CONCURRENCE IN SENATE AMENDMENTS
AB 1889 (Mullin)
As Amended August 19, 2016
Majority vote

| ASSEMBLY: | SENATE: |
| --- | --- |

Original Committee Reference: **L. GOV.**

**SUMMARY**: Defines the terms "suitable and ready for high-speed train operation".

**The Senate amendments** delete the Assembly version of the bill and instead**:**

1) Outline the history of the California High-Speed Rail Program, including funding and acts of the Legislature.

2) Declare the intent of the Legislature in appropriating funds for the "Bookend" projects that the projects should proceed to construction in the near term and the investments are consistent with Proposition 1A.

3) Declare the intent of the Legislature that nothing in the bill relives the California High-Speed Rail Authority (Authority) of any requirements of Proposition 1A, including the development of a funding plan for the use of bond funds.

4) Declare that the bill clarifies that early investments in the Bookends and elsewhere along the system as defined in SB 1029 (Committee on Budget and Fiscal Review), Chapter 152, Statutes of 2012, are consistent with the intent of the Legislature in appropriating the funding and consistent with Proposition 1A.

5) Define, for the purposes of a funding plan required by Proposition 1A, that a corridor or usage segment thereof be "suitable and ready for high-speed train operation," for the use of bond funds, as appropriated in SB 1029 (Committee on Budget and Fiscal Review), Chapter 152, Statutes of 2012, to mean a project that would enable high-speed trains to operate immediately or after additional planned investments are made on the corridor or usable segment thereof and passenger train service providers will benefit from the project in the near-term.

6) Requires the Authority to include information in the Business Plan and Project Update Report describing the use of bond proceeds appropriated for the Bookends demonstrating that the investments made are consistent with the Authority's current Business Plan and advance the development of the Phase I blended system as described in the Business Plan.

**EXISTING LAW**:

1) Establishes the Authority and vests with it the responsibility to develop and implement a high-speed rail system in California.

2) Enacts the Safe, Reliable High-Speed passenger Train Bond Act for the 21st Century (Proposition 1A of 2008), which authorizes the sale of $9.95 billion in general obligation bonds to partially fund the development and construction of California's high-speed rail

system and other passenger rail systems in the state that will provide for connectivity to the high-speed system.

3) Continuously appropriates 25% of the cap and trade proceeds annually from the Greenhouse Gas Reduction Fund to the high-speed rail program.

4) Requires the Authority to prepare a business plan by March 1, 2014, and every two years thereafter that includes specific requirements.

5) Requires the Authority to develop a project update report on March 1, 2017, and every two years thereafter that includes specific requirements.

6) Appropriates $8 billion in federal and state funds to begin construction of the Initial Operating Segment (IOS) of the high-speed rail system, the bookend projects as defined, and the rail connectivity projects administered by the California Transportation Commission, and requires funds to be encumbered by June 30, 2018.

7) Defines the "Bookend" projects as early improvements for the Phase I Blended system as outlined in the Authority's 2012 Revised Business Plan and agreements with local transportation agencies in Northern and Southern California.

8) Prohibits appropriated funds for the San Francisco to San Jose corridor to be spent on a 4 track system.

9) Requires the Authority, prior to seeking an appropriation of bond funds for a specific corridor or usable segment, to submit a detailed funding plan, with specific requirements, to the Director of Finance, the High-Speed Rail Peer Review Group, and the Legislature.

10) Requires the Authority, prior to committing bond funds for construction and real property and equipment acquisition for a specific corridor or usable segment that has been appropriated, to submit a detailed funding plan, with specific requirements, to the Director of Finance and the Joint Legislative Budget Committee.

11) Requires the Authority, in conjunction with the funding plan prior to committing bond funds, obtain a report or reports by one or more independent financial consulting firms that includes an analysis on a number of elements, including whether the corridor or usable segment will be suitable and ready for high-speed train operation upon completion of construction.

12) Requires the Director of Finance to approve the funding plan, with the abovementioned reports included, prior to the Authority entering any commitments to expend bond funds for a specific corridor or usable segment.

**AS PASSED BY THE ASSEMBLY**, this bill deleted obsolete provisions of law creating the Peninsula Rail Transit District.

**FISCAL EFFECT**: According to the Senate Appropriations Committee, the bill has potential accelerated expenditure of $1.1 billion in previously-appropriated bond funds, relative to current law (High-Speed Passenger Train Bond Fund). This bill would explicitly allow for expenditure of bond funds in the near-term for projects that benefit passenger train service without providing all necessary funding for investments in a usable segment that would be necessary for the immediate operation of high-speed trains. Absent this bill, these funds may not be available for project expenditures prior to the expiration of the June 30, 2018, encumbrance limitation tied to the previous appropriation of bond funds.

**COMMENTS**: The Authority was created in 1996 to direct development and implementation of intercity high-speed rail service in California that would be fully coordinated with other public transportation services. In 2008, voters approved the Safe, Reliable High Speed Passenger Train Bond Act for the 21st Century (Proposition 1A), which authorized $9.95 billion in general obligation bonds to develop and construct a high-speed rail system connecting San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and for connecting intercity and commuter rail systems that would enhance those systems' capacity, safety, or connectivity to the high-speed rail system. Proposition 1A prescribes specific design and funding requirements for the high-speed rail system, and lays out specific requirements the Authority must meet in order to access and spend the bond funds, including submission of detailed funding plans to the Legislature and Department of Finance, with independent financial review.

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. In November 2011, the Authority released a Business Plan, as called for in Proposition 1A, with an estimated cost of $98 billion. The Authority revised the Business Plan in April 2012 to build the project "better, cheaper, faster." The Revised Business Plan reduced the cost estimate to $68 billion by utilizing the "blended system," or integrating high-speed rail by sharing tracks with existing rail systems in the San Jose/San Francisco segment and the Los Angeles/Anaheim segments. Additionally, the Authority proposed making near-term investment in the Bookends in the Bay Area and Los Angeles to produce "immediate benefits and enhance the ultimate utility of high-speed rail." The current 2016 Business plan estimates the cost of the system at $64 billion.

In July 2012, the Legislature approved SB 1029 (Committee on Budget and Fiscal Review), Chapter 152, Statutes of 2012, that appropriated roughly $8 billion in federal and state funds to begin the construction of the IOS, fund the bookends and connectivity projects, and continue work on other high-speed rail segments, as outlined in the 2012 Revised Business Plan. Specifically, SB 1029 appropriated $1.1 billion of Proposition 1A funds for improvements in the Bookends. Specifically, $600 million was dedicated to the electrification of the Caltrain system in the San Francisco Bay Area, and $500 million to fund projects in the Los Angeles Basin as reflected in the 2012 Memorandum of Understanding (MOU) signed with the Southern California Association of Governments (SCAG) and its regional transportation members. SB 1029 requires that all funding provided be encumbered by July 30, 2018.

Prior to spending any bond funds, Proposition 1A requires the Authority to submit a detailed funding plan, referred to as Funding Plan (d), to the Department of Finance and the Legislature. Funding Plan (d) must include specific details about the corridor or usable segment. An additional report to accompany Funding Plan (d) must be completed by an independent financial services firm confirming the contents of the plan and that the corridor or usage segment thereof would be suitable and ready for high-speed train service, one or more passenger providers could begin using the tracks or stations for passenger train service, the planned passenger train service to be provided by the Authority, or pursuant to its authority, will not require an operating subsidy, and an assessment of risk. The funding plan must be reviewed by the Director of

Finance and the Joint Legislative Budget Committee and the Director of Finance has 60 days to approve the plan.

The Authority awarded a contract in November 2015 for independent financial services to provide an independent review of the funding plan. Whether or not the firm will find that the system can operate without a subsidy is uncertain. Furthermore, based on experiences with Funding Plan (c), it is likely the merits of Funding Plan (d) will be litigated. If there is litigation, the Authority's ability to use the bond proceeds for the high-speed rail project and the Bookends will likely be delayed until the lawsuit is resolved.

Caltrain's Peninsula Corridor Electrification Project (PCEP) is ready to move forward with construction. In fact, in July, the Caltrain Board of Directors approved $1.25 billion in contracts to begin work, issuing a limited motion to proceed. Additionally, in August, the Authority Board of Directors approved a Caltrain corridor plan, including environmental findings and funding agreements to proceed with the project. In addition to the $600 million from Proposition 1A bond funds appropriated for the PCEP, the Authority committed an additional $113 million from other state funding sources. The Authority estimates that Caltrain will need $117 million for the project for the next fiscal year.

AB 1889 would define, for the purposes of Funding Plan (d), that a corridor or usable segment is "suitable and ready for high-speed train operation," if the bond funds are used for capital projects that would enable high-speed trains to operate immediately or after additional planned investments are made on the corridor or usable segment and passenger train service providers will benefit from the project in the near-term. Additionally, AB 1889 further declares the intent of the Legislature that early investments in the Bookends and other parts of the system, as outlined in the appropriation in SB 1029, is consistent with Proposition 1A.

According to the author, AB 1889 provides the necessary conforming statutory changes to provide more expeditious access to Proposition 1A bond proceeds for the Caltrain electrification project in the Bay Area, bookend projects in Southern California, and California High-Speed Rail construction in the Central Valley, consistent with funding provided for those projects with the enactment of SB 1029. Additionally, the author states that in making the appropriation, the Legislature directed the Authority to make these early investments in the Phase 1 Blended system, and that this bill is necessary to expedite the availability to Proposition 1A bond funds for these projects. In writing in support of the bill, the Santa Clara County Board of Supervisors notes that while these early investments would benefit the existing Caltrain and Metrolink commuter rail services immediately, high-speed trains are not expected to operate in the Peninsula Corridor or in the Los Angeles Basin until sometime in the future. The Board further states that the bill is consistent with the Legislature's intent when it appropriated $1.1 billion for Bookend projects in SB 1029, including the electrification of the Peninsula Corridor.

*Committee Comments:* The intent of the author and sponsor of AB 1889 is to expedite the spending of Proposition 1A bond funds for the Bookend projects as appropriated by the Legislature in 2012. However, it is unclear whether AB 1889 would have the desired effect. Prior to expending bond funds, the Authority must submit the required Funding Plan (d) and the independent financial review and certification of that plan. Although the Authority has retained an independent firm, it is unclear when a funding plan will be submitted for review and approval, and what portions of the overall project would be covered. As previously mentioned, Funding Plan (c), submitted to the Legislature prior to the appropriation, was litigated after SB 1029 was approved 2012. The Authority eventually prevailed in 2014. It is expected that Funding Plan (d) will also face litigation. In writing in opposition to the bill, the Transportation Solutions Defense and Education Fund contends that the Legislature may not unilaterally change the terms of a bond measure, as understood and approved by the voters, by changing the meaning of a material term in the measure presented to the voters.

When the Authority submits a Funding Plan (d) for the Caltrain project, or any other corridor or usable segment, such as projects in the Southern Bookend or the initial construction in the Central Valley, is will likely face litigation. AB 1889 could serve to provide a court with additional understanding of the intent of the Legislature when appropriating Proposition 1A funds, but it will likely not help avoid litigation all together. As previously mentioned the appropriations authority provided for in SB 1029 expires on July 30, 2018, and if the bonds funds are not encumbered by that time, the Legislature would need to revisit and re-appropriate funds in the future.

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