

AMENDED IN SENATE MARCH 13, 2001

AMENDED IN SENATE MARCH 5, 2001

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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 56131~~ *Sections 56131 and 56875* of the Government Code, to add Section 25441.3 to the *Public Resources Code*, and to amend ~~Section~~ *Sections 11561 and 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 resolution of necessity conclusively establishes those facts required by law to exercise the power of eminent domain except in specified situations, including when the property is electric, gas, or water public utility property; For electric, gas, or water 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~~ *the rebuttable* 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. Existing law prohibits a public agency being divided in the formation of a municipal utility district.

This bill would delete the local agency formation commission approval requirements 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. *This bill would prohibit a city being divided in the formation of a municipal utility district.*

(3) *Existing law requires the State Energy Resources Conservation and Development Commission to provide financial assistance to local jurisdictions for the purpose of staff training and support services to reduce energy costs.*

*This bill would require the commission to provide technical assistance to local jurisdictions and community groups for the purpose of preparing feasible proposals for the formation of special districts for the generation, transmission, and distribution of electricity.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. 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

1 electrical power, to ensure sufficient power reserves, to assure  
2 stability and rationality in California's electricity market, to  
3 encourage energy efficiency and conservation as well as the use of  
4 renewable energy resources, and to protect the public health,  
5 welfare, and safety, the state needs to streamline the process for  
6 forming public power districts.

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

9 1245.250. (a) Except as otherwise provided by statute, a  
10 resolution of necessity adopted by the governing body of the  
11 public entity pursuant to this article conclusively establishes the  
12 matters referred to in Section 1240.030.

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

20 (c) If the taking is by a local public entity and the property  
21 described in the resolution is not located entirely within the  
22 boundaries of the local public entity, the resolution of necessity  
23 creates a presumption that the matters referred to in Section  
24 1240.030 are true. This presumption is a presumption affecting the  
25 burden of producing evidence.

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

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

31 56131. (a) (1) The executive officer shall file with the Public  
32 Utilities Commission a certified copy of any proposal for a change  
33 of organization or a reorganization which provides, as a part of the  
34 change of organization or reorganization, that gas or electric  
35 service, as defined in subdivision (c) of Section 56129, be  
36 furnished by a district within any of the territory affected by the  
37 change of organization or reorganization.

38 (2) After that filing, the Public Utilities Commission shall  
39 cause an investigation to be made and may conduct any hearings  
40 in connection with the proposal. Upon completion of the

1 investigation and not later than 60 days after the date of the filing,  
2 the Public Utilities Commission shall make a report to the  
3 commission.

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

7 (b) Notwithstanding Section 56375 or any other provision of  
8 this division, the commission may not ~~deny approval of~~  
9 *disapprove a change of organization or reorganization that would*  
10 *result in the formation of a proposed special district to be formed*  
11 *for the primary purpose of furnishing gas or electric service as*  
12 *defined in subdivision (c) of Section 56129, however, the*  
13 *authority of such a district to furnish water and sewer services is*  
14 *subject to commission approval. The commission may not deny*  
15 *the annexation or detachment of any existing public utility district*  
16 *or municipal utility district furnishing gas or electric service, as*  
17 *defined in subdivision (e) of Section 56129, if the commission has*  
18 *received a resolution in support of the proposal adopted by the*  
19 *legislative body of each city that would be included within the*  
20 *proposed district and, in the case of a district that would include*  
21 *unincorporated territory, a resolution in support of that proposal*  
22 *adopted by the county board of supervisors.*

23 SEC. 5. Section 56875 of the Government Code is amended  
24 to read:

25 56875. (a) If any sufficient petition or resolution of  
26 application shall propose, as a part of the petition or resolution of  
27 application, that the district shall furnish gas or electric service, as  
28 provided in Sections 56129 to 56131, inclusive, a certified copy  
29 of the report of the Public Utilities Commission shall be on file  
30 with the executive officer prior to setting that petition or resolution  
31 for public hearing by the commission.

32 (b) Notwithstanding subdivision (a), if the report of the Public  
33 Utilities Commission is not available within the 60-day time limit  
34 set by Section 56131, the executive officer may set the petition or  
35 resolution for public hearing without the report.

36 SEC. 6. Section 11561 of the Public Utilities Code is amended  
37 to read:

38 11561. Any ~~public agency together with unincorporated~~  
39 ~~territory, or two or more public agencies, with or without~~  
40 ~~unincorporated territory, may organize and incorporate as a~~

~~municipal utility district. Public agencies and unincorporated territory included within a district may be in the same or separate counties and need not be contiguous territory, whether incorporated or unincorporated, whether contiguous or noncontiguous, may be included in a municipal utility district. No public agency city shall be divided in the formation of a district.~~

SEC. 7. Section 11652 of the Public Utilities Code is amended to read:

~~11652. The If the majority of the votes cast at the election is in favor of forming the district, 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 within the district as first proposed who voted on the proposition, according to the register used at the election. order and declare the district created and established.~~

SEC. 8. Section 25441.3 is added to the Public Resources Code, to read:

25441.3. The commission shall provide technical assistance to local jurisdictions and community groups for the purpose of preparing feasible proposals for the formation of special districts for the generation, transmission, and distribution of electricity.

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