

AMENDED IN ASSEMBLY SEPTEMBER 7, 1999

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 616.1, 625, and 626 to, An act to amend Section 66605 of the Government Code, and to add Sections 616.1, 625, and 626 to the Public Utilities Code, relating to public utilities property.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 177, as amended, Peace. ~~Public—San Francisco Bay: public utilities; eminent domain.~~

(1) Existing law contains legislative findings and declarations regarding the further filling of San Francisco Bay and certain waterways, including that the nature, location, and extent of any fill should be such that it will minimize harmful effects to the bay area, as provided.

This bill would include within those harmful effects that are to be minimized, other conditions affecting the environment, as provided.

(2) 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~~

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

~~The~~

(3) *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 66605 of the Government Code*
2 *is amended to read:*

3 66605. The Legislature further finds and declares:

4 (a) That further filling of San Francisco Bay and
5 certain waterways specified in subdivision (e) of Section
6 66610 should be authorized only when public benefits
7 from fill clearly exceed public detriment from the loss of
8 the water areas and should be limited to water-oriented
9 uses (such as ports, water-related industry, airports,
10 bridges, wildlife refuges, water-oriented recreation, and
11 public assembly, water intake and discharge lines for
12 desalinization plants and power generating plants
13 requiring large amounts of water for cooling purposes) or
14 minor fill for improving shoreline appearance or public
15 access to the bay;

16 (b) That fill in the bay and certain waterways specified
17 in subdivision (e) of Section 66610 for any purpose should
18 be authorized only when no alternative upland location
19 is available for such purpose;



1 (c) That the water area authorized to be filled should
2 be the minimum necessary to achieve the purpose of the
3 fill;

4 (d) That the nature, location, and extent of any fill
5 should be such that it will minimize harmful effects to the
6 bay area, such as, the reduction or impairment of the
7 volume surface area or circulation of water, water quality,
8 fertility of marshes or fish or wildlife resources, *or other*
9 *conditions impacting the environment, as defined in*
10 *Section 21060.5 of the Public Resources Code;*

11 (e) That public health, safety, and welfare require
12 that fill be constructed in accordance with sound safety
13 standards which will afford reasonable protection to
14 persons and property against the hazards of unstable
15 geologic or soil conditions or of flood or storm waters;

16 (f) That fill should be authorized when the filling
17 would, to the maximum extent feasible, establish a
18 permanent shoreline;

19 (g) That fill should be authorized when the applicant
20 has such valid title to the properties in question that he
21 *or she* may fill them in the manner and for the uses to be
22 approved.

23 SEC. 2. Section 616.1 is added to the Public Utilities
24 Code, to read:

25 616.1. Notwithstanding Section 616, a telephone
26 corporation may not condemn any property on an airport
27 owned by a city and county, and located in another
28 county, unless that property is necessary for that
29 telephone corporation to provide telecommunications as
30 a carrier of last resort seeking to serve an unserved area.

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

33 625. (a) (1) (A) For the purpose of this article,
34 except as specified in paragraph (4), a public utility that
35 offers competitive services may not condemn any
36 property for the purpose of competing with another
37 entity in the offering of those competitive services, unless
38 the commission finds that such an action would serve the
39 public interest, pursuant to a petition or complaint filed
40 by the public utility, *personal notice of which has been*

1 *served on the owners of the property to be condemned,*
 2 *and an adjudication hearing in accordance with Chapter*
 3 *9 (commencing with Section 1701), including an*
 4 *opportunity for the public to participate.*

5 (B) The requirements of this section do not apply to
 6 the condemnation of any property that is necessary solely
 7 for an electrical company or gas corporation to meet its
 8 commission-ordered obligation to serve. Proposed
 9 exercises of eminent domain by electrical or gas
 10 corporations that initially, or subsequently, acquire
 11 property for either commission-ordered electrical
 12 corporation obligation to serve and competitive
 13 telecommunications services or gas corporation
 14 obligation to serve and telecommunications services are
 15 subject to paragraph (2) of subdivision (b). For property
 16 acquired through the exercise of eminent domain after
 17 January 1, 2000, by an electrical or gas corporation solely
 18 to meet its commission-ordered obligation to serve, any
 19 electrical or gas corporation, or subsidiary or affiliate, that
 20 intends to install telecommunication equipment on the
 21 property for the purpose of providing competitive
 22 telecommunications services shall provide notice for the
 23 planned installation in the commission calendar.

24 (2) (A) Before making a finding pursuant to this
 25 subdivision, the commission shall conduct the hearing in
 26 the local jurisdiction that would be affected by the
 27 proposed condemnation. The hearing shall commence
 28 within 45 days of the date that the petition or complaint
 29 ~~is filed, unless there is a need for discovery or the~~
 30 ~~respondent requests an extension. The commission shall~~
 31 ~~is filed, unless the respondent establishes that an~~
 32 ~~extension of not more than 30 days is necessary for~~
 33 ~~discovery or other hearing preparation. The commission~~
 34 shall provide public notice of the hearing pursuant to the
 35 procedures of the commission and shall also notify the
 36 local jurisdiction. In addition, the commission shall
 37 provide the local jurisdiction with copies of the notice of
 38 hearing in time for the local jurisdiction to mail that
 39 notice at least seven days in advance of the hearing to all
 40 persons who have requested copies of the local

1 jurisdiction's agenda or agenda packet pursuant to
2 Section 54954.1 of the Government Code.

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

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

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

27 (4) This subdivision and Section 626 do not apply to a
28 railroad corporation, a refined petroleum product
29 common carrier pipeline corporation, or a water
30 corporation.

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

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

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

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

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

5 (C) The public benefit of acquiring the property by
6 eminent domain outweighs the hardship to the owners of
7 the property.

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

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

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

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

24 (f) The authority provided in this section
25 supplements, and does not replace or otherwise affect any
26 other limitation in law on the exercise of the power of
27 eminent domain, including, but not limited to, any
28 authority provided by Title 7 (commencing with Section
29 1230.010) of Part 3 of the Code of Civil Procedure.

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

32 626. On or after January 1, 2000, a public utility may
33 not enter into any exclusive access agreement with the
34 owner or lessor of, or a person controlling or managing,
35 a property or premises served by the public utility, or
36 commit or permit any other act, that would limit the right
37 of any other public utility to provide service to a tenant
38 or other occupant of the property or premises.

39 SEC. 5. No reimbursement is required by this act
40 pursuant to Section 6 of Article XIII B of the California

1 Constitution because the only costs that may be incurred
2 by a local agency or school district will be incurred
3 because this act creates a new crime or infraction,
4 eliminates a crime or infraction, or changes the penalty
5 for a crime or infraction, within the meaning of Section
6 17556 of the Government Code, or changes the definition
7 of a crime within the meaning of Section 6 of Article
8 XIII B of the California Constitution.

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