

AMENDED IN ASSEMBLY MARCH 17, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2162

Introduced by Assembly Member Niello

February 18, 2010

An act to amend Sections 1255.410 and 1255.450 of the Code of Civil Procedure, and to amend Section 625 of the Public Utilities Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 2162, as amended, Niello. Eminent domain: public utilities.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including gas corporations, as defined. The existing Public Utilities Act prohibits any gas corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). Existing law authorizes certain public utilities to condemn property, as prescribed, but prohibits 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 commission finds, pursuant to a petition or complaint filed by the public utility, in accordance with specified provisions that such an action would serve the public interest.

This bill would provide that the existing prohibition upon specified public utilities condemning property if they offer competitive services does not apply to a gas corporation seeking to develop a natural gas

storage facility in a natural gas reservoir if the ~~issue of the need for the~~ storage project at the proposed location was ~~litigated~~ *determined* in an evidentiary hearing before the commission pursuant to an application for a certificate of public convenience and necessity.

(2) The Eminent Domain Law provides the procedure for the exercise of the power of eminent domain by governmental entities and public utilities and authorizes the plaintiff to make an application to the court to take possession of property prior to judgment and sets forth the procedures the plaintiff must follow. Existing law authorizes a court to issue an order of possession upon an ex parte application by a water, wastewater, gas, electric, or telephone utility, as the court deems appropriate under the circumstances of the case, if the court finds that (A) an emergency exists and as a consequence the utility has an urgent need for possession of the property, and (B) an emergency order of possession will not displace or unreasonably affect any person in actual and lawful possession of the property to be taken or the larger parcel of which it is a part. Existing law authorizes a defendant or occupant of the property to move for relief from an order of possession issued on behalf of a utility because of an emergency and authorizes the court to modify, stay, or vacate the order upon consideration of the relevant facts and any objections raised, and upon completion of a hearing, if requested.

This bill would authorize a court to issue an order for possession upon an ex parte application by a water, wastewater, gas, electrical, or telephone utility if the court finds that (A) the commission has issued a certificate of public convenience and necessity for the project, (B) the ~~issue of need for the proposed project at the proposed location was~~ *litigated determined* through an evidentiary hearing before the commission pursuant to an application for a certificate of public convenience and necessity, and (C) the order of possession will not displace or unreasonably affect any person in actual and lawful possession of the property to be taken or the larger parcel of which it is a part. The existing right of a defendant or occupant of the property to move for relief would be applicable to any order of possession issued pursuant to this authority.

~~This bill would, in cases where property is being taken for the purpose of storing natural gas in a depleted natural gas field, require that the plaintiff serve a copy of the order for possession on the record owner of the property and on the occupants, if any, not less than 10 days prior to the time possession is to be taken pursuant to the order. The bill~~

would provide that an order of possession may be served by mail upon an owner or occupant who previously appeared in or was provided with notice pursuant to the notice procedures of the commission in a prior proceeding of the commission acting upon an application by the plaintiff for a certificate of public convenience and necessity as to the project for which possession of the property is required.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1255.410 of the Code of Civil Procedure
2 is amended to read:

3 1255.410. (a) At the time of filing the complaint or at any time
4 after filing the complaint and prior to entry of judgment, the
5 plaintiff may move the court for an order for possession under this
6 article, demonstrating that the plaintiff is entitled to take the
7 property by eminent domain and has deposited pursuant to Article
8 1 (commencing with Section 1255.010) an amount that satisfies
9 the requirements of that article.

10 The motion shall describe the property of which the plaintiff is
11 seeking to take possession, which description may be by reference
12 to the complaint, and shall state the date after which the plaintiff
13 is seeking to take possession of the property. The motion shall
14 include a statement substantially in the following form: “You have
15 the right to oppose this motion for an order of possession of your
16 property. If you oppose this motion you must serve the plaintiff
17 and file with the court a written opposition to the motion within
18 30 days from the date you were served with this motion.” If the
19 written opposition asserts a hardship, it shall be supported by a
20 declaration signed under penalty of perjury stating facts supporting
21 the hardship.

22 (b) The plaintiff shall serve a copy of the motion on the record
23 owner of the property and on the occupants, if any. The plaintiff
24 shall set the court hearing on the motion not less than 60 days after
25 service of the notice of motion on the record owner of unoccupied
26 property. If the property is lawfully occupied by a person dwelling
27 thereon or by a farm or business operation, service of the notice
28 of motion shall be made not less than 90 days prior to the hearing
29 on the motion.

1 (c) Not later than 30 days after service of the plaintiff's motion
2 seeking to take possession of the property, any defendant or
3 occupant of the property may oppose the motion in writing by
4 serving the plaintiff and filing with the court the opposition. If the
5 written opposition asserts a hardship, it shall be supported by a
6 declaration signed under penalty of perjury stating facts supporting
7 the hardship. The plaintiff shall serve and file any reply to the
8 opposition not less than 15 days before the hearing.

9 (d) (1) If the motion is not opposed within 30 days of service
10 on each defendant and occupant of the property, the court shall
11 make an order for possession of the property if the court finds each
12 of the following:

13 (A) The plaintiff is entitled to take the property by eminent
14 domain.

15 (B) The plaintiff has deposited pursuant to Article 1
16 (commencing with Section 1255.010) an amount that satisfies the
17 requirements of that article.

18 (2) If the motion is opposed by a defendant or occupant within
19 30 days of service, the court may make an order for possession of
20 the property upon consideration of the relevant facts and any
21 opposition, and upon completion of a hearing on the motion, if the
22 court finds each of the following:

23 (A) The plaintiff is entitled to take the property by eminent
24 domain.

25 (B) The plaintiff has deposited pursuant to Article 1
26 (commencing with Section 1255.010) an amount that satisfies the
27 requirements of that article.

28 (C) There is an overriding need for the plaintiff to possess the
29 property prior to the issuance of final judgment in the case, and
30 the plaintiff will suffer a substantial hardship if the application for
31 possession is denied or limited.

32 (D) The hardship that the plaintiff will suffer if possession is
33 denied or limited outweighs any hardship on the defendant or
34 occupant that would be caused by the granting of the order of
35 possession.

36 (e) (1) Notwithstanding the time limits for notice prescribed
37 by this section and Section 1255.450, a court may issue an order
38 of possession upon an ex parte application by a water, wastewater,
39 gas, electrical, or telephone utility, as the court deems appropriate

1 under the circumstances of the case, if the court finds each of the
2 following:

3 (A) An emergency exists and as a consequence the utility has
4 an urgent need for possession of the property. For purposes of this
5 section, an emergency is defined to include, but is not limited to,
6 a utility's urgent need to protect the public's health and safety or
7 the reliability of utility service.

8 (B) An emergency order of possession will not displace or
9 unreasonably affect any person in actual and lawful possession of
10 the property to be taken or the larger parcel of which it is a part.

11 (2) Notwithstanding the time limits for notice prescribed by this
12 section and Section 1255.450, a court may also issue an order for
13 possession upon an ex parte application by a water, wastewater,
14 gas, electrical, or telephone utility as the court deems appropriate
15 under the circumstances of the case, if the court finds each of the
16 following:

17 (A) The Public Utilities Commission has issued a certificate of
18 public convenience and necessity for the project, pursuant to
19 Chapter 5 (commencing with Section 1001) of Part 1 of Division
20 1 of the Public Utilities Code, for which possession of the property
21 is required.

22 (B) ~~The issue of need for the proposed project at the proposed~~
23 ~~location was litigated~~ *determined* through an evidentiary hearing
24 before the Public Utility Commission pursuant to the application
25 for a certificate of public convenience and necessity.

26 (C) An order of possession will not displace or unreasonably
27 affect any person in actual and lawful possession of the property
28 to be taken or the larger parcel of which it is a part.

29 (3) Not later than 30 days after service of the order authorizing
30 the plaintiff to take possession of the property, any defendant or
31 occupant of the property may move for relief from an ex parte
32 order of possession that has been issued under this subdivision.
33 The court may modify, stay, or vacate the order upon consideration
34 of the relevant facts and any objections raised, and upon completion
35 of a hearing if requested.

36 SEC. 2. Section 1255.450 of the Code of Civil Procedure is
37 amended to read:

38 1255.450. (a) As used in this section, "record owner" means
39 the owner of the legal or equitable title to the fee or any lesser

1 interest in property as shown by recorded deeds or other recorded
2 instruments.

3 (b) The plaintiff shall serve a copy of the order for possession
4 issued under Section 1255.410 on the record owner of the property
5 and on the occupants, if any. If the property is lawfully occupied
6 by a person dwelling thereon or by a farm or business operation,
7 service shall be made not less than 30 days prior to the time
8 possession is to be taken pursuant to the order. In all other cases,
9 ~~including cases in which property is being taken for the purpose~~
10 ~~of storing natural gas in a depleted natural gas field,~~ service shall
11 be made not less than 10 days prior to the time possession is to be
12 taken pursuant to the order. Service may be made with or following
13 service of summons.

14 (c) At least 30 days prior to the time possession is taken pursuant
15 to an order for possession made pursuant to Section 1255.040,
16 1255.050, or 1255.460, the plaintiff shall serve a copy of the order
17 on the record owner of the property and on the occupants, if any.

18 (d) Service of the order shall be made by personal service except
19 that:

20 (1) If the person on whom service is to be made has previously
21 appeared in the proceeding or been served with summons in the
22 proceeding, or has previously appeared in or been provided with
23 notice pursuant to the notice procedures of the Public Utilities
24 Commission in a prior proceeding of the commission, acting upon
25 an application by the plaintiff for a certificate of public convenience
26 and necessity pursuant to Chapter 5 (commencing with Section
27 1001) of Part 1 of Division 1 of the Public Utilities Code, as to the
28 project for which possession of the property is required, service
29 of the order may be made by mail upon that person and his or her
30 attorney of record, if any.

31 (2) If the person on whom service is to be made resides out of
32 the state, or has departed from the state or cannot with due
33 diligence be found within the state, service of the order may be
34 made by registered or certified mail addressed to that person at his
35 or her last known address.

36 (e) If the record owner cannot be located, the court may, for
37 good cause shown on ex parte application, authorize the plaintiff
38 to take possession of unoccupied property without serving a copy
39 of the order for possession upon a record owner.

1 (f) A single service upon or mailing to one of several persons
2 having a common business or residence address is sufficient.

3 SEC. 3. Section 625 of the Public Utilities Code is amended
4 to read:

5 625. (a) (1) (A) For the purpose of this article, except as
6 specified in paragraph (4), a public utility that offers competitive
7 services may not condemn any property for the purpose of
8 competing with another entity in the offering of those competitive
9 services, unless the commission finds that such an action would
10 serve the public interest, pursuant to a petition or complaint filed
11 by the public utility, personal notice of which has been served on
12 the owners of the property to be condemned, and an adjudication
13 hearing in accordance with Chapter 9 (commencing with Section
14 1701), including an opportunity for the public to participate.

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

32 (2) (A) Before making a finding pursuant to this subdivision,
33 the commission shall conduct the hearing in the local jurisdiction
34 that would be affected by the proposed condemnation. The hearing
35 shall commence within 45 days of the date that the petition or
36 complaint is filed, unless the respondent establishes that an
37 extension of not more than 30 days is necessary for discovery or
38 other hearing preparation. The commission shall provide public
39 notice of the hearing pursuant to the procedures of the commission
40 and shall also notify the local jurisdiction. In addition, the

1 commission shall provide the local jurisdiction with copies of the
2 notice of hearing in time for the local jurisdiction to mail that notice
3 at least seven days in advance of the hearing to all persons who
4 have requested copies of the local jurisdiction's agenda or agenda
5 packet pursuant to Section 54954.1 of the Government Code.

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

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

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

26 (4) This subdivision and Section 626 do not apply to a railroad
27 corporation, a refined petroleum product common carrier pipeline
28 corporation, a water corporation, or a gas corporation seeking to
29 develop a natural gas storage facility in a natural gas reservoir if
30 ~~the issue of~~ the need for the storage project at the proposed location
31 was ~~litigated~~ *determined* in an evidentiary hearing before the
32 commission pursuant to an application for a certificate of public
33 convenience and necessity.

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

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

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

3 (A) The public interest and necessity require the proposed
4 project.

5 (B) The property to be condemned is necessary for the proposed
6 project.

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

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

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

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

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

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

27 (g) (1) At the request of a public utility gas corporation, the
28 commission shall hold the local hearing required in subparagraphs
29 (A) and (B) of paragraph (2) of subdivision (a) and make and
30 certify the finding required by paragraph (1) of subdivision (a) as
31 part of the procedure to issue a certificate of public convenience
32 and necessity.

33 (2) Notwithstanding any other provision of law, if the
34 commission holds public hearings during the certification
35 procedure for the purpose of making the determination required
36 under paragraph (2) of subdivision (b), the commission shall have
37 an additional 45 days beyond the date of any otherwise applicable
38 statutory or regulatory deadline for making a determination.

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