



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

MEMORANDUM

To: Chairperson and Authority Members

Date: August 24, 2009

From: Mehdi Morshed, Executive Director

Subject: Agenda Item 7 - 2009 High Speed Train Legislation

Discussion

The Authority's staff regularly presents an action item summarizing new high-speed train legislation introduced in the 2009-10 Legislative Session. A total of ten (10) new bills initially were identified as directly affecting or having the potential to affect in different ways the high-speed train project or related intercity passenger rail operations. The initial legislative report anticipated that the Authority could be asked for its views, if any, on the various measures as the new bills were scheduled for legislative policy and fiscal hearings and started to move through the legislative process. The April 2009 and subsequent monthly reports highlighted the provisions of the various bills and recommended to the Board formal positions on several bills and that the Board monitor the status and progress of the other identified bills. After discussion at its May meeting, the Board approved the staff report's recommended positions and action on the bills and asked that staff keep board members informed of important changes and developments in the language or status of the bills.

Following the May and June Board meetings, the legislative policy and fiscal committee deadlines for bills in the house of origin passed, and action on the "Suspense" files of the two appropriations committees was concluded. Action on the 2009 legislation shifted in June to the respective Floors of the Assembly and Senate for action by the full body of each house and subsequent referral to the other house for further consideration and action there. Throughout June and July most of the remaining pending legislation was heard by the policy and fiscal committees of the opposite house—Senate bills in the Assembly and Assembly bills in the Senate-- with some exceptions for measures with deadline waivers or urgency clauses. The deadlines for policy committee action on other-house bills now has passed and the fiscal committees must complete their action on other-house bills by August 28th. Following this deadline, any remaining legislative action on 2009 bills will occur on the respective Floors of the Senate and Assembly. If rule waivers are granted, however, then committees could meet to consider and act on specific legislation.

An updated and revised summary of pending legislation affecting the HSRA is presented in this report. The "current approved positions" noted for each bill are those positions formally adopted by the Board at its prior meetings.

Recommendation:

Authority staff propose that the Authority continue its prior approved actions regarding positions on specific high-speed train legislation as follows, including affirming its support position on AB 289 and the measure's new provisions, and direct the Executive Director to communicate any Board positions to the appropriate committees and respective authors of the bills. If there are no proposed changes, then no further Board action is necessary:

1. **AB 153 (Ma)** – *Operations and duties of the High Speed Rail Authority - Successor legislation to the Authority-sponsored AB 981 (Ma, 2007, later used for other issues)*. The bill deletes language made obsolete by the passage of AB 3034 (Prop. 1A) last year regarding a financial plan and makes several technical and clarifying changes to statutes governing the powers duties of the Authority (for example, makes a technical reference that the Board is the “governing authority” of the Authority in cases of eminent domain, clarifies that the Authority’s existing eminent domain powers exempt the Authority from having to rely on the state Public Works Board to acquire property, and deletes obsolete contingency language and updates provisions requiring the Authority to prepare construction plans for the HST system). The bill also provides that the Authority may hire its own legal counsel (and continue to use the services of the Attorney General, or both), similar to provisions for the California Transportation Commission.

Bill history/status: Approved by Assembly Transportation Committee on 3/23/09, 9-0; approved by Assembly Judiciary Committee 7-2 on 4/14/09; approved by Assembly Appropriations Committee 11-5 on 4/29/09; approved by Assembly 53-16 on 5/11/09. Sent to Senate; double-referred to Transportation and Housing and Judiciary Committees. Set for hearing in Transportation and Housing on 6/23/09; put over/postponed to later hearing by Committee, with proposed committee amendments presented to the author. No new hearing scheduled; may be heard in 2010. Two-year bill.

Current approved position: As sponsor of the bill, request that author cease further efforts to secure passage of the measure at this time. (July 20, 2009 letter sent to author requesting this.)

2. **AB 289 (Galgiani)** – Formerly, *CEQA Exemption for Grade Separation projects*. Clarified that a railroad grade separation project that is a component of the high-speed train system is included in the existing exemption from the California Environmental Quality Act (CEQA) if the project eliminates an existing railroad grade separation or reconstructs an existing grade separation. Bill was stripped of this subject matter on August 17, 2009 to instead require that the Authority use the proceeds of the Proposition

1A high speed rail bonds to match federal high-speed rail stimulus funds to the extent possible

Re former bill contents: Current law provides an exemption from CEQA for grade separation projects that eliminate an existing grade separation or reconstruct a grade separation. There may be some ambiguity, however, whether such grade separation projects undertaken by the Authority and initially used by complementary rail passenger services (e.g., Caltrain, Metrolink, etc.) are covered by the exemption. The bill clarified that the Authority's projects to eliminate an existing grade separation or reconstruct a grade separation qualify for the exemption by specifically referencing those projects in the existing exemption language.

Re new/current contents: Proposition 1A (AB 3034), the Safe, Reliable High-Speed Passenger Train Act for the 21st Century, was approved by state voters on November 4, 2008. Prop. 1A controls the expenditure of the bond funds and imposes conditions on the use of the funds for development and construction of the high-speed train (HST) project, including that no more than 50% of the construction cost in any corridor or usable segment can come from the bond funds. Prop. 1A also requires the Authority to pursue and obtain other private and public funding, including federal funding for the HST project. Separately, the revised 2009-10 Budget Act appropriation for the Authority provides that the state appropriation for the Authority's operating and project expenses may be reduced and replaced (substituted) by an equivalent amount of any federal stimulus funds made available through the American Recovery and Reinvestment Act (ARRA).

The new provisions of the bill would direct the Authority to seek federal ARRA funding by matching such funds with state bond funds. The bill requires the Authority, to the extent possible, to use the Prop. 1A bond funds to match federal high speed rail grant funds available under the ARRA.

Bill history/status: Approved by Assembly Transportation Committee 13-0 on 4/27/09; approved by Assembly 72-3 on 5/18/09. Sent to Senate and referred to Senate Environmental Quality Committee; hearing pending. Author prepared and added amendments on 8/17/09 to delete former contents and change subject matter to requiring state action relative to matching federal ARRA high-speed rail stimulus funding. Rereferred to Senate Committee on Rules.

Current approved position: Support (Re prior contents)

Recommended position: Support (Re new contents)

3. **AB 733 (Galgiani)** – *Job creation as a contract award factor. Authorizes the Authority to consider the creation of jobs in California when awarding major contracts or purchasing high speed trains.* The Authority’s current powers and duties include, among other things, contractual authority, rights-of-way acquisition, eminent domain, debt issuance, setting fares and schedules, etc. The bill would add that the Authority, to the extent permitted by federal and state law, may consider the creation of jobs in California when awarding major contracts or purchasing high-speed trains and related equipment and supplies. The bill is permissive; it allows but does not require the Authority to utilize California job creation as a contractual criterion.

Bill history/status: Approved by the Assembly Transportation Committee 13-0 on 4/20/09; approved by Assembly Appropriations Committee 16-0 on 4/29/09. Approved by Assembly 73-0 on 5/14/09. Sent to Senate and approved by Transportation and Housing Committee 9-1 on 7/7/09. Referred to Senate Appropriations Committee; re-referred by Appropriations Committee directly to Senate Floor per Rule 28.8—no fiscal effect. Pending on Senate Third Reading File.

Current approved position: Support

4. **AB 928 (Blakeslee)** – *Earthquake early warning system.* Requires the Authority to develop an earthquake early warning system, in cooperation with several state agencies. The bill requires the warning system to be designed to protect the lives of high-speed train passengers and schoolchildren and protect critical infrastructure by providing advanced earthquake warning and by enabling preventative measures before an earthquake.

Bill history/status: Referred to Assembly Rules Committee, awaiting action. (Two-year bill.)

Current approved position: Monitor

5. **AB 1375 (Galgiani)** – *Department of High Speed Trains. Creates a Department of High-Speed Trains within the Business, Transportation and Housing Agency to implement the policies of the High-Speed Rail Authority and perform the daily tasks of building the high-speed train project and implementing the HST system.* The Authority would continue as the policy and oversight body of the HST project and exercise those powers and duties described in Proposition 1A. The bill would transfer certain of the existing powers and responsibilities of the Authority to the department and add new duties, including the annual submission of a 6-year high-speed train capital improvement program and a separate progress report to the Legislature. The Authority would appoint the department director and the Governor could appoint up to 10 exempt executive employees to staff the department, who would serve at the pleasure of the director. The bill would extend the Authority's/department's rights-of-way and property acquisition and management authority to parallel that exercised by Caltrans and would authorize the employment of in-house legal counsel.

Bill history/status: Approved by Assembly Transportation Committee 9-4 on 4/27/09; referred to Assembly Appropriations Committee. (Hearing postponed by Committee; Pending in Appropriations Committee at request of Assembly Speaker. Two-year bill)

Current approved position: Monitor

6. **SB 409 (Ducheny)** – *Creates a Department of Railroads in the Business, Transportation and Housing Agency, responsible for several current state rail programs.* The bill would combine in a single new agency several state rail functions and operations currently residing in other agencies: Caltrans' intercity rail (AMTRAK) program, the Public Utilities Commission's and Caltrans' goods movement (freight) rail programs, and the high-speed train (HST) program/project. The new department would also include the state's railroad grade separation programs and be responsible for the coordination of regional planning efforts for rail transportation. The department would be the only agency eligible to apply for and receive grant and loan funds from the federal government or other sources for intercity rail, high-speed rail, or freight rail purposes. The High Speed Rail Authority would become a division of the new Department of Railroads. The Department of Railroads would be under the control of a new Director of Railroads.

The position of Executive Director of the Authority would be eliminated. Instead, the Authority would be administered by a division chief who would be nominated by and report to the new Director of Railroads, and be approved by the Authority. The Director of Railroads would be nominated by the Governor and be subject to Senate confirmation, would serve as a member of the board of the Authority, and would permanently chair the

Authority and preside at all its meetings. (The relationships and interaction among the Authority's new division chief, the new Director of Railroads and the Board of the Authority are not clearly spelled out and require clarification and further development.) The bill would require that a task force composed of the Director of Transportation, Director of Railroads and a Public Utilities Commission representative be formed to resolve issues of overlapping jurisdiction of the agencies, but it is not clear whether the task force would have sufficient authority to implement any additional operational, administrative or structural changes or whether subsequent legislation would be required.

Bill history/status: Heard in Senate Transportation and Housing Committee as an information item on 4/14/09. Rule waiver granted 5/28/09 to allow bill to be heard in policy committee after bill action deadlines. Approved by Senate Transportation and Housing Committee 10-0 on 6/9/09. Referred to Senate Appropriations Committee; set for hearing 7/23/09 pending rule waiver approval. Waiver granted; bill heard and placed on Senate Appropriations Committee Suspense File on 7/23/09. Approved by Senate Appropriations Committee 13-0 on 8/27/09; sent to Senate Floor.

Current approved position: Oppose (Letter sent to author July 9, 2009.)

- 7. SB 455 (Lowenthal)** – *Operations and duties of the High Speed Rail Authority. Makes numerous conforming changes to statutory provisions and adds specific references to the Authority in statutes governing property acquisition activities and eminent domain. Adds additional Phase 1 project selection criteria and requires Senate confirmation of some Board appointees. Requires the Authority to prepare an overall project schedule on a quarterly basis, approve a quarterly contract status report, and approve all contract amendments at board meetings.* The bill proposes many technical and conforming changes to the Authority's property acquisition powers and incorporates several changes to law regarding property management as suggested by the Authority's legal counsel. The bill clarifies that the Authority has independent authority parallel to that of Caltrans in these property acquisition, management and disposition activities and is not under the general property management scheme administered by the Department of General Services for other agencies.

The bill also makes several author-initiated substantive changes to the Authority and its operations: a) the Governor's 5 appointees to the Authority would be subject to Senate confirmation (prospectively); b) the Authority would have to consider additional project selection criteria for investments in Phase 1 of the HST project—including access to railroad stations and terminals, improvements to travel times, service reliability, safety, improved connections between the San Joaquin Valley and southern California and the Bay Area, etc., or some combination of them; c) the Authority would have to prepare an

overall project schedule with delivery milestones and related information and present the report quarterly to the board and the Legislature; d) the board would have to approve quarterly a written report on the status of contracts for the previous quarter, and submit the reports to the Legislature; and e) the board would have to formally approve all proposed amendments to contracts, including contract change orders, accompanied by a written report explaining the changes.

Bill history/status: Approved by the Senate Transportation and Housing Committee 10-1 on 4/22/09; approved by Senate Appropriations Committee 9-4 on 5/27/09; Approved by Senate 32-5 on 6/2/09. Sent to Assembly. Approved by Assembly Transportation Committee 10-4 on 6/29/09; approved by Assembly Appropriations Committee 11-5 on 7/15/09. Referred to Assembly Floor Third Reading File; placed on Inactive File on 7/24/09.

Current approved position: Monitor

8. **SB 526 (Ashburn)** – *San Joaquin rail corridor: Altamont Pass extension*. Requires Caltrans to enter into negotiations with operating freight and commuter passenger railroads to develop a service plan and operating agreement to extend San Joaquin Corridor intercity passenger train service (state-supported AMTRAK) to and from San Francisco using the Altamont Corridor.

Bill history/status: Approved by Senate Transportation and Housing 10-0 on 4/29/09; referred to Senate Appropriations Committee; held in Appropriations Committee under submission on Suspense File on 5/28/09.

Current approved position: Monitor

9. **SB 527 (Kehoe—formerly Ashburn)** – *As introduced, spot bill (placeholder)*. *Stated the Legislature’s intent to reorganize the High-Speed Rail Authority to ensure greater oversight and accountability for the HST project. Author was changed to Kehoe and subject matter changed to bicycle provisions on 5/6/09. No longer applicable to HSRA.*

Bill history/status: Amended to new subject matter and approved by Senate. Approved by Assembly Transportation Committee 14-0 on 6/22/09 and referred to Assembly Floor. Action pending.

Current approved position: Monitor (No longer relevant.)

10. SB 783 (Ashburn) - High-speed rail business plan. *Requires the Authority to adopt and submit a new comprehensive business plan by January 1, 2012 and every two years thereafter.* The bill requires the preparation, publication, adoption and submittal to the Legislature of a new business plan every two years, beginning January 1, 2012. A draft of each plan must be published 60 days prior to legislative submittal for public review and comment, including a public hearing by the Authority. The Authority would have to formally adopt each business plan before submittal to the Legislature. The biennial plans must include a plethora of specific elements, including service levels and types of service to be developed, forecasts of anticipated patronage, operating, capital and maintenance costs, alternative financial *pro formas*, project work and environmental assessment schedules, funding sources, development strategies, chronology of construction, a discussion of foreseeable risks and strategies to manage such risks and other elements. The business plans also would have to identify written agreements with public and private entities for funding components of the system and any impediments to completion of the system, and identify alternative public-private development strategies for implementing the system's Phase 1 (SF to Anaheim).

Bill history/status: Approved by Senate Transportation and Housing Committee 10-0 on 4/29/09; approved by Senate Appropriations Committee 12-1 on 5/28/09; approved by Senate 38-0 on 6/1/09. Sent to Assembly and referred to Assembly Transportation Committee. Approved by Assembly Transportation Committee 12-0 on 6/29/09; approved by Assembly Appropriations Committee 16-0 on 7/15/09. Referred to Assembly Floor and approved on Assembly Consent Calendar 76-0 on 8/17/09. Returned to Senate for concurrence; pending on Senate Special Consent Calendar.

Current approved position: Monitor