

AMENDED IN ASSEMBLY JULY 8, 1999

AMENDED IN SENATE MAY 19, 1999

AMENDED IN SENATE APRIL 21, 1999

AMENDED IN SENATE APRIL 7, 1999

AMENDED IN SENATE MARCH 16, 1999

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**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 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 specified public utilities that 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, an adjudication hearing in accordance with specified provisions of the act governing hearings and judicial review, and a ~~local~~ public hearing *in the local jurisdiction that would be affected by the proposed condemnation*, 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 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:*

- 1 SECTION 1. Section 616 of the Public Utilities Code
- 2 is repealed.
- 3 SEC. 2. Section 616 is added to the Public Utilities
- 4 Code, to read:

1 616. A telephone corporation may not condemn any  
2 property unless that property is necessary for that  
3 telephone corporation to provide telecommunications  
4 services as a carrier of last resort seeking to serve  
5 unserved areas.

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

8 625. (a) (1) For the purpose of this article, except as  
9 specified in paragraph (4), a public utility that offers  
10 competitive services may not condemn any property for  
11 the purpose of competing with another entity in the  
12 offering of those competitive services, unless the  
13 ~~commission finds, pursuant to a petition or complaint~~  
14 ~~filed by the public utility, an adjudication hearing in~~  
15 ~~accordance with Chapter 9 (commencing with Section~~  
16 ~~1701) of this part, and a local public hearing in accordance~~  
17 ~~with paragraph (2), that such an action would serve the~~  
18 ~~public interest.~~

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

27 ~~(3) The commission shall render a decision on making~~  
28 ~~a finding in accordance with this subdivision within \_\_\_\_\_~~  
29 ~~days of the date of the local public hearing. commission~~  
30 ~~finds that such an action would serve the public interest,~~  
31 ~~pursuant to a petition or complaint filed by the public~~  
32 ~~utility and an adjudication hearing in accordance with~~  
33 ~~Chapter 9 (commencing with Section 1701), including an~~  
34 ~~opportunity for the public to participate.~~

35 (2) (A) *Before making a finding pursuant to this*  
36 *subdivision, the commission shall conduct the hearing in*  
37 *the local jurisdiction that would be affected by the*  
38 *proposed condemnation. The hearing shall commence*  
39 *within 45 days of the date that the petition or complaint*  
40 *is filed, unless there is a need for discovery or the*

1 respondent requests an extension. The commission shall  
2 provide public notice of the hearing pursuant to the  
3 procedures of the commission and shall also notify the  
4 local jurisdiction. In addition, the commission shall  
5 provide the local jurisdiction with copies of the notice of  
6 hearing in time for the local jurisdiction to mail that  
7 notice at least seven days in advance of the hearing to all  
8 persons who have requested copies of the local  
9 jurisdiction's agenda or agenda packet pursuant to  
10 Section 54954.1 of the Government Code.

11 (B) For purposes of subparagraph (A), "local  
12 jurisdiction" means each city within whose boundaries  
13 property sought to be taken by eminent domain is  
14 located, and if property sought to be taken is not located  
15 within city boundaries, each county within whose  
16 boundaries that property is located. However, where  
17 there is more than one local jurisdiction with respect to  
18 a single complaint or petition, the commission shall  
19 provide notice and copies of notices for mailing to all local  
20 jurisdictions involved, but shall hold only a single hearing  
21 in any one of those local jurisdictions.

22 (3) (A) The assigned commissioner or administrative  
23 law judge shall render a decision on making a finding in  
24 accordance with this subdivision within 45 days of the  
25 conclusion of the hearing, unless further briefing is  
26 ordered, in which event this period may be extended by  
27 up to 30 additional days to allow for briefing.

28 (B) If the rendering of a decision pursuant to this  
29 subdivision requires review under the California  
30 Environmental Quality Act (Division 13 (commencing  
31 with Section 21000) of the Public Resources Code), then  
32 the time limits contained in subparagraph (A) of  
33 paragraph (2) and subparagraph (A) of paragraph (3)  
34 shall be extended as needed to accommodate that review.

35 (4) This subdivision does not apply to a railroad  
36 corporation or a water corporation.

37 (b) The commission may make a finding pursuant to  
38 subdivision (a) if, in the determination of the  
39 commission, either of the following conditions is met:

1 (1) The proposed condemnation is necessary to  
2 provide service as a provider of last resort to an unserved  
3 area.

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

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

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

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

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

17 (c) A public utility may not condemn property and  
18 subsequently use that property for any purpose other  
19 than a public utility purpose, or sell that property, unless  
20 that property has been used by the public utility for a  
21 public utility purpose for 50 years from the date of  
22 condemnation.

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

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

31 (f) A public utility that does not comply with this  
32 section may not exercise the power of eminent domain,  
33 including, but not limited to, any authority provided by  
34 Title 7 (commencing with Section 1230.010) of Part 3 of  
35 the Code of Civil Procedure.

36 (g) The authority provided in this section  
37 supplements, and does not replace or otherwise affect any  
38 other limitation in law on the exercise of the power of  
39 eminent domain, including, but not limited to, any

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

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

5 626. On or after January 1, 2000, a public utility may  
6 not enter into any exclusive access agreement with the  
7 owner or lessor of, or a person controlling or managing,  
8 a property or premises served by the public utility, or  
9 commit or permit any other act, that would limit the right  
10 of any other public utility to provide service to a tenant  
11 or other occupant of the property or premises.

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

