

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 1145 (Quirk) – As Introduced February 17, 2017

SUBJECT: Compensation of utilities for relocation costs

SUMMARY: Requires the state or a local government to reimburse a cable television corporation or operator reasonable relocation costs incurred as a result of construction project financed from any voter-approved bond. Specifically, **this bill:**

- 1) Requires the state or a local government to reimburse a utility for the reasonable relocation costs incurred by the utility to relocate its facilities as a result of a construction project financed from any voter-approved bond act of the state or local government.
- 2) Defines “relocation cost” to mean all costs of relocating a utility’s facilities that the utility incurs as a direct result of the construction and operation of a construction project. Relocation costs do not include profits, but may include a reasonable allocation of general overhead expenses.
- 3) Specifies that a cable television corporation or a cable operator, as specified, is deemed a utility under provisions of the bill.
- 4) Requires the state or a local government to provide the utility, at the state’s or local government’s expense, with equal land rights in the new location of the relocated facilities, if the utility has existing land rights, including a utility easement, for the facilities that are required to be relocated as a result of the construction project.
- 5) Requires the state or local government to provide the utility, at the state’s or local government’s expense, rights in the new location of the relocated facilities equivalent to the utility’s existing rights under the permit, if the utility’s existing facilities relocated in the right-of-way under a permit.
- 6) Requires a utility to submit a verified itemized claim to the state or a local government for reimbursement of relocation costs within 180 days after each calendar quarter in which the utility incurs the relocation costs.
- 7) Requires, upon receipt of a verified itemized claims for reimbursement of relocation costs, the state or a local government to do all of the following:
 - a) Review each verified itemized claim. The review may include an audit conducted pursuant to generally accepted accounting principles, upon written request, the utility shall make its relevant books and records reasonably available to the state or local government to review for the purposes of the audit;
 - b) Reimburse the utility for the reasonable incurred relocation costs within 90 days after receipt of the verified itemized claim, as specified; and,
 - c) Reimburse verified itemized claims for reimbursement of relocation costs from all affected utilities in the order of receipt.

EXISTING LAW:

- 1) Defines a “public utility” to include every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof. (Public Utilities Code (PUC) Section 215.7)
- 2) Defines “cable operator” as any person or group of persons that either provides cable service over a cable system and directly, or through one or more affiliates, owns a significant interest in a cable system; or that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system, as specified. (PUC Section 5830)
- 3) Defines “cable television corporation” to mean any corporation or firm which transmits television programs by cable to subscribers for a fee. (PUC Section 216.2)
- 4) Requires all charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered to be just and reasonable. Specifies that every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. (PUC Section 451)
- 5) Requires the California Public Utilities Commission (CPUC) to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, requires the public utility to furnish such commodity or render such service within the time and upon the conditions provided in such rules. (PUC Section 761)
- 6) Authorizes the city and any public utility or public agency supplying electric or communication service within the city, in a proceeding for a conversion, by agreement, to provide that, upon confirmation of the assessment, the public utility or public agency shall have legal title to the electric or communication facilities, which shall thereafter constitute part of a system of the public utility or public agency and be used, operated, maintained, and managed by it as part of its system. (Streets and Highways Code (SHC) Section 5896.9)
- 7) Requires the legislative body, in order to initiate proceedings for a conversion, to determine that the city or a public utility has voluntarily agreed to pay over 50 percent of all costs of conversion, excluding costs of users’ connections to underground electric or communication facilities. (SHC Section 5896.5)
- 8) Requires all electric or communication facilities, including connections to the owner’s premises, located upon any lot or parcel of land within the assessment district to be constructed, reconstructed, relocated or converted by the owner of such lot or parcel at his own expense, as specified. (SHC Section 5896.14)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Author's Statement:** "AB 1145 does the following: Creates fairness for all utility service providers. When local or state governments selectively reimburse only certain utility companies for forced facilities relocations but not for others, such as cable operators, the customers for the non-reimbursed utility service providers end up paying twice, shouldering more of the costs associated for all forced facility relocations [...] Provides accountability for capital improvement projects. When local governments have 'skin in the game' and are responsible for keeping costs in line with their project budgets, local governments will ensure relocation costs are reasonable and planned appropriately. Creates greater efficiency among all parties for local capital improvement projects. This bill will allow communication companies to work collaboratively with cities and towns on their projects instead of spending needless hours haggling over movement of facilities."
- 2) **Background:** Article XII of the California Constitution establishes the CPUC and grants it the authority to regulate public utilities. Amongst its responsibilities, the CPUC provide oversight over electric and gas utility infrastructure, as well as other infrastructure related policy and programs, including interconnection, reliability and distribution, undergrounding and infrastructure safety. Public utilities provide essential public services, such as electricity, natural gas, water, and sewage, and are subject to various forms of public control and regulations under the CPUC. As part of its authority, the CPUC approves the amount each investor owned utility (IOU) can collect from its customers based on the cost of operating, maintaining and financing the infrastructure used to run the utility, and on the cost of its procured fuel and power. Such utilities undergo General Rate Case (GRC) proceedings at the CPUC who authorizes the amounts they can charge their customer for the cost to own, operate, and maintain their facilities in rates. GRCs generally occur on a three year cycle for each IOU, and less frequently for multi-jurisdictional utilities.

Although the CPUC has some limited rate of return regulatory authority over the communication services industry including oversight over universal service programs, cable companies offer subscriber based television and communication services through a range of connections to the home beyond the traditional coaxial cable regulations of the CPUC. Pursuant to the Digital Infrastructure and Video Competition Act (DIVCA), cable companies wishing to build new video and broadband infrastructure must apply for a state issued franchise to cover a service territory to operate. DIVCA left most standard requirements of a franchise in place and under the control of local governments, but required all video providers to offer and funding for public, educational, and government channels. There has been growing debate over the governance of communication services, including whether or not internet and cable communication services should be considered essential services and, hence, regulated as a public utility.

- 3) **Undergrounding:** Undergrounding is the process of replacing overhead lines that provide services such as electricity or communications with lines underground. Undergrounding is typically done for aesthetic purposes, but serves the benefit of making such lines less susceptible to damage from being exposed to the elements, hence reducing the cost of fixing damaged lines overtime. For example, power-line fires in less developed areas combined with fire-weather condition such as strong winds, low humidity, and elevated temperatures, have the potential of turning utility fires into rapidly spreading mega fires resulting in great damage and cost to communities. Although undergrounding may reduce the cost of

maintenance overtime, the initial cost of undergrounding is more expensive. In addition, aside from cost, undergrounding carries with it its own risk in terms of safety, access, and maintenance. For example, whereas overhead electric system cables can rely on air to provide insulation, underground electric system cables must be covered by insulation material to protect it from the buildup of flammable gas and water damage in order to reduce the potential for explosions, as was seen in 2015 when several fires in underground vaults caused power outages throughout the City of Long Beach.

- 4) **Tariff Rule 20:** To facilitate the conversion of overhead cables to underground facilities, the CPUC established Tariff Rule 20 which creates criteria's to assist public utilities undergrounding projects through ratepayer funds. Rule 20 provides three levels of progressively diminishing ratepayer funding. Rule 20A projects are typically initiated by a city or county and occur in areas of a community that are used by the public. Under Rule 20A, ratepayers contribute the bulk of the cost (80% of project or more) if the project meets certain public interest criteria's including: eliminate an unusually heavy concentration of overhead lines, involve a street or road with a high volume of public traffic, benefit a civic or public recreation area or area of unusual scenic interest, or be listed as an arterial street or major collector, as specified. The determination of what is considered general interest is made by the local government, after holding public hearings, in consultation with the utilities.

Rule 20B projects are typically done in conjunction with larger developments with the majority of the cost funded by developers or applicants. Under Rule 20B, ratepayer may fund up to 20% of project cost. Finally, Rule 20C projects are usually smaller projects involving property owners. Under Rule 20C, project costs are de minimis and borne almost entirely by the applicants. Oftentimes projects that require undergrounding of utility lines typically include attaching equipment and lines from other communications services. However, because cable companies are not classified as public utilities, whereas, a traditional public utility may be able to recoup their relocation cost through Rule 20 or their GRC proceedings. Cable corporations cannot.

This bill classifies cable television corporations and operators as public utilities for the sole purpose of receiving relocation cost for construction projects financed from any voter-approved bond act of the state or local government. The bill creates a specified process for cable corporations and operators to submit verified itemized claims, and requires the state and local government to reimburse utilities for the cost of relocating a utility's facilities that the utility incurs as a direct result of the construction project, as specified. It is unclear why private cable corporations should be able to receive the benefits of public funds, but be exempted from any rate of return or other regulations similar to traditional public utilities.

The author may wish to consider an amendment to require public utilities to first apply for reimbursement through its eligible regulatory process.

The author may also wish to consider an amendment to better align the reimbursement process for cable corporations and operators with those established under Rule 20 for eligible public utilities.

- 5) **Relocation Cost:** This bill requires local government to reimburse a utility for the reasonable relocation cost incurred by the utility to relocate its facilities as a result of any voter approved bond act construction project. In addition, the bill requires the state or local government to

provide the utility at the state's or local governments expense equal land rights in a new location of the relocation facilities if the utility has existing land rights for the facilities that are required to be relocated. It is unknown what amount future voter-approved bond acts might be or the cost of the resulting relocation projects. Arguably, funds from any voter-approved bond are intended for a specified purposes approved by the voters. Although cable corporations or operators currently have to bear the entire cost of relocation, the majority of the bond should still be dedicated to the specified purpose.

The author may wish to consider an amendment to limit the amount of any voter-approved bond that can be paid for relocation cost to five percent of the total dollar amount of the voter-approved bond proceeds.

6) Suggested Amendment:

7012. (a) Unless otherwise prohibited by law or expressly governed by a contract in force as of January 1, 2018, the state or a local government shall reimburse a utility for the reasonable relocation costs incurred by the utility to relocate, at the direction of the state or local government entity with the appropriate jurisdiction, its facilities from an existing state or local government right-of-way or easement as a result of a construction project financed from any voter-approved bond act of the state or local government, respectively.

7012 (x) Reasonable utility relocation costs shall be for projects that are in the public interest by meeting one or more of the following criteria:

(i) Eliminate an unusually heavy concentration of overhead lines;

(ii) Involve a street or road with a high volume of public traffic;

(iii) Benefit a civic or public recreation area or area of unusual scenic interest;

(iv) Are necessary to accommodate a state or local capital infrastructure project;

(v) Are necessary for public safety; or,

(iv) Be listed as an arterial street or major collector as defined in the Governor's Office of Planning and Research Guidelines.

(x) The determination of "general public interest" under these criteria is made by the local government, after holding public hearings, in consultation with the utilities.

7012 (x) Prior to the state or local government reimbursing a public utility for facilities relocation costs, the public utility shall first apply for recovery of their relocation costs through its regulatory process, if applicable. Only after being denied regulatory cost recovery shall the public utility apply for reimbursement from the state or local government for reimbursement from project bond proceeds.

7012 (x) The reimbursement limitation for paid claims of utility relocation costs is not more than five percent of the total dollar amount of all voter-approved bond proceeds.

- 7) **Arguments in Support:** According to the California Cable & Telecommunications Association, “[AB 1145] would provide for a fair and equitable cost reimbursement process when cable operators are required by local or state governments to relocate or underground their facilities [...] More and more cities and their residents are choosing to pursue the undergrounding of overhead facilities for a variety of reasons, including aesthetic and safety concerns. When overhead electric lines are moved underground, cable and telephone companies that have attached to the electric utility poles incur additional costs to go underground as well [...] AB 1145 would ensure that government policies related to the reimbursement of cost for relocating facilities are applied equably to all consumers living in a community where the capital improvement is to be completed so that consumers do not have to pay twice.”
- 8) **Double-referral:** *This bill is double referred, and if passed by this Committee, will be referred to the Assembly Committee on Local Government.*

REGISTERED SUPPORT / OPPOSITION:**Support**

California Cable and Telecommunications Association (sponsor)
Charter Communications
Cox Communications
Comcast

Opposition

None on file.

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