

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 23, 2005

To: The Commission
(Meeting of May 26, 2005)

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

Subject: **AB 158 (Bermudez) Railroads: safety study**
As Amended (April 20, 2005)

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support.

SUMMARY: The bill would:

- require the CPUC to convene a special task force to study certain railroad safety issues and to make recommendations for improving railroad safety measures; and,
- require the CPUC to include the findings and recommendations of the task force in its next annual report to the Legislature on sites on railroad lines that are found to be hazardous.

The bill sunsets on January 1, 2007, if not extended by the Legislature.

DIVISION RECOMMENDATION & ANALYSIS (Legal/CPSD):

SUPPORT IF FUNDED. (Author's note: Regarding the need for adequate funding of this initiative, Assembly Budget Subcommittee No. 4, for which Assemblymember Bermudez is chair, approved an appropriation of \$100,000 from the CPUC Transportation Reimbursement Account that would provide necessary support for this working group or task force). The field of transportation of hazardous materials by rail has been occupied completely by the Federal Railroad Administration (FRA). Nevertheless, the findings and recommendations of the proposed task force can be submitted by the CPUC to the FRA, the National Transportation Safety Board (NTSB), and Congress, as well as the California Legislature. The CPUC could petition the FRA for Rulemakings based on the task force's findings and recommendations.

Although no amendments are suggested, the Legislature and author should be made aware of the state's limitations in promulgating laws and regulations in this area of interstate commerce.

ANALYSIS

- The CPUC is responsible under the bill for providing staff support to the task force.
- The CPUC also is responsible for applying for, accepting, and spending any grants and gifts from any source, public or private, to support the functions and purpose of the task force.
- The bill places extra duties on CPUC rail safety, legal, administrative, and budget staff to support the task force which are presently unfunded.
- The CPUC's rail safety staff already perform the functions of:
 - Submitting an Annual Report to the Legislature under P.U. Code section 7711.
 - Identifying any deficiencies in current land use planning, [**Note:** this function receives minimal funding under the present budget], and
 - Making recommendations for changes in land use planning to lessen risks to the public and environment [**Note:** this function receives minimal funding under the present budget].
- New to the rail safety staff's functions, and presently unfunded, would be:
 - identifying any deficiencies for responding to railroad emergencies, and
 - making recommendations for changes to improve emergency response,
 - providing staff support to the task force, and
 - applying for, accepting, and spending any grants and gifts from any source, public or private, to support the requirements of this section.
- If the functions required under this bill are separately funded, rail safety could be improved by identifying and correcting difficulties in emergency response to railroad accidents and by correcting identified deficiencies in land use issues in the immediate vicinity of main line railroad rights-of-way. If separate funds are not provided, it would not be possible to provide the review and recommendations.
- The authors and the California Legislature should be made aware of the federal court's decision in *Union Pac. R.R. v. California PUC*, 109 F. Supp. 2d 1186, 2000 U.S. Dist. LEXIS 11617 (N.D. Cal., 2000), voiding all aspects of P.U. Code §§ 7711 and 7712 except the immediate reporting of railroad accidents to the state's emergency responders. As previously noted, the field of transportation of hazardous materials by rail has been occupied completely by the FRA.

LEGISLATIVE HISTORY: Public Utilities Code sections 7711 et seq. were enacted following the catastrophic derailments and toxic spills at Dunsmuir and Seacliff, California, in July of 1991. These provisions affecting the transportation of hazardous materials by rail were designed to allow the promulgation of state laws and regulations improving safety to the environment and the communities of California under the local safety hazard exception to federal preemption under 49 U.S.C. § 20106.

PROGRAM BACKGROUND: As previously mentioned, the rail safety program performs a very small portion of the functions of the bill. Aside from providing joint FRA/CPUC inspectors for identifying and correcting defects under federal law in the operation of railroads in California, the Rail Safety Operations Branch and the Rail Crossings Engineering Section of the Consumer Protection and Safety Division of the CPUC are struggling with staffing issues as they work to expand their role in land use issues surrounding railroad lines and train-blocked highway-rail crossings in the delivery of emergency services to communities. The functions prescribed by the bill would improve rail safety in the state if funds are made available to pay for those duties.

STATUS: AB 158 is presently in Assembly U. & C.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

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Date: May 23, 2005

BILL NUMBER: AB 158 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 20, 2005
AMENDED IN ASSEMBLY APRIL 12, 2005
AMENDED IN ASSEMBLY MARCH 29, 2005
AMENDED IN ASSEMBLY FEBRUARY 24, 2005

INTRODUCED BY Assembly ~~Member~~ ~~Bermudez~~
 Members Bermudez and Frommer

~~(- Coauthors:-~~
~~Assembly Members -Chan,~~
~~-Cohn, -~~
~~Dymally, - Koretz,~~
~~- and Mullin -)~~

~~(- Coauthor: -Senator~~
~~-Figueroa -)~~

JANUARY 14, 2005

~~An act to amend Section 2154 of the Elections Code,~~
~~relating to voter registration. An act to add Section~~
~~7711.5 to the Public Utilities Code, relating to railroads.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 158, as amended, Bermudez. ~~Voter registration.~~
Railroads: safety study.

Existing law establishes the safety division of the Public Utilities Commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail. Existing law requires every railroad corporation that transports hazardous materials, as defined, in the state to provide a system map of the state to the Office of Emergency Services and to the commission showing certain information, to annually submit a copy of its emergency handling guidelines to the office, and to provide specified information in the event of an incident where there is a release or threatened release of a hazardous material. Under existing law, the commission is required to annually report to the Legislature on sites on railroad lines in the state that it finds to be hazardous, including a list of all commodities transported on railroad lines that could pose a hazard to the public or the environment in the event of a train derailment or other accident, a description of the quantities of these commodities, and the locations and routes that these materials are transported, and a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous 5 years.

This bill would require the commission to convene a special task force to study certain railroad safety issues and to make recommendations for improving railroad safety measures. The bill would require the commission to include the findings and

recommendations of the task force in its next annual report to the Legislature on sites on railroad lines that are found to be hazardous.

~~Existing law requires a county elections official who receives an affidavit of registration in which the affiant fails to identify his or her state of birth to apply a rebuttable presumption that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States" or "U.S.A."~~

~~This bill would provide that the term "U.S." shall also give rise to a rebuttable presumption that the affiant was born in a state or territory of the United States.~~

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

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

SECTION 1. Section 7711.5 is added to the Public Utilities Code , to read:

7711.5. (a) The Special Railroad Safety Task Force is hereby created.

(b) The task force shall be comprised of the following:

(1) A representative of the safety division of the commission, to be designated by the commission.

(2) A representative of the Office of Emergency Services, to be designated by the Director of the Office of Emergency Services.

(3) At least one representative of an administering agency, as defined in Section 25501 of the Health and Safety Code, to be designated by the commission.

(4) At least one representative of emergency rescue personnel, as defined in Section 25501 of the Health and Safety Code, to be designated by the commission.

(5) A representative of the California Highway Patrol, to be designated by the Commissioner of the California Highway Patrol.

(6) A representative of railroad safety engineers or conductors, to be designated by the commission.

(7) Two representatives of each class I railroad operating in California, with expertise in rail operations, equipment, and track, to be designated by the commission.

(8) A representative of a short-line railroad, as defined in Section 99317.1, with expertise in rail operations, equipment, and track, to be designated by the commission.

(9) The commission shall invite a representative of the United States Department of Transportation Federal Railroad Administration to participate in the special task force.

(c) Members of the task force shall be appointed on or before March 1, 2006.

(d) Members shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of task force duties.

(e) Within 30 days after the operative date of this section, the task force shall meet and establish operating procedures. The task force shall meet at least once each month through and including March 2006.

(f) A majority of the task force shall constitute a quorum for the transaction of business.

(g) The task force shall be headed by a chairperson, selected by

the task force from among its members.

(h) The duties of the task force shall include, but not be limited to, all of the following:

(1) Identify threats from vandalism or terrorism that are not adequately addressed by existing rail safety programs and to make recommendations to address those threats in the future.

(2) Identify any deficiencies in current land use planning and to make recommendations for changes in land use planning to lessen risks to the public and environment.

(3) Identify any deficiencies for responding to railroad emergencies and to make recommendations for changes to improve emergency response.

(i) The commission shall provide staff support to the task force, and may apply for, accept, and spend any grants and gifts from any source, public or private, to support the requirements of this section.

(j) The commission shall incorporate the findings and recommendations of the task force into the next annual report to the Legislature pursuant to Section 7711.

(k) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

~~SECTION 1. Section 2154 of the Elections Code is amended to read:~~

~~2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official voters shall apply the following rebuttable presumptions:~~

~~(a) If no middle name or initial is shown, it shall be presumed that none exists.~~

~~(b) If no party affiliation is shown, it shall be presumed that the affiant has no party affiliation.~~

~~(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.~~

~~(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," "U.S.," or other recognizable term designating the United States.~~