

AMENDED IN SENATE MAY 19, 1999  
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

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An act to add 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~~ *property is necessary to provide* 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 specified public utilities~~ that ~~offers~~ *offer* 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, *and a local public hearing, as prescribed*, 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. *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.* 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:*

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 Section 616 of the Public Utilities Code is repealed.

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

616. A telephone corporation may not condemn any property ~~unless that telephone corporation provides telecommunications services as a carrier of last resort seeking to serve currently unserved areas.~~ *property unless that property is necessary for that telephone corporation to provide telecommunications services as a carrier of last resort seeking to serve unserved areas.*

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

~~625. (a) For the purpose of this article, a public~~

625. (a) (1) *For the purpose of this article, except as specified in paragraph (4), 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, and a local public hearing in accordance with paragraph (2), that such an action would serve the public interest. The commission may make such a finding public interest.*

(2) *Before making a finding pursuant to this subdivision, the commission shall conduct a public hearing in the local area that would be affected by the proposed condemnation within \_\_\_\_ days of the date that the petition or complaint is filed. The commission shall notify the local governmental entity and provide public notice of the hearing pursuant to both the procedures of the commission and of the local governmental entity.*

(3) *The commission shall render a decision on making a finding in accordance with this subdivision within \_\_\_\_ days of the date of the local public hearing.*

1 (4) *This subdivision does not apply to a railroad*  
2 *corporation or a water corporation.*

3 (b) *The commission may make a finding pursuant to*  
4 *subdivision (a) if, in the determination of the*  
5 *commission, either of the following conditions is met:*

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

8 (1) *The proposed condemnation is necessary to*  
9 *provide service as a provider of last resort to an unserved*  
10 *area.*

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

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

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

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

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

24 ~~(b)–~~

25 (c) *A public utility may not condemn property and*  
26 *subsequently use that property for any purpose other*  
27 *than a public utility purpose, or sell that property, unless*  
28 *that property has been used by the public utility for a*  
29 *public utility purpose for 50 years from the date of*  
30 *condemnation.*

31 (d) *The commission shall develop procedures to*  
32 *facilitate access for affected property owners to eminent*  
33 *domain proceedings pursuant to this section, and to*  
34 *facilitate the participation of those owners in those*  
35 *proceedings.*

36 ~~(e)–~~

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

40 ~~(d)–~~

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

~~(e)~~

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

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

626. On or after January 1, 2000, a public utility may not enter 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 commit or permit 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.

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