

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 9, 2008

To: The Commission
(Meeting of May 15, 2008)

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

Subject: **AB 2195 (Brownley) – Rail transit.**
As amended April 2, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would make public hearings at the California Public Utilities Commission (Commission) discretionary with respect to the construction of highway-rail crossings of new public guideway transit system lines.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- There is no specific identified deficiency that the bill is addressing. The available bill background information does not state what problems the author is attempting to resolve with the introduction of this bill.
- Under its authority under Public Utilities Code (PU Code) § 99152 and 49 C.F.R. Part 659, the Commission has enacted specialized rules, expertise and enforcement provisions in transit oversight such as General Order 164-D, employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Consumer Protection and Safety Division (CPSD):

- The bill would permit the Commission to issue orders concerning the safety of public transit guideway crossings without public hearings in contravention of existing Public Utilities statutes and existing Commission procedures.
- Constitutional origin of the Commission
 - “By direct grant from the Constitution, the Commission was empowered to prescribe uniform systems of accounts and fix rates for railroads “and other transportation companies”, examine records, hear and determine complaints, issue subpoenas, and take testimony and punish for contempt...Legislative and judicial functions have been united in a single agency” (Roderick B. Cassidy, Public Utility Regulation in California, Commentary to the Public Utilities Code, 1954, pp. 2-3.) Certain of the Commission’s powers are derived by direct grant from the Constitution which created it.¹ The Legislature is without power, either by silence or by direct enactment, to modify, curtail, or abridge the constitutional grant of power.² But it may enact legislation to facilitate the exercise of those powers. “Broadly speaking, the Commission’s many and varied powers and duties relate to the fixing of rates and supervision of service, including matters involving public safety....” (Public Utility Regulation in California, supra at p. 5.)
- Transportation Responsibilities of the Commission
 - Public transit guideway systems are “common carriers” under Cal. Pub. Util. Code § 211. Common carriers are “public utilities” under Cal. Pub. Util. Code § 216. “Under the Code public utilities are required to furnish such...facilities as are necessary to promote the safety, health, comfort, and convenience of patrons, employees, and the public. (Cal. Pub. Util. Code § 451.)...The Commission shall determine the character of facilities necessary to meet public requirements (Cal. Pub. Util. Code § 730), may require changes or additions in plant and equipment, joint use of facilities, installation of safety devices, and may fix reasonable standards, practices, measurements, or service. (Cal. Pub. Util. Code § 761-772.)” (Public Utility Regulation in California, supra at p. 11.) The safety of rail crossings is an area of statewide concern and under the exclusive control of the Commission.³

¹ For example, rates of intrastate carriers by air are subject to regulation, although the Public Utilities Act contains no specific reference to airline carriers. Such carriers are “transportation companies” under the Constitution. *People v. Western Air Lines*, (1954) 42 Cal.2d 621.

² *Western Ass’n v. Railroad Comm.*, (1916) 173 Cal. 802, 1 A.L.R. 1455.

³ *Northwestern Pac. R.R. Co. v. Superior Court*, (1949) 34 Cal.2d 454, 458, and *City of San Mateo v. Railroad Com.* (1937) 9 Cal.2d 1, 9-10. See also: “Under [Cal. Pub. Util. Code §§] 1201 and 1202 authorization is required for the creation of any grade crossing of a railroad and any public road or street. The Commission has exclusive power to prescribe terms of

- Hearings and Procedures at the Commission
 - “Formal proceedings are governed by rules of practice and procedure adopted by the Commission. (Cal. Pub. Util. Code § 1701.)⁴ Except for the filing of procedural rules, the Administrative Procedure Act does not apply to the Commission....⁵” (Public Utility Regulation in California, supra at p. 18.) “
 - All hearings are governed by Cal. Util. Code §§ 1701 et seq. “The commission, consistent with due process, public policy, and statutory requirements, shall determine whether a proceeding requires a hearing. The commission shall determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The commission's decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision.” (Cal. Util. Code § 1701.1) The consolidated proceeding for the Exposition Authority’s crossing applications, A.07-01-017 et seq., has been categorized by the Commission as a “ratesetting” proceeding. (Scoping Memo & Ruling, Oct. 16, 2007) “If the commission pursuant to Section 1701.1 has determined that a “ratesetting” case requires a hearing, the procedures prescribed by this section shall be applicable.” (Cal. Util. Code § 1701.3) The Commission may also determine that a hearing is required in a “quasi-legislative” proceeding. (Cal. Util. Code § 1701.4)
 - “The Code requires a hearing on certain kinds of applications. Public hearings are required in contested applications [whether categorized as “quasi-legislative,” “adjudicatory,” or “ratesetting”] and in those proceedings in which a hearing appears warranted before action is taken. (See: Cal. Pub. Util. Code § 1701.1) Hearings are a matter of right in complaint cases and Commission investigations.” (Public Utility Regulation in California, supra at p. 19; see also: Cal. Util. Code § 705.) Hearings are also required in proceedings based on a motion of the Commission. (Cal. Util. Code § 705) Hearings are also required in proceedings in which the Commission issues a stay or order of suspension. (Cal. Util. Code § 1762)
- Conclusion Concerning Transit Crossing Hearings at the Commission
 - The Commission has safety oversight over public transit guideway systems under 49 C.F.R. Parts 659 et seq. (as the State Safety Oversight Agency to the Federal Transit Administration, U.S.D.O.T., designated by the Governor of the

installation, use, and protection of crossings; to relocate or abolish crossings by physical closing; to require a separation of grades, and to apportion costs between railroads, the state, and political subdivisions [footnote omitted].” (Public Utility Regulation in California, supra at p. 15.)

⁴ California Code of Regulations, Title 20.

⁵ Cal. Gov. Code §§ 11351, 11501.

State of California) and Cal. Util. Code § 99152. The Commission may establish a rule to fix safety rules, practices, equipment, appliances, facilities, or construction in which the public transit guideway system's rules, practices, equipment, appliances, facilities, or construction have been determined to be inadequate or unsafe—but only after a hearing. (Cal. Util. Code § 761) The Commission may order additions, extensions, repairs, or improvements to, or changes in, the existing...equipment, apparatus, facilities, or other physical property of any public utility...to promote security to the public or the utility's employees—after a hearing. (Cal. Util. Code § 762) The Commission may require the public utility to construct, maintain, and operate its line...system, equipment, apparatus, tracks, and premises in a manner to promote and safeguard the health and safety of its employees, passengers, customers, and the public—after a hearing. (Cal. Util. Code § 768)

PROGRAM BACKGROUND:

- In 1992, Governor Wilson designated the Commission as the agency responsible for ensuring that California complies with Section 3029 of the Intermodal Surface Transportation Efficiency Act of 1991, which later was referred to as the designated State Safety Oversight Agency as required by Title Part 49 of the Code of Federal Regulations (CFR), Part 659.
- The Commission has a well developed state safety oversight program standard, as required by Title 49 CFR 659. The program encompasses several Commission General Orders, transit system specific orders, and Rail Transit Safety Section Procedures.

LEGISLATIVE HISTORY:

AB 1010 (Oropeza, 2005) would have transferred transit safety authority from the Commission to the Department of Transportation. AB 1010 died in the Assembly Conference Committee.

FISCAL IMPACT:

None.

STATUS:

AB 2195 is pending hearing in the Assembly Appropriations Committee.

SUPPORT/OPPOSITION:

None on file.

Date: May 9, 2008

BILL LANGUAGE:

BILL NUMBER: AB 2195 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 2, 2008

INTRODUCED BY Assembly Member Brownley

FEBRUARY 20, 2008

~~An act to amend Section 99152 of, to add Section 99152.1 to, and to repeal Section 778 of, the Public Utilities Code, relating to transportation.~~ An act to add Section 1701.7 to the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2195, as amended, Brownley. Rail transit.

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 provides that any public transit guideway planned, acquired, or constructed after January 1, 1979, is subject to the regulations of the ~~Public Utilities Commission~~ commission relative to safety appliances and procedures. Existing law authorizes the commission to determine whether a proceeding requires a hearing and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases.

This bill would ~~transfer that responsibility to the Department of Transportation on January 1, 2010~~ authorize the commission to approve a public transit guideway, or to otherwise carry out its regulatory and oversight duties over public transit guideways, without a hearing .

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. The Legislature finds and declares all of the following:

(a) Rail fixed guideway systems (light-rail transit systems) are an integral part of public transit in California. As California's population grows to a projected 39,000,000 by 2010 and nearly 60,000,000 by 2050, light-rail transit systems will be expected to accommodate substantial growth in ridership.

(b) Demand for greater mobility, now and in the future, necessitates that transit agencies utilize all necessary and

appropriate tools to expand service and move people within and throughout California more efficiently and effectively.

(c) With almost 170,000 miles of publicly maintained roadway in the state as of 2005, expansion of light-rail transit systems will inevitably result in the intersection of railways and highways, whether at-grade or grade-separated.

(d) The California Public Utilities Commission (CPUC) has shown unyielding dedication to ensuring public safety at highway-rail grade crossings, particularly in the design and construction thereof.

(e) Numerous opportunities for public participation in overall project planning exist within the California Environmental Quality Act (CEQA) process, and therefore public comment and protest heard by the CPUC with respect to proposed highway-rail grade crossing projects should be limited to valid public safety concerns related to design and construction.

SEC. 2. Section 1701.7 is added to the Public Utilities Code , to read:

1701.7. The commission may approve a public transit guideway, or otherwise carry out its regulatory and oversight duties pursuant to Section 99152, without a hearing pursuant to this chapter.

~~—SECTION 1.— Section 778 of the Public Utilities Code is repealed.~~

~~—SEC. 2.— Section 99152 of the Public Utilities Code is amended to read:~~

~~—99152. Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures. However, on and after January 1, 2010, the department shall succeed to the responsibilities of the commission in that regard.~~

~~—The commission, until January 1, 2010, and the department, on and after that date, shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.~~

~~—The commission, until January 1, 2010, and the department, on and after that date, shall develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways. Existing industry standards shall be used where applicable.~~

~~—The commission, until January 1, 2010, and the department, on and after that date, shall enforce the provisions of this section.~~

~~—SEC. 3.— Section 99152.1 is added to the Public Utilities Code, to read:~~

~~—99152.1. The department shall adopt rules and regulations, which shall become effective January 1, 2010, relating to safety appliances and procedures for rail public transit services operated at grade and in vehicular traffic. The rules and regulations shall include, but not be limited to, provisions on grade crossing protection devices, headways, and maximum operating speeds with respect to the speed and volume of vehicular traffic within which the transit service is operated.~~