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Thursday, August 25, 2011

Senate Transportation and Housing Committee
Hon. Mark DeSaulnier, Chair
State Capitol, Room 2209
Sacramento, California 95814

Telephone: 916-651-4007
By Fax to: 916-445-2527
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Re: AB706 - OPPOSE - "Gut and Amended" and Revived in the Senate

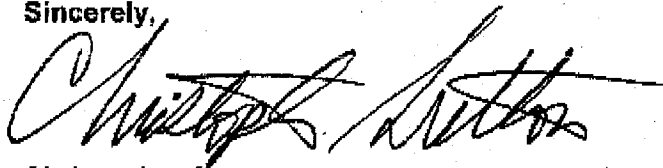
Dear Chairman DeSaulnier and Committee Members:

AB706 was "gut and amended" recently to exempt the Gold Line Construction Authority in the San Gabriel Valley from certain conflict of interest laws. A recent L.A. Times story on **AB706** is attached.

AB706 seeks to exempt the Pasadena Metro Blue Line Construction Authority (a.k.a. Gold Line Construction Authority) from two conflict of interest laws prohibiting: (1) "incompatible public offices" and (2) self-dealing in public contracts. These are covered by Government Code §§ 1090, 1099, and 1126. **It could eliminate criminal and civil liability for four Gold Line Board members for their votes on July 27, 2011.** This should not be done by a "gut and amend" procedure. My clients have lawsuits pending regarding this project. A complaint we filed with the Attorney General is based on a ruling obtained by Senator Lowenthal in 2010 regarding the High Speed Rail Authority. **AB706** could partially wipe out that ruling. **AB706** could retroactively eliminate civil and criminal penalties for actual conflicts of interest. We believe such conflicts of interest occurred at the Gold Line Board. The Gold Line is paying **four times market value (\$57 million versus \$14 million)** to the City of Monrovia for land. Local officials on the Gold Line board were appointed contrary to Public Utilities Code §§ 132400 to 132450 (SB1347-1998). Their actions may violate Government Code §§ sections 1090, 1099, and 1126. The decision to site a "Maintenance and Operations Yard" in Monrovia — and not at the cheaper and larger Rosedale site in Azusa — has never been explained. We believe this decision resulted from conflicts of interest. **AB706** could eliminate criminal and civil laws regarding these past decisions. It may hinder a prosecution of any member of the Gold Line Board or of several city councils. **AB706** undermines potential criminal prosecutions.

The "gut and amended" process harms the image of the Legislature, violating California Constitution at Article IV sections 8 and 16. **AB706** should be handled as a two-year bill. No vote or hearing should be held until 31 days after the complete gutting of a bill with 100% new content. "Gut and amend" equates with introducing a whole new bill. **AB706** must not be a local favor, but must be statewide in scope. A section 1090 exemption does not appear in the statute for other transportation authorities statewide, except one, and it is not as broad. Please **OPPOSE AB706** in your committee.

Sincerely,



Christopher Sutton
Attorney for Excalibur Property Holdings, LLC
George Brokate and Diana Brokate

cc: committee members

LA Times story enclosed

LATIMES.COM

TUESDAY, AUGUST 23, 2011 AA3

BILL TO AID RAIL BOARD URGED

DAN WEIKEL

Local legislators want to exempt officials of a San Gabriel Valley light-rail project from conflict-of-interest laws after a complaint was lodged last month with the state attorney general.

Assemblywoman Norma J. Torres (D-Chino) and five colleagues have proposed a bill that would help five board members and two alternates of the Metro Gold Line Foothill Extension Construction Authority who have been accused of holding incompatible offices.

State law forbids public officials from serving on multiple boards, commissions, city councils and other governing bodies with interests that are likely to clash. All the board members in question are council members of cities where the Foothill Extension of the Gold Line would run.

The complaint to the attorney general was filed by Christopher Sutton, a Pasadena attorney who has sued the Gold Line on behalf of a San Gabriel Valley property owner involved in a condemnation matter. Sutton also alleges that the authority's non-voting members and some of the board alternates were improperly appointed.

Torres' bill, AB 706, would further prevent board mem-

bers, alternates, consultants and employees from being prosecuted for violations of another state conflict of interest law based solely on the fact they hold office or work for the authority.

That law prohibits officials from voting for or participating in decisions involving contracts or entities in which they have a financial interest.

"The best qualified folks to sit on these types of boards are the ones who sit on local city councils," Torres said. "We can't afford for the attorney general to rule. We don't want to stall the work that is being done, postpone the jobs that are on the line or delay an important project."

If Sutton's complaint is successful, authority board members might have to be replaced. Or the attorney general could determine the officials are not holding incompatible offices.

The attorney general concluded in December that former Anaheim Mayor Curt Pringle and members of the L.A. County and Orange County transportation boards should not serve simultaneously on the board of the California High-Speed Rail Authority, which is overseeing the state's bullet train project.

Pringle and L.A. County transportation official Richard Katz are no longer on the high-speed rail board.

Sutton contends that Torres' bill could create problems for prosecutors if a Gold Line board member voted for a contract in which he or she had a financial interest.

"In my opinion, it immu-

nizes these board members from prosecution," Sutton said. "There is a different way to do this. They should say that nothing in the bill is intended to circumvent the criminal provisions of the law."

Torres disagreed, saying that Metro Gold Line Foothill Extension Construction Authority officials, employees and consultants would have to recuse themselves from actions involving matters in which they have a financial interest.

"The law is very narrow," Torres said. "Officials still have to abide by the state's conflict laws."

Sutton also questioned the legislative process for AB 706, which started out as a telecommunications bill and was rewritten to provide exemptions from state conflict-of-interest laws. The process is known as "gut and amend."

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