

ATTACHMENT A

BILL: S. 846/H.R. 2739

AUTHORS: U.S. SENATOR JOHN CORNYN (R-TX) AND CONGRESSMAN HARLEY ROUDA (D-CA)

SUBJECT: FEDERAL FUNDING PROHIBITION ON STATE-OWNED ROLLING STOCK FIRMS BASED IN CHINA

STATUS: REFERRED TO THE U.S. SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE AND THE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

ACTION: WORK WITH AUTHOR

RECOMMENDATION

Staff recommends that the Board of Directors adopt a WORK WITH AUTHOR position on S. 846 and H.R. 2739.

ISSUE

The bills, S. 846 and H.R. 2739, have been introduced in the 116th Congress as federal legislators have significantly increased their scrutiny over the role of foreign state-owned enterprises in securing rolling stock contracts with transportation agencies across the United States. Both bills would prohibit the use of federal funds to procure rolling stock from firms based in China and both pieces of legislation include a provision exempting contracts that have been entered into prior to their potential passage.

BACKGROUND

As part of the broad and ongoing “trade war” between the United States and the People’s Republic of China, Congress began last year to aggressively explore placing federal funding restrictions on rolling stock from firms based in China. Specifically, the House Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development had language in their Fiscal Year 2019 spending bill that would have barred the use of federal transit funds from being used by “entities owned, directed, or subsidized by a country identified as a priority watch list country by the United States Trade Representative (USTR) in the most recent report required under section 182 of the Trade Act of 1974 (19 U.S.C. 2242) and is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).” This language was clearly aimed towards rolling stock firms based in China, which has been identified as a priority watch list country by the USTR.

Likewise, actions were taken last year in the U.S. Senate to bar the use of federal funds for rolling stock from firms based in China. Ultimately, the final funding bill passed by Congress – following a 35-day partial shutdown of the federal government - did not include any language barring the use of federal funds for rolling stock produced by firms based in China.

Metro entered into a Heavy Rail Car Contract with the Chinese firm CRRC MA Inc. (CRRC) in February 2017 for up to 282 Heavy Rail Cars valued at \$647 million. Metro has exercised only the Base portion of that Contract for 64 vehicles to support Purple Line Extension Section 1 and to replace the 30 oldest A650 heavy rail cars which are scheduled to be retired. There remains a total of five Contract Options available to Metro to support all Purple Line Extension sections, support service expansions, and replace the balance of Metro's A650 heavy rail car fleet.

Metro also entered into Zero Emission Bus (ZEB) Contracts with the Chinese firm Build Your Dreams (BYD) in June and October 2017 for 40-foot and 60-foot ZEBs. The 40-foot ZEB contract valued at \$77.8 million is for up to 100 vehicles. Metro has exercised a Base order of 60 vehicles from the 40-foot ZEB Contract. The 60-foot ZEB Contract is valued at \$6.6 million for five ZEBs. All orders have been placed for the 60-foot ZEB Contract.

For these reasons, staff recommends that the Board of Directors adopt a WORK WITH AUTHOR position on S. 846 and H.R. 2739.

DISCUSSION

On April 9, 2019 U.S. Senator John Cornyn (R-TX) was joined by Senators Tammy Baldwin (D-WI), Mike Crapo (R-ID) and Sherrod Brown (D-OH) in introducing the Transit Infrastructure Vehicle Security Act (S. 846) that would bar the use of federal funds for rolling stock procurements from state owned firms in China.

On May 15, 2019, Congressman Harley Rouda (D-CA) introduced legislation nearly identical to the Transit Infrastructure Vehicle Security Act, with the following original cosponsors; U.S. Representatives Eric Crawford (R-AL), Scott Perry (R-PA), Kay Granger (R-TX), Tim Ryan (D-OH), Eleanor Holmes-Norton (D-DC At-Large), Randy Weber (R-TX) and John Garamendi (D-CA).

Proponents of both bills have cited two broad concerns related to Chinese rolling stock companies doing business in the United States. First, Chinese firms are undercutting competition to win contracts aided by an unfair subsidy by the Chinese Government. Second, supporters of the bills are concerned that the Chinese Government could impact our national security by implanting tools in the rolling stock to harm the United States through cyber capabilities.

While the Rouda/Cornyn bills have strong, bipartisan support throughout Congress, some Members have expressed concern regarding the unintended consequences this legislation could have on workers currently manufacturing products for Chinese firms, as well as the unintended impact that the legislation could have on environmental goals. "I have heard from sheet metal, air, rail, and transportation workers' unions that represent most of these employees and they have raised real concerns about the loss of jobs should BYD be prohibited from doing business with our local transit agencies," said Representative Julia Brownley (D-CA) during a recent hearing held by the U.S. House Committee on Transportation and Infrastructure. Representative Brownley went

on to say, “I’m also concerned at how this issue relates to addressing climate change,” citing California’s mandate to transition to zero-emission bus fleets.

One notable feature of the Transit Infrastructure Vehicle Security Act (S. 846) and H.R. 2739 is an exception clause, which according to the congressional legislative counsel’s office, would not apply any ban on the use of federal funding for rolling stock to transportation agencies that have already entered into contracts with firms targeted by the legislation. This means that our agency would not be subject to this potential congressional restriction on the use of federal funds for exercising its Contract Options with either CRRC or BYD. However, future rolling stock contracts with such firms by our agency would be subject to the federal restrictions sought in both the Cornyn/Rouda bills.

On May 16, 2019, Metro Chief Executive Officer Phillip A. Washington testified before the House Transportation and Infrastructure Committee at a hearing entitled, “The Impacts of State-Owned Enterprises on Public Transit and Freight Rail Sectors.” At this hearing, the CEO shared with Chairman Peter DeFazio (D-OR), Ranking member Sam Graves (R-MO) and other distinguished members of the committee that our agency would welcome Congress taking clear and decisive steps to support his drive to establish a rail/bus manufacturing center in Los Angeles County. The CEO emphasized in his congressional testimony (see attached) that “there is a large delta between the benefits of simply assembling rolling stock in the United States as opposed to manufacturing rolling stock in our nation.”

DETERMINATION OF SAFETY IMPACT

There is no determined safety impact due to the enactment of the proposed legislation.

FINANCIAL IMPACT

The estimated financial impact has yet to be determined.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

Staff recommendation supports strategic plan goal # 4.2: Metro will help drive mobility agendas, discussions and policies at the state, regional and national levels.

ALTERNATIVES CONSIDERED

Staff has considered adopting either a support or oppose position on these bills. Staff believes a WORK WITH AUTHOR position best positions our agency to continue its work with Congress to advance our goal of establishing a rail/bus manufacturing facility in Los Angeles County – not just facilities in which foreign and domestic equipment is assembled.

NEXT STEPS

Should the Board decide to adopt a WORK WITH AUTHOR on this legislation; staff will communicate the Board’s position to the authors and work to ensure inclusion of the exemption language for pre-existing rolling stock contracts in the final version of the bills. Additionally, staff will work to include language in the bill that will enhance our agency’s effort to develop a rail/bus manufacturing center in Los Angeles County. Staff

will continue to keep the Board informed as this issue is addressed throughout the 116th Congress.