

AMENDED IN SENATE APRIL 24, 2001
AMENDED IN SENATE APRIL 3, 2001
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CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

SENATE BILL

No. 23

Introduced by Senator Soto
(Principal coauthor: Senator Alarcon)
(Coauthor: Senator Burton)

(Coauthors: Assembly Members Robert Pacheco, Strom-Martin, and
Washington)

January 30, 2001

An act to amend Sections 1240.650 and 1245.250 of, and to add Section 1245.231 to, the Code of Civil Procedure, to amend Sections 56131 and 56875 of, *and to add Chapter 7 (commencing with Section 55725) to Part 2 of Division 2 of Title 5 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, provided that the conclusive presumption made applicable by the bill shall not be construed as limiting the property owner's rights under specified provisions of existing law, and set forth additional requirements with regard to the findings necessary for the resolution of necessity with respect to the taking of electronic 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 of



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.

This bill would require that any new municipal utility district or municipal utility formed subsequent to January 1, 2001, from a territory served by an investor-owned utility shall be obligated for a proportionate share of specified contracts for electric service acquired by the Department of Water Resources subject to modification of the obligation by agreement between the new municipal utility district or municipal utility and the department.

(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:

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 1240.650 of the Code of Civil Procedure is
12 amended to read:

13 1240.650. (a) Where property has been appropriated to
14 public use by any person other than a public entity, the use thereof
15 by a public entity for the same use or any other public use is a more
16 necessary use than the use to which such property has already been
17 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) Subdivisions (a) and (b) shall not be construed as limiting the property owner's right to review under Section 1094.5 or 1245.255 or to have an objection heard and determined pursuant to Section 1260.110.

(d) 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. 3.5. Section 1245.231 is added to the Code of Civil Procedure, to read:

1245.231. If the property to be taken is electric or gas public utility property, the resolution of necessity shall also contain a determination that there is an economic basis for the necessity, based on findings with respect to the following economic issues affecting the public entity seeking to commence proceedings to acquire the property by eminent domain:

(a) The projected costs to the public entity.

(b) The ability of the public entity to provide power to its customers.

(c) The financial condition of the public entity.

(d) Any other possible side-effects of the taking, including impacts on local telecommunications services.

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 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.

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

SEC. 4.5. Chapter 7 (commencing with Section 55725) is added to Part 2 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 7. ELECTRIC SERVICE CONTRACTS

55725. Any new municipal utility district or new municipal utility that is formed subsequent to January 1, 2001, from a territory served by an investor-owned utility shall be obligated for a proportionate share of the contracts for electric service acquired by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code. This obligation may be modified pursuant to an agreement between the new municipal utility district or municipal utility and the Department of Water Resources.

SEC. 5. 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

1 service, as defined in subdivision (c) of Section 56129, be
2 furnished by a district within any of the territory affected by the
3 change of organization or reorganization.

4 (2) After that filing, the Public Utilities Commission shall
5 cause an investigation to be made and may conduct any hearings
6 in connection with the proposal. Upon completion of the
7 investigation and not later than 60 days after the date of the filing,
8 the Public Utilities Commission shall make a report to the
9 commission. *The report shall review and comment on whether the*
10 *proposed service by the district within the territory will*
11 *substantially impair the ability of the public utility to provide*
12 *adequate service at reasonable rates within the remainder of the*
13 *service area of the public utility.*

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

17 (b) Notwithstanding Section 56375 or any other provision of
18 this division, the commission may not disapprove a change of
19 organization or reorganization that would result in the formation
20 of a special district to be formed for the primary purpose of
21 furnishing gas or electric service as defined in subdivision (c) of
22 Section 56129, if the commission has received a resolution in
23 support of the proposal adopted by the legislative body of each city
24 that would be included within the proposed district and, in the case
25 of a district that would include unincorporated territory, a
26 resolution in support of that proposal adopted by the county board
27 of supervisors.

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

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

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

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

3 11561. Any territory, whether incorporated or
4 unincorporated, whether contiguous or noncontiguous, may be
5 included in a municipal utility district. No city shall be divided in
6 the formation of a district.

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

9 11652. The board of supervisors shall canvass the returns of
10 each public agency and each parcel of unincorporated territory, if
11 any, separately, and shall order and declare the district created and
12 established of only the public agencies and territory in which a
13 majority of those who voted on the proposition voted in favor of
14 the creation of the district.

15 SEC. 9. Section 25441.3 is added to the Public Resources
16 Code, to read:

17 25441.3. The commission shall provide technical assistance
18 to local jurisdictions and community groups for the purpose of
19 preparing feasible proposals for the formation of special districts
20 for the generation, transmission, and distribution of electricity.

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