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AB-1145 Conversion of existing overhead electric and communication facilities to underground locations: cable television corporations and cable operators. (2017-2018)

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Assembly Bill No. 1145

CHAPTER 792

An act to amend Sections 700, 5896.2, 5896.5, 5896.9, 5896.10, and 5896.14 of the Streets and Highways Code, relating to electric and communication facilities.

[Approved by Governor October 14, 2017. Filed with Secretary of State October 14, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1145, Quirk. Conversion of existing overhead electric and communication facilities to underground locations: cable television corporations and cable operators.

Existing law authorizes the Department of Transportation and any person maintaining any utility facility, as defined, to enter into a contract providing for or apportioning the obligations and costs to be borne by each party as to specified removals or relocations of utility facilities.

This bill would include within the definition of "utility facilities" for these purposes any pole, poleline, pipe, pipeline, conduit, cable, aqueduct, or other structure or appurtenance used to provide cable service or video service, as defined in the Digital Infrastructure and Video Competition Act of 2006.

The Improvement Act of 1911 authorizes the initiation of special assessment proceedings for the conversion of overhead electric and communication facilities to underground locations upon either the filing of a petition or a determination by the local legislative body that the city or a public utility has voluntarily agreed to pay over 50% of all costs of conversion, excluding costs of users' connections to underground electric or communication facilities. Existing law authorizes an agreement entered into as part of those proceedings to allocate duties between a city and an electricity or communication provider regarding, among other things, the planning and specifications of, and contributions of labor, materials, and money to, the conversion of those electric and communication facilities to underground locations.

This bill would additionally make these provisions applicable to cable television facilities and cable operators.

Because this bill would create new duties for local entities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 700 of the Streets and Highways Code is amended to read:

700. (a) "Person," in addition to the definition in Section 19, includes any city, county, public corporation, or public district.

(b) "Utility facility" means any pole, poleline, pipe, pipeline, conduit, cable, aqueduct, or other structure or appurtenance thereof used for public or privately owned utility services, used to provide cable service or video service, as defined in Section 5830 of the Public Utilities Code, or used by any mutual organization supplying water or telephone service to its members.

(c) "Utility" means any person maintaining any utility facility.

(d) "Freeway" includes any toll bridge, including approaches, under the jurisdiction of the commission.

SEC. 2. Section 5896.2 of the Streets and Highways Code is amended to read:

5896.2. As used in this chapter, the following words and phrases, and any variants thereof, are defined as follows:

"Cable operator" has the same meaning as defined in Section 5830 of the Public Utilities Code.

"Cable television service" has the same meaning as "cable service" as defined in Section 5830 of the Public Utilities Code.

"Communication service" means the transmission of intelligence by electrical means, including, but not limited to, telephone, telegraph, messenger-call, clock, police, fire alarm, and traffic control circuits, and circuits for the transmission of television or radio signals.

"Convert" or "conversion" means the removal of all, or any part, of any existing overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

"Electric service" means the distribution of electricity for heat, light, or power.

"Electric or communication facilities" means any works or improvements used or useful in providing electrical, cable television, or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances, other than those owned or used by, or provided for, any railroad or pipeline, and located upon or above the right-of-way of the railroad or pipeline. "Electric facilities" does not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

"Overhead electric or communication facilities" means electrical, cable television, or communication facilities located, in whole or in part, above the surface of the ground.

"Underground electric or communication facilities" means electrical, cable television, or communication facilities located, in whole or in part, beneath the surface of the ground.

"Public agency" means any city, county, district, or public corporation (other than the one conducting the proceedings) that provides electric or communication service to the public by means of electric or communication facilities.

"Public utility" means any person or corporation that provides electric or communication service to the public by means of electric or communication facilities.

SEC. 3. Section 5896.5 of the Streets and Highways Code is amended to read:

5896.5. Proceedings for a conversion shall be initiated by either a petition or by a determination of the legislative body.

(a) In order to initiate proceedings, a petition shall:

(1) Describe the proposed assessment district, as provided in Section 5181.

(2) Generally describe the proposed conversion.

(3) Request that proceedings for such conversion be taken pursuant to this division.

(b) In order to initiate proceedings, the legislative body shall determine that the city, a public utility, or a cable operator has voluntarily agreed to pay over 50 percent of all costs of conversion, excluding costs of users' connections to underground electric or communication facilities.

(c) The city shall not pay a different percentage of the costs of conversion incurred by a public utility and by a cable operator associated with the same proceeding. The payment shall be made on a nondiscriminatory basis.

SEC. 4. Section 5896.9 of the Streets and Highways Code is amended to read:

5896.9. (a) In a proceeding for a conversion, the city and any public utility, cable operator, or public agency supplying electric service, cable television service, or communication service within the city, by agreement, may provide that, upon confirmation of the assessment, the public utility, cable operator, 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.

(b) Subject to any rules, regulations, or tariffs applicable to any public utility, cable operator, or public agency, the agreement also may provide, among other things, for any of the following: the supplying or approval by the public utility, cable operator, or public agency of plans and specifications; a contribution of labor, materials, or money by the public utility, cable operator, or public agency; the performance by the public utility, cable operator, or public agency of all, or any part, of the work or improvement; and payment to the public utility, cable operator, or public agency for any work or improvement performed or service rendered by it.

(c) Any agreement shall be made prior to the adoption of the resolution ordering the work. If the proceedings are abandoned, the agreement shall be given no further force or effect. To the extent that the agreement provides that all, or any part, of the work or improvement is to be performed by the public utility, cable operator, or public agency, the provisions of this division requiring competitive bidding and the award of the contract to the lowest responsible bidder shall be inapplicable.

(d) Nothing in this chapter precludes the city, cable operator, or the public utility, in the event of disagreement regarding any provision of the proposed agreement, from seeking review of the disagreement by the Public Utilities Commission.

SEC. 5. Section 5896.10 of the Streets and Highways Code is amended to read:

5896.10. If the work or improvement consists solely of a conversion, and the work or improvement is performed by a public utility, cable operator, or public agency, the resolution of intention shall provide that (a) the warrant, assessment, and diagram or (b) any bonds issued or to be issued to represent unpaid assessments, or both (a) and (b), shall be sold as the legislative body directs. The purchaser, and any successors, shall have the same rights and liens as the contractor to collect and enforce the assessments and all bonds issued to represent unpaid assessments. If the work and improvement consists, in part, of a conversion and, in part, of other types of work or improvement under this division, the legislative body may provide, in the resolution of intention, that the costs and expenses of conversion are part of the incidental expenses to be advanced to the city by the contractor and to be included in the assessment. Any payments made upon assessments, any proceeds from the sale of the warrant, assessment, and diagram or bonds, and any incidental expenses so advanced to the city may be used by the city for the purpose of making payments to a public utility, cable operator, or public agency pursuant to an agreement made under Section 5896.9.

SEC. 6. Section 5896.14 of the Streets and Highways Code is amended to read:

5896.14. (a) Subject to applicable rules, regulations, tariffs, or ordinances, all electric or communication facilities, including connections to the owner's premises, located upon any lot or parcel of land within the assessment district shall be constructed, reconstructed, relocated, or converted by the owner of the lot or parcel at his or her own expense. This work may be done by the contractor, or the public utility, cable operator, public agency, or city performing the conversion work, and the cost thereof included in the assessment to be levied upon the lot or parcel, provided that the owner shall execute a written request therefor and file it with the clerk. Any such request shall expressly authorize the contractor, public utility, cable operator, public agency, or city, and the respective officers, agents, and employees of each, to enter upon the lot or parcel for that purpose and shall waive any right of protest or objection in respect of the doing of that work and the inclusion of the cost thereof in the assessment.

(b) The provisions of this chapter shall not be deemed to diminish any right of an owner of a lot or parcel of land to contract any portion of work on his or her premises.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.