SENATE BILL No. 455

Introduced by Senator Lowenthal

February 26, 2009

An act to amend Sections 11005, 11005.2, 11007.1, 11011.13, 13332.11, 13332.12, 14255, 14662, 14666, 14666.6, 14666.8, and 14667 of the Government Code, to amend Sections 10106 and 10107 of the Public Contract Code, to amend Section 185020 of the Public Utilities Code, and to add Chapter 20.1 (commencing with Section 2704.30) to Division 3 of the Streets and Highways Code, relating to high-speed rail.

LEGISLATIVE COUNSEL'S DIGEST

SB 455, as introduced, 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. The authority is composed of 9 members, including 5 members appointed by the Governor.

This bill would provide that the members of the authority appointed by the Governor are subject to appointment with the advice and consent of the Senate.

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 defines Phase I of the high-speed train project to be between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim.

This bill would require the authority to ensure that projects undertaken by the authority, including projects for acquisition of right-of-way, are consistent with specified criteria.

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, authorizations, and exemptions relative to real property obtained for high-speed rail purposes by the High-Speed Rail Authority. The bill would make various additional conforming changes.

Existing law generally requires the approval of the Department of Finance and the State Public Works Board before a state agency may expend funds from an appropriation for capital outlay purposes. These provisions do not apply to the Department of Transportation and certain other state agencies.

This bill would also make these provisions inapplicable to the High-Speed Rail Authority.

Existing law provides that the Department of Transportation is the responsible agency for projects for various purposes under the Public Contract Code, except with respect to projects under the jurisdiction of other specified state agencies.

This bill would provide that the High-Speed Rail Authority is the responsible agency for projects under its jurisdiction.

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

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

SECTION 1. Section 11005 of the Government Code is amended to read:

11005. (a) Unless the Legislature specifically provides that approval is not required, every gift or dedication to the state of personal property, or every gift to the state of real property in fee or in any lesser estate or interest, shall be approved by the Director of Finance, and every contract for the acquisition or hiring of real property in fee or in any lesser estate or interest, entered into by or on behalf of the state, shall be approved by the Director of General Services. Any contract entered into in violation of this section is void. This section applies to any state agency that, by general or specific statute, is expressly or impliedly authorized to enter into transactions referred to in this section.

(b) This section does not apply (1) to unconditional gifts of money, (2) to the acquisition or hiring by the Department of Transportation of real property in fee or in any lesser estate or interest for highway purposes, but does apply to the hiring by that department of office space in any office building, (3) to contracts entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, (4) to the receipt of donated, unencumbered personal property from private sources received in conjunction with the administration of the Federal Surplus Personal Property Program by the Department of General Services, (5) to the receipt of gifts of personal property in the form of interpretive or historical objects, each valued at fifteen thousand dollars ($15,000) or less, by the Department of Parks and Recreation, ~~or~~ (6) *to* the acceptance by the State Coastal Conservancy of offers to dedicate public accessways made pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code*, or (7) to the acquisition or hiring by the High-Speed Rail Authority of real property in fee or in any lesser estate or interest for high-speed rail purposes, but does apply to the hiring by that authority of office space in any office building*.

SEC. 2. Section 11005.2 of the Government Code is amended to read:

11005.2. Unless the Legislature specifically provides that approval by the Director of General Services is not required, every conveyance, contract, or agreement whereby an interest of the state in any real property is conveyed, demised, or let to any person, shall, before the conveyance, contract, or agreement is executed or entered into, be approved by the Director of General Services. Any conveyance, contract, or agreement executed or entered into in violation of this section is void. This section shall apply to any state agency which, by general or specific statute, is expressly or impliedly authorized to enter into transactions referred to in this section.

This section does not apply to real property acquired by the Department of Transportation for highway purposes, *real property acquired by the High-Speed Rail Authority for high-speed rail purposes,* or real property administered by the State Lands Commission, the Controller, or the State Compensation Insurance Fund.

SEC. 3. 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 ~~such~~ *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. 4. Section 11011.13 of the Government Code is amended to read:

11011.13. As used in Section 11011.15, "agency" means any state agency, department, division, bureau, board, commission, and the California State University. "Agency" does not mean the Legislature, the University of California, ~~or~~ the Department of Transportation, *or the High-Speed Rail Authority*.

SEC. 5. Section 13332.11 of the Government Code is amended to read:

13332.11. (a) (1) Except as otherwise specified in paragraph (2), no funds appropriated for capital outlay may be expended by any state agency, including the University of California, the California State University, and the community colleges, until the Department of Finance and the State Public Works Board have approved preliminary plans for the project to be funded from a capital outlay appropriation.

(2) Paragraph (1) shall not apply to any of the following:

(A) Amounts for acquisition of real property in fee, or any other lesser interest.

(B) Amounts for equipment or minor capital outlay projects.

(C) Amounts appropriated for preliminary plans, surveys, and studies.

(b) Notwithstanding subdivision (a), approvals by the State Public Works Board and the Department of Finance for the University of California and the community colleges shall apply only to the allocation of state capital outlay funds appropriated by the Legislature, including land acquisition and equipment funds.

(c) Any appropriated amounts for working drawings or construction where the working drawings or construction have been started by any state agency prior to approval of the preliminary plans by the State Public Works Board, and all amounts not approved by the board under this section shall be reverted to the fund from which the appropriation was made. No major project for which a capital outlay appropriation is made shall be put out to bid until the working drawings have been approved by the Department of Finance. No substantial change shall be made to the approved preliminary plans or approved working drawings without written approval by the Department of Finance. Any proposed construction bid alternates shall be approved by the Department of Finance.

(d) The Department of Finance shall approve the use of funds from a capital outlay appropriation for the purchase of any significant unit of equipment.

(e) The State Public Works Board may augment a major project in an amount of up to 20 percent of the total of the capital outlay appropriations for the project, irrespective of whether any such appropriation has reverted. The State Public Works Board shall defer all augmentations in excess of 20 percent of the amount appropriated for each capital outlay project until the Legislature makes additional funds available for the specific project.

(f) In addition to the powers provided by Section 15849.6, the State Public Works Board may further increase the additional amount in Section 15849.6 to include a reasonable construction reserve within the construction fund for any capital outlay project without augmenting the project. The amount of the construction reserve shall be within the 20 percent augmentation limitation. The State Public Works Board may use this amount to augment the project, when and if necessary, after the lease revenue bonds are sold to assure completion of the project. Upon completion of the project, any amount remaining in the construction reserve funds shall be used to offset rental payments.

(g) Augmentations in excess of 10 percent of the amount appropriated for each capital outlay project shall be reported to the Chairperson of the Joint Legislative Budget Committee, or his or her designee, 20 days prior to board approval, or not sooner than whatever lesser time the chairperson, or his or her designee, may in each instance determine.

(h) Prior to State Public Works Board action on any capital outlay appropriation, the Department of Finance shall certify, in writing, to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative advisors of the board that the requested action is in accordance with the legislatively approved scope and cost. If, pursuant to the other provisions of this section, the Department of Finance approves changes to the approved scope or cost, or both, the department shall report the changes and associated cost implications.

(i) The State Public Works Board shall defer action with respect to approval of an acquisition project, when it is determined that the estimated cost of the total acquisition project, as approved by the Legislature is in excess of 20 percent of the amount appropriated, unless it is determined that a lesser portion of the property is sufficient to meet the objectives of the project approved by the Legislature, and the Chairperson of the Joint Legislative Budget Committee, or his or her designee, is provided a 20-day prior notification of the proposed reductions in the acquisition project, or whatever lesser period the chairperson, or his or her designee, may in each instance determine.

(j) The State Public Works Board shall defer action with respect to the approval of preliminary plans when it is determined that the estimated cost of the total capital outlay construction project, as approved by the Legislature, is in excess of 20 percent of the amount appropriated.

(k) Nothing in this section shall be construed to limit or control the Department of Transportation, *the High-Speed Rail Authority,* or the California Exposition and State Fair in the expenditure of all funds appropriated to ~~the department~~ *any of them* for capital outlay purposes.

SEC. 6. Section 13332.12 of the Government Code is amended to read:

13332.12. (a) Any acquisition of land or other real property authorized in any appropriation, except an appropriation from the California Water Fund ~~and~~ *or* an appropriation to the Department of Transportation *or the High-Speed Rail Authority* for capital outlay purposes, shall be subject to the provisions of the Property Acquisition Law. Nothing in this section shall be construed as exempting the California Coastal Commission from this section.

(b) All property acquisitions, including those exempted pursuant to subdivision (a), shall be reported to the State Public Works Board.

SEC. 7. Section 14255 of the Government Code is amended to read:

14255. Whenever provision is made by law for any project ~~which~~ *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. 8. 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 ~~he~~ *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. 9. 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 ~~such~~ *those* purposes and upon ~~such~~ *that* consideration and subject to ~~such~~ *those* conditions, limitations, restrictions, and reservations as ~~he~~ *the director* deems are in the interest of the state. All revenue received in connection with the granting and conveying of ~~such~~ *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 ~~said~~ *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. 10. 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 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 authority to be in the best interest of the state. To the extent permitted under existing

law, the authority shall determine the amount of consideration for, 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.

~~(c)~~

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

~~(d)~~

(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 *or the high-speed Rail Authority*, including but not limited to rights-of-way along the state highway system *or the high-speed rail system, as the case may be*, shall be deposited in the State Transportation Fund.

SEC. 11. 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 colocation 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. 12. 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 ~~he~~ *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 ~~he disposes~~ *disposing* of ~~such~~ *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 ~~such~~ disposition.

SEC. 13. Section 10106 of the Public Contract Code is amended to read:

10106. For purposes of this part:

(a) "Department" means any of the following:

(1) The Department of Water Resources as to any project under the jurisdiction of that department.

(2) The Department of General Services as to any project under the jurisdiction of that department.

(3) The Department of Boating and Waterways as to any project under the jurisdiction of that department pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code.

(4) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(5) The Military Department as to any project under the jurisdiction of that department.

(6) The High-Speed Rail Authority as to any project under the jurisdiction of that authority.

~~(6)~~

(7) The Department of Transportation as to all other projects.

(b) "Director" means the director of each department as defined herein respectively, *or the executive director in the case of the High-Speed Rail Authority*.

SEC. 14. Section 10107 of the Public Contract Code is amended to read:

10107. Whenever provision is made by law for any project ~~which~~ *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. 15. Section 185020 of the Public Utilities Code is amended to read:

185020. (a) There is in state government a High-Speed Rail Authority.

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

(A) Five members appointed by the Governor, *with the advice and consent of the Senate*.

(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) Except as provided in subdivision (d), and until their successors are appointed, members of the authority shall hold office for terms of four years. 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) (1) On and after January 1, 2001, the terms of all persons who are then members of the authority shall expire, but those members may continue to serve until they are reappointed or until their successors are appointed. In order to provide for evenly staggered terms, persons appointed or reappointed to the authority after January 1, 2001, shall be appointed to initial terms to expire as follows:

(A) Of the five persons appointed by the Governor, one shall be appointed to a term which expires on December 31, 2002, one shall be appointed to a term which expires on December 31, 2003, one shall be appointed to a term which expires on December 31, 2004, and two shall be appointed to terms which expires on December 31, 2005.

(B) Of the two persons appointed by the Senate Committee on Rules, one shall be appointed to a term which expires on December 31, 2002, and one shall be appointed to a term which expires on December 31, 2004.

(C) Of the two persons appointed by the Speaker of the Assembly, one shall be appointed to a term which expires on December 31, 2003, and one shall be appointed to a term which expires on December 31, 2005.

(2) Following expiration of each of the initial terms provided for in this subdivision, the term shall expire every four years thereafter on December 31.

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

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

SEC. 16. Chapter 20.1 (commencing with Section 2704.30) is added to Division 3 of the Streets and Highways Code, to read:

Chapter 20.1. Implementation of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century

2704.30. (a) When making investments in Phase I of the high-speed train project as defined in paragraph (2) of subdivision (b) of Section 2704.04, or investments pursuant to paragraph (3) of subdivision (b) of Section 2704.04, the High-Speed Rail Authority shall ensure that projects undertaken by the authority, including acquisition of right-of-way, that are funded pursuant to Chapter 20 (commencing with Section 2704) or any other funds available to the authority for capital outlay purposes, are consistent with one or more of the following criteria:

(1) The project provides for enhancement of railroad access to stations and terminals, with priority to be given to those stations and terminals that serve the largest employment centers.

(2) The project provides improvements to travel time, service reliability, safety, and service frequency for existing commuter and intercity passenger train services.

(3) The project provides for improvement of the connections from the San Joaquin Valley to southern California and from the San Joaquin Valley to the Bay Area.

(b) With respect to projects undertaken pursuant to paragraphs (1), (2), and (3) of subdivision (a), the projects shall result in right-of-way or facilities that are capable of being converted to use by high-speed passenger train service, or are otherwise consistent with the operation of high-speed passenger train service, at the time the authority is prepared to begin the operation of high-speed passenger train service.

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