

Date of Hearing: April 16, 2018

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 2712 (Travis Allen) – As Amended March 12, 2018

**SUBJECT:** Bonds: Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century

**SUMMARY:** Directs that a referendum be placed on the ballot to stop the issuance of high-speed rail bonds and redirect any outstanding bond proceeds to be distributed to California taxpayers. 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 be distributed as refunds to the California taxpayers upon appropriation of the Legislature.
- 3) Directs the Secretary of State to submit the act to the voters on the ballot for the next statewide election.
- 4) Contains an urgency clause.

**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, including projects in the San Francisco Bay Area (Caltrain), and the Los Angeles region.

**FISCAL EFFECT:** According to the Authority, \$2.7 billion in Proposition 1A bonds have been issued to date. Of that total, \$2.1 billion (of the \$9 billion) have been issued for the high-speed rail project and \$633 million (of the \$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 I), 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 estimate for Phase 1 is \$77.3 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.

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.

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 project in the San Francisco Bay Area. In June 2017, the Authority also submitted a funding plan for the Rosecrans – Marquardt rail grade separation project, a bookend project in the Los Angeles region. The so-called "funding plan (d)," is required by Proposition 1A prior to any expenditure of bond funds for

capital construction and must contain specific elements, including details of funding and construction cost projections for the segment.

Following the submission of the funding plans for the Central Valley and Caltrain, 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. Although the court denied a request for a temporary restraining order to stop the sale of Proposition 1A bonds, the court case is still pending.

On March 9, 2018, the Authority issued the 2018 Draft Business Plan which continues their commitment to a northern oriented and expanded IOS from the Silicon Valley to the Central Valley, the so-called “Valley to Valley” line. Additionally, the draft plan reflects work directed by the Authority’s Board of Directors in 2017 for a comprehensive review of the current Central Valley construction contracts and cost estimates for the Valley to Valley Line and full Phase I of the system. This new cost review was first unveiled in November 2017, when the Authority revealed that costs for the Central Valley segment had risen over \$2.8 billion from previous estimates, due primarily to right-of way acquisition delays and so-called third party agreements with freight railroads and utilities. The new cost estimates are reflected in the draft plan. As mentioned, the updated cost for full Phase I of the system is \$77.3 billion.

To date, the state has sold roughly \$2.7 billion in Proposition 1A bonds to fund the high speed rail and bookend projects, and over \$630 million for connectivity projects. The Department of Finance estimates that the bond debt service for Proposition 1A bonds will be approximately \$366 million in the 2018-19 fiscal year. As the remaining Proposition 1A bonds are appropriated and cleared of legal hurdles for sale by the state, the debt service costs will likely increase.

This bill would place a referendum on the ballot to bar any further Proposition 1A bonds from being sold, except those needed for the bookend projects in the San Francisco Bay area and Los Angeles region. The measure would also require that any unspent proceeds from Proposition 1A bonds that have been issued, be redirected from high-speed rail purposes and distributed as refunds to California taxpayers. These funds would have to be appropriated by the Legislature, who would prescribe the manner in which the funds would be distributed.

According to the author, “California has invested billions of state and federal funds into a high-speed rail project that has refused to gain any traction or hold to financial limitations. These funds should be returned back to the people.”

*Committee Comments:* This committee recently held an oversight hearing on the Draft 2018 Business Plan. The committee thoroughly discussed the issues facing the Authority, including the lack of funding to complete the IOS. The High-Speed Rail Peer Review Group clearly laid out options for the future of the high-speed rail project, including reconfirming the state’s commitment to the completion of the IOS and Phase I, completing parts of the system to provide independent utility, or ending the project.

It is clear that the project is at a crossroads, and as funding partners for the project the Legislature will need to consider these options in the near future in a deliberative manner, with stakeholder input. Stopping the project now would cause billions of dollars of work to be wasted and leave stranded, unusable assets. The Legislature should continue its oversight of the project and work on a long term solution.

Additionally, it is unclear whether the distribution of General Obligation bond proceeds to taxpayers would be allowable under the California Constitution. Further, California taxpayers could be on the hook for paying the debt on the bonds issued to provide the refunds.

*Related legislation:* AB 2530 (Melendez) would direct that a referendum be placed on the ballot to redirect high-speed rail bond funding to the purchase of school buses for public school children. AB 2530 is set for hearing in this committee on April 16, 2018.

*Previous legislation:* SB 414 (Vidak) of 2017, would have required 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.

AB 1442 (Allen) of 2017, would have required the Secretary of State to put on the November 2018 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 state water projects. AB 1422 failed passage in this committee.

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 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**

State Building and Construction Trades Council, AFL-CIO

**Analysis Prepared by:** Melissa White / TRANS. / (916) 319-2093