

Fast tracking of major projects worries high-speed rail critics

Lance Williams, California Watch, 1-10-12

Since the recession began, the state Legislature has put some big-ticket construction projects on the environmental fast track in the name of creating jobs.

At the behest of then-Gov. Arnold Schwarzenegger, lawmakers agreed in 2009 to exempt 10 multimillion-dollar highway construction projects from environmental review.

Last year, they gave a similar environmental green light to a proposed \$800 million, 75,000-seat professional football stadium in Los Angeles.

In both cases, project boosters said the promise of creating thousands of construction jobs in a weak economy justified sidestepping some protections of the California Environmental Quality Act, the state's landmark green law.

Now, opponents of the biggest-ticket construction job of all -- California's controversial \$98 billion bullet train - - say they worry that a similar effort might be contemplated to ease the project past a gauntlet of environmental lawsuits.

A measure introduced last week by Assembly Member Mike Feuer, D-West Hollywood, to provide expedited environmental review for "public rail transit projects" caused concern among groups worried about the financial and environmental effects of the massive high-speed rail project.

Although Feuer's staff said the bill is not intended to fast-track the bullet train, the issue is an "ongoing concern," said lawyer Stuart Flashman, who represented Bay Area groups in two environmental lawsuits concerning the project.

Proponents of the high-speed rail plan "would definitely love to exempt this whole thing from CEQA," he said, using the acronym for the California Environmental Quality Act.

Otherwise, lawsuits could "stall things for years," he said.

The law requires developers to write comprehensive reports describing the pluses and minuses of big construction projects and outlining strategies for blunting their effect on smog, traffic, noise and urban sprawl. If critics believe a report doesn't accurately describe a project or address its problems, they can sue, and the legal process can be prolonged.

If developers lose -- as the state High-Speed Rail Authority has, twice, in the Bay Area lawsuits -- they can be required to redo the report, which takes still more time. Development interests and construction unions long have complained about the process.

In 2009, as part of negotiations to settle a budget stalemate, Schwarzenegger induced the Legislature to exempt the 10 highway projects outright from environmental review, according to news reports. "We can worry about all the other regulations," he said then. "But let's get the people to work."

At the time, Flashman represented Berkeley and Oakland groups that had sued the state over traffic and smog

from the \$400 million expansion of the Caldecott Tunnel, the freeway link between the Bay Area and Contra Costa suburbs.

The case was "days away from a ruling," he recalled. Then, he said, Senate President Pro Tem Darrell Steinberg called and said, "the governor is going to exempt this project, and I can't stop him, so you guys better settle."

"We ended up negotiating with a gun to our head," Flashman said.

In the case of the proposed Farmers Field football stadium in Los Angeles, lawmakers created an expedited review process. Developers still must prepare an environmental report, and critics still can go to court, but lawsuits are heard not by a trial judge, but by an appellate panel, which presumably would spend far less time on the litigation.

"Projects like Farmers Field can create thousands of jobs during a tough economic time," Gov. Jerry Brown said last year, "so it's imperative for the state to cut the red tape that could delay projects like this for years."

That's the process Feuer's bill would apply for proposed "new public rail transit projects" selected by the governor.

Feuer is a mass-transit booster, and he means the bill to apply to "intracity, not intercity" transit, said chief of staff Rebecca Marcus. He hasn't zeroed in on specific projects, she said, but high-speed rail isn't among them.

Arianna Smith, Feuer's spokeswoman, said the lawmaker is ambivalent about the bullet train itself: He's interested in the possibilities but has "a lot of questions."

The governor's office and rail authority didn't respond to emails asking whether they would favor exempting the bullet train from environmental review.

High-speed rail faces a flurry of litigation, all concerning the bullet train's route. In addition to the Bay Area suits, lawsuits challenging the project have been filed in Kings County and in Los Angeles.

And another one is threatened, as agricultural interests fear that the proposed line between Fresno and Merced will wreck prime farmland.

Richard Tolmach, president of the California Rail Foundation and a critic of the project, said an attempt to exempt the bullet train from environmental review would cause an outcry, especially in the Central Valley.

"That could cause major repercussions, if the Valley farmers thought they were getting their environmental protection taken away," he said.