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AMENDED IN SENATE MARCH 14, 2001
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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

An act to amend Sections 1240.650 and 1245.250 of the Code of Civil Procedure, to amend Sections 56131 and 56875 of the Government Code, to add Section 25441.3 to the Public Resources Code, and to amend 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, 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 the rebuttable presumption to the taking of electric or gas public utility property. This bill would prohibit a district or city for 5 years following acquisition of property for furnishing electric or gas service, from increasing the fee beyond an annual adjustment for inflation for attachments of cable corporations or certified telecommunications carriers to the 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 upon receipt of a specified resolution with respect to the formation of a proposed district to be formed for the primary purpose of furnishing gas or electric service. This bill would prohibit a city being divided in the formation of a municipal utility district. *This bill would revise the procedure that the board supervisors is required to use to canvass the returns of each public agency and each parcel of unincorporated territory, if any, in order to be able to declare a municipal utility district created.*

(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: yes. State-mandated local program: no.

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

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

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

SEC. 3. Section 1240.650 of the Code of Civil Procedure is amended to read:

1240.650. (a) Where property has been appropriated to public use by any person other than a public entity, the use thereof by a public entity for the same use or any other public use is a more necessary use than the use to which such property has already been appropriated.

(b) Where property has been appropriated to public use by a public entity, the use thereof by the public entity is a more necessary use than any use to which such property might be put by any person other than a public entity.

(c) Where property which has been appropriated to a public use is water public utility property which the public entity intends to put to the same use, the presumption of a more necessary use established by subdivision (a) is a rebuttable presumption affecting the burden of proof, unless the acquiring public entity is a sanitary district exercising the powers of a county water district pursuant to Section 6512.7 of the Health and Safety Code.

SEC. 4. 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

1 a rebuttable presumption that the matters referred to in Section
2 1240.030 are true. This presumption is a presumption affecting the
3 burden of proof.

4 (c) If the taking is by a local public entity and the property
5 described in the resolution is not located entirely within the
6 boundaries of the local public entity, the resolution of necessity
7 creates a presumption that the matters referred to in Section
8 1240.030 are true. This presumption is a presumption affecting the
9 burden of producing evidence.

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

13 (e) For a period of five years following the acquisition of
14 property to furnish electric or gas service, the district board, or the
15 city council, of the district or city furnishing gas or electric service,
16 shall not increase the annual recurring fee for attachments by cable
17 corporations or certified telecommunications carriers to that
18 property above the amount in effect at the time of the acquisition,
19 except for prospective annual adjustments for inflation, based
20 upon changes in the Consumer Price Index.

21 SEC. 5. Section 56131 of the Government Code is amended
22 to read:

23 56131. (a) (1) The executive officer shall file with the Public
24 Utilities Commission a certified copy of any proposal for a change
25 of organization or a reorganization which provides, as a part of the
26 change of organization or reorganization, that gas or electric
27 service, as defined in subdivision (c) of Section 56129, be
28 furnished by a district within any of the territory affected by the
29 change of organization or reorganization.

30 (2) After that filing, the Public Utilities Commission shall
31 cause an investigation to be made and may conduct any hearings
32 in connection with the proposal. Upon completion of the
33 investigation and not later than 60 days after the date of the filing,
34 the Public Utilities Commission shall make a report to the
35 commission.

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

39 (b) Notwithstanding Section 56375 or any other provision of
40 this division, the commission may not disapprove a change of

organization or reorganization that would result in the formation of a special district to be formed for the primary purpose of furnishing gas or electric service as defined in subdivision (c) of Section 56129, if the commission has received a resolution in support of the proposal adopted by the legislative body of each city that would be included within the proposed district and, in the case of a district that would include unincorporated territory, a resolution in support of that proposal adopted by the county board of supervisors.

SEC. 6. Section 56875 of the Government Code is amended to read:

56875. (a) If any sufficient petition or resolution of application 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.

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

SEC. 7. Section 11561 of the Public Utilities Code is amended to read:

11561. Any territory, whether incorporated or unincorporated, whether contiguous or noncontiguous, may be included in a municipal utility district. No city shall be divided in the formation of a district.

~~SEC. 8. Section 11652 of the Public Utilities Code is amended to read:~~

~~11652. — If the majority of the votes cast at the election is in favor of forming the district, the board of supervisors shall order and declare the district created and established.~~

SEC. 8. 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 *only* the public agencies and territory in which a majority of those who voted on the proposition voted in favor of

1 the creation of the district if the total number of voters in such
2 approving public agencies and territory is not less than two thirds
3 the number of voters within the district as first proposed, according
4 to the register used at the election.

5 SEC. 9. Section 25441.3 is added to the Public Resources
6 Code, to read:

7 25441.3. The commission shall provide technical assistance
8 to local jurisdictions and community groups for the purpose of
9 preparing feasible proposals for the formation of special districts
10 for the generation, transmission, and distribution of electricity.

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