

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 6, 2008

To: The Commission
(Meeting of March 13, 2008)

From: Pamela C. Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1845 (Duvall) – Railroad-highway grade separations.
As introduced: January 28, 2008**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill states the Legislature's intent to transfer the responsibility for developing the priority list for the annual \$15,000,000 grade separation program from the California Public Utilities Commission (CPUC) to the California Transportation Commission (CTC) upon completion of the expenditure of the \$150,000,000 in Proposition 1B general obligation bond funds that are to be allocated pursuant to the priority list process.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC currently has exclusive jurisdiction over rail crossings in California. The CPUC's development of the priority list reinforces the Commission's goal and policy to address and assist local agencies with the elimination of unsafe crossings. Additionally, the CPUC's quasi-judicial proceeding for developing the priority list affords all parties ample opportunity to participate and due process.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (CPSD):

- Under Streets and Highways Code Section 2452¹, the Commission is responsible for establishing the grade separation priority listing of crossing projects.
- The CPUC currently has exclusive jurisdiction over rail crossing in California under Public Utilities Code 1201, et.al.. The Commission currently maintains a rail crossings inventory database and accidents database that it utilizes to verify and analyze applicant's nominations. Should this bill become law, CTC/Caltrans would need to seek outside data (from the CPUC) to verify the nominations, which often contain errors or outdated data.
- CTC delegates most of its responsibility to Caltrans for administering the fund. It would not be appropriate for Caltrans to determine a project's priority since it can also be a lead agency for a project that requests an allocation from the program.
- The legislature's Joint Legislative Audit Committee recently requested the Bureau of State Audits (BSA) to review the Grade Separation program. BSA found that it is not the administrative process that is hampering the program – but a significant lack of funding. The current funding level of \$15 million annually has not been updated by the Legislature since 1975.
- The CPUC has a well established process for developing the priority list of projects that provides an opportunity for all interested parties to bring issues before the Commission, including the criteria which is used to rank the projects.
- CTC/Caltrans does not have the technical staff, data or quasi-judicial process that the CPUC does - all are critical components to the development of the list.

PROGRAM BACKGROUND:

- Section 190 of the Streets and Highways Code requires the State's annual budget to include \$15 million for funding these grade separation projects. Section 2450 et seq. of the Code requires the CPUC to establish the prioritization listing and establishes the procedure for administering these funds, and Section 2453 gives the California Transportation Commission (CTC) responsibility for allocating (distributing) the funds to qualified projects.

¹ “Prior to July 1 of each year, commencing with 1974, the Public Utilities Commission shall establish a list, in order of priority, of projects which the commission determines to be most urgently in need of separation or alteration. Such priority list shall be determined on the basis of criteria established by the Public Utilities Commission. Where a project involves the relocation of railroad tracks or highways and the closure of grade crossings, the Public Utilities Commission shall indicate on the priority list which of the grade crossings eliminated would have been considered urgently in need of a grade separation.” (Cal. Streets & Highway Code § 2452)

- The \$15 million program continues to provide a specific source of funding focused on grade separation projects.
- S&H Code 2452 requires the Commission by July 1 of each year to establish the priority list for projects and furnish it to the CTC for use in the fiscal year beginning on that date. The Commission's procedure is to open a proceeding every two years to accept and evaluate nominations and establish the priority list. The list for the second year of the process is established by deleting those projects for which funds were actually allocated in the first year. The Commission adopts the revised list by final decision in the second year of the proceeding, and begins the nominating cycle again the following year by instituting a new proceeding.
- For example, the Commission opened the current Order Instituting Investigation (I.07-07006) in July 2007, with nominations due October 19, 2007. 119 nominations were received, which were then analyzed and ranked. Hearings to examine the nominations are scheduled for March 2008, with the Commission's Decision issuing the Priority List due by June 30, 2008.
- California voters approved the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Proposition 1B), which provides \$250 million to improve railroad crossing safety. Of the \$250 million, \$150 million are available for allocation using the process established for the Grade Separation Program. The Proposition 1B Highway-Rail Safety Account Crossing Guidelines are being developed by the CTC with the cooperation of the Commission and the High Speed Rail Authority, and are slated to be adopted in March. The authors of Proposition 1B recognized the Commission's known and well developed open process in developing a priority list and eliminated any duplication in efforts by requiring its use in allocating Bond funds².

² Relevant Proposition 1B language:

(j) (1) Two hundred fifty million dollars (\$250,000,000) shall be deposited in the Highway-Railroad Crossing Safety Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, to the Department of Transportation for the completion of high-priority grade separation and railroad crossing safety improvements. Funds in the account shall be made available for allocation pursuant to the process established in Chapter 10 (commencing with Section 2450) of Division 3 of the Streets and Highways Code, except that a dollar for dollar match of nonstate funds shall be provided for each project, and the limitation on maximum project cost in subdivision (g) of Section 2454 of the Streets and Highways Code shall not be applicable to projects funded with these funds.

LEGISLATIVE HISTORY:

AB 1853 (2006) would have required the CPUC to account for emergency vehicle blocking delays when calculating a project's ranking on the grade separation priority list. Author held her bill at the CPUC's request, and introduced ACR 151 instead.

ACR 151 (Res. Ch. 133, 2006) requested that the CPUC revise its prioritization formula for grade separation projects to include a factor for blocking delays that disproportionately affect emergency vehicles. The CPUC has already received comments from interested parties on this proposed change and will consider implementing the change in the Order Instituting Investigation set to open in July 2007.

FISCAL IMPACT:

Unknown.

STATUS:

AB 1845 is awaiting policy committee assignment by the Assembly Rules Committee.

SUPPORT/OPPOSITION:

None on file.

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Date: March 6, 2008

BILL LANGUAGE:

BILL NUMBER: AB 1845 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Members Duvall and Horton
(Coauthor: Assembly Member Garrick)

JANUARY 28, 2008

An act relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1845, as introduced, Duvall. Railroad-highway grade separations.

Existing law provides for the Department of Transportation to include \$15,000,000 in its annual proposed budget for highway-railroad grade separation projects. Existing law requires the Public Utilities Commission to establish an annual priority list for expenditure of these funds, which are allocated to specific projects by the California Transportation Commission. Existing law, pursuant to Proposition 1B, approved by the voters at the November 7, 2006 general election, provides for the allocation of \$250,000,000 in general obligation bond funds to grade separation projects. It requires \$150,000,000 of these funds to be available pursuant to the above-described priority list process, with certain exceptions, and the remaining \$100,000,000 to be available for allocation by the California Transportation Commission to projects that are not part of that process.

This bill would state the intent of the Legislature to transfer the responsibility for developing the priority list for the annual \$15,000,000 grade separation program from the Public Utilities Commission to the California Transportation Commission upon completion of the expenditure of the \$150,000,000 in Proposition 1B general obligation bond funds that are to be allocated pursuant to the priority list process.

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

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

SECTION 1. It is the intent of the Legislature to transfer the responsibility for the development of the priority list for the Section 190 grade separation program from the Public Utilities Commission to the California Transportation Commission effective with the completion of the expenditure of the one hundred fifty million dollars (\$150,000,000) in Proposition 1B general obligation bond funds made available pursuant to paragraph (1) of subdivision (j) of Section 8879.23 of the Government Code.