

AMENDED IN ASSEMBLY JUNE 14, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 611

Introduced by Senator Hill

February 22, 2013

An act to amend ~~Sections 101 and 110 of, and to add Section 203.5 to, the Business and Professions Code, and to amend Sections 309.5, 402, 409, 1731, 1756, and 5900 of the Public Utilities Code, relating to the Public Utilities Commission.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Hill. Public Utilities Commission: Division of Ratepayer Advocates.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. Existing law establishes the Division of Ratepayer Advocates within the commission to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. Existing law requires the Director of the Division of Ratepayer Advocates to submit an annual budget to the commission for final approval. *Existing law authorizes the director of the division to appoint a lead attorney to represent the division and requires all attorneys assigned by the Public Utilities Commission to perform services for the division to report to and be directed by the lead attorney for the division.*

This bill would rename the Division of Ratepayer Advocates the Office of Ratepayer Advocates, ~~would transfer the office to the Department of Consumer Affairs,~~ would authorize the office to seek rehearings and judicial review of commission decisions, and would require that the director of the office develop a budget for the office that would be submitted to the Department of Finance for final approval. *The bill would require the lead attorney to obtain adequate legal personnel for the work to be conducted by the office from the Public Utilities Commission's attorney and requires the Public Utilities Commission's attorney to timely and appropriately fulfill all requests for legal personnel made by the lead attorney for the office, provided the office has sufficient moneys and positions in its budget for the services requested. The bill would make other conforming changes.*

~~Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law provides for the Public Utilities Commission Ratepayer Advocate Account in the General Fund and requires that money from the Public Utilities Commission Utilities Reimbursement Account be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account for performance of the duties of the division.~~

~~This bill would require the commission to continue to collect moneys through Public Utilities Commission reimbursement fees for the support of the Office of Ratepayer Advocates in the amounts authorized by the Department of Finance. The bill would provide that moneys collected for the support of the Office of Ratepayer Advocates be paid into the Office of Ratepayer Advocates Special Fund Account, which the bill would create in the existing Consumer Affairs Fund. The bill would provide that moneys in the account would be available, upon appropriation by the Legislature, only for use by the Office of Ratepayer Advocates in performing its assigned functions and that moneys in the account are held in trust on behalf of the public utility ratepayers from whom the moneys were collected and may not be appropriated, or in~~

any other manner transferred or otherwise diverted, to any other fund or entity.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—Section 101 of the Business and Professions Code~~
- 2 ~~is amended to read:~~
- 3 ~~101. The department is comprised of:~~
- 4 ~~(a) The Dental Board of California.~~
- 5 ~~(b) The Medical Board of California.~~
- 6 ~~(c) The State Board of Optometry.~~
- 7 ~~(d) The California State Board of Pharmacy.~~
- 8 ~~(e) The Veterinary Medical Board.~~
- 9 ~~(f) The California Board of Accountancy.~~
- 10 ~~(g) The California Architects Board.~~
- 11 ~~(h) The Bureau of Barbering and Cosmetology.~~
- 12 ~~(i) The Board for Professional Engineers and Land Surveyors.~~
- 13 ~~(j) The Contractors’ State License Board.~~
- 14 ~~(k) The Bureau for Private Postsecondary Education.~~
- 15 ~~(l) The Bureau of Electronic and Appliance Repair, Home~~
- 16 ~~Furnishings, and Thermal Insulation.~~
- 17 ~~(m) The Board of Registered Nursing.~~
- 18 ~~(n) The Board of Behavioral Sciences.~~
- 19 ~~(o) The State Athletic Commission.~~
- 20 ~~(p) The Cemetery and Funeral Bureau.~~
- 21 ~~(q) The State Board of Guide Dogs for the Blind.~~
- 22 ~~(r) The Bureau of Security and Investigative Services.~~
- 23 ~~(s) The Court Reporters Board of California.~~
- 24 ~~(t) The Board of Vocational Nursing and Psychiatric~~
- 25 ~~Technicians.~~
- 26 ~~(u) The Landscape Architects Technical Committee.~~
- 27 ~~(v) The Division of Investigation.~~
- 28 ~~(w) The Bureau of Automotive Repair.~~
- 29 ~~(x) The Respiratory Care Board of California.~~
- 30 ~~(y) The Acupuncture Board.~~
- 31 ~~(z) The Board of Psychology.~~
- 32 ~~(aa) The California Board of Podiatric Medicine.~~
- 33 ~~(ab) The Physical Therapy Board of California.~~

1 ~~(ac) The Arbitration Review Program.~~
 2 ~~(ad) The Physician Assistant Committee.~~
 3 ~~(ae) The Speech-Language Pathology and Audiology Board.~~
 4 ~~(af) The California Board of Occupational Therapy.~~
 5 ~~(ag) The Osteopathic Medical Board of California.~~
 6 ~~(ah) The Naturopathic Medicine Committee.~~
 7 ~~(ai) The Dental Hygiene Committee of California.~~
 8 ~~(aj) The Professional Fiduciaries Bureau.~~
 9 ~~(ak) The Office of Ratepayer Advocates.~~
 10 ~~(al) Any other boards, offices, or officers subject to its~~
 11 ~~jurisdiction by law.~~

12 ~~SEC. 2. Section 110 of the Business and Professions Code is~~
 13 ~~amended to read:~~

14 ~~110. (a) Except as provided in subdivision (b), the department~~
 15 ~~shall have possession and control of all records, books, papers,~~
 16 ~~offices, equipment, supplies, funds, appropriations, land and other~~
 17 ~~property—real or personal—now or hereafter held for the benefit~~
 18 ~~or use of all of the bodies, offices or officers comprising the~~
 19 ~~department. The title to all property held by any of these bodies,~~
 20 ~~offices or officers for the use and benefit of the state, is vested in~~
 21 ~~the State of California to be held in the possession of the~~
 22 ~~department. Except as authorized by a board, the department shall~~
 23 ~~not have the possession and control of examination questions prior~~
 24 ~~to submission to applicants at scheduled examinations.~~

25 ~~(b) The Office of Ratepayer Advocates shall have possession~~
 26 ~~and control of all records, books, papers, offices, equipment,~~
 27 ~~supplies, funds, appropriations, land and other property, real or~~
 28 ~~personal, now or hereafter held for the benefit or use of the office.~~
 29 ~~The title to all property held by the Office of Ratepayer Advocates~~
 30 ~~is vested in the State of California in trust on behalf of the~~
 31 ~~ratepayers of the state's public utilities, to be held in the possession~~
 32 ~~of the office. The records of the Office of Ratepayer Advocates~~
 33 ~~are subject to Section 583 of the Public Utilities Code.~~

34 ~~SEC. 3. Section 203.5 is added to the Business and Professions~~
 35 ~~Code, to read:~~

36 ~~203.5. Within the Consumer Affairs Fund there is hereby~~
 37 ~~created the Office of Ratepayer Advocates Special Fund Account.~~
 38 ~~Moneys in the account shall be available, upon appropriation by~~
 39 ~~the Legislature, only for use by the Office of Ratepayer Advocates~~
 40 ~~in performing its functions pursuant to Section 309.5 of the Public~~

1 Utilities Code. Moneys in the account are held in trust on behalf
2 of the public utility ratepayers from whom the moneys were
3 collected and may not be appropriated, or in any other manner
4 transferred or otherwise diverted, to any other fund or entity.

5 SEC. 4. Section 309.5 of the Public Utilities Code is amended
6 to read:

7 309.5.—(a) There is, within the Department of Consumer
8 Affairs, an Office of Ratepayer Advocates to represent and
9 advocate on behalf of the interests of public utility customers and
10 subscribers within the jurisdiction of the commission. The goal of
11 the office shall be to obtain the lowest possible rate for service
12 consistent with reliable and safe service levels. For revenue
13 allocation and rate design matters, the office shall primarily
14 consider the interests of residential and small commercial
15 customers. The office may seek rehearing and judicial review of
16 commission decisions pursuant to Article 2 (commencing with
17 Section 1731) and Article 3 (commencing with Section 1756) of
18 Chapter 9.

19 (b) The director of the office shall be appointed by, and serve
20 at the pleasure of, the Governor, subject to confirmation by the
21 Senate.

22 The director shall annually appear before the appropriate policy
23 committees of the Assembly and the Senate to report on the
24 activities of the office.

25 (c) The director shall develop a budget for the office which shall
26 be subject to final approval of the Department of Finance. As
27 authorized in the approved budget, the office shall employ
28 personnel and resources, including attorneys and other legal support
29 staff at a level sufficient to ensure that customer and subscriber
30 interests are effectively represented in all significant proceedings.
31 The office may employ experts necessary to carry out its functions.
32 The director may appoint a lead attorney who shall represent the
33 office, and shall report to and serve at the pleasure of the director.
34 All attorneys performing services for the office shall report to and
35 be directed by the lead attorney appointed by the director.

36 (d) The commission shall develop appropriate procedures to
37 ensure that the existence of the office does not create a conflict of
38 roles for any employee. The procedures shall include, but shall
39 not be limited to, the development of a code of conduct and
40 procedures for ensuring that advocates and their representatives

1 on a particular case or proceeding are not advising decisionmakers
2 on the same case or proceeding.

3 (e) ~~The office may compel the production or disclosure of any~~
4 ~~information it deems necessary to perform its duties from any~~
5 ~~entity regulated by the commission, provided that any objections~~
6 ~~to any request for information shall be decided in writing by the~~
7 ~~assigned commissioner or by the commission, if there is no~~
8 ~~assigned commissioner.~~

9 (f) ~~The commission shall continue to collect moneys pursuant~~
10 ~~to Chapter 2.5 (commencing with Section 401) for the support of~~
11 ~~the Office of Ratepayer Advocates in the amounts authorized by~~
12 ~~the Department of Finance. Moneys from the Public Utilities~~
13 ~~Commission Utilities Reimbursement Account in the General Fund~~
14 ~~shall be transferred in the annual Budget Act to the Office of~~
15 ~~Ratepayer Advocates Special Fund Account in the Consumer~~
16 ~~Affairs Fund. The funds in the Office of Ratepayer Advocates~~
17 ~~Special Fund Account shall be utilized exclusively by the office~~
18 ~~in the performance of its duties as determined by the director. The~~
19 ~~director shall annually submit a staffing report to the Director of~~
20 ~~Finance containing a comparison of the staffing levels for each~~
21 ~~five-year period.~~

22 (g) ~~On or before January 10 of each year, the office shall provide~~
23 ~~to the chairperson of the fiscal committee of each house of the~~
24 ~~Legislature and to the Joint Legislative Budget Committee all of~~
25 ~~the following information:~~

26 (1) ~~The number of personnel years utilized during the prior year~~
27 ~~by the Office of Ratepayer Advocates.~~

28 (2) ~~The total dollars expended by the Office of Ratepayer~~
29 ~~Advocates in the prior year, the estimated total dollars expended~~
30 ~~in the current year, and the total dollars proposed for appropriation~~
31 ~~in the following budget year.~~

32 (3) ~~Workload standards and measures for the Office of~~
33 ~~Ratepayer Advocates.~~

34 (h) ~~The office shall meet and confer in an informal setting with~~
35 ~~a regulated entity prior to issuing a report or pleading to the~~
36 ~~commission regarding alleged misconduct, or a violation of a law~~
37 ~~or a commission rule or order, raised by the office in a complaint.~~
38 ~~The meet and confer process shall be utilized in good faith to reach~~
39 ~~agreement on issues raised by the office regarding any regulated~~
40 ~~entity in the complaint proceeding.~~

1 SECTION 1. Section 309.5 of the Public Utilities Code is
2 amended to read:

3 309.5. (a) There is within the commission ~~a Division~~ an
4 independent Office of Ratepayer Advocates to represent and
5 advocate on behalf of the interests of public utility customers and
6 subscribers within the jurisdiction of the commission. The goal of
7 the ~~division~~ office shall be to obtain the lowest possible rate for
8 service consistent with reliable and safe service levels. For revenue
9 allocation and rate design matters, the ~~division~~ office shall primarily
10 consider the interests of residential and small commercial
11 customers. *The office may seek rehearing and judicial review of*
12 *commission decisions pursuant to Article 2 (commencing with*
13 *Section 1731) and Article 3 (commencing with Section 1756) of*
14 *Chapter 9.*

15 (b) The director of the ~~division~~ office shall be appointed by, and
16 serve at the pleasure of, the Governor, subject to confirmation by
17 the Senate.

18 The director shall annually appear before the appropriate policy
19 committees of the Assembly and the Senate to report on the
20 activities of the ~~division~~ office.

21 (c) The director shall develop a budget for the ~~division~~ which
22 office that shall be subject to final approval of the ~~commission~~. In
23 accordance with Department of Finance. As authorized in the
24 approved budget, the ~~commission~~ shall, by rule or order, provide
25 for the assignment of personnel to, and the functioning of, the
26 ~~division~~. The ~~division~~ office shall employ experts necessary
27 to carry out its functions. Personnel personnel and resources,
28 including attorneys and other legal support, shall be provided by
29 the ~~commission~~ to the ~~division~~ support staff, at a level sufficient
30 to ensure that customer and subscriber interests are effectively
31 represented in all significant proceedings. *The office may employ*
32 *experts necessary to carry out its functions. The director may*
33 *appoint a lead attorney who shall represent the ~~division~~, office,*
34 *and shall report to and serve at the pleasure of the director. All*
35 *attorneys assigned The lead attorney for the office shall obtain*
36 *adequate legal personnel for the work to be conducted by the*
37 *~~commission~~ office from the commission's attorney appointed*
38 *pursuant to perform services for the ~~division~~ Section 307. The*
39 *commission's attorney shall report to timely and be directed*
40 *appropriately fulfill all requests for legal personnel made by the*

1 lead attorney ~~appointed by~~ *for the director office, provided the*
2 *office has sufficient moneys and positions in its budget for the*
3 *services requested.*

4 (d) The commission shall develop appropriate procedures to
5 ensure that the existence of the ~~division office~~ does not create a
6 conflict of roles for any employee. The procedures shall include,
7 but shall not be limited to, the development of a code of conduct
8 and procedures for ensuring that advocates and their representatives
9 on a particular case or proceeding are not advising decisionmakers
10 on the same case or proceeding.

11 (e) The ~~division office~~ may compel the production or disclosure
12 of any information it deems necessary to perform its duties from
13 any entity regulated by the commission, provided that any
14 objections to any request for information shall be decided in writing
15 by the assigned commissioner or by the president of the
16 commission, if there is no assigned commissioner.

17 (f) There is hereby created the Public Utilities Commission
18 Ratepayer Advocate Account in the General Fund. Moneys from
19 the Public Utilities Commission Utilities Reimbursement Account
20 in the General Fund shall be transferred in the annual Budget Act
21 to the Public Utilities Commission Ratepayer Advocate
22 Account. The funds in the Public Utilities Commission Ratepayer Advocate
23 Account shall be *a budgetary program fund administered and*
24 *utilized exclusively by the* ~~division office~~ *in the performance of*
25 *its duties as determined by the director. The director shall annually*
26 *submit a staffing report containing a comparison of the staffing*
27 *levels for each five-year period.*

28 (g) On or before January 10 of each year, the ~~commission office~~
29 shall provide to the chairperson of the fiscal committee of each
30 house of the Legislature and to the Joint Legislative Budget
31 Committee all of the following information:

32 (1) The number of personnel years ~~assigned to~~ *utilized during*
33 *the* ~~Division~~ *prior year by the Office of Ratepayer Advocates.*

34 (2) The total dollars expended by the ~~Division Office~~ of
35 Ratepayer Advocates in the prior year, the estimated total dollars
36 expended in the current year, and the total dollars proposed for
37 appropriation in the following budget year.

38 (3) Workload standards and measures for the ~~Division Office~~
39 of Ratepayer Advocates.

1 (h) The ~~division~~ *office* shall meet and confer in an informal
2 setting with a regulated entity prior to issuing a report or pleading
3 to the commission regarding alleged misconduct, or a violation of
4 a law or a commission rule or order, raised by the ~~division~~ *office*
5 in a complaint. The meet and confer process shall be utilized in
6 good faith to reach agreement on issues raised by the ~~division~~
7 *office* regarding any regulated entity in the complaint proceeding.

8 ~~SEC. 5.~~ Section 402 of the Public Utilities Code is amended
9 to read:

10 ~~402.~~ The Public Utilities Commission Utilities Reimbursement
11 Account is hereby continued in existence. All fees collected by
12 the commission pursuant to Section 431 shall be transmitted to
13 the Treasurer at least quarterly for deposit in the account or the
14 Office of Ratepayer Advocates Special Fund Account within the
15 Consumer Affairs Fund.

16 ~~SEC. 6.~~ Section 409 of the Public Utilities Code is amended
17 to read:

18 ~~409.~~ (a) Notwithstanding any other provision of law, all fees
19 and charges collected pursuant to this code by the commission
20 from each public utility subject to Section 431, with the exception
21 of any penalty collected pursuant to Section 405 or 406, shall be
22 deposited in the Public Utilities Commission Utilities
23 Reimbursement Account, in addition to the fee authorized by
24 Section 431, or in the Office of Ratepayer Advocates Special Fund
25 Account within the Consumer Affairs Fund.

26 (b) A penalty collected pursuant to Section 405 or 406 shall be
27 deposited in the General Fund.

28 ~~SEC. 7.~~

29 ~~SEC. 2.~~ Section 1731 of the Public Utilities Code is amended
30 to read:

31 1731. (a) The commission shall set an effective date when
32 issuing an order or decision. The commission may set the effective
33 date of an order or decision prior to the date of issuance of the
34 order or decision.

35 (b) (1) After any order or decision has been made by the
36 commission, any party to the action or proceeding, including the
37 Office of Ratepayer Advocates, or any stockholder or bondholder
38 or other party pecuniarily interested in the public utility affected,
39 may apply for a rehearing in respect to any matters determined in
40 the action or proceeding and specified in the application for

1 rehearing. The commission may grant and hold a rehearing on
2 those matters, if in its judgment sufficient reason is made to appear.
3 No cause of action arising out of any order or decision of the
4 commission shall accrue in any court to any corporation or person
5 unless the corporation or person has filed an application to the
6 commission for a rehearing within 30 days after the date of
7 issuance or within 10 days after the date of issuance in the case of
8 an order issued pursuant to either Article 5 (commencing with
9 Section 816) or Article 6 (commencing with Section 851) of
10 Chapter 4 relating to security transactions and the transfer or
11 encumbrance of utility property.

12 (2) The commission shall notify the parties of the issuance of
13 an order or decision by either mail or electronic transmission.
14 Notification of the parties may be accomplished by one of the
15 following methods:

16 (A) Mailing the order or decision to the parties to the action or
17 proceeding.

18 (B) If a party to an action or proceeding consents in advance to
19 receive notice of any order or decision related to the action or
20 proceeding by electronic mail address, notification of the party
21 may be accomplished by transmitting an electronic copy of the
22 official version of the order or decision to the party if the party
23 has provided an electronic mail address to the commission.

24 (C) If a party to an action or proceeding consents in advance to
25 receive notice of any order or decision related to the action or
26 proceeding by electronic mail address, notification of the party
27 may be accomplished by transmitting a link to an Internet Web
28 site where the official version of the order or decision is readily
29 available to the party if the party has provided an electronic mail
30 address to the commission.

31 (3) For the purposes of this article, “date of issuance” means
32 the mailing or electronic transmission date that is stamped on the
33 official version of the order or decision.

34 (c) No cause of action arising out of any order or decision of
35 the commission construing, applying, or implementing the
36 provisions of Chapter 4 of the Statutes of the 2001–02 First
37 Extraordinary Session that (1) relates to the determination or
38 implementation of the department’s revenue requirements, or the
39 establishment or implementation of bond or power charges
40 necessary to recover those revenue requirements, or (2) in the sole

1 determination of the Department of Water Resources, the expedited
2 review of order or decision of the commission is necessary or
3 desirable, for the maintenance of any credit ratings on any bonds
4 or notes of the department issued pursuant to Division 27
5 (commencing with Section 80000) of the Water Code or for the
6 department to meet its obligations with respect to any bonds or
7 notes pursuant to that division, shall accrue in any court to any
8 corporation or person unless the corporation or person has filed
9 an application with the commission for a rehearing within 10 days
10 after the date of issuance of the order or decision. The Department
11 of Water Resources shall notify the commission of any
12 determination pursuant to paragraph (2) of this subdivision prior
13 to the issuance by the commission of any order or decision
14 construing, applying, or implementing the provisions of Chapter
15 4 of the Statutes of the 2001–02 First Extraordinary Session. The
16 commission shall issue its decision and order on rehearing within
17 20 days after the filing of the application.

18 ~~SEC. 8.~~

19 *SEC. 3.* Section 1756 of the Public Utilities Code is amended
20 to read:

21 1756. (a) Within 30 days after the commission issues its
22 decision denying the application for a rehearing, or, if the
23 application was granted, then within 30 days after the commission
24 issues its decision on rehearing, or at least 120 days after the
25 application is granted if no decision on rehearing has been issued,
26 any aggrieved party, including the Office of Ratepayer Advocates,
27 may petition for a writ of review in the court of appeal or the
28 Supreme Court for the purpose of having the lawfulness of the
29 original order or decision or of the order or decision on rehearing
30 inquired into and determined. If the writ issues, it shall be made
31 returnable at a time and place specified by court order and shall
32 direct the commission to certify its record in the case to the court
33 within the time specified.

34 (b) The petition for review shall be served upon the executive
35 director and the general counsel of the commission either
36 personally or by service at the office of the commission.

37 (c) For purposes of this section, the issuance of a decision or
38 the granting of an application shall be construed to have occurred
39 on the date of issuance, as defined in paragraph (3) of subdivision
40 (b) of Section 1731.

1 (d) The venue of a petition filed in the court of appeal pursuant
2 to this section shall be in the judicial district in which the petitioner
3 resides. If the petitioner is a business, venue shall be in the judicial
4 district in which the petitioner has its principal place of business
5 in California.

6 (e) Any party may seek from the Supreme Court, pursuant to
7 California Rules of Court, an order transferring related actions to
8 a single appellate district.

9 (f) For purposes of this section, review of decisions pertaining
10 solely to water corporations shall only be by petition for writ of
11 review in the Supreme Court, except that review of complaint or
12 enforcement proceedings may be in the court of appeal or the
13 Supreme Court.

14 (g) No order or decision arising out of a commission proceeding
15 under Section 854 shall be reviewable in the court of appeal
16 pursuant to subdivision (a) if the application for commission
17 authority to complete the merger or acquisition was filed on or
18 before December 31, 1998, by two telecommunications-related
19 corporations including at least one which provides local
20 telecommunications service to over one million California
21 customers. These orders or decisions shall be reviewed pursuant
22 to the Public Utilities Code in existence on December 31, 1998.

23 ~~SEC. 9.~~

24 *SEC. 4.* Section 5900 of the Public Utilities Code is amended
25 to read:

26 5900. (a) The holder of a state franchise shall comply with
27 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2
28 of the Government Code, and any other customer service standards
29 pertaining to the provision of video service established by federal
30 law or regulation or adopted by subsequent enactment of the
31 Legislature. All customer service and consumer protection
32 standards under this section shall be interpreted and applied to
33 accommodate newer or different technologies while meeting or
34 exceeding the goals of the standards.

35 (b) The holder of a state franchise shall comply with provisions
36 of Section 637.5 of the Penal Code and the privacy standards
37 contained in Section 551 et seq. of Title 47 of the United States
38 Code.

39 (c) The local entity shall enforce all of the customer service and
40 protection standards of this section with respect to complaints

1 received from residents within the local entity’s jurisdiction, but
2 it may not adopt or seek to enforce any additional or different
3 customer service or other performance standards under Section
4 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the
5 Government Code, or any other authority or provision of law.

6 (d) The local entity shall, by ordinance or resolution, provide a
7 schedule of penalties for any material breach by a holder of a state
8 franchise of this section. No monetary penalties shall be assessed
9 for a material breach if it is out of the reasonable control of the
10 holder. Further, no monetary penalties may be imposed prior to
11 January 1, 2007. Any schedule of monetary penalties adopted
12 pursuant to this section shall in no event exceed five hundred
13 dollars (\$500) for each day of each material breach, not to exceed
14 one thousand five hundred dollars (\$1,500) for each occurrence
15 of a material breach. However, if a material breach of this section
16 has occurred, and the local entity has provided notice and a fine
17 or penalty has been assessed, and if a subsequent material breach
18 of the same nature occurs within 12 months, the penalties may be
19 increased by the local entity to a maximum of one thousand dollars
20 (\$1,000) for each day of each material breach, not to exceed three
21 thousand dollars (\$3,000) for each occurrence of the material
22 breach. If a third or further material breach of the same nature
23 occurs within those same 12 months, and the local entity has
24 provided notice and a fine or penalty has been assessed, the
25 penalties may be increased to a maximum of two thousand five
26 hundred dollars (\$2,500) for each day of each material breach, not
27 to exceed seven thousand five hundred dollars (\$7,500) for each
28 occurrence of the material breach. With respect to video providers
29 subject to a franchise or license, any monetary penalties assessed
30 under this section shall be reduced dollar-for-dollar to the extent
31 any liquidated damage or penalty provision of a current cable
32 television ordinance, franchise contract, or license agreement
33 imposes a monetary obligation upon a video provider for the same
34 customer service failures, and no other monetary damages may be
35 assessed.

36 (e) The local entity shall give the video service provider written
37 notice of any alleged material breach of the customer service
38 standards of this division and allow the video provider at least 30
39 days from receipt of the notice to remedy the specified material
40 breach.

- 1 (f) A material breach for the purposes of assessing penalties
2 shall be deemed to have occurred for each day within the
3 jurisdiction of each local entity, following the expiration of the
4 period specified in subdivision (e), that any material breach has
5 not been remedied by the video service provider, irrespective of
6 the number of customers or subscribers affected.
- 7 (g) Any penalty assessed pursuant to this section shall be
8 remitted to the local entity, which shall submit one-half of the
9 penalty to the Digital Divide Account established in Section 280.5.
- 10 (h) Any interested person may seek judicial review of a decision
11 of the local entity in a court of appropriate jurisdiction. For this
12 purpose, a court of law shall conduct a de novo review of any
13 issues presented.
- 14 (i) This section shall not preclude a party affected by this section
15 from utilizing any judicial remedy available to that party without
16 regard to this section. Actions taken by a local legislative body,
17 including a local franchising entity, pursuant to this section shall
18 not be binding upon a court of law. For this purpose, a court of
19 law shall conduct de novo review of any issues presented.
- 20 (j) For purposes of this section, “material breach” means any
21 substantial and repeated failure of a video service provider to
22 comply with service quality and other standards specified in
23 subdivision (a).
- 24 (k) The Office of Ratepayer Advocates shall have authority to
25 advocate on behalf of video subscribers regarding renewal of a
26 state-issued franchise and enforcement of this section, and Sections
27 5890 and 5950. For this purpose, the office shall have access to
28 any information in the possession of the commission subject to all
29 restrictions on disclosure of that information that are applicable
30 to the commission.