



Agenda Item

DATE: July 29, 2014

TO: Board of Supervisors

FROM: Chairman Andreas Borgeas *AB*

SUBJECT: Discuss and Provide Direction to Staff to Prepare and File an Amicus Brief Regarding the High Speed Rail Litigation.

RECOMMENDED ACTION:

Direct Staff to Prepare and File an Amicus Brief Regarding the High Speed Rail Litigation.

ALTERNATIVE ACTION(s):

Take no action.

FISCAL IMPACT:

There are no costs associated with filing an amicus brief.

WHAT IS AN AMICUS BRIEF?

The term amicus brief comes from the term *amicus curiae*, which literally means "friend of the court." Amicus briefs are usually filed by persons or entities with strong interest in or views on the subject matter of an action, but are not a direct party to the action. Such briefs are commonly filed regarding concerning matters of a broad public interest.

Briefs are used to educate the court on points of law that are in doubt, gather or organize information, or raise awareness about some aspect of the case that the court might otherwise miss. Amicus curiae must not be a party to the case, nor an attorney in the case, but must have some knowledge or perspective that makes her or his views valuable to the court. The additional information found in an amicus brief document can be useful for the judge evaluating the case, and it becomes part of the official case record.

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BOARD ACTION: DATE _____ APPROVED AS RECOMMENDED _____ OTHER _____

UNANIMOUS _____ BORGEAS _____ CASE MCNAIRY _____ LARSON _____ PEREA _____ POOCHIGIAN _____

WHAT ARE THE COSTS OF FILING AN AMICUS BRIEF?

There are no costs associated with filing an amicus brief.

WHAT IS THE PROCESS OF FILING AN AMICUS BRIEF?

If the Board should adopt the recommended action a short letter application would be prepared by Staff and submitted to the court requesting acceptance of a submission. Upon the court's approval the brief would be submitted and included in the materials reviewed by the court without making the County of Fresno or the Board direct parties in the litigation.

DISCUSSION:

On November 4, 2008, California voters passed Proposition 1A, *The Safe, Reliable, High-Speed Passenger Train Bond Act for the 21st Century* that authorized the issuance of \$9.95 billion in bond funding for High-Speed Rail in the State of California.¹

Proposition 1A voters were presented with a project for a high-speed intercity passenger train system that would cost an estimated \$33 billion.² The most recent HSR Business Plan (April 2014) sets the initial cost of the overall HSR system at approximately \$68 billion which exceeds the original \$33 billion cost estimate of Proposition 1A.³

As presented in the proposition, the project was set to be completed by 2020.⁴ Today the project's completion date has been postponed to the year 2028.⁵

The project initiative stated the cost of a ticket from San Francisco to Los Angeles would be \$55.⁶ According to the revised California High-Speed Rail Authority 2012 Business Plan, the cost of a ticket is expected to be much higher,⁷ and may even be comparable to the price of commercial airfare.⁸

Given the revised HSR Business Plan does not meet the initiative's promised cost, fares, and projected completion date, this Board does not believe the voters were given accurate information during the 2008 election necessary to make an informed decision about this project.

Based on the information above, the requested action is for the Board of Supervisors to direct staff to prepare an amicus brief in support of one position taken by the plaintiffs in the case of *John Tos, et al. v. California High-Speed Rail* (Case No. 34-2011-0013919), which is expected to go to trial this fall.

DRAFT FRAMEWORK FOR AMICUS BRIEF

RE: *John Tos, et al. v. California High Speed Rail*
Sacramento Superior Court (Case No. 34-2011-0013919)

The County of Fresno, through its Board of Supervisors, hereby submits the following amicus brief in support of one position taken by the plaintiffs herein. We outline our concerns with the California High Speed Rail Project and the issue which we seek to present to the court.

DRAFT ISSUES AND CONCERNS RAISED BY FRESNO COUNTY:

Issue: **Whether the projected costs, funding sources and implementation measures of the High Speed Rail Project exceed the authority granted by the voters in Proposition 1A?**

Concerns:

- Whether the costs of the project and its escalation from \$33 billion to \$67-\$76 billion, and possibly as high as \$150 billion for the state-wide project nullifies the authorization granted by Prop 1A;
- Whether the state of California stands to bear this burden alone and whether federal and private investor financial partnership prospects have collapsed;
- Whether there should be a “revote” on the project to determine if the voters still intend to support the HSR project with its current financial projections;
- If the authority granted by the voters in Prop 1A has indeed been exceeded, whether there should be a revote, and whether there can be a choice presented to the voters to “re-designate” the remaining funds in the Proposition 1A bond fund (approximately \$8.5 billion) for California water projects and other transportation projects; and
- Any other issues our Board will be permitted by the court to submit for comment.

An example of case law worth examining further as supportive of this position is *O'Farrell v. County of Sonoma*, where the California Supreme Court decision has been interpreted in subsequent cases to stand for the principle that a bond measure, once approved by the voters, is analogous to a contract between the governmental agency and the voters, and binds the government agency to the terms it placed before the voters. (189 Cal. 343, 348 (1922)).

¹ California General Election – Voter Supplement, Tuesday, November 4, 2008

² Nov. 2008 California High-Speed Train Business Plan, p. 19-20

³ April 2014 California High-Speed Rail Business Plan, p. 16

⁴ Nov. 2008 California High-Speed Train Business Plan, p. 21

⁵ April 2014 California High-Speed Rail Business Plan, p. 16

⁶ Ridership and Revenue Forecast for 2008, California High Speed Train Project p. 4, Prepared by Parsons Brinckerhoss, Cambridge Systematics, & SYSTRA

⁷ April 2012 California High-Speed Rail Business Plan, p ES-14

⁸ Travelocity: LA to SFO, one way, \$77, (July 23, 2014)