SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 875 (Wiener)
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Fiscal: Yes
Urgency: No
ME

SUBJECT

Public utilities: eminent domain: just compensation

DIGEST

This bill reinstates the conclusive presumption rules in the Code of Civil Procedure for the condemnation of privately owned electric or gas utility property within the service area of Pacific Gas and Electric Company (PG&E).

EXECUTIVE SUMMARY

Eminent domain refers to the taking of private property by a public entity for a proper public use. The Code of Civil Procedure sets forth the requirements for a public entity to take private property for a public use. This Committee's analysis is confined to the issues within the jurisdiction of the Judiciary Committee, which are sections 2 and 3 of the bill that amend sections 1240.650 and 1245.250 of the Code of Civil Procedure. Section 7 is also within the jurisdiction of the Judiciary Committee as it relates to the recovery of litigation costs. The other portions of the bill are within the jurisdiction of the Senate Energy, Utilities and Communications Committee and will be analyzed by that policy Committee.

The City and County of San Francisco would like to create a public utility to provide electricity to the residents of San Francisco. Currently Pacific Gas and Electric Company (PG&E), a private corporation regulated by the Public Utilities Commission, provides electricity to San Francisco. The author contends that PG&E has been a problematic provider of electricity in San Francisco and in other parts of the state. Additionally, the author asserts that the current rebuttable presumption offers PG&E an opportunity to thwart San Francisco's attempt to establish a public utility. The author further asserts that current law makes it extremely difficult for a local government to create a public utility and brings this bill to make it easier for local governments to provide utility services to their constituents. With regard to this Committee's jurisdiction over changes to the Code of Civil Procedure, this bill would essentially revert the relevant Civil

Procedure statutes to how they read before SB 1757 ((Morgan) Ch. 812, Stats. 1992) went into effect in 1993. Specifically, this bill conclusively provides that where a public entity seeks to take privately owned electric or gas public utility property by eminent domain within the PG&E service area for the same use, such use is a public necessity and more necessary than its current use. The bill also provides that the adoption of a resolution of necessity by a local entity conclusively establishes the prerequisites for taking the property. This was the law before SB 1757 ((Morgan) Ch. 812, Stats. 1992) changed the conclusive presumptions to rebuttable presumptions. The bill further prohibits a public utility from recovering from ratepayers any litigation costs associated with a political subdivision's efforts to acquire public utility property, as specified, including eminent domain actions.

The bill is supported by Consumer Watchdog, StopWaste, and the Board of Supervisors of the City and County of San Francisco and is opposed by unions, private utility companies, and others. A coalition of organizations request that the author not confine the bill to PG&E service areas and instead have it apply to all utilities. If the bill passes out of this Committee it will move on to the Senate Committee on Energy, Utilities and Communication.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Permits public entities to exercise the power of eminent domain to take private property for public use. (Civ. Proc. §§ 1230.010 et seq.)

2) Requires the public entities to provide the property owner with just compensation when the public entity exercises the power of eminent domain. (U.S. Const., 5th Amend; Calif. Const., Art. 1, sec. 19.)

3) Provides that in an eminent domain action, where property (other than privately owned public utility property) is being used for a public use, the decision of a public entity to take that property for the same or any other public use is conclusively presumed to be a more necessary use than the property's current use. (Civ. Proc. § 1240.650 (b).)

4) Specifies, in cases where the private property which has been appropriated to public use is electric, gas or water public utility property, that the presumption of a more necessary use is a rebuttable, rather than a conclusive, presumption affecting the burden of proof if the public entity intends to put the property to the same use. (Civ. Proc. § 1240.650 (c).)

5) Provides that a public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity which contains a

declaration that the public entity has found and determined, among other things: a) the public interest and necessity of the project; b) that the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and, c) that the property described in the resolution is necessary for the proposed project. A resolution of necessity adopted by the governing body of a public entity conclusively establishes that, among other matters, the public interest and necessity require the project. However, if a taking is by a local public entity and the property is electrical, gas, or water public utility property, the resolution of necessity creates a rebuttable presumption that those matters are true. (Civ. Proc. §§ 1245.220, 1245.230, 1245.250.)

This bill:

1) This bill would exempt from that rebuttable presumption described in paragraph 4), above, property that has been appropriated to a public use that is electrical or gas public utility property within the PG&E service area.

2) Provides that, if a taking is by a local public entity within the PG&E service area and the property is electrical or gas public utility property, the resolution of necessity, described in paragraph 5), above, instead conclusively establishes those matters.

3) Prohibits a public utility from recovering from ratepayers any litigation costs associated with a political subdivision's efforts to acquire public utility property, as specified, including eminent domain actions.

COMMENTS

1. Stated need for the bill

According to the author:

> For decades, electrical utilities like PG&E run by big investors have rigged our regulatory system to block cities' attempts to break up with them and form public utilities. They are afraid that cities and municipalities can do what they do cheaper and better. They are right to be afraid — cities like Sacramento with public utilities pay around 50% less for electricity and receive better service than PG&E offers. They don't deal with the same constant blackouts from poor maintenance, or the poor communication when blackouts happen.
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> SB 875 does not create a new public electric utility, nor does it require cities to municipalize. This bill simply clarifies the process for cities choosing to pursue municipalization, including those that seek to do so through a consensual transaction with an electrical utility.

> SB 875 will unrig the breakup process so that cities like San Francisco can get back on their feet and start delivering affordable, reliable energy to Californians.

Consumer Watchdog writes the following in support of SB 875:

> For years, California ratepayers, particularly those served by PG&E, have faced the consequences of utility mismanagement, including catastrophic wildfires, prolonged blackouts, and skyrocketing electricity rates. Customers continue to pay among the highest rates in the nation while experiencing unreliable service and unacceptable safety failures. These outcomes underscore the urgent need for greater accountability and alternative models of utility governance.
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> Publicly owned utilities (POUs) have consistently demonstrated that they can deliver electricity at lower cost while maintaining higher standards of safety, transparency, and responsiveness. Unlike investor-owned utilities, POUs are directly accountable to the communities they serve and operate under public oversight and open records laws. However, despite existing legal authority to municipalize, local jurisdictions have been effectively blocked from doing so due to obstructionist tactics by investor-owned utilities like PG&E.
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> PG&E has repeatedly delayed and frustrated municipalization efforts through excessive litigation, refusal to negotiate fair asset valuations, and manipulation of regulatory processes. In San Francisco, efforts to acquire transmission infrastructure have been stalled for years, with more than 130 legal filings delaying proceedings well beyond statutory timelines. Similar delays have hindered other communities, such as the South San Joaquin Irrigation District, for over a decade.
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> SB 875 addresses these issues by restoring fairness and clarity to the municipalization process. The bill would lower the burden of proof for public entities to acquire utility infrastructure, clarify the scope of review at the California Public Utilities Commission (CPUC), and establish enforceable timelines to prevent indefinite delays. These reforms are essential to ensuring that communities can meaningfully exercise their right to pursue local control over their energy systems.

According to the Environmental Working Group, also in support of SB 875:

> This bill helps empower all northern California communities to pursue and realize energy independence and local control of their electricity supplies. Local control has become imperative to the health and safety of our communities.

> Back in the early 1900s, when PG&E was first granted status as a regulated monopoly, it was never the intention to forever wed California consumers or their communities to PG&E and prevent them from supplying and distributing electricity themselves. The monopoly utility was intended to provide value to consumers; value they could not otherwise provide themselves. It was never intended for PG&E to become a burden. Yet, a burden is what PG&E has undeniably become. We can do better. Minimally, Californians and their communities should have the ability to break free and manage their own energy future. This is what [SB] 875 is all about.
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> SB 875 would lower the burden of proof a local jurisdiction must meet to exercise its right to acquire investor-owned utility infrastructure and facilities through eminent domain. It would also reinstate the valuation standards and procedural framework that governed such acquisitions prior to 1992. The post-1992 standards are onerous and have effectively rendered the right of municipalization illusory. In addition, SB 875 would clarify and narrow the role of the California Public Utilities Commission, relieving the agency of undue administrative burden. In short, [SB 875] would restore municipalization as a meaningful and viable option for communities seeking a locally accountable alternative to investor-owned utility service. As such, this is an important bill that empowers local jurisdictions to evaluate a better way of generating, self-providing, and delivering electricity in the public interest.

2. <u>California law permits public entities to exercise the power of eminent domain</u>

California law provides that a public entity may exercise the power of eminent domain. California's Eminent Domain Law was adopted in 1975 pursuant to the study and recommendation of the California Law Revision Commission. The purpose of the 1975 law was to reorganize and restate existing California condemnation law. The framework for how the process works is in the Code of Civil Procedure at section 1240.010, et. seq. The power of eminent domain may be exercised to acquire property only for a public use. (Civ. Proc. § 1240.010.) The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: that the public interest and necessity require the project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and the property sought to be acquired is necessary for the project. (Civ. Proc. § 1240.030.) Additionally, a public entity may exercise the power of eminent domain only if it has adopted a resolution of necessity, as specified in the Code of Civil Procedure sections 1245.210-1245.270. This bill reinstates the conclusive presumption rules for the condemnation of privately owned electric or gas utility property within the service area of PG&E.

The author explains a history of the issue in the bill's findings and declarations:

> Eminent domain is the constitutional right of the people or their government to take private property for public use. Until 1993, Section 1240.650 of the Code of Civil Procedure provided a conclusive presumption that the same use by public entities of the property to be taken is a "more necessary use" than the use for which the property was already being used by the private entity. Investor-owned utilities, like Pacific Gas and Electric Company, were granted special statutory protections in 1992 making it unusually difficult and costly for local governments to exercise their constitutional and statutory authority to acquire utility infrastructure or establish municipal energy services. In 1992, the Legislature passed Senate Bill 1757 (Chapter 812 of the Statutes of 1992) to change the requirements for eminent domain of utility property that has been put to a public use. Senate Bill 1757 removed the conclusive presumption of "public necessity" and "more necessary use" and replaced it with a "rebuttable presumption" for electric, gas, or water public utility property. The Legislature passed, and Governor Wilson signed into law, this change with the express purpose of enabling investor-owned utilities to further challenge eminent domain proceedings initiated by local governments. In a 1992 letter, the Governor's Office of Planning and Research recommended that Governor Wilson make clear this rationale, arguing, "The reality of this bill is that it would strengthen private utilities' hand in negotiating and probably dissuade some public acquisitions. This office believes that would be a good thing. The private sector can provide utility services more efficiently [than] the public sector." California made this change at a time when it was also broadly deregulating the energy market through bills like Assembly Bill 1890 (Chapter 854 of the Statutes of 1996). The Legislature enacted these changes with the promise that this legislation would lead to lower electricity rates. Instead of lowering electricity rates, the Legislature's deregulatory efforts led to the Enron crisis. Competition in the energy industry was one of the goals of Assembly Bill 1890 (Chapter 854 of the Statutes of 1996), which would provide better and cheaper service, and local publicly owned utilities provide one of the few sources of competition with investor-owned utilities in the energy industry. Senate Bill 1757 (Chapter 812 of the Statutes of 1992) helped investor-owned utilities hamstring their main competitor, and, in the years since the passage of Senate Bill 1757 (Chapter 812 of the Statutes of 1992), investor-owned utilities have not proven to more efficiently provide utility services than local publicly owned utilities.

The 1992 Senate Judiciary Committee analysis of SB 1757 explained the following about rebuttable and conclusive presumptions with regard to the relevant sections of the Code of Civil Procedure[1]:

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[1] Senate Judiciary Committee analysis of SB 1757 (Morgan) Ch. 812, Stats. 1992, p. 3, as amended May 4, 1992 for hearing on May 5. 1992 (Reg. Sess. 1991-92.)).

> Eminent domain is the sovereign right of the people or their government to take private property for public use. While the taking must be for a proper public purpose, the legislative determination of a public use, purpose, or function is a conclusive determination except where the declaration is clearly erroneous (C.C.P. Section 1240.010). Further, Section 1240.650 generally provides a conclusive presumption that the same use by public entities of the property to be taken is a "more necessary use" than the use for which the property was already being used by the private entity. The purpose of the presumptions is to avoid litigation and challenges to a public entity's legislative determination of public use and necessity.
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> The bill would remove those conclusive presumptions in the case of privately owned public utility property which is being taken for the same public use. The bill would instead substitute a rebuttable presumption affecting the burden of proof in favor of the condemnor public entity. Unlike a conclusive presumption, which cannot be challenged or contradicted, a rebuttable presumption affecting the burden of proof permits a challenge to the fact being assumed. Under Evidence Code Section 605, "the effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the non-existence of the presumed fact." Thus, in a case where the public entity proposes to take privately owned public utility property by eminent domain for the same use, SB 1757 would enable the private utility to challenge the proposed taking as to its necessity and purpose. However, it would be the condemnee private entity's burden to show that the taking was not a "public necessity" and that the proposed use was not a more necessary use.
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> A similar rebuttable presumption of "more necessary use" applies where the state seeks to take property which is already put to the same use as is intended by the state (C.C.P. Section 1240.640).

This bill essentially reverts the burden of proof for eminent domain of electrical or gas utility property within the PG&E service territory to the standard before SB 1757 was codified. Additionally, this bill prohibits a public utility from recovering from ratepayers any litigation costs associated with a political subdivision's efforts to acquire public utility property, as specified, including eminent domain actions.

3. Opposition

Pacific Gas and Electric write the following in opposition to this bill:

> SB 875 would amend the Code of Civil Procedure to eliminate judicial review of a city's finding that the transfer of the IOU's property as part of a municipalization reflects a more necessary use of the same property—a finding

> that may involve factual determinations related to rate impacts, operational feasibility, safety, and reliability, among other public interest considerations. Said differently, SB 875 removes the ability to challenge—let alone consider—the validity of a city's determination of greater necessity, eliminating a fair and meaningful opportunity to be heard (procedural due process rights) for PG&E as the current property owner, as well as from interested, affected stakeholders.
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> Conclusive presumptions in eminent domain proceedings are extraordinarily rare because they eliminate any meaningful opportunity for parties and courts to evaluate the facts in a proceeding where property rights may be extinguished. By replacing an independent, balanced judicial review with the municipality's own facts and outcomes, SB 875 undermines the role of the judiciary to make well-reasoned, fact-based determinations, protect fundamental rights, and ensure procedural due process and fair outcomes for all Californians. Not only is this bad policy, but it is unconstitutional under state and federal law. A unilateral determination by San Francisco, for example, that a taking of IOU property creates a "more necessary" public use without permitting the IOU or anyone to evaluate or challenge the criteria used to make that determination, and without consideration of any evidence relied upon in reaching that determination, plainly violates procedural due process under the California Constitution. While the legislature may define standards for eminent domain, it cannot foreclose all judicial inquiry where property rights could be extinguished.

The Coalition of California Utility Employees and the California State Association of Electrical Workers write the following in opposition of this bill:

> [. . .] Eminent Domain Protections Ensure Full Accountability and Public Interest Review Under eminent domain law, a city can take IOU assets to form a municipal utility. The city must show a court, among other things, that the taking is necessary and in the public interest. There is a rebuttable presumption that this is so, but an IOU may present contrary evidence. For example, an IOU may show that a takeover would harm the state's ability to mitigate catastrophic wildfires which is not in the public interest. A rebuttable presumption ensures courts have the full picture on safety, reliability, affordability and other policies before determining whether a takeover would genuinely be a more beneficial use of IOU assets. […]
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> Victims of wildfires would lose access to the wildfire insurance fund even though they, as PG&E ratepayers, already paid the premiums. Who would pay billions of dollars in wildfire liabilities if a municipal utility starts a wildfire? Under inverse condemnation, the municipal utility customers would be obligated to pay all damages from wildfires caused by the utility or the city would go bankrupt. [. . .]

> [A] municipal takeover would significantly impact PG&E employees. It could bankrupt the pension fund if many workers are removed from it who would otherwise be contributing to the fund. If it doesn't bankrupt the pension, many people would lose their pension if they lose their jobs because of the takeover and the pension is not fully vested. Workers would lose bargaining power by being in smaller units, would lose job mobility that they currently have, and would lose advancement opportunities and earning power. These consequences create the risk these workers will choose NOT to work for the municipal utility. Where would the municipal utility find enough qualified workers? An inadequate city utility workforce would reduce reliability in San Francisco.

SUPPORT

Board of Supervisors of the City and County of San Francisco
Consumer Watchdog
Environmental Working Group
StopWaste

OPPOSITION

Advance SF
Bay Area Council
California Chamber of Commerce
California State Association of Electrical Workers
California Water Association
Coalition of California Utility Employees
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
Kern County Taxpayers Association
Liberty Utilities (Apple Valley Ranchos Water) Corp.
Pacific Gas and Electric Company
San Diego Gas and Electric Company
San Francisco Chamber of Commerce
Southern California Edison

RELATED LEGISLATION

Pending legislation: SB 327 (McNerney, 2026) prohibits certain political influence activities and expenses by electrical or gas corporations, those related to opposing efforts to municipalize energy utility service, from being recorded in certain accounts and having the costs recovered from ratepayers; states the Public Advocates Office has the same authority as the California Public Utilities Commission to discover information and review the accounts of public utilities. The bill is at the Assembly Desk.

Prior Legislation: AB 47X1 (Wiggins, 2001) sought to reverse SB 1757 changes to the conclusive presumption.
SB 1757 (Morgan, Ch. 812, Stats. 1992) changed the conclusive presumption to a rebuttable presumption.

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