

Date of Hearing: April 20, 2015

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1138 (Patterson) – As Introduced February 27, 2015

**SUBJECT:** High-speed rail: eminent domain

**SUMMARY:** Restricts the High-Speed Rail Authority (Authority), or the State Public Works Board (PWB) acting on behalf of the Authority, from adopting a resolution of necessity to commence an eminent domain proceeding unless the resolution meets certain requirements. Specifically, **this bill:**

- 1) Prohibits the Authority, or PWB acting on behalf of the Authority, from adopting a resolution of necessity to commence an eminent domain proceeding to acquire a parcel of real property on a corridor or a usable segment of a corridor for the high-speed train system unless the resolution:
  - a) Identifies the sources of all funds to be invested in the corridor or usable segment of the corridor and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means.
  - b) Certifies that the Authority has completed all necessary project-level environmental clearances necessary to proceed to construction of the corridor or usable segment.
- 2) Defines "corridor" to mean a portion of the high-speed train system.
- 3) Defines usable segment to mean a portion of a corridor that includes at least two stations and that, upon completion, will be used to operate high-speed train service between those stations.

**EXISTING LAW:**

- 1) Establishes the Authority and vests with it the responsibility to develop and implement a high-speed rail system in California.
- 2) Authorizes the Authority to use bond proceeds for, among other things, the acquisition of real property and rights-of-way for the purpose of constructing the system.

**FISCAL EFFECT:** Unknown

**COMMENTS:** Current law created the Authority in 1996 to direct the development and implementation of intercity high-speed rail service that is fully coordinated with other public transportation services. In 2008, voters approved Proposition 1A authorizing \$9.95 billion in general obligation bonds for the high-speed rail project. Proposition 1A authorizes the Authority to use bond funds to acquire real property and rights-of-way for the purpose of constructing the system.

Like other governmental agencies, the Authority attempts to purchase any necessary property by offering the appraised fair market value of that property to the owner. If the transaction is unable to proceed in this way, PWB, on behalf of the Authority, may use the state's eminent domain

authority to acquire the property. Property acquisition processes, including eminent domain proceedings, generally result in a settlement transferring the ownership of private property to a governmental entity for public use, typically at a justified and documented price based on sound business practices. In order to commence an eminent domain proceeding, PWB must adopt a resolution of necessity explaining why the state needs to acquire the property.

This bill requires the Authority to identify all sources of funds to be invested in a corridor or segment of the high-speed rail system and certify that it has completed all necessary project-level environmental clearances to proceed to construction of the corridor or segment before beginning an eminent domain proceeding. According to the author, there is "grave concern - especially among residential, farm, and business owners - that their property will be taken through the use of eminent domain for the purpose of high speed rail but the project will fail to be completed. Root causes of concern lie in the availability or interest in private funding, skyrocketing estimates for project completion and operation, along with highly criticized business models and ridership projections. If the Authority were to take property yet be unable to complete the project, many farmers', residents', and Californians' property will have been taken for naught."

*Committee concerns:* It is not clear why the Authority should be subject to different rules with respect to eminent domain than any other governmental entity. If there is a problem with the eminent domain process generally, then the author may wish to pursue changes that apply equally across all governmental entities rather than singling out the Authority.

Additionally, requiring the Authority to identify all funds to be invested in a corridor could be construed to mean that the Authority must identify the source of all funds necessary to construct, maintain, and operate the high-speed rail system in that corridor over time. It is very difficult to predict all future investment. According to the Authority's business plan, once the initial operating segment is complete and high-speed trains begin operating on the system, the state will likely turn the maintenance and operation over to a private concessionaire. That will not occur for many years, maybe decades. It seems unreasonable to expect the Authority to be able to identify the sources of all funds ever to be invested in a corridor.

*Double-referral:* This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

*Related legislation:* AB 6 (Wilk) prohibits the sale of any additional bonds for high-speed rail and redirects the remaining bonding authority to fund the construction of school facilities. AB 6 is scheduled to be heard by this committee on April 20, 2015.

AB 397 (Mathis) prohibits the sale of any additional bonds for high-speed rail and redirects the remaining bonding authority to fund the construction of water-related infrastructure. AB 397 is scheduled to be heard by this committee on April 20, 2015.

AB 1087 (Grove) provides that the cap-and-trade funds that have been continuously appropriated to high-speed rail are for specified components of the initial operating segment and Phase 1 blended system, as described in the Authority's 2012 business plan. AB 1087 is scheduled to be heard by this committee on April 20, 2015.

*Previous legislation:* SB 902 (Vidak) of 2014, would have prohibited the Authority, or PWB acting on behalf of the Authority, from commencing an eminent domain proceeding to acquire property for high-speed rail purposes unless it identified the sources of all funds to be invested in

that property and the anticipated time of receipt of those funds and certified that the offer to the property owner was either the Authority's approved appraisal of the fair market value of the property or the amount necessary to discharge any liens against the property, whichever is greater. The bill failed passage in the Senate Transportation and Housing Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Agua Dulce Town Council  
California Citizens for High Speed Rail Accountability  
Fresno County Supervisor Buddy Mendes  
Howard Jarvis Taxpayers Association  
Kings County Board of Supervisors  
Thermo King Fresno/Modesto  
57 Individual letters

**Opposition**

California Labor Federation  
California Teamsters Public Affairs Council  
State Building and Construction Trades Council

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