

AMENDED IN ASSEMBLY AUGUST 31, 1999

AMENDED IN ASSEMBLY AUGUST 26, 1999

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

SENATE BILL

No. 177

Introduced by Senators Peace and Burton

January 12, 1999

An act to add Sections ~~625 and 616.1~~, 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 on an airport, as prescribed, unless that property is necessary to provide telecommunications services as a carrier of last resort seeking to serve an unserved area. 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 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. *This bill would exempt specified entities, as prescribed.* Condemnation actions necessary solely to meet a commission-ordered obligation to serve would be excepted from these requirements, as prescribed. The bill would require specified utilities or their affiliates or subsidiaries to give notice, as prescribed, if they intend to install telecommunications equipment on property acquired by eminent domain, as prescribed. 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.

(2) Because a violation of the act is a crime, this bill would impose a state-mandated local program by creating a new crime.

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:~~

5 ~~616.—A~~

6 *SECTION 1. Section 616.1 is added to the Public*
7 *Utilities Code, to read:*

8 *616.1. Notwithstanding Section 616, a telephone*
9 *corporation may not condemn any property on an airport*
10 *owned by a city and county, and located in another*
11 *county, unless that property is necessary for that*
12 *telephone corporation to provide telecommunications as*
13 *a carrier of last resort seeking to serve an unserved area.*

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

16 625. (a) (1) (A) For the purpose of this article,
17 except as specified in paragraph (4), a public utility that
18 offers competitive services may not condemn any
19 property for the purpose of competing with another
20 entity in the offering of those competitive services, unless
21 the commission finds that such an action would serve the
22 public interest, pursuant to a petition or complaint filed
23 by the public utility and an adjudication hearing in
24 accordance with Chapter 9 (commencing with Section
25 1701), including an opportunity for the public to
26 participate.

27 (B) The requirements of this section do not apply to
28 the condemnation of any property that is necessary solely
29 for an electrical company or gas corporation to meet its
30 commission-ordered obligation to serve. Proposed
31 exercises of eminent domain by electrical or gas
32 corporations that initially, or subsequently, acquire
33 property for either commission-ordered electrical

1 corporation obligation to serve and competitive
2 telecommunications services or gas corporation
3 obligation to serve and telecommunications services are
4 subject to paragraph (2) of subdivision (b). For property
5 acquired through the exercise of eminent domain after
6 January 1, 2000, by an electrical or gas corporation solely
7 to meet its commission-ordered obligation to serve, any
8 electrical or gas corporation, or subsidiary or affiliate, that
9 intends to install telecommunication equipment on the
10 property for the purpose of providing competitive
11 telecommunications services shall provide notice for the
12 planned installation in the commission calendar.

13 (2) (A) Before making a finding pursuant to this
14 subdivision, the commission shall conduct the hearing in
15 the local jurisdiction that would be affected by the
16 proposed condemnation. The hearing shall commence
17 within 45 days of the date that the petition or complaint
18 is filed, unless there is a need for discovery or the
19 respondent requests an extension. The commission shall
20 provide public notice of the hearing pursuant to the
21 procedures of the commission and shall also notify the
22 local jurisdiction. In addition, the commission shall
23 provide the local jurisdiction with copies of the notice of
24 hearing in time for the local jurisdiction to mail that
25 notice at least seven days in advance of the hearing to all
26 persons who have requested copies of the local
27 jurisdiction's agenda or agenda packet pursuant to
28 Section 54954.1 of the Government Code.

29 (B) For purposes of subparagraph (A), "local
30 jurisdiction" means each city within whose boundaries
31 property sought to be taken by eminent domain is
32 located, and if property sought to be taken is not located
33 within city boundaries, each county within whose
34 boundaries that property is located. However, where
35 there is more than one local jurisdiction with respect to
36 a single complaint or petition, the commission shall
37 provide notice and copies of notices for mailing to all local
38 jurisdictions involved, but shall hold only a single hearing
39 in any one of those local jurisdictions.



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

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

(4) This subdivision ~~does~~ *and Section 626 do* not apply to a railroad corporation, *a refined petroleum product common carrier pipeline corporation*, or a water corporation.

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

(1) The proposed condemnation is necessary to provide service as a provider of last resort to an unserved area, except when there are competing offers from facility-based carriers to serve that area.

(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 owners of the property is outweighed by the benefits to the public utility.~~

(C) The public benefit of acquiring the property by eminent domain outweighs the 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.

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

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

9 (e) A public utility that does not comply with this
10 section may not exercise the power of eminent domain,
11 including, but not limited to, any authority provided by
12 Title 7 (commencing with Section 1230.010) of Part 3 of
13 the Code of Civil Procedure.

14 (f) The authority provided in this section
15 supplements, and does not replace or otherwise affect any
16 other limitation in law on the exercise of the power of
17 eminent domain, including, but not limited to, any
18 authority provided by Title 7 (commencing with Section
19 1230.010) of Part 3 of the Code of Civil Procedure.

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

22 626. On or after January 1, 2000, a public utility may
23 not enter into any exclusive access agreement with the
24 owner or lessor of, or a person controlling or managing,
25 a property or premises served by the public utility, or
26 commit or permit any other act, that would limit the right
27 of any other public utility to provide service to a tenant
28 or other occupant of the property or premises.

29 SEC. 5. No reimbursement is required by this act
30 pursuant to Section 6 of Article XIII B of the California
31 Constitution because the only costs that may be incurred
32 by a local agency or school district will be incurred
33 because this act creates a new crime or infraction,
34 eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section
36 17556 of the Government Code, or changes the definition
37 of a crime within the meaning of Section 6 of Article
38 XIII B of the California Constitution.

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