

AMENDED IN SENATE MARCH 5, 2001

AMENDED IN SENATE FEBRUARY 15, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

## SENATE BILL

**No. 23**

**Introduced by Senator Soto**

**(Principal coauthor: Senator Alarcon)**

(Coauthors: Assembly Members Strom-Martin and Washington)

January 30, 2001

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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, to amend Section 56131 of the Government Code, to amend Sections 11531, 11652, and 15701 of, and to repeal Sections 11643.1 and 15762.1 and to amend Section 11652 of the Public Utilities Code, relating to public power districts.~~

### LEGISLATIVE COUNSEL'S DIGEST

SB 23, as amended, 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 the application of that presumption as to the taking of electric or gas public utility property.

(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 with respect to the formation of a proposed district to be formed for the primary purpose of furnishing gas or electric service and would prohibit the commission from denying the annexation or detachment of any existing public utility district or municipal utility district furnishing gas or electric service. 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.

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

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

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

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

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

~~(B) A bridge and highway district.~~

~~(C) A joint highway district.~~

~~(D) A transit or rapid transit district.~~

~~(E) A metropolitan water district.~~

~~(F) A separation of grade district.~~

~~(G) A municipal utility district.~~

~~(H) A public utility district.~~

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

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

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

~~(A) A flood control district.~~

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

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

~~(D) A conservation district.~~

~~(E) A water conservation district.~~

~~(F) A water replenishment district.~~

~~(G) The Orange County Water District.~~

~~(H) A California water storage district.~~

~~(I) A water agency.~~

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

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

~~SEC. 5. Section 56129 of the Government Code is repealed.~~

~~SEC. 6. Section 56130 of the Government Code is repealed.~~

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

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

~~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.~~

~~SEC. 11.—~~

~~SEC. 4. Section 56131 of the Government Code is amended to read:~~

~~56131. (a) (1) The executive officer shall file with the Public Utilities Commission a certified copy of any proposal for a change of organization or a reorganization which provides, as a part of the change of organization or reorganization, that gas or electric service, as defined in subdivision (c) of Section 56129, be furnished by a district within any of the territory affected by the change of organization or reorganization. The certified copy need not contain any signatures if the proposal is by petition. After that~~

~~change of organization or reorganization has been ordered, the clerk of the district shall file with the Public Utilities Commission a certified copy of any ordinance, resolution, or order made by the board of directors of a district proposing to furnish gas or electric service, as defined in subdivision (c) of Section 56129, within the territory.~~

~~After~~

(2) *After* that filing, the Public Utilities Commission shall cause an investigation to be made and may conduct any hearings in connection with the proposal. Upon completion of the investigation and not later than ~~90~~ 60 days after the date of the filing, the Public Utilities Commission shall make a report to the commission stating whether, in the opinion of the Public Utilities Commission, the proposed service by the district within the territory will substantially impair the ability of the public utility to provide adequate service at reasonable rates within the remainder of the service area of the public utility.

~~The~~

(3) *The* secretary of the Public Utilities Commission shall immediately file a certified copy of that report with the executive officer.

*(b) Notwithstanding Section 56375 or any other provision of this division, the commission may not deny approval of the formation of a proposed district to be formed for the primary purpose of furnishing gas or electric service as defined in subdivision (c) of Section 56129, however, the authority of such a district to furnish water and sewer services is subject to commission approval. The commission may not deny the annexation or detachment of any existing public utility district or municipal utility district furnishing gas or electric service, as defined in subdivision (c) of Section 56129.*

SEC. 5. Section 11652 of the Public Utilities Code is amended to read:

11652. The board of supervisors shall canvass the returns of each public agency and each parcel of unincorporated territory, if any, separately, and shall order and declare the district created and established of the public agencies and territory in which a majority of those who voted on the proposition voted in favor of the creation of the district if the total number of voters in those approving public agencies and territory is not less than a majority of the voters

1 within the district as first proposed who voted on the proposition,  
2 according to the register used at the election.

3 ~~SEC. 12. Section 15701 of the Public Utilities Code is~~  
4 ~~amended to read:~~

5 ~~15701. A district may be incorporated and managed in~~  
6 ~~unincorporated territory pursuant to this division and may exercise~~  
7 ~~the powers expressly granted.~~

8 ~~Notwithstanding Division 3 (commencing with Section 56000)~~  
9 ~~of Title 5 of the Government Code, this division provides the sole~~  
10 ~~and exclusive authority and procedure for the initiation, conduct,~~  
11 ~~and completion of the organization of, changes to, and~~  
12 ~~reorganization of public utility districts.~~

13 ~~SEC. 13. Section 15762.1 of the Public Utilities Code is~~  
14 ~~repealed.~~

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