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June 26, 2016

Senator Jim Beall, Chair
California Senate Transportation and
Housing Committee
State Capitol, Room 2209
Sacramento, CA 95814

Re: Assembly Bill 1889 (Mullin)--OPPOSE

Dear Chairperson Beall:

I am writing on behalf of the Transportation Solutions Defense and Education Fund, the Train Riders Association of California, Preserve Our Heritage, Citizens for California High Speed Rail Accountability and the Community Coalition on High-Speed Rail to oppose the above-referenced bill, which has been set for hearing on Tuesday, June 28th. The bill proposes to add a new section 2704.78 to the Streets and Highways Code, concerning the use of the bond funds authorized by the Safe, Reliable High-Speed Passenger Train Bond Act of the 21st Century, approved by California voters in 2008 as Proposition 1A. As currently proposed, AB 1889 would violate the California Constitution.

The bill proposes to modify one provision of the bond act, a requirement under §2704.08(c) and (d) that any funding plan proposed by the California High-Speed Rail Authority ("Authority") for the use of bond funds towards the construction of a "corridor or usable segment thereof" of the high-speed rail system to be built using the bond funds must be "suitable and ready for high-speed train operation."

This language arises in two contexts. In the context of §2704.08(c)(2), it is one of eleven items that must be included, identified, or certified by the Authority as part of the first of two funding plans that must be prepared and approved by the Authority. The purpose of that "preliminary" funding plan is to inform the Legislature about the properties of the proposed corridor or usable segment prior to the Legislature appropriating bond funds towards the construction of that corridor/segment. (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676.) As the court of appeal made clear in that decision, the preliminary funding plan, while intended to help the Legislature decide whether or not to appropriate bond funds for the proposed corridor/segment, is only an interlocutory step in the process and therefore not legally actionable. (*Id.* at p. 712.)

By contrast, the court of appeal held that the second, final, funding plan was subject to judicial review. The court noted that while that plan, like the preliminary funding plan, had to be prepared and approved by the Authority, it also had to be "submitted to the Director of the Department of Finance and the Chairperson of the Joint Legislative Budget Committee, *and* an independent financial consultant prepares a report." (*Id.* at p. 710 [emphasis in original].) The court particularly emphasized the importance of the consultant's report:

> This latter report is particularly significant in that the independent consultant *must certify* that construction can be completed as proposed *and is suitable for high-speed rail*; the planned passenger train service will not require an operating subsidy; and upon completion, passenger service providers can begin using the tracks or stations. (*Id.* at pp. 710-711 [emphasis added].)

Thus, in the preliminary funding plan, the Authority makes a certification, but for the final funding plan, it is an independent financial consultant, not the Authority, that must make and certify the determination that the proposed corridor/segment "is suitable for high-speed rail."

The court emphasized the importance of the fact that, for the final funding plan, "an independent report attests to the financial integrity of the plan." (*Id.*) The proposed legislation would change this carefully constructed and voter-approved "financial straightjacket." (*Id.* at p. 706.) As the court of appeal explained:

> But it is the second and final funding plan, like the final EIR, that will provide the ultimate decision maker with the most important and expansive information necessary to make the final determination whether the high-speed rail project is financially viable. The Authority now has a clear, present, and mandatory duty to include or certify to all the information required in subdivision (d) of section 2704.08 in its final funding plan and, *together with the report of the independent financial consultant, to provide the Director of the Department of Finance with the assurances the voters intended* that the high-speed rail system can and will be completed as provided in the Bond Act. (*Id.* at p. 713 [emphasis added].)

Thus, under Proposition 1A, the voters' intent was that the final funding plan fortify the Authority's initial certification with the certification of an independent financial consultant. AB 1889 would fundamentally change that statutory scheme by making the Authority's initial certification conclusive. This would destroy the voters' purpose in having an independent consultant separately certify the Authority's determination in the final funding plan. In making this fundamental change, AB 1889 would alter the voter-approved provisions of a bond act without having that change approved by the voters. This would violate Article 16 §1 of the California Constitution. The Legislature therefore may not enact this law as currently written unless it at the same time places it on the ballot, by a 2/3 majority of both houses, and has the provision ratified by the voters.

Most sincerely,

Stuart M. Flashman

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cc: Legislative Analyst's Office
Office of the Legislative Counsel