

Senate Bill No. 177

Passed the Senate September 10, 1999

Secretary of the Senate

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

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 property.

LEGISLATIVE COUNSEL'S DIGEST

SB 177, Peace. San Francisco Bay: public utilities.

(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.

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

(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.

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

SECTION 1. Section 66605 of the Government Code is amended to read:

66605. The Legislature further finds and declares:

(a) That further filling of San Francisco Bay and certain waterways specified in subdivision (e) of Section 66610 should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented



uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation, and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the bay;

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

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

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

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

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

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

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

616.1. Notwithstanding Section 616, a telephone corporation may not condemn any property on an airport owned by a city and county, and located in another county, unless that property is necessary for that



telephone corporation to provide telecommunications as a carrier of last resort seeking to serve an unserved area.

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

625. (a) (1) (A) 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 that such an action would serve the public interest, pursuant to a petition or complaint filed by the public utility, personal notice of which has been served on the owners of the property to be condemned, and an adjudication hearing in accordance with Chapter 9 (commencing with Section 1701), including an opportunity for the public to participate.

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

(2) (A) Before making a finding pursuant to this subdivision, the commission shall conduct the hearing in the local jurisdiction that would be affected by the proposed condemnation. The hearing shall commence within 45 days of the date that the petition or complaint



is filed, unless the respondent establishes that an extension of not more than 30 days is necessary for discovery or other hearing preparation. The commission shall provide public notice of the hearing pursuant to the procedures of the commission and shall also notify the local jurisdiction. In addition, the commission shall provide the local jurisdiction with copies of the notice of hearing in time for the local jurisdiction to mail that notice at least seven days in advance of the hearing to all persons who have requested copies of the local jurisdiction's agenda or agenda packet pursuant to Section 54954.1 of the Government Code.

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

(c) 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.

(d) 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.

(e) 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.

(f) 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.



Approved _____, 1999

Governor

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