

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 29, 2009

To: The Commission
(Meeting of May 7, 2009)

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

Subject: **SB 409 (Ducheny) - Department of Railroads.**
As introduced February 26, 2009

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would create the Department of Railroads in the Business, Transportation and Housing Agency (BT&H), and would transfer to that Department responsibilities for various state railroad programs currently administered by the Department of Transportation (Caltrans) and the California Public Utilities Commission (CPUC or Commission), as well as other duties.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC would lose its constitutionally-based jurisdiction over the safety of rail-highway grade crossings on freight rail, inter-city rail, commuter rail and high speed rail systems. The bill does not currently propose the removal of the Commission's jurisdiction over rail-highway grade crossings on light rail transit systems. As written, this bill would remove the CPUC's rail crossing safety programs, but would also likely remove the CPUC's freight and passenger railroad safety and rail transit safety programs.

SUMMARY OF SUGGESTED AMENDMENTS:

CPUC recommends that the bill be amended to remove Section 14661(a)(4), thereby excluding the transfer of any CPUC rail safety functions to BT&H.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

- This bill would relocate all of Rail Crossings Engineering Section's (RCES) heavy freight and passenger rail related rail-highway grade crossing and rail-highway grade separation programs, codified in Chapter 6 (commencing with Section 1201) and Chapter 6.5 (commencing with Section 1231) of Part 1 of Division 1 of the Public Utilities Code, and Sections 190, 191, and 191.5 of, and Chapter 10 (commencing with Section 2450) of Division 3 of, the Streets and Highways Code. These functions would be transferred to a new Department of Railroads in the Business, Transportation & Housing Agency.
- The Commission's rail safety and security programs are housed in its Consumer Protection and Safety Division (CPSD). The CPSD divides its rail safety programs into two branches, the Railroad Operations Safety Branch (ROSB) and the Rail Transit and Crossings Branch (RTCB). The RTCB further divides its programs into two sections, the Rail Transit Safety Section (RTSS) and the Rail Crossings Engineering Section (RCES).
- Rail crossings are a significant and integral component of the rail system that the CPUC regulates. They are a much less significant component of the highway system that BT&H regulates. Rail crossing numbers are small compared to the number of highway intersections subject to BT&H jurisdiction. Shifting rail crossing safety responsibilities to BT&H would relegate grade crossing safety to a lower status. At BT&H, these responsibilities would be housed in an agency whose main objective is to fund and administer contracts to improve the state's highway system.
- The CPUC has 98 years of experience in ensuring the safety of the entire rail system. Current safety professional practice requires system safety analyses and an understanding of the importance of an organization's safety culture. Removing a key part of the rail system, rail crossings, from CPUC regulation will lead to a disintegration of the system components, and reduce rail safety. Rail crossing safety is critical to the efficient operations of all rail systems, but most particularly to the freight, inner-city, commuter and high-speed rail systems impacted by this proposed legislation. These are the trains that are heavy, operate at high speeds, have long stopping distances, carry our families and friends, and carry heavy freight and hazardous materials frequently on shared tracks. Arguments relative to grade crossing safety always come down to cost, and rail crossing safety is then best served by an independent safety oversight agency.
- Transferring CPUC rail safety responsibilities would require major legislative and legal efforts, including amending or revising the California Constitution. The California Constitution grants the Commission the authority to regulate passenger and freight rail and rail transit safety in the state, as these are operated by entities that fall under the constitutional definition of public utilities. Neither the Governor nor the Legislature can legally remove these constitutionally-granted functions, which

cannot be transferred to another entity without changes to the California Constitution, by amendment or possibly, revision.

- Housing both rail service provision and rail safety oversight responsibilities in the same agency poses potential conflict of interest problems. The proposed Department of Railroads would presumably be responsible for providing the majority of Amtrak and any future High Speed Rail services, and the statewide promotion, planning, scheduling, and financing of rail infrastructure construction. There are inherent potential conflicts between the regulation of the safety of an organization's services, and the promotion and/or provision of those services. As has occurred with other agencies, safety could be compromised in favor of on-time scheduling or other service provision requirements. The CPUC does not have these or other institutional conflicts of interest. Its rail programs focus solely on safety, and the Commission does not fund, promote, set service standards, schedule rail movements, or provide rail services. The regulation of other utilities does not conflict, overlap, or need coordination with its rail safety mission.
- The CPUC has the authority and the organizational infrastructure necessary to improve rail crossing safety. The CPUC has inspective authority, investigative powers, rulemaking authority and enforcement authority, all contained in an open process that encourages public participation and provides a framework for objective decisions made by an independent Commission.
- CPUC takes no position regarding the transfer of functions from other agencies to the new Department.

PROGRAM BACKGROUND:

- Rail safety for heavy rail and rail transit in California is regulated through a combination of state and federal authorities. The main federal agencies regulating the safety of railway systems are within the U.S. Department of Transportation. The Federal Railroad Administration (FRA) regulates freight rail, high speed rail, inter-city rail and commuter rail systems, and the Federal Transit Administration (FTA) regulates light-rail transit systems.
- State regulation of heavy-rail freight and passenger systems is largely preempted by federal regulation. However, the CPUC participates in the State Rail Safety Participation Program of the FRA. This program allows state inspectors to act as agents of the FRA in the enforcement of federal regulations within California. The CPUC has adopted some safety regulations addressing areas not covered by federal regulations, which it enforces exclusively. The FTA is primarily a funding agency and has only established minimum system safety and planning standards for rail transit agencies that receive FTA formula funds or grants for new projects. The FTA delegates safety and security oversight to state agencies. The CPUC is the designated state oversight agency in California. The CPUC's safety and security

oversight responsibility includes not only oversight of operations but also safety certification of new rail transit starts, extensions, and major projects. The CPUC exercises its safety regulatory authority by issuing rules expressed in General Orders and Resolutions; by conducting inspections and investigations; and by undertaking administrative, civil, and/or criminal enforcement proceedings.

- The CPUC's Rail Crossings Engineering Section (RCES) provides safety oversight for the approximately 9,000 heavy rail public crossings and 4,000 heavy rail private crossings in the state, which includes the authority to determine crossing design, location, terms of installation, operation, maintenance, and warning devices. RCES crossings-related responsibilities include:
 - Performing safety inspections of crossings
 - Preparing recommendations to enhance safety at specific crossings
 - Reviewing and processing applications for Commission authority to construct new or to alter existing crossings
 - Reviewing and responding to public complaints (e.g., rough or unsafe crossings, noise issues)
 - Developing Commission policies to enhance safety of all crossings in the state
 - Reviewing environmental impact documents for potential project-related effects on the safety of crossings in or near the project area (Rail Corridor Safety Improvement Program)
 - Participating in state and national committees that establish standards and recommend rule changes to improve crossing safety
 - Analyzing new crossing safety technology
 - Administering and maintaining the Commission's Rail Crossing Inventory Database and the Commission's Rail Accidents Database
 - Administering the Rail Transit and Crossings Branch's Filings Database
- Other RCES responsibilities include:
 - Participating in the Section 130 program, in which RCES identifies and evaluates public crossings that are candidates for federal funding to eliminate hazards at crossings, and submits detailed engineering recommendations to Caltrans, which then issues service contracts to railroads and local roadway agencies to implement the improvements.
 - Participating in the Section 190 program, which evaluates crossings nominated by local roadway agencies and prioritizes those crossings to establish a ranking of those most in need of grade separation. Ranked projects are then eligible for

funds, allocated by Caltrans, to establish grade separations to replace the at-grade crossing.

- Evaluating all notices of the establishment or continuation of federal Quiet Zones, and providing written comments within 60 days. Quiet Zones are areas meeting certain criteria, designated by local governments, in which locomotives are not required to sound their horns on approaching crossings. The evaluation requires research and verification of data submitted under federal rule, and the processing of applications to the Commission for authority to alter the warning devices at such crossings.
- Participating in the Grade Crossing Maintenance Fund. Railroads are responsible for maintaining automatic-grade crossing warning devices. However, crossing agreements typically require maintenance costs be shared between railroads and local roadway authorities. The Automatic-Grade Crossing Warning Device Maintenance Fund Program is a state-funded program established by the Legislature in 1965 to pay the cities' and counties' share of the cost of maintaining highway-rail crossing automatic warning devices installed or upgraded after October 1, 1965. Public Utilities Code Section 1231.1 requires Caltrans to set aside, in its annual budget, a minimum allocation of \$1 million into the Grade Crossing Maintenance Fund Program. Those funds are then allocated to the CPUC for the purpose of paying to the railroads the cities and counties share of maintaining these devices. The railroads perform required maintenance during a given calendar year, and then file a claim with the CPUC for reimbursement of the local government's share of the maintenance costs. CPUC verifies that the claims are valid, confirms the status of the crossing and its eligibility under the program, and forwards valid claims to Caltrans for payment. These claims are paid from the allocation made in the Caltrans budget for this purpose.
- Not all of the RCES responsibilities listed above would be relocated to the Department of Railroads. For example, its roles in administering databases and reviewing environmental impact documents would not be affected. However, since crossings are an integral part of the railroad system, the state's railroad safety role would be diminished through disintegration of the system components. Current safety professional practice requires system safety analyses, which would be difficult to maintain.
- Current programs that would not be transferred, may not continue if CPUC crossing functions were transferred. For example, the Rail Corridor Safety Improvement Program, involving review and commenting on all CEQA documents where rail crossings and rail corridors may be impacted. Knowledge of both the current and potential future conditions of areas and crossings provides a unique and valuable perspective to identify and recommend appropriate safety mitigations at each location in the state.

LEGISLATIVE HISTORY:

SB 409 is very similar to the June 2008 version of SB 53 (Ducheny). When SB 53 was amended in 2008, provisions that would have created the Department of Railroads were removed from the bill.

SB 53 (Chapter 612, Statutes of 2008) was eventually enacted and required that the California Research Bureau (CRB), in consultation with various state agencies and offices, analyze and make recommendations regarding a range of railroad-related issues. These include the benefits and liabilities of establishing one accountable state commission or department responsible for the oversight, regulation, identification, and prioritization of rail transportation and safety programs and projects, including, but not limited to, rail grade crossings and separations, rail equipment procurement and passenger service, the provision of traditional passenger rail and high-speed rail service, and rail safety regulation and oversight. CPUC submitted its analysis and recommendations to the CRB on March 20, 2009. CRB's report is due May 1, 2009.

STATUS:

SB 409 is awaiting hearing in the Senate Transportation and Housing Committee.

SUPPORT/OPPOSITION:

Support: None on file.

Opposition: California Public Utilities Commission based on its official oppose position to SB 53 last year.

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Date: April 29, 2009

BILL LANGUAGE:

BILL NUMBER: SB 409 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Ducheny

FEBRUARY 26, 2009

An act to add Part 5.1 (commencing with Section 14460) to Division 3 of Title 2 of the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 409, as introduced, Ducheny. Department of Railroads.

Existing law creates the Department of Transportation in the Business, Transportation and Housing Agency, with various powers and duties relative to the intercity rail passenger program, among other transportation programs. Existing law creates the High-Speed Rail Authority, with various powers and duties relative to development and implementation of a high-speed passenger train system. Existing law creates the Public Utilities Commission, with various powers and duties relative to railroads, among other responsibilities.

This bill would create the Department of Railroads in the Business, Transportation and Housing Agency, and create the positions of director and deputy director within the department, to be appointed by the Governor, as specified. The bill would transfer to the department responsibility for various state railroad programs currently administered by the above-referenced agencies. The bill would specify new duties of the department relative to an analysis of the state's freight rail transportation system. The bill would provide that the department shall be the only state agency eligible to apply for and receive grant and loan funds from the federal government for intercity rail, high-speed rail, or freight rail purposes.

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) California has a network of 5,488 miles of Class I railroads and 1,409 miles of shortline and terminal railroads. On an annual basis, 7,578,465 carloads of freight carrying 177,907,810 tons are carried by these railroads. In addition, over 28 million intercity and commuter rail passengers traveled in 2006 on tracks owned by Class I railroads or on tracks owned by public agencies, over which Class I railroads may operate.

(b) Over 47 percent of the containers used in the nation's foreign

trade either enter or leave the United States via the Ports of Long Beach, Los Angeles, and Oakland. The dominance of California's ports is due to (1) the proximity to Asia, (2) the fact that California, with a growing population projected to reach 49 million in 2030, is itself a major consumer market, and (3) because the railroad infrastructure of the state is fully integrated into the national railroad network. As a result of being the nation's port of entry, the number of train miles in the state are increasing, resulting in a greater intensity of use of railroad tracks, the reduction in some cases of average speed, and the potential reduction in the performance of passenger rail services in some corridors.

(c) California is the largest single state market for intercity passenger rail travel in the country, with the three lines being operated under contract to Amtrak carrying 42 percent of the passengers that travel on the trains that Amtrak operates under contract for California and 12 other states. In addition, the three California corridors--the Pacific Surfliner in southern California, the San Joaquins between the Bay Area/Sacramento and the San Joaquin Valley, and the Capitol Corridor between the Bay Area and Sacramento--carry nearly 20 percent of all Amtrak passengers.

(d) The railroad freight industry and the commuter and intercity passenger railroads operating in California employ 15,000 people in the state, with total wages of \$1,042,945,000 in 2005.

(e) California voters have recognized the importance of a passenger rail system, including high-speed rail, for improving mobility, addressing greenhouse gas concerns, and contributing to improvements in air quality.

(f) It is in the public interest for California to create a Department of Railroads to work cooperatively with private firms and public agencies to ensure that the state's railroad infrastructure meets the commercial needs of California, including the interchange of freight between various modes of surface transportation, the provision of reliable passenger services in commuter and intercity corridors, and the deployment of a cost-effective high-speed train system.

SEC. 2. Part 5.1 (commencing with Section 14460) is added to Division 3 of Title 2 of the Government Code, to read:

PART 5.1. DEPARTMENT OF RAILROADS

CHAPTER 1. GENERAL

14460. There is within the Business, Transportation and Housing Agency a Department of Railroads. An undersecretary of the agency shall be assigned to give attention to rail matters.

14460.1. (a) The department is under the control of an executive officer known as the Director of Railroads. The director is appointed by the Governor, subject to confirmation by the Senate, and holds office at the pleasure of the Governor. The annual salary of the director shall be the same as provided for the Director of Transportation pursuant to Chapter 6 (commencing with Section 11550) of Part 1. The director shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and

carry out and effect all purposes vested by law in the department, except as otherwise expressly provided by law.

(b) There shall be within the department the position of Deputy Director of Railroads. The deputy director is appointed by the Governor, upon recommendation of the director, and shall serve at the pleasure of the director. The annual salary shall be fixed by the director in accordance with law. The deputy director shall have the duties that may be assigned to him or her by the director and shall be responsible to the director for the performance of those duties.

(c) As used in this part, the following terms shall have the following meanings:

(1) "Department" means the Department of Railroads.

(2) "Director" means the Director of Railroads.

(3) "Secretary" means the Secretary of Business, Transportation and Housing.

14460.2. For the purpose of administration, the director shall organize the department with the approval of the Governor and the secretary.

14460.3. The department may expend funds appropriated for the administration of laws and programs under the jurisdiction of the department. The expenditure of those funds shall be made in accordance with law in carrying out the work for which the appropriations were made.

CHAPTER 2. POWERS AND DUTIES

14461. (a) The department shall be responsible for all of the following programs:

(1) The intercity rail program and related matters (Sections 14031.6, 14031.7, 14031.8, and 14034 to 14040, inclusive). The department shall assume the duties of the Department of Transportation pursuant to Article 4 (commencing with Section 14060), Article 5 (commencing with Section 14070), Article 5.2 (commencing with Section 14072), Article 5.4 (commencing with Section 14074), and Article 5.6 (commencing with Section 14076) of Chapter 1 of Part 5.

(2) The High-Speed Rail Program (Division 19.5 (commencing with Section 185000) of the Public Utilities Code).

(3) The rail goods movement program (Article 9 (commencing with Section 7700) of Chapter 1 of Division 4 of the Public Utilities Code) and the rail portion of the goods movement programs currently administered by the Department of Transportation's Office of Goods Movement and the Business, Transportation and Housing Agency. In connection with goods movement, the department, at least every two years, shall conduct an analysis of the state's freight rail transportation system that considers its relationship to other modes of transportation and to commerce, assesses system performance, identifies future trends, and recommends system improvements. The director shall ensure that the activities associated with this analysis are coordinated with the freight railroad industry, other sectors of the logistics industry, commuter rail operators, applicable, federal agencies, seaports and airports, regional transportation planning agencies, and other relevant public and private entities. The analysis shall identify those improvements where public funding is appropriate and the sources of public funding. Before preparing the analysis, the department shall develop

and publish for review a set of performance indicators that it will use in the analysis. The performance indicators shall include, but not be limited to, freight rail transportation system connectivity, safety, and capacity within California.

(4) The rail-highway grade crossing and rail-highway grade separation programs (Chapter 6 (commencing with Section 1201) and Chapter 6.5 (commencing with Section 1231) of Part 1 of Division 1 of the Public Utilities Code, and Sections 190, 191, and 191.5 of, and Chapter 10 (commencing with Section 2450) of Division 3 of, the Streets and Highways Code).

(5) Coordination of regional transportation planning efforts throughout the state relative to rail transportation.

(b) Notwithstanding any other provision of law, the department shall succeed to and be vested with all of the duties, powers, purposes, and responsibilities with respect to the programs identified in subdivision (a). Any reference to the Department of Transportation or the Public Utilities Commission with respect to those programs shall be deemed to refer to the department, unless the context otherwise requires.

(c) The secretary shall convene a joint task force, cochaired by the director and Director of Transportation, for the purpose of resolving issues between their two departments relative to overlapping jurisdiction.

14462. (a) The department shall be responsible for developing a proposed budget. Any reference to budgetary duties of the Department of Transportation or the Public Utilities Commission relative to a funding source that supports programs that have been transferred to the department pursuant to Section 14461 shall refer to the department. The Department of Transportation or the Public Utilities Commission shall cooperate with the department to ensure a smooth transition. The Department of Transportation shall further cooperate with the department relative to the programming process for transportation funds that may be allocated to transportation projects under the jurisdiction of either department, including, but not limited to, interregional transportation program funds governed by Section 14526 of this code and paragraph (1) of subdivision (a) of Section 164 of the Streets and Highways Code. Funds allocated under subdivision (f) of Section 99315 of the Public Utilities Code shall be allocated to the department consistent with the department's responsibilities.

(b) The department shall succeed to the responsibilities of the Department of Transportation with respect to general obligation bond funds made available for rail purposes under the Passenger Rail and Clean Air Bond Act of 1990 (Part 11.5 (commencing with Section 99600) of the Public Utilities Code), the Clean Air and Transportation Improvement Act of 1990 (Chapter 17 (commencing with Section 2700) of Division 3 of the Streets and Highways Code), and the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) and Chapter 12.491 (commencing with Section 8879.50) of Division 1 of Title 2 of this code).

(c) The department shall be the only state agency eligible to apply for and receive grant and loan funds from the federal government or other sources for intercity rail, high-speed rail, or freight rail purposes. Responsibility for grants and loans made

available to the state prior to the enactment of this part shall be transferred to the department.

14463. The California Transportation Commission shall continue to be responsible for the programming of transportation capital projects pursuant to Chapter 2 (commencing with Section 14520) of Part 5.3.

14464. The High-Speed Rail Authority shall be a division of the department. The executive director of the authority shall report to the director. The budget for the authority shall be developed by the board of the authority in cooperation with the director.