

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: May 21, 2009
POSITION: Oppose

BILL NUMBER: SB 409
AUTHOR: D. Ducheny

BILL SUMMARY: Create New Department: Department of Railroads

This bill would create the Department of Railroads (DOR) within the Business, Transportation and Housing Agency (Agency), by integrating the High Speed Rail Authority (HSRA) with the railroad functions of the Department of Transportation (Caltrans) and the Public Utilities Commission (PUC). The DOR would be the only state agency eligible to apply for and receive federal grants and loans for intercity rail, high-speed rail, and freight rail purposes. Additionally, this bill would require the Agency Secretary to convene a joint task force co-chaired by the Director of the DOR, the Director of Caltrans, and the Director of the PUC for the purpose of resolving issues related to the overlapping jurisdiction of these agencies, each of which currently serves a planning function or provides rail services within the state.

FISCAL SUMMARY

There would likely be significant administrative costs to reconfigure various programs and authorities into a new organization. The majority of the state's passenger rail activities are currently funded through the Public Transportation Account (PTA), which has become more constrained in recent years since it has been used to fund transportation-related bond debt service costs, home-to-school transportation, and regional center transportation. The proposed 2009-10 budget includes \$425 million and 165 positions for Caltrans' Mass Transportation Program, of which 57 positions and \$125 million are designated for the intercity rail program, with another \$130 million in capital outlay and local assistance for rail project expenditures.

Proposition 1B provides \$400 million for intercity rail projects administered by Caltrans, including \$125 million for the purchase of intercity rail equipment. \$260 million has been appropriated thus far, and another \$126 million is proposed for 2009-10.

Proposition 1A provides authority for the sale of \$9.95 billion for the design and construction of a high-speed train system. For 2009-10, \$139 million and 11 positions have been proposed for the HSRA to contract for program management, preliminary engineering and design, and environmental review.

The PUC has \$13.7 million and 83 positions for rail-related functions in 2009-10. Any costs as the result of this bill are unknown.

COMMENTS

Finance is opposed to this bill for the following reasons:

- Our primary concern is how the proposed changes in the structure of the HSRA could affect the state's ability to sell the bonds. Our counsel advises that there are limitations on how much the roles and responsibilities of the HSRA can be amended. For example, a department director likely could not have authority over the HSRA, but an Agency Secretary may be able to provide oversight and policy guidance without impeding on the rights of the Authority. There also may be some circumscribed functions that could be awarded to Caltrans or the Agency, but substantially more legal review is needed before action

Analyst/Principal (0751) M. Tollefson Date Program Budget Manager Mark Hill Date

Department Deputy Director Date

Governor's Office: By: Date: Position Approved Position Disapproved

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

D. Ducheny

May 21, 2009

SB 409

is taken on this bill. Any reorganization that is not crafted carefully could jeopardize the state's ability to sell high-speed and intercity rail bonds.

- This bill is premature because the consolidation of existing programs could result in an overlap of functional areas, such as monitoring the safety issues stemming from rail operations. These issues should be addressed prior to consolidation, with technical cleanup to follow, if necessary, after implementation.
- The Attorney General's Office has advised, with regard to the opinions they must issue on bonds, that "unqualified opinions may be jeopardized if the functions and role under the Bond Act and other critical roles not under the Bond Act are moved to another entity piecemeal." We therefore believe it is essential to take the time to deliberate on and fully vet all relevant implementation issues prior to consolidation.
- As written, this bill would take effect mid-year, which would unnecessarily complicate administrative and operating functions, such as spending authority, payroll processes, State Controller's Office processes, the inability of accounting systems to handle split spending authority, and year-end financial reporting.

We are willing to work with the Legislature to identify and address any issues necessary to ensure that the bonds can be sold as provided for in the Bond Act.

ANALYSIS

A. Programmatic Analysis

Current law provides for the High Speed Rail Authority (HSRA) to plan, construct and operate a high-speed train system to serve California's major metropolitan areas. In 2008, Proposition 1A was passed, providing \$9.95 billion in general obligation bonds to fund the planning and construction of a high-speed passenger train system and complementary improvements to connecting rail systems and corridors in the state, subject to appropriation by the Legislature.

Current law authorizes the Department of Transportation to operate three intercity rail services, which it currently does by contracting with Amtrak.

Current law provides for the Public Utilities Commission (PUC) to perform safety inspections on behalf of the Federal Railroad Administration and to regulate urban mass transportation rail systems.

The California Transportation Commission (CTC) is currently authorized to fund grade crossing and grade separation projects from a priority list prepared by the PUC and recommendations made by Caltrans. Funding for these projects is programmed through the biennial State Transportation Improvement Program (STIP) process. The CTC also allocates funding for local and state rail projects through the STIP process.

This bill would create a new Department of Railroads (DOR), including a division for high-speed rail.

This bill would also transfer to the DOR specified programs currently administered by Caltrans, such as contracting with Amtrak for intercity rail services, funding capital expenditures to maintain intercity rail services, and funding for grade separation and grade crossing programs.

This bill also would transfer the PUC's authority to allow, close, and regulate railroad grade crossings and grade separations and prioritize grade separations per established criteria.

This bill would add the Director of the DOR to the HSRA board, which is currently composed of four members selected by the Governor, two selected by the Senate Rules Committee and two members selected by the Speaker of the Assembly. The chairperson is currently selected from the members,

D. Ducheny

May 21, 2009

SB 409

but this bill would make the Director the chairperson. The Director would be appointed by the Governor, subject to confirmation by the Senate.

Discussion: The author's office indicates that the intent of this bill is to create a single entity to work cooperatively with private firms and public agencies to meet the state's needs for the movement of goods, the provision of intercity and commuter rail corridors, and the development of a cost-effective intercity high-speed rail system. The bill does not, however, include the PUC's responsibility for inspecting heavy rail systems and overseeing the state's rail transit safety programs.

Consolidation of rail activities in California likely would elevate rail visibility, accountability and compatibility.

Finance notes, however, that the Bureau of State Research, in a report written pursuant to Chapter 612, Statutes of 2008 (SB 53), lauds the intent of rail consolidation, but concludes that individual and collective human capability and effort are stronger determinants for success of programs such as high-speed rail than the organizational form. Moreover, consolidations can be costly up front and may not be warranted in the current fiscal environment. We note, too, that the PUC has indicated that safety issues are more appropriately handled by an independent entity.

Most importantly, consolidation without the proper ground work being completed could lead to unnecessary legal challenges and, as stated in our summary of opposition, jeopardize the state's ability to sell the bonds

Related Legislation: AB 1375 (Galgiani) would create the Department of High-Speed Trains within the Business, Transportation, and Housing Agency. AB 1375 is currently in the Assembly Appropriations Committee and Finance does not have an approved position on the bill. Finance notes that the comparative economic effects of these concurrent bills have not been evaluated and that this bill could be duplicative of other concurrent legislative bills proposing administrative and organizational changes to the HSRA.

B. Fiscal Analysis

There could be unknown administrative costs to reconfigure various programs and authorities into a new organization. The majority of the state's passenger rail activities are currently funded through the Public Transportation Account (PTA), which has become more constrained in recent years since it has been used to fund transportation-related bond debt service costs, home-to-school transportation, and regional center transportation. The proposed 2009-10 budget includes \$425 million and 165 positions for Caltrans' Mass Transportation Program, of which 57 positions and \$125 million are designated for the intercity rail program, with another \$130 million in capital outlay and local assistance for rail project expenditures.

Proposition 1B provides \$400 million for intercity rail projects administered by Caltrans, including \$125 million for the purchase of intercity rail equipment. \$260 million has been appropriated thus far, and another \$126 million is proposed for 2009-10.

Proposition 1A provides authority for the sale of \$9.95 billion for the design and construction of a high-speed train system. For 2009-10, \$139 million and 11 positions have been proposed for the HSRA to contract for program management, preliminary engineering and design, and environmental review.

The PUC has \$13.7 million and 83 positions for rail-related functions in 2009-10. Any costs as the result of this bill are unknown.

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

AUTHOR

AMENDMENT DATE

BILL NUMBER

D. Ducheny

May 21, 2009

SB 409

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	
2660/Caltrans	SO	No	-----	See Fiscal Summary	-----				0046
2665/High Speed	SO	No	-----	See Fiscal Summary	-----				6043
8660/PUC	SO	No	-----	See Fiscal Summary	-----				0046

<u>Fund Code</u>	<u>Title</u>
0046	Public Transportation Account, STF
6043	High - Speed Passenger Train Bond Fund