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 660 (Galgiani) – Railroad-highway grade separations.**
As amended: January 24, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would streamline the current grade separation program by removing obsolete code sections and rarely used allocation categories.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Cleaning up the grade separation program's governing code sections will simplify the program for applicants and focus limited funds on existing crossings in need of separation.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (OGA/CPSD):

- The Commission has concluded in the past that the overriding problem with the grade separation program is a lack of funding. The existing annual allocation of $15 million from the State Highway Account was established over 25 years ago and is woefully inadequate to provide meaningful financial assistance to local entities wishing to grade separate a railroad crossing. Increases in the cost of land acquisition (particularly in urban areas) and construction have resulted in the fixed allocation funding fewer projects over time.

- In the current budget climate, increasing funding for the grade separation program is improbable. However, streamlining the program through modest code clean-up can help Caltrans more effectively allocate the transportation bond funds dedicated to grade separation projects.

- This bill would eliminate from program eligibility projects that remove or relocate highways or tracks so as to eliminate grade crossings.
    - By eliminating this option, which has only had one such qualification in the last sixteen years, some confusion is removed as to what projects qualify. Also, it concentrates the program on building new grade separations and rehabilitating existing grade separations.

  [S&H 2450(b)(3), last sentence of 2452, and 2454(e)]

- This bill would eliminate from program eligibility proposed grade crossings.
    - With such limited funding, the program should be focused on eliminating existing crossings, not future ones.

  [S&H 2450(b)(2) and 2454(b)]

- This bill would eliminate the requirement that a project be in existence for at least 10 years before it can receive an allocation in excess of 50% of project's cost.
    - This requirement makes an otherwise eligible crossing ineligible until the arbitrary 10 year period elapses.
    - Circumstances can change dramatically in less than 10 years, which may not be foreseeable in the planning process. The prioritization process should stand on its own. The objective data and formula evaluation process provides a prioritization of projects that takes all relevant criteria into account.

  [S&H 2454(c)]

- This bill would eliminate the requirement that a city or county passenger rail service must contribute 20% of the project's cost.
    - This requirement poses an inappropriate stumbling block to local governments if Metrolink or Caltrain cannot contribute 20% of the cost. What does it matter which local entities provide what percentage of the funds as long as the total necessary funding is available to secure the state funding.

  [S&H 2454(f)]

- This bill would eliminate the option of ranking a project affecting Amtrak higher on the priority list if Amtrak contributed an amount equal to one third of the project's cost.
    - Not only is Amtrak funding of a grade separation project uncertain and unreliable, but it has never happened in the recollection of Commission staff.

  [S&H 2454.5]

PROGRAM BACKGROUND:

- The optimal safety improvement for a highway-rail crossing is the complete separation of the railroad tracks from the highway. Although costly, a grade separation maximizes safety by eliminating train-vehicle collisions and reducing highway congestion and delay.

- To help local agencies with the high cost of separating grade crossings, the legislature introduced the Grade Separation Program in 1957, with an original funding level of $5 million. Currently, and since 1974, Section 190 of the S&H Code requires the State's annual budget to include $15 million for funding these projects.

- Section 2450 et seq. of the Streets & Highway (S&H) Code sets out the procedure for allocating and administering these funds. S&H Code Section 2452 requires the Public Utilities Commission, by July 1 of each year, to establish the priority list for projects most urgently in need of separation or alteration and furnish it to the California Transportation Commission (CTC) for use in the upcoming fiscal year. Section 2453 gives the CTC responsibility for allocating the funds to qualified projects from the prioritization list that also meet the other Caltrans requirements for an allocation.

- The ranking on the priority list does not guarantee that the project will be funded by Section 190. The proponent must provide Department of Transportation (Caltrans) prescribed documentation that the project is ready to proceed by no later than by April 1 of each year. Required documentation includes agreements with the affected railroad, (e.g., evidence that the railroad will contribute 10% of the project cost), environmental documents, and certification by the local governing body that sufficient local funds are available to complete the project, etc. (Title 21 C.C.R. § 1554.)
- In recent years, local governments have consistently failed to complete the required documentation by Caltrans' April 1 deadline. For example, no new projects were funded by the Section 190 program in the 2005-06 FY because local governments did not submit the necessary documentation prior to the April 1, 2005 deadline.
- Furthermore, in prior years, projects ranking as low as number 52 received funding because projects ranking higher on the priority list were not ready to proceed by the April 1 deadline. Unfortunately, even though Caltrans may allocate funds for a project, unless the local government is prepared to proceed to construction within the contract period, the funds not used are automatically reverted back to the Section 190 program account.

LEGISLATIVE HISTORY:

AB 357 (1999) was sponsored by the CPUC and would have increased the annual appropriation for grade separation projects from $15 million to $60 million. Failed to pass the Senate Transportation Committee.

AB 453 (c. 298, 2005) provided on additional year to local agencies to complete state-funded grade separation projects.

AB 1785 (2006) would have increased the annual budget allocation for rail/highway grade separation projects from $15 million to $70 million annually. Held on suspense in Senate Appropriations Committee.

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.

AB 633 (2007) would have required the CPUC, jointly with Caltrans, to issue a report to the Legislature by September 1, 2008, evaluating the grade separation program and recommending improvements to the program, including a hardship application. Author held her bill at the CPUC's request due to the pending State Auditor's report.

FISCAL IMPACT:

None.

STATUS:

AB 660 passed the Assembly 74-2, and is now awaiting hearing in the Senate Transportation Committee.

SUPPORT/OPPOSITION:

Support (as of 1/14/08): American Federation of State, County and Municipal Employees (AFL-CIO); California State Association of Counties (Support with amendments); City of Merced; Merced County; and Southern California Contractor Association.

Opposition (as of 1/14/08): None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 660 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JANUARY 24, 2008
AMENDED IN ASSEMBLY JANUARY 17, 2008
AMENDED IN ASSEMBLY JANUARY 7, 2008
AMENDED IN ASSEMBLY APRIL 10, 2007

INTRODUCED BY Assembly Member Galgiani

FEBRUARY 21, 2007

An act to amend Sections 190, 191, 2450, 2452, 2454, 2458, and 2460.5 of, and to repeal Sections 2454.5 and 2460.7 of, the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 660, as amended, Galgiani. 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 may be allocated by the California Transportation Commission for various kinds of projects, including alteration of existing grade separations, construction of new grade separations for existing or proposed grade crossings, and removal or relocation of highways or railroad tracks to eliminate existing grade crossings. Existing law provides that allocations from these funds may not exceed 80% of project costs, and *generally* limits the maximum total allocation amount for a single project to $5,000,000 unless there is specific legislative authorization, with certain exceptions. Existing law requires that an amount equal to a portion of the funds received by cities and counties for grade separation projects shall be deducted by the Controller from apportionments to those cities and counties of specified fuel tax revenues.

This bill would revise the program to delete funding eligibility for a grade separation at a proposed new grade crossing or for removal or relocation of highways or railroad tracks to eliminate existing grade crossings. The bill would provide for a maximum allocation of 80% of project costs for all projects funded but would modify the provisions limiting the maximum amount that may be allocated to a single project to $5,000,000 ~~in any fiscal year~~ , unless there is specific legislative authorization ~~, with a cumulative limit for a single project of $20,000,000~~ . The bill would also modify the calculation of the amount of funds deducted from the apportionments of the fuel tax revenues, delete provisions requiring the reduction of cost to a party to a grade separation project when the National Railroad Passenger Corporation (Amtrak) contributes towards a specified amount

of the project, and delete provisions authorizing a local agency to construct a grade separation project, and retain eligibility for subsequent project priority lists, prior to the time that the project reaches a high enough priority for funding.

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 190 of the Streets and Highways Code is amended to read:

190. Each annual proposed budget prepared pursuant to Section 165 shall include the sum of fifteen million dollars ($15,000,000), which sum may include federal funds available for grade separation projects, for allocations to grade separation projects, in accordance with Chapter 10 (commencing with Section 2450) of Division 3.

SEC. 2. Section 191 of the Streets and Highways Code is amended to read:

191. Prior to each July 15, the department shall prepare and forward to the Controller a report identifying the amounts to be deducted from the allocations under Sections 2104 and 2107 as provided in Sections 2104.1 and 2107.6. The amounts reported shall be the amount of funds allocated to cities for grade separation projects included in allocations to cities made pursuant to Chapter 10 (commencing with Section 2450) of Division 3 in the preceding fiscal year and the amount of funds allocated to counties for grade separation projects included in allocations to counties made pursuant to Chapter 10 (commencing with Section 2450) of Division 3 in the preceding fiscal year.

SEC. 3. Section 2450 of the Streets and Highways Code is amended to read:

2450. For purposes of this chapter:

(a) "Grade separation" means the structure which actually separates the vehicular roadway from the railroad tracks.

(b) "Project" means the grade separation and all approaches, ramps, connections, drainage, and other construction required to make the grade separation operable and to effect the separation of grades. A grade separation project may include provision for separation of nonmotorized traffic from the vehicular roadway and the railroad tracks. If a separation of nonmotorized traffic is not to be included in a project, there shall be an affirmative finding that the separation of nonmotorized traffic is not in the public interest. On any project where there is only one railroad track in existence, the project shall be built so as to provide for expansion to two tracks when the Director of Transportation determines that the project is on an existing or potential major railroad passenger corridor. The project may consist of:

(1) The alteration or reconstruction of existing grade separations.

(2) The construction of new grade separations to eliminate existing grade crossings.

(c) "Highway" means city street, a county highway, or a state highway which is not a freeway as defined in Section 257.

(d) "Railroad" means a railroad corporation.

SEC. 4. Section 2452 of the Streets and Highways Code is amended to read:

2452. Prior to July 1 of each year, the Public Utilities Commission shall establish a list, in order of priority, of projects that the commission determines to be most urgently in need of separation or alteration. The priority list shall be determined on the basis of criteria established by the Public Utilities Commission.

SEC. 5. 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) On projects that eliminate an existing crossing, or alter or reconstruct an existing grade separation, no allocation shall be made unless the railroad agrees to contribute 10 percent of the cost of the project.

(c) (1) Notwithstanding subdivisions (a) and (b), the total of these allocations for a single project shall not exceed five million dollars ($5,000,000) ~~in any one fiscal year~~ without specific legislative authorization. Cumulative allocations to a single project ~~shall be limited to twenty million dollars ($20,000,000) and shall~~ *shall* not exceed 80 percent of the cost to construct the project.

(2) Notwithstanding paragraph (1), the California Transportation Commission may allocate up to fifteen million dollars ($15,000,000) ~~in any one fiscal year~~ to a single project if that project is the highest ranking project on the priority list established by the Public Utilities Commission pursuant to Section 2452.

(d) (1) Notwithstanding subdivisions (a) to (c), 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 (A) is included in the Public Utilities Commission's priority list of projects scheduled to be funded, (B) eliminates the need for future related grade separation projects, (C) 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 (D) 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 (c) for a single project.

(2) 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. An agency that 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. However, if funds are available for allocation, as determined by the Department of Transportation, an agency may be eligible for an allocation for another project.

(e) Notwithstanding any of the provisions of this section or any

other provision of law, when the state or a 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.

SEC. 6. Section 2454.5 of the Streets and Highways Code is repealed.

SEC. 7. Section 2458 of the Streets and Highways Code is amended to read:

2458. 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 those 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 those 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 that is not reverted as set forth in this section. The department shall determine, with the local agency, as to the time of repayment.

SEC. 8. Section 2460.5 of the Streets and Highways Code is amended to read:

2460.5. From funds remaining after allocations for projects higher on the priority list, the commission shall offer to allocate the remaining funds for the next eligible project on the priority list, even though the amount of the remaining funds is less than the amount the local agency is entitled to for that project.

The commission, in the next fiscal year, shall allocate to the local agency an additional amount equal to the difference between the amount the local agency was eligible to receive and the amount of the reduced allocation.

The total of the amount of allocations for a single project, including, but not limited to, any allocation pursuant to this section, shall not exceed the amount prescribed by subdivision (c) of Section 2454 without specific legislative authorization.

SEC. 9. Section 2460.7 of the Streets and Highways Code is repealed.