

SENATE BILL

No. 23

Introduced by Senator Soto

January 30, 2001

An act to amend Section 1245.250 of the Code of Civil Procedure, to amend Section 56036 of, to repeal Sections 56129, 56130, 56131, and 56875 of, the Government Code, to amend Sections 11531, 11652, and 15701 of, and to repeal Sections 11643.1 and 15762.1 of the Public Utilities Code, relating to public power districts.

LEGISLATIVE COUNSEL'S DIGEST

SB 23, as introduced, Soto. Public power districts.

(1) Existing law, relating to the acquisition of property by the exercise of eminent domain by a public entity, provides that, if the taking is by a local public entity and the property is electric, gas, or water public utility property, the resolution of necessity of the governing body of the local public agency creates a rebuttable presumption that the required conditions for the exercise of eminent domain are true, and that the presumption is a presumption affecting the burden of proof.

This bill would delete that presumption.

(2) Existing law establishes the procedures and requirements for the organization and reorganization of special districts, generally, in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Existing law also requires that, if a service area that is furnished gas or electric service by a public utility becomes part of, or is formed into, a district authorized to furnish gas or electric service, the district may not furnish that service without approval of the local agency formation commission and the voters of an election. Existing law

specifically provides for the formation of municipal utility districts and public utility districts.

This bill would specifically remove municipal utility districts and public utility districts from the application of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and delete the local agency formation commission and voter approval requirements discussed above. The bill would provide that laws governing municipal utility districts and public utility districts, respectively, are the sole and exclusive authority and procedure for the initiation, conduct, and completion of the organization of changes to, and reorganization of municipal utility districts and public utility districts. The bill would make various conforming changes.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Fair Citizen Access to Public Power Act.

3 SEC. 2. The Legislature finds and declares that in order to
4 furnish the citizens of California with reliable, affordable
5 electrical power, to ensure sufficient power reserves, to assure
6 stability and rationality in California's electricity market, to
7 encourage energy efficiency and conservation as well as the use of
8 renewable energy resources, and to protect the public health,
9 welfare, and safety, the state needs to streamline the process for
10 forming public power districts.

11 SEC. 3. Section 1245.250 of the Code of Civil Procedure is
12 amended to read:

13 1245.250. (a) Except as otherwise provided by statute, a
14 resolution of necessity adopted by the governing body of the
15 public entity pursuant to this article conclusively establishes the
16 matters referred to in Section 1240.030.

17 (b) ~~If the taking is by a local public entity, other than a sanitary~~
18 ~~district exercising the powers of a county water district pursuant~~
19 ~~to Section 6512.7 of the Health and Safety Code, and the property~~
20 ~~is electric, gas, or water public utility property, the resolution of~~
21 ~~necessity creates a rebuttable presumption that the matters referred~~
22 ~~to in Section 1240.030 are true. This presumption is a presumption~~
23 ~~affecting the burden of proof.~~

(e) If the taking is by a local public entity and the property described in the resolution is not located entirely within the boundaries of the local public entity, the resolution of necessity creates a presumption that the matters referred to in Section 1240.030 are true. This presumption is a presumption affecting the burden of producing evidence.

~~(d) For the purposes of subdivision (b), a taking by the State Reclamation Board for the Sacramento and San Joaquin Drainage District is not a taking by a local public entity.~~

SEC. 4. Section 56036 of the Government Code is amended to read:

56036. (a) “District” or “special district” means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. “District” or “special district” includes a county service area, but excludes all of the following:

- (1) The state.
- (2) A county.
- (3) A city.
- (4) A school district or a community college district.
- (5) A special assessment district.
- (6) An improvement district.
- (7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.
- (8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.
- (9) An air pollution control district or an air quality maintenance district.
- (10) A service zone of a fire protection district.
- (11) *A municipal utility district.*
- (12) *A public utility district.*

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a “district” or a “special district” for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive,

1 of Part 4 or Part 5 (commencing with Section 57300), none of the
2 following entities is a “district” or a “special district:”

3 (A) A unified or union high school library district.

4 (B) A bridge and highway district.

5 (C) A joint highway district.

6 (D) A transit or rapid transit district.

7 (E) A metropolitan water district.

8 (F) A separation of grade district.

9 (G) *A municipal utility district.*

10 (H) *A public utility district.*

11 (2) Any proceedings pursuant to Part 4 (commencing with
12 Section 57000) for a change of organization involving an entity
13 described in paragraph (1) shall be conducted pursuant to the
14 principal act authorizing the establishment of that entity.

15 (c) Except as otherwise provided in paragraph (1), each of the
16 entities listed in paragraph (1) is a “district” or “special district”
17 for purposes of this division.

18 (1) For the purposes of Chapter 1 (commencing with Section
19 57000) to Chapter 7 (commencing with Section 57175), inclusive,
20 of Part 4 or Part 5 (commencing with Section 57300), none of the
21 following entities is a “district” or “special district” if the
22 commission of the principal county determines, in accordance
23 with Sections 56127 and 56128, that the entity is not a “district”
24 or “special district.”

25 (A) A flood control district.

26 (B) A flood control and floodwater conservation district.

27 (C) A flood control and water conservation district.

28 (D) A conservation district.

29 (E) A water conservation district.

30 (F) A water replenishment district.

31 (G) The Orange County Water District.

32 (H) A California water storage district.

33 (I) A water agency.

34 (J) A county water authority or a water authority.

35 (2) If the commission determines that an entity described in
36 paragraph (1) is not a “district” or “special district,” any
37 proceedings pursuant to Part 4 (commencing with Section 57000)
38 for a change of organization involving the entity shall be
39 conducted pursuant to the principal act authorizing the
40 establishment of that entity.

SEC. 5. Section 56129 of the Government Code is repealed.
~~56129. (a) If a public utility has been granted a certificate of public convenience and necessity authorizing and requiring it to furnish gas or electric service within a certain service area and, as a result of a change of organization or a reorganization, territory consisting of all, or any part, of that service area becomes a part of, or is formed into, a district authorized by its principal act to furnish gas or electric service, the district shall not furnish that service within the territory except upon approval by both of the following:~~

~~(1) The commission after receipt and consideration of the report of the Public Utilities Commission made as provided in Section 56131.~~

~~(2) The voters within the territory, given at an election as provided in Section 56130.~~

~~(b) If both of those approvals are given, upon assumption of service by the district the public utility may at any time thereafter withdraw service within the territory, unless otherwise ordered by the Public Utilities Commission.~~

~~(c) "Gas or electric service," as used in this section and in Sections 56130, 56131, and 56875, means the distribution and sale for any purpose, other than for the purpose of resale, of gas or electricity for light, heat, or power.~~

SEC. 6. Section 56130 of the Government Code is repealed.
~~56130. Voter approval within the territory, as required by Section 56129, shall be given at an election. The question submitted at the election shall identify the district, designate the kind of service to be furnished, identify the territory within which the service is proposed to be furnished, and state the name of the public utility presently authorized to furnish the gas or electric service within the territory.~~

~~The district shall not furnish the gas or electric service, as defined in subdivision (c) of Section 56129, within the territory unless the question of furnishing the gas or electric service has been submitted to the voters at an election called, held, and conducted within the territory and a majority of the votes cast upon the question are in favor of the service. The board of supervisors or the legislative body of the conducting district may submit the question at the election called upon the question of confirmation of an order of change of organization or reorganization, or the~~

1 board of directors of the district may submit the question of the gas
2 or electric service at a special election called after completion of
3 the proceedings for a change of organization or a reorganization.
4 The question of the service shall be submitted as a separate
5 proposition at any election within the territory and shall be voted
6 upon only by qualified voters within the territory. If the question
7 is defeated at the election, for one year thereafter no petition
8 requesting the gas or electric service may be filed and no new
9 election called upon the question.

10 SEC. 7. Section 56131 of the Government Code is repealed.

11 ~~56131. The executive officer shall file with the Public~~
12 ~~Utilities Commission a certified copy of any proposal for a change~~
13 ~~of organization or a reorganization which provides, as a part of the~~
14 ~~change of organization or reorganization, that gas or electric~~
15 ~~service, as defined in subdivision (c) of Section 56129, be~~
16 ~~furnished by a district within any of the territory affected by the~~
17 ~~change of organization or reorganization. The certified copy need~~
18 ~~not contain any signatures if the proposal is by petition. After that~~
19 ~~change of organization or reorganization has been ordered, the~~
20 ~~clerk of the district shall file with the Public Utilities Commission~~
21 ~~a certified copy of any ordinance, resolution, or order made by the~~
22 ~~board of directors of a district proposing to furnish gas or electric~~
23 ~~service, as defined in subdivision (c) of Section 56129, within the~~
24 ~~territory.~~

25 After that filing, the Public Utilities Commission shall cause an
26 investigation to be made and may conduct any hearings in
27 connection with the proposal. Upon completion of the
28 investigation and not later than 90 days after the date of the filing,
29 the Public Utilities Commission shall make a report to the
30 commission stating whether, in the opinion of the Public Utilities
31 Commission, the proposed service by the district within the
32 territory will substantially impair the ability of the public utility to
33 provide adequate service at reasonable rates within the remainder
34 of the service area of the public utility.

35 The secretary of the Public Utilities Commission shall
36 immediately file a certified copy of that report with the executive
37 officer.

38 SEC. 8. Section 56875 of the Government Code is repealed.

39 ~~56875. If any sufficient petition or resolution of application~~
40 ~~shall propose, as a part of the petition or resolution of application,~~

~~that the district shall furnish gas or electric service, as provided in Sections 56129 to 56131, inclusive, a certified copy of the report of the Public Utilities Commission shall be on file with the executive officer prior to setting that petition or resolution for public hearing by the commission.~~

SEC. 9. Section 11531 of the Public Utilities Code is amended to read:

11531. A municipal utility district may be created as provided in this division and when so created may exercise the powers herein granted.

Notwithstanding Division 3 (commencing with Section 56000, of Title 5 of the Government Code, this division provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of the organization of, changes to, and reorganization of municipal utility districts.

SEC. 10. Section 11643.1 of the Public Utilities Code is repealed.

~~11643.1. Within five days after the district formation election has been called, the legislative body which has called the election shall transmit, by registered mail, a written notification of the election call to the executive officer of the local agency formation commission of the county or principal county in which the territory or major portion of the territory of the proposed district is located. Such written notice shall include the name and a description of the proposed district, and may be in the form of a certified copy of the resolution adopted by the legislative body calling the district formation election.~~

~~The executive officer, within five days after being notified that a district formation election has been called, shall submit to the commission, for its approval or modification, an impartial analysis of the proposed district formation.~~

~~The impartial analysis shall not exceed 500 words in length and shall include a specific description of the boundaries of the district proposed to be formed.~~

~~The local agency formation commission, within five days after the receipt of the executive officer's analysis, shall approve or modify the analysis and submit it to the officials in charge of conducting the district formation election.~~

SEC. 11. Section 11652 of the Public Utilities Code is amended to read:

1 11652. The board of supervisors shall canvass the returns of
2 each public agency and each parcel of unincorporated territory, if
3 any, separately, and shall order and declare the district created and
4 established of the public agencies and territory in which a majority
5 of those who voted on the proposition voted in favor of the creation
6 of the district if the total number of voters in ~~such~~ *those* approving
7 public agencies and territory is not less than ~~two-thirds the number~~
8 *of a majority of the voters within the district as first proposed who*
9 *voted on the proposition*, according to the register used at the
10 election.

11 SEC. 12. Section 15701 of the Public Utilities Code is
12 amended to read:

13 15701. A district may be incorporated and managed in
14 unincorporated territory pursuant to this division and may exercise
15 the powers expressly granted.

16 *Notwithstanding Division 3 (commencing with Section 56000)*
17 *of Title 5 of the Government Code, this division provides the sole*
18 *and exclusive authority and procedure for the initiation, conduct,*
19 *and completion of the organization of, changes to, and*
20 *reorganization of public utility districts.*

21 SEC. 13. Section 15762.1 of the Public Utilities Code is
22 repealed.

23 ~~15762.1. Within five days after the district formation election~~
24 ~~has been called, the legislative body which has called the election~~
25 ~~shall transmit, by registered mail, a written notification of the~~
26 ~~election call to the executive officer of the local agency formation~~
27 ~~commission of the county or principal county in which the~~
28 ~~territory or major portion of the territory of the proposed district~~
29 ~~is located. Such written notice shall include the name and a~~
30 ~~description of the proposed district, and may be in the form of a~~
31 ~~certified copy of the resolution adopted by the legislative body~~
32 ~~calling the district formation election.~~

33 ~~The executive officer, within five days after being notified that~~
34 ~~a district formation election has been called, shall submit to the~~
35 ~~commission, for its approval or modification, an impartial analysis~~
36 ~~of the proposed district formation.~~

37 ~~The impartial analysis shall not exceed 500 words in length and~~
38 ~~shall include a specific description of the boundaries of the district~~
39 ~~proposed to be formed.~~

1 ~~The local agency formation commission, within five days after~~
2 ~~the receipt of the executive officer's analysis, shall approve or~~
3 ~~modify the analysis and submit it to the officials in charge of~~
4 ~~conducting the district formation election.~~

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