

Date of Hearing: June 26, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

SB 400 (Portantino) – As Amended June 1, 2017

SENATE VOTE: 37-0

SUBJECT: Highways: surplus residential property

SUMMARY: Prohibits, until January 1, 2020, the California Department of Transportation (Caltrans) from increasing rents for surplus residential properties in the State Route (SR) 710 corridor in Los Angeles County.

EXISTING LAW:

- 1) Allows Caltrans to acquire any real property that it considers necessary for state highway purposes.
- 2) Allows Caltrans, whenever it determines that any real property acquired by the state for highway purposes is no longer necessary, to sell or exchange it in the manner and upon terms, standards, and conditions established by the California Transportation Commission.
- 3) Requires Caltrans, to the greatest extent possible, to offer to sell or exchange excess real property within one year from the date that it determines the property is excess.
- 4) Generally requires state and local agencies, prior to disposing of excess lands, first to offer property for sale or lease to local public agencies, housing authorities, or redevelopment agencies within whose jurisdiction the property is located. Requires Caltrans to give priority first to entities agreeing to use the land for low- or moderate-income housing then to entities for open-space purposes, school facilities construction, enterprise zone purposes, and infill opportunities, in that order.
- 5) Provides an exception from these provisions for the disposal of excess residential properties in the unconstructed portion of the SR 710 corridor, i.e., the portion of SR 710 addressed in this bill. According to this exception, provided for in the Roberti Act, excess residential properties in this corridor are to be sold as follows:
 - a) First, homes presently occupied by their former owners must be offered for sale to the occupant at fair market value. (Caltrans reports that there are no longer any properties in the SR 710 corridor occupied by previous owners);
 - b) Second, homes are to be offered to present occupants that have lived in the property for at least two years and who are persons and families of low or moderate income;
 - c) Third, homes must be offered for sale to present occupants that have lived in the home for more than five years and whose household income does not exceed 150% of the area median income;

- d) Homes offered to income-qualified buyers are to be offered at an affordable price, but not less than the acquisition price or more than fair market value.
 - e) Homes not sold under these terms must then be offered to housing-related private and public entities for a price which is best suited economically to using the property for low- or moderate-income housing; and,
 - f) Any excess homes not sold pursuant to these provisions are then to be sold at fair market value with first priority given to purchasers who are present occupants and then to purchasers who will be owner occupants.
- 6) Directs 50% of the revenue collected by Caltrans from rental of historic property that is located in a freeway right-of-way corridor to be deposited in the Historic Property Maintenance Fund to pay for costs associated with maintenance and operation of the historic properties.
- 7) As set forth in regulations, establishes an Affordable Rent Program by which Caltrans considers affordability when adjusting rents for current residential tenants who are economically disadvantaged.

FISCAL EFFECT: Unknown

COMMENTS: Beginning in the 1950s, Caltrans began acquiring property by eminent domain for the purpose of extending the SR 710 freeway through Alhambra, El Sereno, South Pasadena, and Pasadena. Local political opposition stalled the project, at which point Caltrans began renting the residential properties. Caltrans currently owns over 400 properties in the corridor, most of them single-family homes. [The project continues to be somewhat in limbo, although progress to resolve it seems to be progressing. The surface route, originally proposed in 1953, was eliminated from consideration years ago, but other alternatives were still being considered, including a tunnel, light rail, bus rapid transit, and transportation demand and traffic flow management. However, in May of this year, the Los Angeles County Metropolitan Transportation Authority (Metro) board voted unanimously to withdraw its support and funding for the five-mile, \$3.2-billion tunnel connecting the SR 710 and SR 210 freeways. Instead, the board voted to spend \$700 million on a range of transportation fixes to ease congestion and other problems within the corridor. Caltrans is expected to take similar action to cease further study of the freeway gap project.]

Property management of the homes in the SR 710 corridor has created long-standing tension between SR 710 corridor tenants and Caltrans. Over the years, tenants argued that Caltrans inadequately maintained the homes and failed to make appropriate improvements. Caltrans argued that the homes were being rented on a temporary basis and were expected to be razed to make way for freeway construction; hence, homes were kept up to health and safety standards, but long-term improvements were not a reasonable expense of public funds.

Caltrans and tenants have also long tussled over the issue of appropriate rental rates in this corridor. AB 21 (Liu) of 2003 was illustrative of this conflict. It would have required Caltrans to establish a task force to develop recommendations to the Legislature regarding rental rates on department-owned residential property in the SR 710 corridor. It would have also prohibited Caltrans from increasing rents on occupied residential properties and placed a moratorium on

any without-cause evictions. AB 21 stemmed from tension over complaints from tenants about the maintenance of the properties and Caltrans indication at that time that it intended to increase rents in order to get the rents up to fair market levels. AB 21 was never heard in the Senate.

Then, as now, tenants in some cases were paying significantly less than current market rent, despite the department's policy generally to charge fair market rates, except within its Affordable Rent Program. That program, developed in regulations in 2013, is intended to protect low-income tenants already living in SR 710 corridor homes from large rental rate increases. (New tenants, however, are required to pay fair market rates.) For tenants who began renting a home prior to 1981, affordable rent equates to 25% of gross monthly income. For tenants who began renting after this date, affordable rent equates to 30% of their gross monthly income. Gross monthly income is considered the total income for the most previous tax year, before adjustments, credits, and taxes.

According to Caltrans, of the nearly 400 homes currently being rented, 254 fall outside of the Affordable Rent Program. Of these 254 homes, 251 of the tenants are charged less than fair market rent. Of the 123 tenants under the Affordable Rent Program, 47 are charged less than the affordable rent rate. Caltrans raises rents every year for homes that are less than 25% below either the fair market rate or the affordable rate, whichever is applicable, and every six months for tenants that are more than 25% below the appropriate rate. Increases are limited to 10% per regulations.

When it comes to setting the appropriate rental rate schedule for this corridor, Caltrans is in an impossible situation. An earlier attempt to charge market rates (including a proposed rental rate increase in 2002 that was issued for tenants paying less than 80% market value) was suspended due to legislative and tenant outcries. Subsequently, a 2012 State Audit strongly criticized the department and found, among other things, Caltrans' failure to charge full market rental rates for the properties cost the state over \$22 million over about a five-year period. The audit found that properties were, on average, rented at rates that were 43% below the market rate. The audit warned that failure to rent these properties at the fair market rate essentially constituted a gift of public funds, which, the Auditor argued, is prohibited by the California Constitution. (Others provide different legal opinions on this point. For example, in an opinion published by then-Attorney General Edmund G. Brown (No. 07-801), the Attorney General opined that below-market sales or rentals are constitutionally permissible as a limited exception to the "gift of public funds" prohibition if the property qualifies as surplus residential property under the affordable-housing legislation known as the Roberti Law, within which the SR 710 properties fall.)

In December 2016, Caltrans announced its plans to sell 42 of the SR 710 corridor properties and outlined future plans to sell many, if not all, of the remaining properties. This announcement, along with Metro's announcement to withdraw its support for a freeway gap tunnel project, has spurred the author to introduce this bill. As the author points out, existing law allows current tenants of Caltrans-owned properties to purchase their homes once the properties are declared surplus. The author wants to ensure that these tenants are not forced out of the homes they rent because of rental rate increases imposed by Caltrans. The author stated, "Current tenants have the right to purchase their homes from Caltrans. I want to make sure that rising rents don't drive them out while we are in the home stretch of resolving the 60-year issue in the SR 710 corridor. For me, the fair thing to do is to freeze rents and help facilitate the sale of the properties as quickly and efficiently as possible."

Committee concerns: This bill undermines existing efforts to resolve a decades-old problem, that is, to charge appropriate rental rates for SR 710 properties. It arbitrarily freezes rates for those tenants that are not yet paying either the fair market rate or affordable rental rate, all the while other tenants in the corridor and around the state are required to pay the appropriate rental rates.

Related legislation: SB 99 (Committee on Budget and Fiscal Review) requires surplus residential property purchased at an affordable price to be assessed at its affordable price for property tax purposes. SB 99 would provide that these provisions only apply to surplus residential properties originally acquired for the construction of SR 710, in the County of Los Angeles. SB 99 is currently in the Assembly Budget Committee.

Previous legislation: AB 21 (Liu) of 2003 would have required Caltrans to establish a task force to develop recommendations to the Legislature on rental rates on department-owned residential property in the SR 710 corridor. AB 21 would have prohibited the department from increasing rents on such occupied residential units and place a moratorium on any without-cause evictions until January 1, 2005.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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