

# New political and legal battle is shaping up for California bullet train

**Ralph Vartabedian, Los Angeles Times, 7-30-16**

A seemingly obscure, two-sentence piece of state legislation is demonstrating the still unsettled political and legal foundations of California's troubled bullet train project.

Supporters of the legislation say they simply want to “clarify” highly technical wording of taxpayer protections written into the \$9 billion bond that voters approved for high-speed rail in 2008 — part of an effort to avert lawsuits over spending some of the bond money to upgrade a Bay Area commuter rail system.

But rail opponents say the move is a direct attempt to gut taxpayer protections and have vowed to sue over the legislation, potentially stalling the project further.

Separately, some of the original proponents of high-speed rail fear that a cynical wholesale grab of bond money by local transit agencies will shortchange the cash strapped project and fracture it into a series of regional pieces.

The new controversy comes at the very time when Gov. Jerry Brown is trying to convince the Legislature to repair the state’s flawed cap and trade market for carbon credits, which are supposed to provide half of the money needed to build a partial \$21 billion operating segment from San Jose to Shafter by 2025. Without the carbon auction funding, the rail project could collapse.

The new battle further complicates Brown’s task, demonstrating the extraordinary complexity and fragility of the political compromises that have kept the high-speed-rail project alive over the last several years.

Brown pushed through a deal in 2012 to start building the system in the Central Valley, quelling big city opposition by agreeing to allocate \$1.1 billion to so-called bookend projects in San Francisco and Los Angeles. The deal helped secure a key rail-construction appropriation, which passed in the Senate by a single vote.

Under the deal, the rail authority is providing \$819 million to Caltrain to convert the Bay Area system from diesel to electrical power, which ultimately could be used by future bullet trains. But the money has been held up by litigation and the state’s inability to satisfy the requirements of the bond act.

Caltrain has also not yet secured all of the other funding for the \$2 billion electrification.

We are victims of this legal limbo.— Hasan Ikhata, executive director of Southern California Assn. of Governments

The \$819 million is about \$200 million more than was outlined in a memorandum of understanding that came out of the 2012 compromise. The rail authority will ask its board to approve the expenditure at its monthly meeting on Aug. 9, said rail spokeswoman Lisa Marie Alley.

Meanwhile, Southern California Assn. of Governments has also secured additional agreements with the rail authority that raises its expected funding to about \$“We are victims of this legal limbo,” Ikhata said.

The association asked the rail authority for \$3.5 billion in additional funding for local rail projects earlier this year, though exactly where that money would come from is unclear.

Any investments have to comply with a series of complex taxpayer protections written into the bond act. The law requires that before bond money can be spent on any segment, it must be “suitable and ready” for high-speed rail.

An independent consultant is supposed to make a determination. The decision is part of a funding plan that shows the system can operate without subsidies, can meet stringent travel times and can fulfill a long list of other requirements.

After a long delay in selling bonds, the bill, AB-1889, was introduced in February in an attempt to break up the legal logjam. It would allow the rail authority to determine whether the electrified track in the Bay Area or any other investment would be suitable and ready for use by bullet trains, opponents say. It is scheduled for a hearing Monday by the Senate appropriations committee, likely the last stop before the full Senate considers it.

A trained legal mind might help unravel its convoluted wording.

“(a)For the purposes of expenditure or liquidation of the appropriation made by Item 2665-204-6043 of Section 2.00 of the Budget Act of 2012, as added by Section 3 of Chapter 152 of the Statutes of 2012, the approval made by the High Speed Rail Authority pursuant to Section 2704.08 that a corridor or usable segment thereof would be suitable and ready for high speed train operation, within the meaning Section 2704.08, shall be conclusive. (b) This section does not relieve the High-Speed Rail Authority of its duties under Section 2704.08, including the report required by subdivision (d) of that section.”

Stuart Flashman, an attorney who represents Bay Area opposition groups, says the state constitution prohibits modifying a bond act through legislation and that the bill would bypass all the key protections in the law.

“They are changing the meaning entirely and tremendously weakening it,” said Flashman, who sent a letter outlining his concerns to legislative leaders.

The bill’s supporters deny they are weakening or trying to bypass any of the bond act’s provisions.

Flashman said his opposition groups will sue if it is passed and sue if the rail authority tries to spend the \$819 million without satisfying the existing requirements of the law.

The bill was introduced by Assemblyman Kevin Mullin (D-South San Francisco), whose San Mateo County district includes the Caltrain line. It was quickly approved by the Senate transportation committee, chaired by Sen. Jim Beall (D-San Jose), whose district also includes the Caltrain line.

Caltrain’s board, the Bay Area’s Joint Powers Authority, voted at its July meeting to award a contract for the electrification and wants the money as soon as possible, said agency spokeswoman Jayme Ackemann. She acknowledged that the bill was intended to head off a potential lawsuit.

But it is not just opponents who object to the change in the law or bookend investments. Sen. Cathleen Galgiani (D-Stockton), an original author of the High Speed Rail Act and one of its most stalwart supporters, has asserted that the move will break up the bullet train system into a series of regional projects, said Bob Alvarez, the senator's chief of staff.

It is a fear that veteran transportation experts say is a realistic outcome and may reflect a breakdown in support of the statewide system.

“It would fracture the statewide nature of the project,” said Art Bauer, a longtime Senate transportation staffer who played a key role in drafting the taxpayer protections in the 2008 bond act.