

Date of Hearing: April 1, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
AB 553 (Melendez) – As Amended March 13, 2019

SUBJECT: High-speed rail bonds: housing

SUMMARY: Directs that an initiative be placed on the ballot to redirect high-speed rail bond funding to the Department of Housing and Community Development's (HCD) Multifamily Housing Program. 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 HCD's Multifamily Housing Program.
- 4) Directs the Secretary of State to submit the act to the voters on the ballot for the next statewide election.
- 5) 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) Continuously appropriates 25% of the state's cap and trade program funds for the high-speed rail project.
- 5) Requires the Authority to complete and submit to the Legislature funding plans and financial analyses, as specified, 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.

- 6) 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, \$3.37 billion in Proposition 1A bonds have been issued to date. Of that total, \$2.6 billion (of the \$9 billion) have been issued for the high-speed rail project and \$752 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 extending 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 into law 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 region.

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 for 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. In November 2018, Sacramento Superior Court denied the motion to block the spending of the bonds. The case may be appealed.

In June 2018, the Authority approved the 2018 Business Plan which continues the 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 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 plan. The updated cost for full Phase I of the system is \$77.3 billion.

In November 2018, the State Auditor released a comprehensive audit of the high-speed rail program and found that flawed decision making and poor contract management contributed to billions in cost overruns and construction delays. The auditor reiterated that the Authority does not have the funding to complete the system, and highlighted concerns over possible future cost increases. Additionally, the auditor made numerous recommendations to increase oversight of the project, focusing on the delivery of the Central Valley segment currently under construction, by strengthening internal Authority controls, such as contract management. The auditor also recommended increasing transparency and reporting. Specifically, one of the recommendations was for the Authority to develop a quarterly update to the Legislature on progress in the Central Valley to better inform policymakers and the public.

In February 2019, Governor Newsom delivered his State of the State address and he appeared to signal a change in project, shifting emphasis to completing a workable rail line in the Central Valley, but casting doubt over the completion of full Phase I. He outlined a new Central Valley construction plan, including extending the current line north to Merced and south to Bakersfield.

In response to Governor Newsom’s address, the Federal Railroad Administration (FRA) issued a letter stating that it plans to “de-obligate \$929 million in federal funding for the project.” The letter details what the FRA contends are the Authority’s failure to comply with the terms of federal grant agreement. The Authority responded with a rebuttal letter in March 2019, and the situation remains unresolved. It is unclear what impact the FRA action could have on the project. The Authority will submit a Project Update Report to the Legislature on May 1, 2019,

which will detail the Governor's new extended Central Valley plan and any cost estimate changes since the 2018 Business Plan.

To date, the state has sold roughly \$2.6 billion in Proposition 1A bonds to fund the high-speed rail and bookend projects, and over \$752 million for connectivity projects. The Department of Finance estimates that the bond debt service for Proposition 1A bonds will be approximately \$444 million in the 2019-20 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 an initiative on the ballot to redirect the remaining Proposition 1A bonds to fund HCD's Multifamily Housing program to assist the new construction, rehabilitation and preservation of permanent and transitional rental housing for lower income households.

According to the author, "Democrats and Republicans can both agree California has been in a severe housing crisis for the past decade. The typical California home costs \$437,000, more than double the typical U.S. home at \$179,000. California renters also face higher costs, with median monthly rent nearly 50% more than the national average. The Legislative Analyst's Office reports that California needs to produce approximately 180,000 units of housing per year to keep up with population growth and has recommended the Legislature 'change policies to facilitate significantly more private home and apartment building,' though the Legislature has done little to do so. AB 553 will, upon voter approval, reallocate the remaining bond funding for High-Speed Rail to the Department of Housing and Community Development's Multifamily Housing Program."

Committee comments: In 2018, this committee held two oversight hearings of the California high-speed rail program. In March, the committee thoroughly discussed the 2018 Business Plan and the issues facing the Authority, including lack of full funding for 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. In November, the committee heard from the State Auditor and the Authority following the release of the high-speed rail audit, including the auditor's recommendations for reform and increased oversight of the Authority.

Governor Newsom's State of the State address outlined a project change for the Central Valley and potentially Phase I. Details of the new plan, including updated cost and ridership estimates, as well as plans for possible interim service in the Central Valley are expected in the Project Update Report due to the Legislature on May 1, 2019. It is clear that the project is at a crossroads, and as funding partners for the project the Legislature will need to consider all of the options in the near future in a deliberative manner, with stakeholder input. Stopping the project now by redirecting bonds would cause billions of dollars of work to be wasted and leave stranded, unusable assets. The Legislature should continue its strident oversight of the project and work on a long term solution.

Related legislation: AB 435 (Fong) requires the Secretary of State to place an initiative on the ballot for the next statewide general election to stop the issuance of high-speed rail bonds and redirect any outstanding bond proceeds to the Department of Water Resources for Central Valley waster infrastructure projects. AB 435 is set for hearing in this committee on April 1, 2019.

AB 1167 (Mathis) eliminates the 25% continuous appropriations of the annual proceeds from the Greenhouse Gas Reduction Fund to the high-speed rail project and redirects the 25% to the Department of Forestry and Fire Protection and to the newly created Firefighter Home Relief Trust Fund program. AB 1167 is set for hearing in this committee on April 1, 2019.

Previous legislation: AB 2530 (Melendez) of 2018 would have required the Secretary of State to place an initiative on the ballot for the next statewide general election to stop the issuance of high-speed rail bonds and redirect any outstanding bond proceeds to the purchase of school buses for public school children. AB 2530 failed passage in this committee.

AB 2712 (Allen) of 2018, would have required the Secretary of State to place an initiative on the ballot for the next statewide general election to stop the issuance of high-speed rail bonds and redirect any outstanding bond proceeds to be distributed to California taxpayers. AB 2712 failed passage in this committee.

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

Southwest California Legislative Council

Opposition

None on file

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