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8 **(Exempt from filing fees – Gov. Code §6103)**

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF CONTRA COSTA**

11 TOWN OF ATHERTON, et al.,  
12 Petitioners

13 v.

14 PENINSULA CORRIDOR JOINT POWERS  
15 BOARD,  
16 Respondent

No. MSN15-0573 Filed 2/9/2015

Case filed under CEQA

Assigned for all purposes to Hon. Barry P.  
Goode, Dept. 17

PETITIONERS' REQUEST FOR JUDICIAL  
NOTICE

Date: July 22, 2016, 2016

Time: 9:00 AM

Dept. 17

Judge Hon. Barry P. Goode

Trial Date – July 22, 2016

17 Pursuant to Evidence Code §§ 451 subd. (a), 452 subd. (c) and 453, Petitioners Town of  
18 Atherton, Community Coalition on High-Speed Rail, and Transportation Solutions Defense and  
19 Education Fund (“Petitioners”) hereby request that the Court take judicial notice of the following  
20 facts and supporting evidence:

21 1. That on July 2, 2015, by decision 44535 in Financial Docket No. 35929, the  
22 United States Surface Transportation Board (“STB”) issued a decision denying the Petition for  
23 Declaratory Order filed by Respondent Peninsula Corridor Joint Powers Board (“PCJPB”)  
24 asking that the STB find that the California Environmental Quality Act (“CEQA”) was  
25 preempted under the Interstate Commerce Commission Termination Act of 1995 as to PCJPB’s  
26 Peninsula Corridor Electrification Project. In support of that fact, attached hereto as Exhibit A is  
27 a true and correct copy of said decision.





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/S/ Stuart M. Flashman  
**STUART M. FLASHMAN**  
Attorney for Petitioners

# **Exhibit A**

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35929

PENINSULA CORRIDOR JOINT POWERS BOARD—PETITION FOR  
DECLARATORY ORDER

Digest:<sup>1</sup> The Board concludes that 49 U.S.C. § 10501(b) does not preempt the application of the California Environmental Quality Act to the electrification of the Peninsula Corridor Joint Powers Board's rail line between San Jose and San Francisco, Cal.

Decided: July 2, 2015

By petition filed on May 19, 2015, the Peninsula Corridor Joint Powers Board (Caltrain), operator of the Caltrain commuter rail service between San Jose and San Francisco, Cal., seeks a declaratory order confirming that the requirements of the California Environmental Quality Act (CEQA), as applied to Caltrain, are preempted under 49 U.S.C. § 10501(b). Replies to Caltrain's petition were filed by Union Pacific Railroad Company (UP), the Alliance for a Cleaner Tomorrow (ACT), and jointly by the Town of Atherton, Community Coalition on High-Speed Rail, and Transportation Solutions Defense and Education Fund (Atherton Parties).

The request for a declaratory order will be denied for the reasons discussed below.

BACKGROUND

Caltrain, a public agency, states that it is a rail carrier subject to the Board's jurisdiction. Caltrain and its managing agency, the San Mateo County Transit District (Samtrans), acquired the rail line between San Jose and San Francisco from Southern Pacific Transportation Company (SP) to conduct passenger commuter rail service on the San Francisco Peninsula. Peninsula Corridor Joint Powers Bd.—Acquis. Exemption—S. Pac. Transp. Co. (Caltrain Acquisition), FD 31980 (ICC served Jan. 17, 1992). Caltrain and Samtrans then granted trackage rights back to SP for freight and intercity passenger operations on the line. S. Pac. Transp. Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Bd., FD 31983 (ICC served Jan. 17, 1992). Caltrain states that, since it acquired the line, SP and its successor, UP, have operated freight service on the line.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Caltrain seeks to electrify its line, a project known as the Peninsula Corridor Electrification Project (Project). The Project “proposes to install 25kv electrical lines over the line and utilize Electrical Multi-Units . . . in providing passenger service.”<sup>2</sup> Pursuant to CEQA, Caltrain prepared and certified an Environmental Impact Report (EIR) for the Project but states that it reserved its right to assert federal preemption should legal challenges to the EIR arise.<sup>3</sup>

The Atherton Parties have filed a lawsuit challenging Caltrain’s compliance with CEQA with respect to the Project in state court. The litigants seek injunctive relief, which Caltrain asserts would interfere with the improvement and operation of its line if granted. Caltrain argues that its improvement and operation of its line are under the Board’s exclusive jurisdiction, and thus, the application of CEQA, including its injunctive remedies, is preempted by 49 U.S.C. § 10501(b).

#### PRELIMINARY MATTER

ACT and the Atherton Parties have requested that the Board extend the time for filing replies to Caltrain’s petition. As we are able to decide this matter based on the record before us, the requests for an extended reply period will be denied.

#### DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to terminate controversy or remove uncertainty. We instituted a proceeding to consider whether, and the extent to which, CEQA is preempted with regard to the Project and provided an opportunity for interested persons to file replies.

Under 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carriers (1) between a place in a state and a place in another state, and (2) between a place in a state and another place in the same state, as long as that intrastate transportation is carried out as “part of the interstate rail network.” See DesertXpress Enters., LLC—Pet. For Declaratory Order, FD 34914 (STB served May 7, 2010). The Board’s jurisdiction over “transportation by rail carriers” is “exclusive” and “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b). Under 49 U.S.C. § 10501(c)(2)(A), however, the Board does not have jurisdiction over “mass transportation provided by a local government authority,” a term that includes commuter services. See N.J. Ass’n of R.R. Passengers—Pet. for Declaratory Order—Princeton Branch (Princeton Branch), FD 35745 (STB served July 25, 2014).

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<sup>2</sup> Pet. 4.

<sup>3</sup> See Pet., Ex. 5 (Peninsula Corridor Electrification Project Final EIR at 1-14), Ex. 6 (Caltrain Board of Directors, Resolution Nos. 2015-03 & 2015-04).

Caltrain asserts that § 10501(b) preempts the application of CEQA to the Project because it is a rail carrier by virtue of its acquisition of a rail line subject to the Board's jurisdiction. While Caltrain became a rail carrier subject to the Board's jurisdiction as a result of its acquisition of SP's rail line, Caltrain's Project is not subject to the Board's jurisdiction, and therefore, federal preemption does not apply.

Caltrain is a public agency created under California law,<sup>4</sup> and therefore, is a "local government authority" as defined under 49 U.S.C. § 5302. Moreover, Caltrain's electrification project is part of its provision of "mass transportation." Mass transportation means "transportation services described in [49 U.S.C. § 5302] that are provided by rail." 49 U.S.C. § 10501(c)(1)(B). The only type of transportation defined under 49 U.S.C. § 5302 is "public transportation," which includes (with some exceptions) "regular, continuing shared-ride surface transportation services that are open to the general public." 49 U.S.C. § 5302(14).<sup>5</sup> In creating the mass transportation exception under § 10501(c)(2)(A), Congress intended to specifically exclude "commuter passenger service" from this agency's jurisdiction. See Princeton Branch, slip op. at 4-5. Caltrain provides only commuter rail service on the line, including equipment and facilities used exclusively for its commuter rail service, and operations of this sort are excluded from Board jurisdiction. Id. at 6 (mass transportation often takes place over lines subject to the Board's jurisdiction and, in such situations, the Board does not have jurisdiction over the mass transportation services despite having jurisdiction over the line on which it runs).

Moreover, it appears that the Project is intended only to benefit Caltrain's commuter operations. Nothing in the record indicates that the Project is either for the benefit of, or would unreasonably interfere with, non-Caltrain rail operations on the line that are subject to the Board's jurisdiction. See Denver & Rio Grande Ry. Historical Found.—Pet. for Declaratory Order, FD 35496, slip op. at 5 (STB served Mar. 24, 2015) (finding that not all of a rail carrier's activities are inherently transportation falling under the Board's jurisdiction and thus covered under § 10501(b)), pet. for judicial review pending sub nom. Denver & Rio Grande Ry. Historical Found. v. STB, No. 15-1153 (D.C. Cir. filed May 26, 2015).

There is no indication that the Project would have potential impacts on UP's freight rail operations on the line. Thus, this case differs from North San Diego County Transit Development Board—Petition for Declaratory Order, FD 34111 (STB served Aug. 21, 2002),

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<sup>4</sup> See Pet., Ex. 2 (SP-Caltrain Trackage Rights Verified Notice of Exemption, Ex. 2 (Trackage Rights Agreement—Peninsula Main Line & Santa Clara/Lick Line at 1)); see also Caltrain Acquis., slip op. at 1.

<sup>5</sup> Prior to the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141, 126 Stat. 405 (2012), § 5302(a) expressly defined "mass transportation" as "public transportation," which in turn was defined as "transportation by a conveyance that provides regular and continuing general or special transportation to the public," with certain specified exceptions. MAP-21 § 20004 eliminated the definition of "mass transportation" from 49 U.S.C. § 5302 and amended the definition of "public transportation" to that shown in the text above. The MAP-21 amendments did not alter §10501(c)(2)(A) or the fundamental understanding of what constitutes mass transportation.



where the Board found that § 10501(b) preempted state and local permitting requirements applied to a commuter rail's construction of a passing track, because the permitting requirements at issue would affect freight rail operations as well as commuter rail operations. Nor is there any evidence that UP's rail operations would be adversely affected by any conditions imposed on the Project pursuant to CEQA.<sup>6</sup>

While Caltrain states that the Project would make its line "compatible with future implementation of the proposed California High Speed Rail project,"<sup>7</sup> it makes clear that the Project is separate and distinct from future high-speed rail operations of the California High Speed Rail Authority (the Authority).<sup>8</sup> Caltrain states that "the electrification of the line has been the subject of planning efforts that date back almost two decades."<sup>9</sup> Moreover, as ACT notes, Caltrain's EIR explains that several other improvements and upgrades are required before the line could support high-speed trains.<sup>10</sup>

Thus, based on the record here, the Project is not rail transportation subject to the Board's jurisdiction under § 10501. The Project will solely enhance Caltrain's commuter rail operations, which constitute mass transportation by a local government agency that is not subject to Board jurisdiction under § 10501(c)(2)(A). We conclude, therefore, that CEQA is not preempted with respect to the Project.

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<sup>6</sup> In its reply, UP takes no position on the merits of the petition. Rather, it requests that the Board clarify that "any conditions imposed on [the Project] pursuant to CEQA must not interfere with [UP's] operations because the application of CEQA to interstate rail operations is clearly preempted" by § 10501(b). UP Reply 4. However, UP does not point to any such conditions that have been imposed. Therefore, it would be premature for the Board to address UP's request in our decision here. In the event that UP identifies any such conditions, it may seek relief before this agency at that time.

<sup>7</sup> Pet. 4.

<sup>8</sup> Pet. 8.

<sup>9</sup> Id. See also ACT Reply, Attachment A (Caltrain's Final EIR Executive Summary and Project Description) ES-3, ES-6 (stating that the Project is separate from the Authority's high-speed rail project and has independent utility).

<sup>10</sup> ACT Reply 3-4.

It is ordered:

1. The Atherton Parties' and ACT's requests for an extension of the reply period are denied.
2. Caltrain's petition for a declaratory order is denied.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

## **Exhibit B**



Senate Bill No. 1029

CHAPTER 152

An act to amend the Budget Act of 2012 by adding Items 2660-104-6043, 2660-304-6043, 2665-104-6043, 2665-304-0890, 2665-304-6043, 2665-305-0890, 2665-305-6043, 2665-306-0890, and 2665-306-6043 to Section 2.00 of that act, relating to the state budget, and making an appropriation thereof to take effect immediately, Budget Bill.

[ Approved by Governor July 18, 2012. Filed with Secretary of State July 18, 2012. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 1029, Committee on Budget and Fiscal Review. Budget Act of 2012.

The Budget Act of 2012 makes appropriations for the support of state government for the 2012–13 fiscal year.

This bill would amend the Budget Act of 2012 by adding items of appropriation relating to a high-speed rail system throughout the state.

This bill would declare that it is to take effect immediately as a Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Item 2660-104-6043 is added to Section 2.00 of the Budget Act of 2012, to read:

2660-104-6043—For local assistance, Department of Transportation, payable from the High-Speed Passenger Train Bond Fund ..... 713,333,000

Schedule:

(1) 30.10-Mass Transportation ..... 713,333,000

Provisions:

- 1. These funds shall be available for encumbrance or liquidation until June 30, 2018.
2. The funds appropriated in this item shall be available for capital

improvement projects to intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system, as adopted by the California Transportation Commission, pursuant to Section 2704.095 of the Streets and Highways Code.

4. Any funds appropriated in this item for projects in the San Francisco to San Jose corridor, consistent with the blended system strategy identified in the April 2012 California High-Speed Rail Program Revised 2012 Business Plan, shall not be used to expand the blended system to a dedicated four-track system.
  
5. The funds appropriated in this item shall only be made available for expenditure upon the enactment of an appropriation of \$3,240,676,000 in Item 2665-306-0890, an appropriation of \$2,609,076,000 in Item 2665-306-6043 for the Initial Operating Segment of the High-Speed Rail System, and an appropriation of \$1,100,000,000 in Item 2665-104-6043 for "Bookend" funding, as articulated in the 2012 High-Speed Rail Authority Final Business Plan.

**SEC. 2.** Item 2660-304-6043 is added to Section 2.00 of the Budget Act of 2012, to read:

2660-304-6043—For capital outlay, Department of Transportation, payable from the High-Speed Passenger Train Bond Fund ..... 106,000,000

Schedule:

- (1) 30-Mass Transportation ..... 106,000,000

Provisions:

1. These funds shall be available for encumbrance or liquidation until June 30, 2018.
  
2. The funds appropriated in this item shall be available for capital improvement projects to intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system, as adopted by the

California Transportation Commission, pursuant to Section 2704.095 of the Streets and Highways Code.

4. Any funds appropriated in this item for projects in the San Francisco to San Jose corridor, consistent with the blended system strategy identified in the April 2012 California High-Speed Rail Program Revised 2012 Business Plan, shall not be used to expand the blended system to a dedicated four-track system.
5. The funds appropriated in this item shall only be made available for expenditure upon the enactment of an appropriation of \$3,240,676,000 in Item 2665-306-0890, an appropriation of \$2,609,076,000 in Item 2665-306-6043 for the Initial Operating Segment of the High-Speed Rail System, and an appropriation of \$1,100,000,000 in Item 2665-104-6043 for "Bookend" funding, as articulated in the 2012 High-Speed Rail Authority Final Business Plan.

**SEC. 3.** Item 2665-104-6043 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-104-6043—For local assistance, High-Speed Rail Authority, payable from the High-Speed Passenger Train Bond Fund .....	1,100,000,000
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Provisions:

1. These funds shall be available for early improvement projects in the Phase 1 blended system, consistent with the Metropolitan Transportation Commission Memorandum of Understanding, as approved by the High-Speed Rail Authority on April 12, 2012, in High-Speed Rail Authority Resolution 12-11 and the Southern California Memorandum of Understanding, as approved by the High-Speed Rail Authority on April 12, 2012, in High-Speed Rail Authority Resolution 12-10. The funds are available for encumbrance or liquidation until June 30, 2018.
2. The amount appropriated in this item is available for expenditure for state operations, local assistance, or capital outlay, and

may be transferred to Item 2665-004-6043 or Item 2665-306-6043. These transfers shall require the prior approval of the Department of Finance.

3. Any funds appropriated in this item for projects in the San Francisco to San Jose corridor, consistent with the blended system strategy identified in the April 2012 California High-Speed Rail Program Revised 2012 Business Plan, shall not be used to expand the blended system to a dedicated four-track system.
4. Provisions 4 to 11, inclusive, of Item 2665-306-6043 shall also apply to this item.
5. No funds appropriated in this item shall be encumbered prior to the High-Speed Rail Authority submitting a detailed funding plan for the project or projects in accordance with subdivision (d) of Section 2704.08 of the Streets and Highways Code to (a) the Department of Finance, (b) the Chairperson of the Joint Legislative Budget Committee, and (c) the peer review group established pursuant to Section 185035 of the Public Utilities Code.
6. No funds appropriated in this item shall be encumbered for construction of a project prior to completion of all project-level environmental clearances necessary to proceed to construction and the final notices being contained in the funding plan for the project.
7. Prior to the obligation of funds to any specific project, and subject to the approval of the Department of Finance, the High-Speed Rail Authority Board shall develop an accountability plan, consistent with Executive Order S-02-07, to establish criteria and procedures to govern the expenditure of the bond funds in this appropriation, and the outcomes that such expenditures are intended to

achieve, including a detailed project description and project cost. The procedures shall ensure that the investments comply with requirements of applicable state and federal laws, and are consistent with and advance the state high-speed train system.

8. The High-Speed Rail Authority shall enter into a project management and funding agreement with the local sponsor of the funded project, and the agreement shall require the local agencies to report to the authority on a quarterly basis to ensure that all bond-funded activities are within the scope and cost outlined in the agreement. Prior to the authority entering into any project management and funding agreement pursuant to this provision, the agreement shall be approved by the Department of Finance.
9. Expenditures of bond proceeds under this item shall be subject to audit to determine whether the expenditures made from bond proceeds were made according to the established criteria and processes, were consistent with all legal requirements, and achieved the intended outcomes. The High-Speed Rail Authority shall contract with the Office of State Audits and Evaluations for the performance of these audits unless alternative audit arrangements are made with the concurrence of the Office of State Audits and Evaluations.
10. The funds appropriated in this item shall only be made available for expenditure upon the enactment of an appropriation of \$3,240,676,000 in Item 2665-306-0890, an appropriation of \$2,609,076,000 in Item 2665-306-6043 for the Initial Operating Segment of the High-Speed Rail System, an



appropriation of \$106,000,000 in Item 2660-304-6043, and an appropriation of \$713,333,000 in Item 2660-104-6043 for Connectivity funding.

**SEC. 4.** Item 2665-304-0890 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-304-0890—For capital outlay, High-Speed Rail Authority, payable from the Federal Trust Fund ..... 28,310,000

Schedule:

- (1) 20.15.010-San Francisco to San Jose—Acquisition ..... 5,135,000
- (3) 20.30.010-Merced to Fresno—Acquisition ..... 2,297,000
- (4) 20.40.010-Fresno to Bakersfield—Acquisition ..... 3,119,000
- (5) 20.45.010-Bakersfield to Palmdale—Acquisition ..... 0
- (6) 20.50.010-Palmdale to Los Angeles—Acquisition ..... 2,566,000
- (7) 20.60.010-Los Angeles to Anaheim—Acquisition ..... 4,299,000
- (8) 20.99.010-Project Management and Agency Costs—Acquisition ..... 10,894,000

Provisions:

- 1. The projects identified in this item may be managed by the High-Speed Rail Authority.
- 2. The projects identified in this item are subject to review by the State Public Works Board.
- 3. Notwithstanding any other provision of law, each project in Schedules (1) to (7), inclusive, of this item shall be the same as the respectively coded project in Schedules (1) to (7), inclusive, of Items 2665-304-6043,

2665-305-0890, and 2665-305-6043. For a given project, funds appropriated in this item may be transferred to the same project in Item 2665-305-0890. These transfers shall require the prior approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.

4. Notwithstanding any other provision of law, the project in Schedule (8) of this item shall be the same as Schedule (8) of Item 2665-305-0890 and Schedule (11) of Items 2665-304-6043 and 2665-305-6043. Funds appropriated in Schedule (8) of this item may be transferred to the same schedule in Item 2665-305-0890 upon approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.

**SEC. 5.** Item 2665-304-6043 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-304-6043—For capital outlay, High-Speed Rail Authority, payable from the High-Speed Passenger Train Bond Fund ..... 124,067,000

Schedule:

- (1) 20.15.010-San Francisco to San Jose—Acquisition ..... 5,135,000
- (3) 20.30.010-Merced to Fresno—Acquisition ..... 2,297,000
- (4) 20.40.010-Fresno to Bakersfield—Acquisition ..... 3,119,000
- (5) 20.45.010-Bakersfield to Palmdale—Acquisition ..... 0
- (6) 20.50.010-Palmdale to Los Angeles—

	Acquisition	2,566,000
	.....	
(7)	20.60.010-Los Angeles to Anaheim—Acquisition	4,299,000
	.....	
(8)	20.70.010-Los Angeles to San Diego— Acquisition	37,055,000
	.....	
(9)	20.80.010-Merced to Sacramento— Acquisition	29,700,000
	.....	
(10)	20.90.010-Altamont Pass—Acquisition	20,375,000
	.....	
(11)	20.99.010-Project Management and Agency Costs— Acquisition	19,521,000
	.....	

Provisions:

1. The projects identified in this item may be managed by the High-Speed Rail Authority.
2. The projects identified in this item are subject to review by the State Public Works Board.
3. Notwithstanding any other provision of law, each project in Schedules (1) to (10), inclusive, of this item shall be the same as the respectively coded project in Schedules (1) to (7), inclusive, of Items 2665-304-0890, 2665-305-0890, and 2665-305-6043, and Schedules (8) to (10), inclusive, of Item 2665-305-6043. For a given project, funds appropriated in this item may be transferred to the same project in Items 2665-305-6043. These transfers shall require the prior approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.
4. Notwithstanding any other provision of law, the project in Schedule (11) of this item shall be the same as

Schedule (11) of Item 2665-305-6043 and Schedule (8) of Items 2665-304-0890 and 2665-305-0890. Funds appropriated in Schedule (11) of this item may be transferred to the same schedule in Item 2665-305-6043 upon approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.

**SEC. 6.** Item 2665-305-0890 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-305-0890—For capital outlay, High-Speed Rail Authority, payable from the Federal Trust Fund ..... 20,044,000

Schedule:

- (1) 20.15.010-San Francisco to San Jose—Design ..... 74,000
- (3) 20.30.010-Merced to Fresno—Design ..... 4,987,000
- (4) 20.40.010-Fresno to Bakersfield—Design ..... 8,246,000
- (5) 20.45.010-Bakersfield to Palmdale—Design ..... 195,000
- (6) 20.50.010-Palmdale to Los Angeles—Design ..... 0
- (7) 20.60.010-Los Angeles to Anaheim—Design ..... 0
- (8) 20.99.010-Project Management and Agency Costs—Design ..... 6,542,000

Provisions:

- 1. The projects identified in this item may be managed by the High-Speed Rail Authority.
- 2. The projects identified in this item are subject to review by the State Public Works Board.
- 3. Notwithstanding any other provision

of law, each project in Schedules (1) to (7), inclusive, of this item shall be the same as the respectively coded project in Schedules (1) to (7), inclusive, of Items 2665-304-0890, 2665-304-6043, and 2665-305-6043. For a given project, funds appropriated in this item may be transferred to the same project in Item 2665-304-0890. These transfers shall require the prior approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.

4. Notwithstanding any other provision of law, the project in Schedule (8) of this item shall be the same as Schedule (8) of Item 2665-304-0890 and Schedule (11) of Items 2665-304-6043 and 2665-305-6043. Funds appropriated in Schedule (8) of this item may be transferred to the same schedule in Item 2665-304-0890 upon approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made in respect to this provision.

**SEC. 7.** Item 2665-305-6043 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-305-6043—For capital outlay, High-Speed Rail Authority, payable from the High-Speed Passenger Train Bond Fund ..... 80,106,000

Schedule:

- (1) 20.15.010-San Francisco to San Jose—Design ..... 74,000
- (3) 20.30.010-Merced to Fresno—Design ..... 4,987,000
- (4) 20.40.010-Fresno to Bakersfield—Design ..... 8,246,000
- (5) 20.45.010-Bakersfield to Palmdale—Design

.....	195,000
(6) 20.50.010-Palmdale to Los Angeles—Design .....	0
(7) 20.60.010-Los Angeles to Anaheim—Design .....	0
(8) 20.70.010-Los Angeles to San Diego—Design .....	19,068,000
(9) 20.80.010-Merced to Sacramento—Design .....	24,176,000
(10) 20.90.010-Altamont Pass—Design .....	16,055,000
(11) 20.99.010-Project Management and Agency Costs—Design .....	7,305,000

Provisions:

1. The projects identified in this item may be managed by the High-Speed Rail Authority.
2. The projects identified in this item are subject to review by the State Public Works Board.
3. Notwithstanding any other provision of law, each project in Schedules (1) to (10), inclusive, of this item shall be the same as the respectively coded project in Schedules (1) to (7), inclusive, of Items 2665-304-0890, 2665-304-6043, and 2665-305-0890, and Schedules (8) to (10), inclusive, of Item 2665-304-6043. For a given project, funds appropriated in this item may be transferred to the same project in Item 2665-304-6043. These transfers shall require the prior approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.
4. Notwithstanding any other provision of law, the project in Schedule (11) of this item shall be the same as Schedule (11) of Item 2665-304-

6043 and Schedule (8) of Items 2665-304-0890 and 2665-305-0890. Funds appropriated in Schedule (11) of this item may be transferred to the same schedule in Item 2665-304-6043 upon approval of the Department of Finance. The Department of Finance shall report annually on May 1 to the Joint Legislative Budget Committee a summary of any transfers that have been made pursuant to this provision.

**SEC. 8.** Item 2665-306-0890 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-306-0890—For capital outlay, High-Speed Rail Authority, payable from the Federal Trust Fund .....	3,240,676,000
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Schedule:

(1) 20.01.010-Initial Operating Segment, Section 1—Acquisition and Build .....	3,240,676,000
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Provisions:

1. The project identified in this item may be managed by the High-Speed Rail Authority.
2. The expenditure of funds appropriated in this item are governed by Section 13332.19 of the Government Code. The project identified in this item is subject to review and oversight by the State Public Works Board. The project may be implemented using several design-build contracts, each of which will have its own set of performance criteria or performance criteria and concept drawings. Funds appropriated for the build portion of this project may only be expended after the Department of Finance and the State Public Works Board have approved performance criteria or performance criteria and concept drawings for the design-build contract. These approvals may be provided for each design-build contract, from time to time, and build funds associated with that design-build contract may be expended at that time.
3. Notwithstanding Section 1.80, the appropriation made in this item is

available for encumbrance until June 30, 2018.

4. Provisions 4 to 11, inclusive, of Item 2665-306-6043 shall also apply to this item.
5. The funds appropriated in this item shall only be made available for expenditure upon the enactment of an appropriation of \$106,000,000 in Item 2660-304-6043, an appropriation of \$713,333,000 in Item 2660-104-6043 for "Connectivity" funding, and an appropriation of \$1,100,000,000 in Item 2665-104-6043 for "Bookend" funding, as articulated in the 2012 High-Speed Rail Authority Final Business Plan.

**SEC. 9.** Item 2665-306-6043 is added to Section 2.00 of the Budget Act of 2012, to read:

2665-306-6043—For capital outlay, High-Speed Rail Authority,  
payable from the High-Speed Passenger Train Bond Fund

.....

2,609,076,000

Schedule:

- (1) 20.01.010-Initial Operating  
Segment, Section 1—Acquisition and  
Build ..... 2,609,076,000

Provisions:

1. The project identified in this item may be managed by the High-Speed Rail Authority.
2. The expenditure of funds appropriated in this item are governed by Section 13332.19 of the Government Code. The project identified in this item is subject to review and oversight by the State Public Works Board. The project may be implemented using several design-build contracts, each of which will have its own set of performance criteria or performance criteria and concept drawings. Funds appropriated for the build portion of this project may only be expended after the Department of Finance and the State Public Works Board have approved performance criteria or performance criteria and concept drawings for the design-build contract. These approvals may be provided for each design-build contract, from time to time, and build funds associated with that design-build contract may be expended at that time.
3. Notwithstanding Section 1.80, the appropriation made in this item is available for encumbrance until June 30, 2018.
4. On or before March 1 and November 15 of each year for which funding appropriated in this item is encumbered, the High-Speed Rail Authority shall



provide a Project Update Report approved, as consistent with the criteria in this provision, by the Secretary of Business, Transportation and Housing to the budget committees and the appropriate policy committees of both houses of the Legislature on the development and implementation of intercity high-speed train service pursuant to Section 185030 of the Public Utilities Code. The report, at a minimum, shall include a programwide summary, as well as details by project segment, with all information necessary to clearly describe the status of the project, including, but not limited to, all of the following:

- (a) A summary describing the overall progress of the project.
  - (b) The baseline budget for all project phase costs, by segment or contract, beginning with the California High-Speed Rail Program Revised 2012 Business Plan.
  - (c) The current and projected budget, by segment or contract, for all project phase costs.
  - (d) Expenditures to date, by segment or contract, for all project phase costs.
  - (e) A comparison of the current and projected work schedule and the baseline schedule contained in the California High-Speed Rail Program Revised 2012 Business Plan.
  - (f) A summary of milestones achieved during the prior year and milestones expected to be reached in the coming year.
  - (g) Any issues identified during the prior year and actions taken to address those issues.
  - (h) A thorough discussion of various risks to the project and steps taken to mitigate those risks.
5. (a) With respect to contracts scheduled to be awarded in December 2012 to commence construction of the first construction segment of the initial operating section of the high-speed rail system, as described in the California High-Speed Rail Program Revised 2012 Business Plan adopted by the authority on April 12, 2012 (revised business plan), the authority shall submit the following reports approved, as consistent with the criteria in this provision, by the Secretary of Business, Transportation and Housing to the Senate Committee on Transportation and Housing, the Assembly Committee on Transportation, and the Senate and Assembly committees on budget:
- (1) By October 1, 2012, prior to awarding a contract to commence construction of the first construction segment or committing

funds for the contract, and prior to advertising contracts to be awarded for the first construction segment in September 2013 and October 2013, a comprehensive staff management report that includes:

- (i) An organizational chart for the authority, detailed description of each executive manager's function and responsibilities, summary of staffing changes in the preceding year, a strategy for filling vacancies and the recruitment and staffing plans for the 2012-13 fiscal year.
    - (ii) The management approach, including number, skill level, position, and hiring and retention plan of staff and outside consultants required to adequately oversee each of the planned construction contracts funded in this act.
    - (iii) Proposed steps and procedures that will be employed to ensure adequate oversight and management of contractors involved in the construction contracts funded in this act.
    - (iv) Procedures to detect and prevent contract splitting.
  - (2) Prior to awarding a contract to commence construction of the first construction segment, a report certifying that the amount awarded under the contract is within the budgeted funding and is consistent with the completion schedule deadlines set by the federal Department of Transportation.
- (b) Each of the reports required pursuant to subdivision (a) for the contracts described in that subdivision shall also be required with respect to the contract scheduled to be awarded in March 2017. The authority shall submit the reports for those contracts no later than 60 days prior to advertising for bids on each contract.
7. Sixty days prior to awarding the contracts scheduled to be awarded in December 2012 to commence construction of the first construction segment of the initial operating section, the High-Speed Rail Authority shall fill the positions of chief executive officer, risk manager, chief program manager, and chief financial officer and report those hiring to the Joint Legislative Budget Committee.
  8. Prior to awarding the contracts scheduled to be awarded in December 2012 to commence construction of the first construction segment of the initial operating section, the High-Speed Rail Authority shall prepare and submit a report approved, as consistent with the criteria in this provision, by the

Secretary of Business, Transportation and Housing to the Senate Committee on Transportation and Housing, the Assembly Committee on Transportation, and the Senate and Assembly committees on budget detailing elements of risk in the high-speed rail project, including all of the following:

- (a) A comprehensive risk management plan that defines roles and responsibilities for risk management and addresses the process by which the authority will identify and quantify project risks, implement and track risk response activities, and monitor and control risks throughout the duration of each project.
  - (b) Quantification of the effect of identified risks in financial terms.
  - (c) Development documents to track identified risks and related mitigation steps.
  - (d) Plans for regularly updating its estimates of capital and support costs.
  - (e) Plans for regularly reassessing its reserves for potential claims and unknown risks, incorporating information related to risks identified and quantified through its risk assessment processes.
  - (f) Plans for regularly integrating estimates for capital, support costs, and contingency reserves in required reports.
9. The High-Speed Rail Authority shall, as part of its January 1, 2014, Business Plan, include: a proposed approach for improving (a) demand projections, (b) operations and maintenance cost models, and (c) benefit-cost analysis as applied to future project decisions. The authority shall also submit a copy of the study by the Union Internationale des Chemins de Fer (the international union of railways) examining how the authority's estimated operating costs for high-speed rail compare to high-speed rail systems in other countries. These business plan components approved, as consistent with the criteria in this provision, by the Secretary of Business, Transportation and Housing shall be based on recommendations of the authority's peer review panel, advice from the domestic and international rail community, and external academic review.
10. On or before June 30, 2013, the High-Speed Rail Authority shall prepare and submit a report approved, as consistent with the criteria in this provision, by the Secretary of Business, Transportation and Housing that provides an analysis of the net impact of the

high-speed rail program on the state's greenhouse gas emissions. The report shall be submitted to the Senate Committee on Transportation and Housing, the Assembly Committee on Transportation, and the Senate and Assembly committees on budget.

11. Within 10 days of executing a valid memorandum of understanding (MOU) with regional transportation agencies relative to the Northern California Unified Service, the High-Speed Rail Authority shall make a copy of the MOU available to the Senate Committee on Transportation and Housing, the Assembly Committee on Transportation, and the Senate and Assembly committees on budget.
12. The safeguards and oversight rules and processes of Sections 13332.11 or 13332.19 of the Government Code, as appropriate, shall apply to the High-Speed Rail Authority.
13. The funds appropriated in this item shall only be made available for expenditure upon the enactment of an appropriation of \$106,000,000 in Item 2660-304-6043, an appropriation of \$713,333,000 in Item 2660-104-6043 for "Connectivity" funding, and an appropriation of \$1,100,000,000 in Item 2665-104-6043 for "Bookend" funding, as articulated in the 2012 High-Speed Rail Authority Final Business Plan.

**SEC. 10.** This act is a Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution and shall take effect immediately.