

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 27, 2009

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

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

Subject: **AB 636 (Jones) Charter-party carriers: busdrivers.
Amended April 13, 2009**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would require the Commission to permanently knowingly revoke the charter-party carrier operating authority of any carrier that knowingly employs a driver to operate a bus, if the driver does not hold the required driver's license or endorsement for that license to drive a bus. A driver found to have operated a bus without the proper license or endorsement would be permanently prohibited from driving a bus. Additionally, the bill would require the California Highway Patrol (CHP) to impound a bus for 30 days if an officer determines that the bus is being driven by a driver who does not possess the appropriate license or endorsement, or certificate.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- The revocation of a carrier's operating authority for knowingly employing an unqualified driver might appear as overly harsh for a first-time offender. However, the tragic Colusa bus accident demonstrates that additional safeguards need to be in place to prevent unqualified drivers from operating buses. This bill would provide significant sanctions for charter-party carriers and their drivers who jeopardize public safety.

SUMMARY OF SUGGESTED AMENDMENTS:

- The Commission supports the direction of this bill. However, the bill should be amended as follows: 1) remove the requirement that the Commission revoke the authority of a carrier found to be operating without a permit (since no permit exists to

revoke) and 2) remove the requirement that a carrier which has its vehicle impounded shall have a right to an expedited hearing by the Commission. These impounded vehicles should be treated the same as vehicles impounded by public agencies. Thus, the CHP which is the impounding agency per Vehicle Code Sections 14602.6(b) and 22852(a), would be the appropriate agency for hearing recourse.

DIVISION ANALYSIS (Consumer Protection & Safety Division):

- This bill was introduced in response to an October 2008 bus accident near Colusa in which 10 passengers (including the bus company owner who was riding as a passenger) were killed and dozens more were injured. Investigation by the CHP disclosed that the driver did not hold the proper driver's license to operate a bus. The company held an active charter-party carrier certificate from the Commission at the time of the accident. Charter-party carriers furnish limousines-for-hire or passenger charter transportation service in motor vehicles. Charter-party carriers do not include vehicles on a set schedule or between fixed termini, taxi cabs, car rentals, or a city bus. Further, charter-party carriers typically provide different sized vehicles to take a scheduled group of people to another location and/or back. The group would usually reserve the vehicle as a group, and would not reserve a "seat" individually.
- The carrier violated the law by permitting an unqualified driver to operate the involved vehicle. Before employing a driver to operate a bus, a charter-party carrier is required to obtain a DMV report of the driver's driving record to verify the driver's license status. Once employed, the driver's name must be entered into the DMV Pull Notice System (a program for monitoring the driving records of carrier drivers).
- Any applicant for a charter-party carrier permit or certificate that will operate a vehicle seating more than 10, including the driver (a "bus" under the Vehicle Code), must undergo and pass a safety inspection by the CHP. Thereafter, the carrier is subject to an annual inspection of its vehicles, maintenance facilities, and records by the CHP. This includes the carrier's record of compliance with the Pull Notice System.
- Under existing law (Public Utilities Code Section 5378.5), the Commission is required to suspend the charter-party carrier permit or certificate of a carrier upon receipt of a written recommendation of suspension from the CHP. The CHP may make such a recommendation when a carrier (1) fails to maintain any vehicle in a safe operating condition or to comply with the Vehicle Code or CHP regulations relative to motor carrier safety, and that failure is either a consistent failure or presents an imminent danger to public safety, or (2) fails to comply with the DMV Pull Notice System. The carrier's authority is reinstated from suspension if a re-inspection by the CHP discloses that the carrier has corrected the violations. The staff administers the suspensions and reinstatements of permits and certificates

under delegated authority from the Commission. The Commission receives no more than 5 or 6 suspension recommendations per year from the CHP.

- It can be a month or more between the time the local CHP inspectors determine that a charter-party carrier should be suspended and when the Commission receives a suspension recommendation from CHP headquarters (which interval includes an opportunity for the carrier to appeal the proposed recommendation with the CHP). The ability of a CHP officer to impound for 30 days a bus being driven by an unqualified driver would provide an immediate partial remedy. The permanent revocation of the charter-party carrier's permit or certificate and the prohibition against the driver ever being authorized to operate a bus in the future would be strong deterrents against violating the law.

PROGRAM BACKGROUND:

- The staff anticipates that it would administer the new provision of law similar to the present suspension program, that is, it would receive from the CHP (through headquarters command) a written statement that a charter-party carrier had knowingly employed an unqualified driver to operate a bus. The staff would then proceed to permanently revoke the carrier's permit or certificate (assuming the Commission delegates this task).
- A possible legal issue is whether a carrier revoked under the bill can reopen under a different legal entity. For example, the principals in a corporation or limited liability company whose permit is revoked might apply for a permit under some other entity. Staff is working with the author to address this issue.

LEGISLATIVE HISTORY:

None

STATUS:

AB 636 is scheduled to be heard in the Assembly Transportation Committee on April 27, 2009.

SUPPORT/OPPOSITION:

Support: California Bus Association
American Federation of State, County and Municipal Employees

Opposition: None on file.

STAFF CONTACTS:

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Date: April 27, 2009

BILL LANGUAGE:

BILL NUMBER: AB 636 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 13, 2009

INTRODUCED BY Assembly Member Jones

FEBRUARY 25, 2009

An act to amend Section 5387 of the Public Utilities Code,
relating to charter-party carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 636, as amended, Jones. Charter-party carriers: busdrivers.

(1) The Passenger Charter-Party Carriers Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission. The act makes it unlawful, among other things, for the owner of a charter-party carrier of passengers to permit the operation of any vehicle upon any public highway for compensation without having obtained from the commission a certificate or permit, as specified, pursuant to the act.

This bill would require the commission to permanently revoke the authority of a charter-party carrier *that operates a bus without having been issued the proper permit from the commission or* that knowingly employs a busdriver who ~~does not have~~ *has not been issued* the required license ~~or endorsement~~ , endorsement, or certificate to drive a bus and would permanently prohibit a person who drives a bus for a charter-party carrier without *having been issued the proper driver's license or endorsement* , endorsement, or certificate from driving a bus of any kind.

The bill would also require an officer of the Department of the California Highway Patrol who stops or inspects a bus of a charter-party carrier *that is operating a bus without having been issued the proper permit from the commission or* that is being driven by a driver ~~who does not have in his or her possession~~ to whom the appropriate license ~~or endorsement~~ , endorsement, or certificate *has not been issued* , to impound the bus.

(2) Under existing law, a violation of the Passenger Charter-Party Carriers Act, or a violation of an order or direction of the commission issued pursuant to the act, is a crime.

Because the provisions of this bill would be a part of the act and because a violation of those provisions or of an order or decision of the commission implementing those provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 5387 of the Public Utilities Code is amended to read:

5387. (a) It is unlawful for the owner of a charter-party carrier of passengers to permit the operation of a vehicle upon a public highway for compensation without (1) having obtained from the commission a certificate or permit pursuant to this chapter, (2) having complied with the vehicle identification requirements of Section 5385, 5385.5, or 5385.6, and (3) having complied with the accident liability protection requirements of Section 5391.

(b) A person who drives a bus for a charter-party carrier without *have been issued* the proper driver's license ~~or~~ , endorsement , or certificate shall be permanently prohibited from driving a bus of any kind, including, but not limited to, a bus, schoolbus, school pupil activity bus, or transit bus, and from receiving a license or endorsement that would permit the driving of any bus.

(c) A charter-party carrier *that operates a bus without having been issued the proper permit from the commission or* that knowingly employs a busdriver who ~~does not have~~ *has not been issued* the required license ~~or~~ , endorsement , or certificate to drive a bus shall have its authority as a charter-party carrier permanently revoked by the commission.

(d) When an officer of the Department of the California Highway Patrol stops or inspects a bus of a charter-party carrier *that is operating a bus without having been issued the proper permit from the commission or* that is being driven by a driver ~~who does not have in his or her possession~~ to whom the appropriate license ~~or~~ , endorsement , or certificate *has not been issued* , the bus shall be impounded for 30 days pursuant to the provisions and procedures for the impoundment and release of vehicles under Section 14602.6 of the Vehicle Code. *The charter-party carrier shall have a right to an expedited hearing by the commission.*

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.