Date of Hearing: April 24, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
AB 1442 (Travis Allen) – As Amended March 28, 2017

SUBJECT: Bonds: transportation: water projects

SUMMARY: Directs that a referendum be placed on the ballot to redirect high-speed rail bond funding to state water projects. Specifically, **this bill**:

1) Prohibits further issuance and sale of any authorized bonds for high-speed rail, except for early improvement projects (a.k.a. bookend projects) in the Phase 1 blended system for which appropriations have already been made.

2) Redirects the proceeds of any outstanding bonds issued and sold, except for those related to the bookend projects, to debt retirement.

3) Reauthorizes the issuance and sale of any unissued bonds, upon appropriation by the Legislature, to fund the construction of water capital projects that are part of the State Water Resources Development System, including the construction of desalination facilities, wastewater treatment and recycling facilities, reservoirs, water conveyance infrastructure, and aquifer recharge.

4) Directs the Secretary of State to submit the act to the voters on the ballot for the next statewide election.

EXISTING LAW:

1) Establishes the California High-Speed Rail Authority (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) Authorizes the expenditure of an additional $950 million in general obligation bonds for capital projects on other passenger rail lines to provide connectivity to the high-speed rail system as well as for capacity enhancements and safety improvements to those lines.

4) Requires the Authority to complete and submit to the Legislature funding plans and financial analyses prior to requesting an appropriation of bond funds for eligible capital costs and prior to committing bond proceeds for expenditure for construction, real property and equipment acquisition.

5) Appropriates $1.1 billion of the $9 billion in high-speed rail bonds for use on bookend projects.

FISCAL EFFECT: According to the Authority, $1.15 billion in Proposition 1A bonds have been issued to date. Of that total, $568 million (of $9 billion) have been issued for the high-speed rail project and $582 million (of $950 million) have been issued for connectivity projects.

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 1), with service eventually extended 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 business plan estimates costs for Phase 1 to be $64 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 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 Basin.

In May 2016, the Authority approved the 2016 Business Plan which switched the focus of the Initial Operating Segment (IOS) from the Los Angeles Basin to Northern California with a terminus in San Jose. The business plan also adjusted the cost estimates for Phase I down to from $68 billion to $64 billion.

Two relevant court cases were litigated in 2013 regarding issuance of Proposition 1A bonds. Specifically, one case challenged the funding plan that was submitted to the Legislature prior to the appropriation as required by Proposition 1A. The lower court found that the plan did not meet the requirements set forth in Proposition 1A. However, the appellate court found that the purpose of the funding plan was to inform the Legislature and if the Legislature acts on the plan, the plan is presumed to have been sufficient. Additionally, the Authority filed a validation suit to clear any potential legal hurdles to issuance of the Proposition 1A bonds. The lower court ruled against the Authority noting that the Authority had not met the legal standards for issuing taxpayer bonds. The ruling was overturned by the California Supreme Court and the lower court was directed to issue an order validating the issuance of the bonds.

With the continued threat of litigation on the issuance and expenditure of the Proposition 1A bonds, the funds approved by the voters remain in question. To begin construction work in the Central Valley and move forward on the other project sections, the Authority negotiated its funding agreement with the federal government to allow a "tapered match"—i.e., to allow federal dollars to be spent first and state matching dollars to be spent later. 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. The Authority Business Plan estimates this to be $500 million annually.

In January 2017, the Authority submitted funding plans to the Department of Finance and the Joint Legislative Budget Committee for the Central Valley segment, the first segment of high-speed rail, and the Caltrain electrification project, a bookend early investment project, in the San Francisco Bay Area. The so-called funding plan (d) is required by Proposition 1A prior to any expenditure of bond funds and must contained specific elements, including details of funding for and construction cost projections for the segment. A lawsuit was immediately filed to block the issuance of the bonds citing that the funding plans did not meet the standards in Proposition 1A. In March 2017, the Sacramento Superior Court denied a request for a temporary restraining order to stop the sale of Proportion 1A bonds pursuant to the funding plans. A hearing is set in late April to further discuss the funding plans.

The author introduced this bill because "recently, heavy rains and storms have pushed California's aged water infrastructure to its limits. Flooding, levies requiring reinforcement, and most notably the entirely preventable Oroville Dam spillway failure, have all shown how refusing to spend a single dollar on our water storage could lead to disastrous consequences." He further states that "the High-Speed Rail [Authority] is receiving both state and federal funds, and both agencies disagree on the final cost and timing for the end of construction, with estimates going as high as $68 billion. Multiple budget spikes, delays, and insecurity in land acquisition have plagued the project since its inception. Simply stated, the high-speed rail project is not needed, over budget and waste of taxpayer funds. The money would be much better spent on our water infrastructure."

Writing in opposition to the bill, the State Building and Construction Trades Council of California, note that, "despite the critical need to fund much needed water projects such as desalination plants, wastewater treatment facilities, reservoir construction, water conveyance infrastructure, and aquifer recharge, that funding stream needs to be permanent and not come from high-speed rail bond funding as AB 1442 would mandate. Furthermore, construction of high-speed rail continues to be the largest job-creating project in the state."

Committee comments: The release of the business plan signaled a more concrete funding plan for the development of the IOS. However, the Authority continues to face funding and legal challenges and the outcome of the project is unclear. The high-speed rail project is under construction and proceeding, its unsteady beginning is not without precedent among mega-projects. In fact, the 2017 Project Update Report provided a thorough description of the construction that has occurred, the economic growth that has resulted from project construction, and an overview of how the Authority intends to manage future risks.

Stopping the project now by redirecting the bonds will cause hundreds of millions of dollars of work and study to be wasted. The Legislature should continue its oversight of the project and work to improve its likelihood of success. To that end in 2016, Governor Brown signed AB 1813 (Frazier), Chapter 117, Statutes of 2016, which adds two members of the Legislature to the Authority Board of Directors as ex-officio, non-voting members. In March 2017, Senate Transportation and Housing Chair Jim Beall (D-San Jose) was appointed to fill one of the seats.

Related legislation: SB 414 (Vidak), would require the Secretary of State to put on the June 2018 general election ballot a legislative referendum which, if approved by voters, would prohibit the sale of any additional high-speed rail bonds and authorize the remaining bonds be issued to fund the repair and new construction projects on state highways and freeways and to cities and counties for transportation projects. SB 414 failed passage in the Senate Transportation and Housing Committee.

Previous legislation: AB 1768 (Gallagher) of 2016 would have required the Secretary of State to put on the November 2016 general election ballot a legislative referendum which, if approved by the voters, would prohibit the sale of any additional high-speed rail bonds and authorize the remaining bonds be issued to fund the SHOPP. AB 1768 failed passage in this committee.

AB 1866 (Wilk) of 2016 would have required the Secretary of State to put on the November 2016 general election ballot a legislative referendum which, if approved by the voters, would prohibit the sale of any additional high-speed rail bonds and authorize the remaining bonds be issued to fund the construction of water projects. AB 1866 failed passage in this committee.

AB 2049 (Melendez) of 2016 would have required the Secretary of State to put on the November 2016 general election ballot a legislative referendum which, if approved by the voters, would prohibit the sale of any additional high-speed rail bonds and authorize the remaining bonds be issued to fund the construction of the SHOPP, STIP, and TCIF. AB 2049 failed passage in this committee.

AB 6 (Wilk) of 2015 would have required the Secretary of State to put on the November 2016 general election ballot a legislative referendum which, if approved by the voters, would prohibit the sale of any additional high-speed rail bonds and authorize the remaining bonds be issued to fund the construction of school facilities for K-12 and higher education. AB 6 failed passage in this committee.

AB 397 (Mathis) of 2015 would have required the Secretary of State to put on the November 2016 general election ballot a legislative referendum which, if approved by the voters, would prohibit the sale of any additional high-speed rail bonds and redirect the authorize the remaining bonds be issued to fund the construction of water capital projects. AB 397 failed in this committee on and was granted reconsideration. AB 397 failed passage on reconsideration.

SBX1 3 (Vidak) of 2015 would have redirected high-speed rail bond proceeds to state freeways and highways, and local streets and roads, upon voter approval. SBX1 3 failed passage in the Senate Transportation and Infrastructure Committee in the 1st Extraordinary Session.

All of the following bills would have reduced the amount of authorized indebtedness for the Authority:

AB 2650 (Conway) of 2014, failed passage in this committee;

AB 1501 (Patterson) of 2014, failed passage in this committee;

SB 901 (Vidak) of 2014, failed passage in Senate Transportation and Housing Committee;

AB 842 (Donnelly) of 2013, failed passage in this committee;

AB 1455 (Harkey) of 2012, failed passage in this committee;

SB 22 (LaMalfa) of 2012, failed passage in the Senate Transportation and Housing Committee;

AB 76 (Harkey) of 2011, failed passage in this committee; and,

AB 2121 (Harkey) of 2010, died in the Senate Rules Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Melissa White / TRANS. /