

AMENDED IN ASSEMBLY JANUARY 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1375

Introduced by Assembly Member Galgiani

February 27, 2009

An act to repeal and add Division 19.5 (commencing with Section 185000) of the Public Utilities Code, relating to high-speed rail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1375, as amended, Galgiani. High-speed rail.

Existing law, the California High-Speed Train Act, creates the High-Speed Rail Authority to develop and implement a high-speed train system in the state, with specified powers and duties. 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 in general obligation bonds for high-speed rail and related purposes.

This bill would revise and recast these provisions by repealing and reenacting the California High-Speed Train Act. The bill would continue the High-Speed Rail Authority in existence to make policy decisions relative to implementation of high-speed rail consistent with Proposition 1A. The bill would create the Department of High-Speed Trains within the Business, Transportation and Housing Agency, which would implement those policies. The bill would transfer certain of the existing powers and responsibilities of the authority to the department; and would specify additional powers and duties of the authority and department relative to implementation of the high-speed rail project, including the annual submission of a 6-year high-speed train capital improvement

program and progress report to the Legislature. The director of the department would be appointed by the ~~authority~~ Governor, who would serve at the pleasure of the authority, and the Governor would be authorized to appoint up to 10 executive employees of the department who would be exempt from civil service and serve at the pleasure of the director. The bill would provide for acquisition and disposition by the department of rights-of-way for the high-speed rail project. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. (a) It is the intent of the Legislature to do all of
2 the following:

3 (1) Further the transportation system of the state through the
4 successful development and construction of the 800-mile
5 high-speed train system described in Proposition 1A, approved by
6 the voters on November 4, 2008.

7 (2) Protect the state's interests and provide for the exercise of
8 continuing oversight of the funds to be invested in the high-speed
9 train project following voter approval of Proposition 1A.

10 (3) Ensure that an adequate public forum maintains the
11 transparency of the development of the high-speed train project.

12 (4) Provide an efficient governmental structure for the
13 development of high-speed train operations in the state.

14 (b) This act continues in existence the High-Speed Rail
15 Authority, creates a new Department of High-Speed Trains within
16 the Business, Transportation and Housing Agency, apportions
17 between the authority and the new department existing as well as
18 new powers, duties, rights, and obligations, and defines the
19 relationship between the authority and the new department.

20 SEC. 2. Division 19.5 (commencing with Section 185000) of
21 the Public Utilities Code is repealed.

22 SEC. 3. Division 19.5 (commencing with Section 185000) is
23 added to the Public Utilities Code, to read:

DIVISION 19.5. CALIFORNIA HIGH-SPEED RAIL
SERVICE

CHAPTER 1. GENERAL PROVISIONS, FINDINGS, AND DEFINITIONS

185000. This division shall be known, and may be cited, as the California High-Speed Rail Act.

185002. The Legislature hereby finds and declares all of the following:

(a) California, over the past decades, has built an extensive network of freeways and airports to meet the state's growing transportation needs.

(b) These facilities are not adequate to meet the mobility needs of the current population.

(c) The population of the state and the travel demands of its citizens are expected to continue to grow at a rapid rate.

(d) The cost of expanding the current network of highways and airports fully to meet current and future transportation needs is prohibitive, and a total expansion strategy would be detrimental to air quality.

(e) Intercity train service, when coordinated with urban transit and airports, is an efficient, practical, and less polluting transportation mode that can fill the gap between future demand and present capacity.

(f) Advances in rail and train technologies have allowed intercity train systems in Europe and Japan to attain speeds of up to 220 miles per hour and compete effectively with air travel for trips in the 200- to 500-mile range.

(g) Development of a high-speed train system is a necessary and viable alternative to automobile and air travel in the state.

(h) In order for the state to have a comprehensive network of high-speed intercity train systems by the year 2020, similar to California's former freeway plan, it is necessary to designate an entity with stable and predictable funding sources to implement the plan.

(i) Utilizing existing human and manufacturing resources to build a large network of high-speed trains will generate jobs and economic growth for today's population and produce a transportation network for future generations.

(j) Upon confirmation of the need and costs by detailed studies, the private sector, together with the state, can build and operate new high-speed intercity train systems utilizing private and public financing.

185004. As used in this division, unless the context requires otherwise, the following terms have the following meanings:

(a) “Authority” means the High-Speed Rail Authority. The members of the authority constitute the board of the authority.

(b) “Department” means the Department of High-Speed Trains.

(c) “High-speed train” means intercity passenger train service that utilizes an alignment and technology that makes it capable of sustained speeds of 200 miles per hour or greater.

(d) “Secretary” means the Secretary of Business, Transportation and Housing.

CHAPTER 2. THE HIGH-SPEED RAIL AUTHORITY

Article 1. Members of the Authority

185110. (a) The High-Speed Rail Authority in state government is hereby continued in existence.

(b) (1) The authority is composed of nine members as follows:

(A) Five members appointed by the Governor.

(B) Two members appointed by the Senate Committee on Rules.

(C) Two members appointed by the Speaker of the Assembly.

(2) For the purposes of making appointments to the authority, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall take into consideration geographical diversity to ensure that all regions of the state are adequately represented.

(c) Members of the authority shall hold office for terms of four years, and until their successors are appointed. A vacancy shall be filled by the appointing power making the original appointment, by appointing a member to serve the remainder of the term.

(d) The term of a member shall expire on December 31 of the fourth year of the member’s term.

(e) Members of the authority are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) From among its members, the authority shall elect a chairperson, who shall preside at all meetings of the authority, and

1 a vice chairperson to preside in the absence of the chairperson.
2 The chairperson shall serve a term of one year.

3 (g) Five members of the authority constitute a quorum for taking
4 any action by the authority.

5 185112. (a) Each member of the authority shall receive
6 compensation of one hundred dollars (\$100) for each day that the
7 member is attending to the business of the authority, but shall not
8 receive more than five hundred dollars (\$500) in any calendar
9 month.

10 (b) Members of the authority shall be reimbursed for their actual
11 travel expenses incurred in attending to the business of the
12 authority.

13 ~~185114. (a) The authority shall appoint the director of the~~
14 ~~department, who shall also serve as the authority's executive~~
15 ~~director, who shall serve at the pleasure of the authority, to~~
16 ~~administer the affairs of the authority and of the department.~~

17 ~~(b) The director is exempt from civil service.~~

18 ~~(c) The director may appoint necessary staff to carry out the~~
19 ~~provisions of this division.~~

20 21 Article 2. Policies of the Authority

22
23 185120. In consultation with the department, the authority shall
24 establish policies directing the development and implementation
25 of intercity high-speed train service that is fully integrated with
26 the state's existing intercity rail and bus network, consisting of
27 interlinked conventional and high-speed train lines and associated
28 feeder buses. The intercity network in turn shall be fully
29 coordinated and connected with commuter train lines and urban
30 transit lines developed by local agencies, as well as other transit
31 services, through the use of common station facilities whenever
32 possible. The department shall implement those policies.

33 185122. (a) The authority shall establish an independent peer
34 review group for the purpose of reviewing the planning,
35 engineering, financing, and other elements of the authority's plans
36 and issuing an analysis of appropriateness and accuracy of the
37 authority's assumptions and an analysis of the viability of the
38 authority's financing plan, including the funding plan for each
39 corridor required pursuant to subdivision (b) of Section 2704.08
40 of the Streets and Highways Code.

(b) The peer review group shall include all of the following:

(1) Two individuals with experience in the construction or operation of high-speed trains in Europe, Asia, or both, designated by the Treasurer.

(2) Two individuals, one with experience in engineering and construction of high-speed trains and one with experience in project finance, designated by the Controller.

(3) One representative from a financial services or financial consulting firm who shall not have been a contractor or subcontractor of the authority for the previous three years, designated by the Director of Finance.

(4) One representative with experience in environmental planning, designated by the secretary.

(5) Two expert representatives from agencies providing intercity or commuter passenger train services in California, designated by the secretary.

(c) The peer review group shall evaluate the authority's funding plans and prepare its independent judgment as to the feasibility and reasonableness of the plans, appropriateness of assumptions, analyses, and estimates, and any other observations or evaluations it deems necessary.

(d) The authority and the department shall provide the peer review group any and all information that the peer review group may request to carry out its responsibilities.

(e) The peer review group shall report its findings and conclusions to the Legislature no later than 60 days after receiving the plans.

Article 3. Powers, Duties, and Responsibilities of the Authority

185130. The authority has ~~those powers, duties, and responsibilities delegated to it pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act of 2008 (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code).~~ In addition, and subject to those powers, duties, and responsibilities, the authority has the following powers, duties, and responsibilities:

(a) The authority shall select the routes of the high-speed train system.

1 ~~(b) The authority shall determine the priority of construction of~~
2 ~~the various segments of the high-speed train system.~~

3 ~~(c)~~

4 (b) The authority shall serve as the governing body of the
5 department, within the meaning of Section 1245.210 of the Code
6 of Civil Procedure, for purposes of the adoption of resolutions of
7 necessity.

8 ~~(d)~~

9 (c) The authority shall advise the secretary and the director
10 concerning high-speed rail matters, *which advice shall be*
11 *considered by the department in exercising its powers and duties*
12 *pursuant to this division.*

13 ~~(e)~~

14 (d) The authority shall adopt criteria for the award of franchises.

15 ~~(f)~~

16 (e) The authority shall set fares or establish guidelines for the
17 setting of fares.

18 185132. (a) The authority shall adopt and submit to the
19 Legislature and the Governor, not later than October 1 each year,
20 a high-speed train program. The program shall cover a period of
21 six fiscal years, beginning July 1 of the year following the year it
22 is adopted, and shall be a statement of intent by the department to
23 request funding in the annual Budget Act for the following six
24 years.

25 (b) The high-speed train program shall include a listing of all
26 capital improvement projects that are expected to require
27 appropriation in the annual Budget Act, including state, federal,
28 local, and private funds, during the following six fiscal years.

29 (c) For each segment, the program shall specify the expenditure
30 amount and the expenditure year for each of the following project
31 components:

32 (1) Completion of all permits and environmental studies.

33 (2) Preparation of plans, specifications, and estimates.

34 (3) The acquisition of rights-of-way, including, but not limited
35 to, support activities.

36 (4) Construction and construction management and engineering,
37 including surveys and inspection.

CHAPTER 3. DEPARTMENT OF HIGH-SPEED TRAINS

Article 1. Organization of the Department

185210. There is in the Business, Transportation and Housing Agency a Department of High-Speed Trains.

185211. The department is under the control of a director known as the Director of High-Speed Trains.

185212. The director shall be appointed by the ~~authority~~ Governor, and hold office at the pleasure of the authority ~~as provided in Section 185114.~~

185213. The director shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided by law.

185214. The director shall organize the department from time to time in the manner the director deems necessary to properly segregate and conduct the work of the department. The director may organize the department into as many divisions as, in the director's judgment, will provide for the efficient administration of the high-speed train project and planning, construction, and operation of the high-speed train system.

185215. (a) For purposes of overseeing the ongoing work of the department, the organization of the department may include provision for up to 10 employees exempt from civil service who shall constitute the executive staff of the department, who shall be appointed by the Governor, and who shall serve at the pleasure of the director.

(b) Notwithstanding Sections 19816 and 19825 of the Government Code, the compensation of key exempt management, including the director and the exempt positions described in subdivision (a), shall be established by the authority board in amounts that are reasonably necessary, in the discretion of the board, to attract and hold a person of superior qualifications.

(c) (1) To determine the compensation for the positions described in this section, the authority shall cause to be conducted, through the use of independent outside advisors, salary surveys of both of the following:

(A) Other state, regional, and local transportation agencies that are most comparable to the department.

(B) Other relevant labor pools.

(2) The salaries so set by the board shall not exceed the highest comparable salary for a position of that type, as determined by the survey.

(d) The Department of Personnel Administration shall review the methodology used in these salary surveys.

185216. The Governor, the secretary, and the department may enter into any agreements, execute any documents, establish and manage any accounts and deposits, and take any other action that may be appropriate, in accordance with federal law and rules and regulations, to receive and expend funds from the federal government in connection with mass transportation programs and projects for which federal funds are available.

185217. The department shall prepare and submit to the Legislature and to the authority board an annual report, no later than December 1 of each year. The report shall include a description of the progress made and the high-speed train program adopted by the authority.

185218. (a) The authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 125 miles per hour in this state is exclusively granted to the department.

(b) Except as provided in paragraph (a), nothing in this chapter precludes other local, regional, or state agencies from exercising powers provided by law with regard to planning or operating, or both, passenger rail service.

Article 2. Powers and Duties of the Department

185220. *The department shall have those powers, duties, and responsibilities delegated to the authority pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act of 2008 (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code), except as provided otherwise in Article 3 (commencing with Section 185130) of Chapter 2. In that regard and to that extent, the department shall be the successor of the authority pursuant to subdivision (b) of Section 2704.01 of the Streets and Highways Code. Subject to the other provisions of this division, and the provisions of the Safe, Reliable High-Speed Passenger Train Bond Act of 2008 (Chapter 20 (commencing with*

~~Section 2704) of Division 3 of the Streets and Highways Code);~~
the department shall have the powers and duties to do the following:

(a) Conduct engineering and other studies related to the selection and acquisition of rights-of-way and the selection of a franchisee, including, but not limited to, environmental impact studies, socioeconomic impact studies, and financial feasibility studies.

(b) Evaluate alternative high-speed train technologies, systems and operators, and select an appropriate high-speed train system.

(c) Award franchises consistent with criteria adopted by the authority.

(d) Accept grants, fees, and allocations from the state, from political subdivisions of the state, or from the federal government, foreign governments, and private sources.

(e) Select a proposed franchisee, a proposed route, and proposed terminal sites.

(f) Enter into contracts with public and private entities for the preparation of the plan.

(g) Prepare a detailed financing plan, including any necessary taxes, fees, or bonds to pay for the construction of the high-speed train network.

(h) Develop a proposed high-speed train financial plan, including necessary taxes, bonds, or both, or other indebtedness, and submit the plan to the Legislature and to the Governor.

(i) Keep the public informed of its activities.

(j) Enter into contracts with private or public entities, including contracts for the design, construction, and operation of high-speed trains. The contracts may be separated into individual tasks or segments or may include all tasks and segments, including any combination of one or more of such tasks as design, build, finance, operate, and maintain.

(k) Acquire rights-of-way through purchase or eminent domain.

(l) Subject to approval by the authority board, issue debt, secured by pledges of state funds, federal grants, or project revenues. The pledge of state funds shall be limited to those funds expressly authorized by statute or voter-approved initiatives.

(m) Enter into cooperative or joint development agreements with local governments or private entities.

(n) Relocate highways and utilities.

(o) Plan, construct, and operate the high-speed train system, or enter into contracts for the planning, construction, or operation of the system, including the acquisition of equipment, including rolling stock, necessary for the operation of the system.

(p) Acquire, sell, and lease passenger rail rolling stock, power units, and associated equipment.

(q) Acquire, lease, design, construct, and improve track lines and related facilities, and contract with the private sector for the design, improvement, or construction of track lines and related facilities.

185222. (a) Notwithstanding any other provision of law, and subject to approval by the authority board, for any project along the high-speed rail network, the department may contract with the Department of Transportation to perform project design and engineering services, including construction inspection services.

(b) For purposes of this section, “project design and engineering services, including construction inspection services” means preliminary engineering, planning, prebid services, right-of-way acquisitions, preparation of environmental documents, preparation of plans, specifications, and estimates, construction inspection including surveying and materials testing, quality control inspection including highway and utility relocation, and grade separations.

Article 3. Rights-of-Way

185230. (a) If the department 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 department may sell, contract to sell, sell by trust deed, or exchange the real property or interest therein in the manner and upon terms, standards, and conditions established by the authority. 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.

(b) A conveyance under this section shall be approved by the authority and shall be executed on behalf of the state by the director and the purchase price shall be paid into the State Treasury to the

1 credit of any fund, available to the department for high-speed rail
2 purposes, that the authority designates.

3 (c) Any real property or interest therein may in like manner be
4 exchanged, either as whole or part consideration, for any other
5 real property or interest therein as needed for high-speed rail
6 purposes.

7 185232. The director may sell or lease excess right-of-way
8 parcels to municipalities or other local agencies for public purposes,
9 and may accept as all or part of the consideration for the sale or
10 lease any substantial benefits the state will derive from the
11 municipality or other local agency's undertaking maintenance or
12 landscaping costs that would otherwise be the obligation of the
13 state.

14 185234. The director may lease nonoperating right-of-way
15 areas to municipalities or other local agencies for public purposes,
16 and may contribute toward the cost of developing local parks and
17 other recreational facilities on those areas. The director may accept
18 as all or part of the consideration for the lease or for the state
19 contribution any substantial benefits the state will derive from the
20 municipality or other local agency's undertaking maintenance or
21 landscaping costs that would otherwise be the obligation of the
22 state. Those leases shall contain a provision that whenever the
23 leased land is needed for high-speed rail operating purposes the
24 lease shall terminate. The department is authorized to classify
25 portions of high-speed rail rights-of-way as nonoperating.

26 185236. (a) The department may acquire, by purchase, lease,
27 or eminent domain, any property necessary for the development
28 and implementation of the state's high-speed train program. The
29 power of eminent domain shall be exercised in accordance with
30 Title 7 (commencing with Section 1230.010) of Part 3 of the Code
31 of Civil Procedure.

32 (b) The authority constitutes the department's "governing body"
33 within the meaning of Section 1245.210 of the Code of Civil
34 Procedure, for purposes of the adoption of resolutions of necessity.

35 (c) To the extent that the activities authorized by subdivision
36 (a) exceed the capacity of the department's existing work force,
37 the department may contract with qualified individuals or firms
38 for engineering, surveying, and related technical services in
39 exercising its authority pursuant to subdivision (a).

CHAPTER 4. LEGAL MATTERS

185300. The department may employ its own legal staff or contract with other state agencies for legal services, or both. The department's legal counsel may represent the authority and the department in any judicial proceeding.

185302. Any legal or equitable action brought against the authority or the department shall be brought in a court of competent jurisdiction in the County of Sacramento. For purposes of this section, subdivision (1) of Section 401 of the Code of Civil Procedure does not apply.

O