

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 15, 2005

To: The Commission
(Meeting of April 21, 2005)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 453 (Benoit) Grade separation projects**
As amended March 29, 2005

Legislative Subcommittee Recommendation: Support

Summary: This bill would amend Sections 2456 and 2458 of the California Streets and Highways (S&H) Code, relating to the grade separation program. This bill would require that local agencies furnish evidence satisfactory to Caltrans that all matters prerequisite to the award of a construction contract can be accomplished within two years after an allocation, instead of the current one-year time period.

Digest: Existing law requires the California Transportation Commission to make allocations for grade separation projects, as defined. Existing law requires, in order for an allocation for construction costs, or for preconstruction costs if not already allocated, to be made, that a local agency furnish certain evidence satisfactory to the Department of Transportation, including that all matters prerequisite to the award of the construction contract can be accomplished within one year after the allocation.

This bill would require, in order for an allocation for construction costs, or for preconstruction costs if not already allocated, to be made, that a local agency furnish evidence satisfactory to the department that all matters prerequisite to the award of a construction contract can be accomplished within two years after the allocation.

Division Analysis (CPSD):

The bill would provide an additional year in which local agencies could complete the requirements of the allocation including securing an agreement with the affected railroad(s), receive authorization to construct the project from the California Public Utilities Commission (CPUC), complete all the required environmental impact reports for

both CEQA and NEPA and secure the remainder of the necessary funding for the proposed grade separation project.

- The Section 190 Grade Separation Program is executed under S&H Codes Sections 190-192 and 2450-2461.
- S&H Code Section 2452 requires the CPUC to establish the priority list for grade separation projects and furnish it to the California Transportation Commission (CTC) by July 1 of each year for use in the fiscal year beginning on that date. S&H Code Section 2452 also makes the CPUC responsible for establishing the criteria to be used in determining the priority of projects nominated for separation or alteration.
- S&H Code Section 2453 gives the CTC responsibility for allocating (distributing) the funds to qualified projects.
- This bill would provide an additional year (2 years total) to local agencies to complete the necessary steps to receive a full allocation.
- Currently, S&H Code Section 2456 requires that a local agency furnish certain evidence satisfactory to the Department of Transportation (Caltrans), including that all matters prerequisite to the award of the construction contract can be accomplished within one year after the allocation in order for an allocation for construction costs, or for preconstruction costs if not already allocated, to be made.
- The bill would address the problem of local agencies needing extra time to complete the allocation requirements. Most recently, two local agencies lost their allocations when they could not satisfy the requirements for an allocation. The City of Ontario and the City of Riverside lost their allocations when they were unable to complete their environmental review documents within the existing one-year time period.
- The additional time would not change the responsibilities of the CPUC nor alter the program fiscally.

Program Background

- S&H Code Section 190 requires the State's annual budget to include \$15 million for funding these projects. S&H Code Section 2450 et seq. sets out the procedure for administering these funds, and Section 2453 gives the CTC responsibility for allocating (distributing) the funds to qualified projects.
- S&H Code Section 2452 requires the CPUC to establish the priority list for projects and furnish it to the CTC by July 1 of each year for use in the fiscal year beginning on that date. CPUC procedure is to promulgate the list for the first fiscal year by issuing an interim decision, and then to revise the list for the second year by deleting projects for which funds were actually allocated in the first. CPUC adopts the revised list by final decision in the second year of the

proceeding, and begins the funding cycle again the following year by instituting a new proceeding.

FISCAL IMPACT: No fiscal impact to the CPUC.

LEGISLATIVE HISTORY

In December 1998, the CPUC acted formally to sponsor legislation (AB 357- Calderon) that would increase the annual appropriation for grade separation projects from \$15 million to \$60 million. The legislation was amended following legislative debates to remove the funding level provisions and insert language requiring the CPUC to submit a report to the Legislature on the sufficiency of the \$15 million fund. The CPUC, in taking a sponsorship position on what ultimately became AB 357, had internally reviewed the sufficiency of the \$15 million appropriation and determined that for safety reasons, an increase in the funding level was necessary. The \$15 million allocation for safety prioritized projects mandated by S&H Code Section 190 was set in 1974 and is woefully inadequate today. CPUC staff suggested a \$60 million funding level in order to provide the same purchasing power in the following fiscal years as was provided in 1974 after they analyzed the increased construction and land acquisition costs.

STATUS

This bill was passed by the Assembly Transportation Committee (policy committee) on April 11, 2005 (vote 9-0) to the Assembly Committee on Appropriations (fiscal committee), and has not received a hearing date.

SUPPORT/OPPOSITION

Support: City of Riverside, Greater Riverside Chamber of Commerce

Opposition: None on file.

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Date: April 15, 2005

BILL LANGUAGE

BILL NUMBER: AB 453 AMENDED
 BILL TEXT

AMENDED IN ASSEMBLY MARCH 29, 2005

INTRODUCED BY Assembly Member Benoit

FEBRUARY 15, 2005

An act to amend Sections ~~2454, 2456,~~ 2456
 and 2458 of the Streets and Highways Code, relating to
 transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 453, as amended, Benoit. Grade separation projects.

Existing law requires the California Transportation Commission to make allocations for grade separation projects, as defined. ~~Existing law requires a railroad to agree to contribute 10% of the cost of a project in order for an allocation to be made for projects that eliminate an existing crossing, or alter or reconstruct an existing grade separation.~~ Existing law requires, in order for an allocation for construction costs, or for preconstruction costs if not already allocated, to be made, that a local agency furnish certain evidence satisfactory to the Department of Transportation, including that all matters prerequisite to the award of the construction contract can be accomplished within one year after the allocation.

This bill would ~~instead require a railroad to agree to contribute 5% of the cost of a project in order for those allocations to be made.~~ The bill would require, in order for an allocation for construction costs, or for preconstruction costs if not already allocated, to be made, that a local agency furnish evidence satisfactory to the department that all matters prerequisite to the award of a construction contract can be accomplished within two years after the allocation.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

~~SECTION 1. Section 2454 of the Streets and Highways Code is amended to read:~~

~~2454. Allocations made pursuant to Section 2453 shall be made on the basis of the following:~~

~~(a) An allocation of 80 percent of the estimated cost of the project shall be made; except that whenever contributions from other sources exceed 20 percent of the estimated cost, the allocation shall be reduced by the amount in excess of 20 percent of the estimated~~

cost.

~~—(b) An allocation of 50 percent of the estimated cost of the project shall be made for a proposed crossing.~~

~~—(c) No allocation shall be made in excess of 50 percent of the estimated cost of the project unless the grade crossing to be eliminated has been in existence for at least 10 years prior to the date of allocation.~~

~~—(d) On projects which eliminate an existing crossing, or alter or reconstruct an existing grade separation, no allocation shall be made unless the railroad agrees to contribute 5 percent of the cost of the project.~~

~~—(e) Where a project does not include a grade separation, but eliminates existing grade crossing or crossings, the allocation shall not exceed the estimated allocation that would have been made for the grade separation which is no longer needed because of the elimination of the grade crossing by the project and which is indicated on the priority list to be urgently in need of grade separation.~~

~~—(f) Where the project includes the separation of a highway and a railroad passenger service operated by a city or county, the operating agency shall contribute 20 percent of the cost of the project. The priority listing for such projects shall be in accordance with criteria established for such railroad passenger service by the Public Utilities Commission.~~

~~—(g) Notwithstanding subdivisions (a) to (f), inclusive, the total of such allocations for a single project shall not exceed five million dollars (\$5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the federal construction cost index increase each year since 1976, or (2) an amount which does not exceed one third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission.~~

~~—(h) Notwithstanding subdivisions (a) to (g), inclusive, a single project in excess of five million dollars (\$5,000,000), but not exceeding twenty million dollars (\$20,000,000), shall be considered without specific legislative authority, if the project (1) is included in the Public Utilities Commission's priority list of projects scheduled to be funded, (2) eliminates the need for future related grade separation projects, (3) provides projected cost savings of at least 50 percent to the state or local jurisdiction, or both of them, by eliminating the need for future projects, and (4) alleviates traffic and safety problems or provides improved rail service not otherwise possible. Projects approved pursuant to this subdivision shall be funded over a multiyear period, not to exceed five years, and the allocation for any one of those years shall not exceed the amount prescribed by subdivision (g) for a single project.~~

~~—An agency which has received an allocation for a project approved pursuant to this subdivision shall not be eligible for an allocation for another project under this subdivision for a period of 10 years from the date of approval of that project. Not more than one half of the total allocation available in any one fiscal year for grade separation projects may be used for the purposes of this subdivision.~~

~~—(i) Notwithstanding any of the above provisions of this section or~~

~~any other provision of law, when the state or local agency uses funds derived from federal sources in financing its share of project costs, the railroad contribution, where required by federal law or regulation, shall be computed pursuant to federal law. However, the allocation made pursuant to this chapter shall be computed as though such matching contribution was derived from nonfederal sources and shall be computed as though the railroad had made its contribution pursuant to state law rather than pursuant to federal law. Where the contribution of the railroad is computed according to federal law or regulation because of the use of federal funds in the allocation for a project, the allocation shall be increased by the amount the share of the railroad is reduced below 5 percent of the estimated cost of the project.~~

~~SEC. 2.~~

SECTION 1. Section 2456 of the Streets and Highways Code is amended to read:

2456. An allocation for construction costs, including preconstruction costs if not already allocated, shall be made to a local agency only if it furnishes evidence satisfactory to the department that all necessary orders of the Public Utilities Commission have been executed, that sufficient local funds will be made available as the work of the project progresses, that all necessary agreements with affected railroad or railroads have been executed that, if required, all environmental impact reports have been prepared and approvals obtained, and that all other matters prerequisite to the award of the construction contract can be accomplished within two years after the allocation. Local funds shall be deemed available to the amount of any general obligation bonds authorized but unsold if it is determined that such bonds may be issued and sold by the local agency at any time.

~~SEC. 3.~~

SEC. 2. Section 2458 of the Streets and Highways Code is amended to read:

2458. Except as provided in this section, allocations shall remain available until expended. If a construction contract has not been awarded within two years after an allocation for construction costs, the commission may order the allocation canceled and such funds shall revert to the fund set aside for purposes of this chapter. All or any part of an allocation for preconstruction costs may be canceled and such funds shall revert to the fund set aside for purposes of this chapter upon a finding that insufficient progress is being made to complete the project. Where an allocation is canceled pursuant to this section, the local agency shall reimburse the fund set aside for purposes of this chapter the portion of the allocation which is not reverted as set forth in this section. The department shall determine, with the local agency, as to the time of repayment.