

Date of Hearing: June 25, 2018

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

SB 1172 (Beall) – As Amended June 18, 2018

**SENATE VOTE:** Vote not relevant

**SUBJECT:** High-Speed Rail Authority: property acquisition: capital outlays: public contracts: county assessor's records

**SUMMARY:** Authorizes the California High-Speed Rail Authority (Authority) to carry out a variety of procedures related to property acquisition. Specifically, **this bill:**

- 1) Restates that the governing body, for the purposes of adopting a resolution of necessity (RON) for all eminent domain proceedings for the Authority, remains the State Public Works Board (SPWB).
- 2) Exempts the Authority from requirements that every contract for the purchase or lease of real property by the state be approved by the Department of General Services (DGS), similar to the current exemption for the California Department of Transportation (Caltrans), if the property is used for high-speed rail purposes.
- 3) Exempts the Authority from requirements that every contract for the sale or lease of state-owned property be approved by DGS, similar to the current exemption for Caltrans, the State Lands Commission, the Controller, and the State Compensation Insurance Fund.
- 4) Exempts the Authority, similar to the exemption for Caltrans, the University of California (UC), the State Lands Commission, and the Legislature, from the property inventory reporting to DGS.
- 5) Exempts the Authority, similar to the exemption for Caltrans and the California Exposition and State Fair, from requiring DGS and Department of Finance (DOF) approval of preliminary plans or plan changes prior to expenditure of any funds for capital outlay.
- 6) Exempts the Authority, similar to the exemption for Caltrans and any appropriation from the California Water Fund, from Property Acquisition Law for any funds appropriated for capital outlay purposes.
- 7) Authorizes the Authority to acquire land and real property directly without the SPWB, similar to authority given to Caltrans, Department of Water Resources (DWR), the Department of Housing and Community Development, and numerous other state agencies.
- 8) Restates the Authority's existing authority to exercise the power of eminent domain to acquire property, similar to authority granted to Caltrans, DWR, the State Lands Commission, and numerous other state agencies.
- 9) Adds the Authority and the Chief Executive Officer (CEO) of the Authority to the definition of department for the purposes for the State Contract Act, thereby exempting the Authority

from the requirement that all projects are under the sole charge and direct control of DGS. Similar exemptions are made for Caltrans, DWR, Department of Parks and Recreation, and numerous other states agencies.

- 10) Expands existing authority to the Authority to allow a County Assessor to disclose property information, furnish abstracts, or permit access to records upon request by the Authority and requires the Authority to reimburse the Assessor for any costs associated with the request.
- 11) Requires the Authority to submit a report to the transportation policy and budget committees of the Legislature, by January 1, 2020, detailing how the provisions of this act have affected the Authority's property acquisition process, including but not limited to, changes in time frames, costs and staffing. Requires the Authority to post the report on their Internet web site.

**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 sale of \$9 billion in general obligation bonds to partially fund the development and construction of California's high-speed rail system.
- 3) Provides the Authority with the powers and duties related to acquisition of rights-of-way (ROW) through purchase and eminent domain.
- 4) Requires various procedures relating to eminent domain, acquisition of personal or real property, and state contracting to be reviewed and/or approved by the SPWB, DOF, or DGS, as specified.
- 5) Provides that specific departments such as, Caltrans, DWR, the UC system, and others are exempt from receiving approval from the abovementioned state departments for purposes of personal or real property acquisition or state contracts.
- 6) Requires DGS to develop an inventory of state property. Excludes from that inventory the Legislature, the UC, the State Lands Commission, and Caltrans. Requires these entities, with the exception of the Legislature, to provide a separate submittal to DGS.
- 7) Requires state agencies to get approvals of DOF or SPWB when expending funds appropriated for capital outlay purposes, with the exceptions for Caltrans and the California Exposition and State Fair.
- 8) Requires any acquisition of land or other real property authorized in any appropriation, except an appropriation from the California Water Fund or to Caltrans, to be subject to the provisions of the Property Acquisition Law.

**FISCAL EFFECT:** Unknown

**COMMENTS:** In 2008, voters approved Proposition 1A, the Safe, Reliable, High-Speed Passenger Train Bond Act, a \$9.95 billion general obligation bond to fund the proposed

California high-speed rail project and related improvements. As envisioned at the time of the ballot measure, the project was to consist of an 800-mile dedicated high-speed passenger rail system capable of speeds up to 220 miles per hour, initially serving the major metropolitan market of San Francisco through the Central Valley into Los Angeles and Anaheim (Phase I), with service eventually extending to Sacramento, the Inland Empire, and San Diego (Phase II). When the bonds were approved in 2008, costs for the entire project were estimated to be \$45 billion, to be paid by a mix of state bonds, federal grants, and private investments. Since then, estimated costs for the project have risen markedly. The Authority's most recent estimate for Phase 1 is \$77.3 billion using the blended approach of relying in part on existing tracks in the Bay Area and parts of Los Angeles. Furthermore, federal contributions to date are limited to \$3.3 billion and there have been no private investments.

In 2012, the Legislature passed and Governor Brown signed into law SB 1029 (Committee on Budget and Fiscal Review), Chapter 152, Statutes of 2012, to appropriate \$8 billion to the Authority (\$4.7 billion in Proposition 1A state bond funds and \$3.3 billion in federal funds) to initiate construction of the high-speed rail project. This amount included \$1.1 billion of Proposition 1A bond funding for the bookend projects in the San Francisco Peninsula and the Los Angeles region. Additionally, the 2014-15 state budget, SB 862 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2014, continuously appropriated 25% of the revenues derived from the state's cap and trade program to the project.

In early 2015, construction on the high-speed rail project commenced in the Central Valley. The 119 mile Central Valley segment is broken down into four design-build construction packages (CP 1, 2-3, 4, and 5). Since 2015, construction has started on three of the construction packages with Fresno County experiencing the most construction activity to date.

On March 9, 2018, the Authority released the 2018 Draft Business Plan which continues the commitment to a northern oriented and expanded Initial Operating Segment (IOS) from the Silicon Valley to the Central Valley, the so-called "Valley to Valley" line. Additionally, the draft plan reflects work directed by the Authority's Board of Directors in 2017 for a comprehensive review of the current Central Valley construction contracts and cost estimates for the Valley to Valley Line and full Phase I of the system. This new cost review was first unveiled in November 2017, when the Authority revealed that costs for the Central Valley segment had risen over \$2.8 billion from previous estimates, due primarily to right-of way acquisition delays and so-called third party agreements with freight railroads and utilities. The new cost estimates are reflected in the draft plan. As mentioned, the updated cost for full Phase I of the system is \$77.3 billion. The final 2018 Business Plan was adopted by the Authority Board of Directors in May 2018.

The acquisition of land and property by the Authority has been a long standing problem and increasing risk for the project. Specifically, the rising costs of construction and the slip of schedule in the Central Valley can be partly attributable to the ROW process and the Authority's management of it. The Authority's cost review of the Central Valley construction noted that \$725 million of \$2.8 billion cost increase was due to "ROW acquisition and ROW delay impact."

The Authority has identified ROW acquisition as a risk to the program all along. In fact, in their March 2017 Project Update Report to the Legislature they highlight the issue and outline actions taken. "The Authority is mitigating and managing the risk associated with right of way in a

variety of ways, including development of a highly detailed acquisition plan, vetting the acquisition plan with contractors and prioritizing acquisition to meet initial contractor work-zone requirements and securing technical expertise and additional capacity. The Authority is also working to streamline administration of the right-of-way process in order to mitigate for schedule challenges that gave a late start to property acquisition. In anticipation of the Silicon Valley to Central Valley Line, the Authority is proceeding to procure additional right-of-way support services to survey and map parcels that may be needed for that line in order to be positioned to begin securing those parcels once environmental clearance is complete.”

Additionally, after the realization of the Central Valley cost overruns, the Authority notes a few “lessons learned” in the 2018 Business Plan including the decision to award design-build contracts before acquiring right-of-way. “The Authority lacked the resources to meet the land-acquisition schedule of a magnitude that was greater than had ever been experienced in the state.” Moving forward, the Authority state that, “The Authority has reorganized its acquisition process and is in the process of updating staffing and aggressive management and mitigation strategies.” The Authority continues, “The number of parcels needed for construction was 50% higher than the budget due to changes in design and delays in completing right-of-way acquisition caused construction schedule delays which have increased costs and risks.”

Again, to mitigate some of these risks, the Authority indicates that in the future they will complete more right-of-way acquisition before awarding contracts, review design changes for right-of way requirements, and work with contractors to identify parcels needed to begin construction of critical structures.

Since the 2012 appropriation for construction to begin on the system, the Authority has heavily relied on contractors for the acquisition process. This is different from Caltrans who has full time ROW staff at both headquarters and all of their districts around the state. For comparison, Caltrans has roughly 550 ROW employees and in 2015-16 they acquired approximately 925 parcels for projects. The Authority has 77 ROW employees, including state employees and employees of the contract Rail Delivery Partner, and for the Central Valley segment, 1,906 parcels will be acquired. The Authority contracts with private companies for on-the-ground work with property owners including, mapping, surveying, appraisals, and purchase offers. Since 2012, the Authority has spent over \$1 billion on ROW contracts. The Authority also works with and reimburses Caltrans for legal services for such things like eminent domain proceedings.

Although not specifically identified as an issue relating to ROW in the reports discussed, the current state process the Authority must go through for property acquisition is quite cumbersome. Unlike Caltrans, the Authority must have DGS and DOF approval for nearly every step of the acquisition process no matter how small the parcel or the cost. For example, when determining a just compensation for real property, the Authority must receive approval from DGS prior to providing an offer to a property owner. The Authority must further receive DGS approval on the final agreement prior to the agreement being executed between the Authority and the property owner. This process has caused unnecessary delays in many circumstances. Examples provided by the Authority show ROW delays ranging from 82 days to 122 days for simple and standard acquisitions due to the existing approval requirements.

This bill would bring the Authority in line with Caltrans and other select state agencies for property acquisition. Specifically, it would streamline the Authority’s process by allowing them

to administer and carry out a variety of functions pertaining to the acquisition of personal and real property. However, the eminent domain process and proceedings would stay with the SPWB as it is now.

According to the author, “Having a completed high-speed rail system brings so many benefits for the people of California and will strengthen the state’s efforts to reduce greenhouse gas emissions. Currently, discrepancies exist between the High-Speed Rail Authority (HSRA) and other state entities that construct major infrastructure projects such as the UC system and Caltrans; these agencies have a more streamlined property acquisition process. Unlike these other state agencies, HSRA is required to follow a multi-step process for acquiring property that can, at times, cause months of delays just for purchasing one property. Without a legislative solution, it is likely that the HSRA will continue to experience mounting delays in property acquisition, which will in turn continue to incur significant costs in both time and state resources. There should be parity in the process equitable to other state agencies that carry out large multi-parcel projects in the state. The HSRA has done a lot of work to try to address some of these issues through administrative processes; however, this change is long overdue, makes sense, and will help create a more efficient pathway forward.”

*Committee Comments:* As mentioned, the acquisition of property has been a top risk for the project since the beginning and the Authority has struggled to manage the risk and control costs and schedule delays. The revelation of \$2.8 billion in cost overruns in the Central Valley remain troubling and ROW delays are a major part. The concerns about the existing state ROW process for the Authority have long been known and identified as a major concern. It is unclear why the Authority did not pursue contracting with Caltrans for all ROW services in the beginning, with their existing knowledge and experience; or why previous legislation attempting to streamline the ROW process was not ultimately approved. As a funding partner to the project, the Legislature should work to help the Authority be a successful project manager, coupled with strong and consistent participation and oversight. Bringing the Authority in line with Caltrans and other state agencies for the ROW process should assist the Authority in meeting future project schedules and costs. This bill requires a report to the transportation policy and budget committees by January 1, 2020, one year after enactment, detailing how the provisions of this bill have affected the Authority’s process, including changes in time frames, costs and staffing. The report will afford the Legislature with an opportunity to review this issue in the future.

*Related Legislation:* SB 1307 (Galgiani) of 2018, contains the same provisions as this bill. SB 1307 is currently on the Senate Inactive file.

*Previous Legislation:* AB 481 (Lowenthal), Chapter 481, Statutes of 2013, exempted the Authority from certain requirements of property and ROW management, similar to Caltrans.

AB 615 (Lowenthal), Chapter 530, Statutes of 2011, originally would have transferred additional personal and real property acquisition authority to the Authority. AB 615 was amended into a bill to appropriate \$4 million from the High-Speed Passenger Train Bond Fund to the Authority for the Los Angeles to San Diego segment.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Association for High Speed Trains

**Opposition**

None on file

**Analysis Prepared by:** Melissa White / TRANS. / (916) 319-2093