

Assembly Bill No. 481

Passed the Assembly August 8, 2013

Chief Clerk of the Assembly

Passed the Senate July 8, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 11007.1, 14255, 14662, 14666, 14666.6, 14666.8, and 14667 of the Government Code, and to add Chapter 4 (commencing with Section 185040) to Division 19.5 of the Public Utilities Code, relating to high-speed rail.

LEGISLATIVE COUNSEL'S DIGEST

AB 481, Lowenthal. High-speed rail.

Existing law creates the High-Speed Rail Authority with specified powers and duties relative to development and implementation of a high-speed train system, including the acquisition of rights-of-way through purchase and eminent domain. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion for high-speed train capital projects and other associated purposes.

Existing law generally requires the approval of the Department of General Services before a state agency may acquire, hire, dispose of, or let real property in fee or in a lesser interest, subject to certain exceptions, including real property obtained for highway purposes by the Department of Transportation. Existing law requires the Department of General Services to inventory state-owned property, other than property owned by the Department of Transportation and certain other state agencies. Existing law provides that property acquired by the Department of Transportation for highway purposes and leased back for commercial or business uses to the former owner for a term exceeding 6 months may be insured for loss by fire at the request of the former owner with the premium for the insurance included in the rent.

This bill would enact similar exceptions and authorizations relative to real property obtained for high-speed rail purposes by the High-Speed Rail Authority. The bill would make various additional conforming changes. The bill would also enact new provisions governing acquisition or disposal of right-of-way property by the authority. The bill would require payments for leases, sales, or other conveyances of property owned or controlled

by the authority to be deposited in the High-Speed Rail Property Fund created by the bill, and would provide that the funds shall be available to the authority upon appropriation by the Legislature for specified purposes.

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

SECTION 1. Section 11007.1 of the Government Code is amended to read:

11007.1. (a) The Department of Transportation, when it has acquired title to any real property for highway purposes and leases that property for commercial or business uses to the former owner for a term exceeding six months, may secure insurance against the risk of damage or destruction by fire where the former owner requests this coverage and the premium therefor is included in the rental agreed to be paid.

(b) The High-Speed Rail Authority, when it has acquired title to any real property for high-speed rail purposes and leases that property for commercial or business uses to the former owner for a term exceeding six months, may secure insurance against the risk of damage or destruction by fire where the former owner requests this coverage and the premium therefor is included in the rental agreed to be paid.

SEC. 2. Section 14255 of the Government Code is amended to read:

14255. Whenever provision is made by law for any project that is not under the jurisdiction of the Department of Water Resources, the Department of Boating and Waterways pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code, the Department of Corrections and Rehabilitation pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, the High-Speed Rail Authority, or the Department of General Services, the project shall be under the sole charge and direct control of the Department of Transportation.

SEC. 3. Section 14662 of the Government Code is amended to read:

14662. The Director of General Services may acquire any easements or rights-of-way which the director determines to be

necessary for the proper utilization of real property owned or being acquired by the state.

This section does not apply to land, easements, or rights-of-way to be acquired by the Department of Transportation or the High-Speed Rail Authority.

SEC. 4. Section 14666 of the Government Code is amended to read:

14666. With the approval of the state agency concerned, the director may grant and convey in the name of the state, easements and rights-of-way across real property belonging to the state not used for highway rights-of-way or high-speed rail rights-of-way, for those purposes and upon that consideration and subject to those conditions, limitations, restrictions, and reservations as the director deems are in the interest of the state. All revenue received in connection with the granting and conveying of those easements and rights-of-way, including charges made for administrative costs, shall be deposited in the General Fund for appropriation as provided in Section 15863. Any expenditure in connection with the granting and conveying of those easements and rights-of-way or investigating proposed gifts of real property to the state may be allocated from the appropriation made pursuant to Section 15863.

SEC. 5. Section 14666.6 of the Government Code is amended to read:

14666.6. (a) With the approval of the state agency concerned, the director shall negotiate in the name of the state, access to state-owned property, not used for highway or high-speed rail purposes, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the best interest of the state. To the extent permitted under existing law, the director shall determine the amount of consideration for, and means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a monetary or service consideration for the access.

(b) The Director of Transportation shall negotiate, in the name of the state, access to state-owned highway rights-of-way, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the Director of Transportation to be in the best interest of the state. To the extent permitted under existing law, the Director of Transportation shall determine the

amount of consideration for, and means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a monetary or service consideration for the access.

(c) The Chief Executive Officer of the High-Speed Rail Authority shall negotiate, in the name of the state, access to state-owned high-speed rail rights-of-way for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the chief executive officer of the authority to be in the best interest of the state. To the extent permitted under existing law, the chief executive officer of the authority shall determine the amount of consideration for that access, and any means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a monetary or service consideration for the access.

(d) This section applies to various telecommunications and information technologies, including, but not limited to, voice data, video, and fiber-optic technologies.

(e) Any payments received under the provisions of this section for a grant or conveyance through land or facilities controlled by the Department of Transportation, including but not limited to rights-of-way along the state highway system, shall be deposited in the State Transportation Fund.

(f) Any payments received under the provisions of this section for a grant or conveyance through land or facilities controlled by the High-Speed Rail Authority, including, but not limited to, rights-of-way along the high-speed rail system, shall be deposited in the High-Speed Rail Property Fund, created pursuant to Section 185045 of the Public Utilities Code, and shall be available to the authority upon appropriation by the Legislature as provided in that section.

SEC. 6. Section 14666.8 of the Government Code is amended to read:

14666.8. (a) The director shall, within 120 days of the operative date of this section, compile and maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities. This inventory shall be the state's sole inventory of state-owned real property available for this purpose. The term "state-owned real property," as used in this

section, excludes property owned or managed by the Department of Transportation, property owned or managed by the High-Speed Rail Authority, and property subject to Section 7901 of the Public Utilities Code.

(b) The director shall provide, in a cost-effective manner, upon payment of any applicable fee, a requesting party a copy of the inventory.

(c) On behalf of the state, the director may negotiate and enter into an agreement to lease department-managed and state-owned real property to any provider of wireless telecommunications services for location of its facilities. A lease for this purpose shall do all of the following:

(1) Provide for fair market value to be paid by the provider of wireless telecommunications service to the state to the extent permitted under existing state law.

(2) Designate a lease term that is acceptable to the director and the state agency that has control over the property. The duration of the initial lease term for any wireless facility may not exceed 10 years, and the lease may provide for a negotiated number of renewal terms, not to exceed five years for each term.

(3) Provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible.

(4) Facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for collocation of their facilities on state-owned real property.

(d) Nothing in this section alters any existing rights of telegraph or telephone corporations pursuant to Section 7901 of the Public Utilities Code.

(e) Notwithstanding any other provision of law, any revenue collected from a lease entered into pursuant to this section to use property that was acquired with money from a fund other than the General Fund shall be deposited into the fund from which the money was obtained. Money received and deposited into a fund pursuant to this section shall be available upon appropriation by the Legislature, notwithstanding any other provision of law.

(f) Before making any state-owned real property that is part of the State Water Resources Development System, as described in Section 12931 of the Water Code, available for leasing under this

section, the director shall consult with the Department of Water Resources as to whether the proposed location of a wireless telecommunication facility is technically, legally, environmentally, and economically feasible for wireless telecommunication purposes.

SEC. 7. Section 14667 of the Government Code is amended to read:

14667. With the approval of the state agency concerned, the director may quitclaim, in the name of the state, the right, title, and interest of the state in and to easements and rights-of-way owned by the state, other than those acquired for highway purposes or for high-speed rail purposes, which the director determines are no longer needed for state purposes.

(a) Unless the conveyance of the easement or right-of-way is made to the federal government, or an agency thereof, or to a county, city, district, or other local governmental agency of this state, the director shall comply with the provisions of this subdivision. Prior to the disposition of any easement or right-of-way owned by the state pursuant to this section, notice thereof shall be published pursuant to Section 6061 of the Government Code in a newspaper published in the county in which the easement or right-of-way is situated, and if there is no newspaper published in such county, notice shall be published in a newspaper published in an adjoining county and shall be posted in at least three public places in the county in which the easement or right-of-way is situated, including one posting on the real property in which the easement or right-of-way is located.

(b) If the easement or right-of-way was acquired by the state for a price approximating its market value at the time of acquisition, the director, when disposing of that easement or right-of-way, shall make a reasonable effort to obtain as the price for the sale thereof an amount approximately equivalent to the current market value at the time of disposition.

SEC. 8. Chapter 4 (commencing with Section 185040) is added to Division 19.5 of the Public Utilities Code, to read:

CHAPTER 4. RIGHTS-OF-WAY

185040. (a) If the authority determines that real property or an interest therein, previously or hereafter acquired by the state

for high-speed rail purposes, is no longer necessary for those purposes, the authority may sell or exchange the real property or interest therein at fair market value in the manner set forth in this section.

(b) The authority may sell the property to an adjoining landowner if it makes either of the following two findings:

(1) (A) That the property is of a size or shape that it is below the average normal standard size and shape of other privately owned properties in the immediate neighborhood, and that if the property were sold to other than the adjoining owner, it would give rise to a land use development thereof that would be below and not consistent with the normal land use of other properties in that neighborhood, (B) that the sale of the property to a party other than the adjoining owner may cause an undue or unfair hardship to the adjoining owner in the normal land use development or operation of his or her property, (C) that the property considered as part of the adjoining property would have a higher and better use than under separate ownership, and (D) that the fair market value of the property considered as part of the adjoining property would be higher than under separate ownership.

(2) That the sale of the excess parcel to other than the adjoining owner would deprive the adjoining owner of an existing vested right of access to a public highway and thereby create a possible cause of action against the authority or the state.

A sale to an adjoining landowner pursuant to this subdivision may be by contract to sell or trust deed. The payment period in a contract of sale or sale by trust deed shall not extend longer than 10 years from the time the contract of sale or trust deed is executed, and a transaction involving a contract of sale or sale by trust deed to private parties shall require a downpayment of at least 30 percent of the purchase price.

(c) The authority may sell the property to municipalities or other local agencies at their request, without calling for competitive bids, at a price representing the fair market value thereof, and upon a determination that the intended use is for a public purpose.

(d) If it is improved property, the property may be sold to a former owner who has remained in occupancy, or to a residential tenant of a tenure of five years or more with all rent obligations current or paid in full.

(e) Any real property or interest therein may in like manner be exchanged, either as whole or part consideration, for any other real property or interest therein as needed for high-speed rail purposes. This provision does not authorize exchanges where the value of the state-owned property exceeds the value of the property the authority seeks to acquire, unless the excess value is incidental and subdivision of the state-owned property, in order to produce a smaller parcel of equal value to the value of the property the authority seeks to acquire, would reduce the total value of the state-owned property.

(f) Except as otherwise provided in this section, property shall be sold either by receipt of competitive sealed bids, or at public auction, whichever method is determined by the authority to be more likely to achieve the higher sales price.

(g) Any payments received under this section for the sale of real property no longer necessary for high-speed rail purposes shall be deposited in the High-Speed Rail Property Fund created pursuant to Section 185045, and shall be available to the authority upon appropriation as provided in that section.

185041. The authority may sell or lease excess right-of-way parcels to municipalities or other local agencies for public purposes, and may accept as all or part of the consideration for the sale or lease any substantial benefits the state will derive from the municipality or other local agency's undertaking maintenance or landscaping costs that would otherwise be the obligation of the state.

185042. The authority may lease nonoperating right-of-way areas to municipalities or other local agencies for public purposes, and may contribute toward the cost of developing local parks and other recreational facilities on those areas. The authority may accept as all or part of the consideration for the lease or for the state contribution any substantial benefits the state will derive from the municipality or other local agency's undertaking maintenance or landscaping costs that would otherwise be the obligation of the state. Those leases shall contain a provision that whenever the leased land is needed for high-speed rail operating purposes the lease shall terminate. The authority is authorized to classify portions of high-speed rail rights-of-way as nonoperating.

185044. The authority may lease to public agencies or private entities or individuals for any term not to exceed 99 years the use

of areas above or below operating rights-of-way and portions of property not currently being used as operating rights-of-way, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection of the safety and adequacy of high-speed rail facilities and of abutting or adjacent land uses. Prior to entering into any lease, the authority shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the authority, except that, in the cases of leases with private entities or individuals, the leases shall be made only after competitive bidding. The possibilities of entering into the leases, and the consequent benefits to be derived therefrom, may be considered by the authority in designing and constructing the high-speed rail system. Revenues from the leases shall be deposited in the High-Speed Rail Property Fund created pursuant to Section 185045.

185045. The High-Speed Rail Property Fund is hereby created in the State Treasury for the deposit of revenue received from the sale, lease, or grant of any interest in or use of real property owned or managed by the High-Speed Rail Authority. Revenues in the fund shall be available to the authority, upon appropriation by the Legislature, for use in the development, improvement, and maintenance of the high-speed rail system, consistent with appropriate uses for each funding source.

Approved _____, 2013

Governor