

AMENDED IN SENATE APRIL 21, 1999

AMENDED IN SENATE APRIL 7, 1999

AMENDED IN SENATE MARCH 16, 1999

SENATE BILL

No. 177

Introduced by Senators Peace and Burton

January 12, 1999

An act to add ~~Section 625 to~~ *Sections 625 and 626 to*, and to *repeal and add Section 616 of*, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 177, as amended, Peace. Public utilities: eminent domain.

(1) The Public Utilities Act authorizes certain public utilities to condemn property, as prescribed.

This bill would amend the act *to prohibit a telephone corporation from condemning any property unless that telephone corporation provides telecommunications services as a carrier of last resort seeking to serve currently unserved areas*. The bill would amend the act to prohibit a public utility that offers competitive services from condemning any property for the purpose of competing with another entity in the offering of those competitive services, unless the Public Utilities Commission finds, *pursuant to a petition or complaint filed by the public utility and an adjudication hearing in accordance with specified provisions of the act governing hearings and judicial review*, that such an action would serve the public interest. The bill would authorize the

commission to make such a finding if, in the determination of the commission, either of specified conditions is met. The bill would require the commission to develop procedures to facilitate access for affected property owners to eminent domain proceedings pursuant to those provisions, and to facilitate the participation of those owners in those proceedings. *The bill would prohibit a public utility from entering into any exclusive access agreement with the owner or lessor of, or a person controlling or managing, a property or premises served by the public utility, or from committing or permitting any other act that would limit the right of any other public utility to provide service to a tenant or other occupant of the property or premises. The bill would specify matters relating to certain existing provisions of the Code of Civil Procedure governing eminent domain proceedings.* Because a violation of the act is a crime, this bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. *Section 616 of the Public Utilities Code*
2 *is repealed.*

3 ~~616. A telephone corporation may condemn any~~
4 ~~property necessary for the construction and maintenance~~
5 ~~of its telephone line.~~

6 SEC. 2. *Section 616 is added to the Public Utilities*
7 *Code, to read:*

8 616. *A telephone corporation may not condemn any*
9 *property unless that telephone corporation provides*
10 *telecommunications services as a carrier of last resort*
11 *seeking to serve currently unserved areas.*

SEC. 3. Section 625 is added to the Public Utilities Code, to read:

625. (a) ~~A—~~*For the purpose of this article, a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds, pursuant to a petition or complaint filed by the public utility and an adjudication hearing in accordance with Chapter 9 (commencing with Section 1701) of this part, that such an action would serve the public interest. The commission may make such a finding if, in the determination of the commission, either of the following conditions is met:*

(1) The public utility is providing services as a provider of last resort that seeks to serve unserved areas.

(2) The public utility is able to show all of the following with regard to the proposed condemnation:

(A) The public interest and necessity require the proposed project.

(B) The property to be condemned is necessary for the proposed project.

(C) That, if the commission does not permit the acquisition of the property by eminent domain, the hardship to the public utility will outweigh any hardship to the owners of the property.

(D) The proposed project is located in a manner most compatible with the greatest public good and least private injury.

(b) The commission shall develop procedures to facilitate access for affected property owners to eminent domain proceedings pursuant to this section, and to facilitate the participation of those owners in those proceedings.

~~SEC. 2.—~~

(c) *Nothing in this section relieves a public utility from complying with Section 1240.030 of the Code of Civil Procedure or any other requirement imposed by law.*

(d) *A public utility that does not comply with this section may not exercise the power of eminent domain, including, but not limited to, any authority provided by*

1 *Title 7 (commencing with Section 1230.010) of Part 3 of*
2 *the Code of Civil Procedure.*

3 *(e) The authority provided in this section*
4 *supplements, and does not replace or otherwise affect any*
5 *other limitation in law on the exercise of the power of*
6 *eminent domain, including, but not limited to, any*
7 *authority provided by Title 7 (commencing with Section*
8 *1230.010) of Part 3 of the Code of Civil Procedure.*

9 *SEC. 4. Section 626 is added to the Public Utilities*
10 *Code, to read:*

11 *626. On or after January 1, 2000, a public utility may*
12 *not enter into any exclusive access agreement with the*
13 *owner or lessor of, or a person controlling or managing,*
14 *a property or premises served by the public utility, or*
15 *commit or permit any other act, that would limit the right*
16 *of any other public utility to provide service to a tenant*
17 *or other occupant of the property or premises.*

18 *SEC. 5. No reimbursement is required by this act*
19 *pursuant to Section 6 of Article XIII B of the California*
20 *Constitution because the only costs that may be incurred*
21 *by a local agency or school district will be incurred*
22 *because this act creates a new crime or infraction,*
23 *eliminates a crime or infraction, or changes the penalty*
24 *for a crime or infraction, within the meaning of Section*
25 *17556 of the Government Code, or changes the definition*
26 *of a crime within the meaning of Section 6 of Article*
27 *XIII B of the California Constitution.*

