



ANALYSIS

CALIFORNIA PUBLIC UTILITIES COMMISSION

SB 409 (Ducheny) As Amended May 21, 2009

SUMMARY

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), as well as other duties.

CPUC POSITION AND SUPPORTING ARGUMENTS

OPPOSE. 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 CPUC'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.

CPUC recommends that the bill be amended to remove Section 14461(a)(4), and all references to the CPUC, thereby excluding the transfer of any CPUC rail safety functions to BT&H. If removal of the CPUC from this bill is not possible, then the CPUC recommends that the bill be amended such that the roles and responsibilities of the CPUC and the Department of Railroads are clarified with respect to the Section 130 and Section 190 programs.

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- 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.

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