

AMENDED IN ASSEMBLY JUNE 11, 2013

**SENATE BILL**

**No. 110**

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**Introduced by Senator ~~Steinberg~~ *DeSaulnier***  
*(Coauthors: Assembly Members Ammiano and Gordon)*

January 14, 2013

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An act to add ~~Section 14521.5 to the Government Code and repeal Chapter 4.4 (commencing with Section 30964.10) of Division 17 of the Streets and Highways Code~~, relating to transportation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 110, as amended, ~~Steinberg~~ *DeSaulnier*. ~~California Transportation Commission: guidelines. East Span, San Francisco-Oakland Bay Bridge Safety Review Task Force.~~

*Existing law identifies the San Francisco-Oakland Bay Bridge as a "toll bridge" and provides that the bridge and the approaches to it are a primary state highway. Existing law requires the Department of Transportation to permanently maintain and operate the San Francisco-Oakland Bay Bridge as a primary state highway in such a manner that the physical condition and operating efficiency thereof are of the highest character. Existing law establishes the Bay Area Toll Authority and assigns to it responsibility for the administration of all toll revenues from state-owned toll bridges. Existing law provides that the power or duty of the authority to fix the rates of toll for the San Francisco-Oakland Bay Bridge or the power and duty of the department to collect the tolls so fixed by the authority for the use of the bridge are not affected by any law providing that state highways are to be free highways.*

*This bill would establish the East Span, San Francisco-Oakland Bay Bridge Safety Review Task Force in state government and require the Legislative Analyst to provide administrative support for the task force as necessary for the completion of its duties. The task force would consist of 7 members appointed by the Legislative Analyst. Each member of the task force would serve a term of one year and receive compensation, as specified, and reimbursement for actual and necessary expenses. The bill would appropriate \$100,000 from the State Highway Account in the State Transportation Fund to the Legislative Analyst for purposes of paying for the compensation and expense reimbursement of the task force members. The task force would be required to assess the anticipated seismic structural performance of the East Span, as defined, of the San Francisco-Oakland Bay Bridge by conducting a series of specified reviews. The task force would be required to submit a final written report to the Legislature and the Governor that includes the results of its reviews, as specified.*

*This bill would provide that the task force is exempt from the Bagley-Keene Open Meeting Act and open meeting requirements that apply to the Legislature. The bill would provide that the records and documents of the task force are exempt from disclosure under the California Public Records Act and the Legislative Open Records Act until the final written report is submitted to the Legislature and the Governor. Upon submission of the final written report, the task force would be required to provide copies of all of its records and documents to the Legislative Analyst, and the records and documents of the task force in the possession of the Legislative Analyst would be subject to disclosure under the Legislative Open Records Act.*

*Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

*This bill would make legislative findings to that effect.*

*This bill would make these provisions, except for the provision regarding liability described below, inoperative on July 1, 2014, and would repeal it as of January 1, 2015.*

*This bill would provide that the task force, each of its individual members, the Legislative Analyst, and any other public officer or entity are not and may not be held liable for any injury arising out of an act or omission made in connection with these provisions.*

~~Existing law generally provides for programming and allocation of state and federal funds available for transportation capital improvement projects by the California Transportation Commission, pursuant to various requirements. Existing law authorizes the commission, in certain cases, to adopt guidelines relative to its programming and allocation policies and procedures.~~

~~Existing law, the Administrative Procedure Act, generally governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law, in certain instances, exempts state agencies from these requirements.~~

~~This bill would establish specified procedures that the commission would be required to utilize when it adopts guidelines, except as specified, and would exempt the adoption of those guidelines from the requirements of the Administrative Procedure Act.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~<sup>yes</sup>. Fiscal committee: ~~yes~~. State-mandated local program: ~~no~~.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Chapter 4.4 (commencing with Section 30964.10)*  
2     *is added to Division 17 of the Streets and Highways Code, to read:*

3  
4             *CHAPTER 4.4. EAST SPAN, SAN FRANCISCO-OAKLAND BAY*  
5                     *BRIDGE SAFETY REVIEW TASK FORCE*

6  
7     30964.10. (a) *The East Span, San Francisco-Oakland Bay*  
8     *Bridge Safety Review Task Force is hereby established in state*  
9     *government. The Legislative Analyst shall provide administrative*  
10    *support for the task force as necessary for the completion of its*  
11    *duties.*

12    (b) *The task force shall consist of seven members appointed by*  
13    *the Legislative Analyst. Each member shall serve a term of one*  
14    *year. The members shall be selected based upon the following*  
15    *qualifications:*

16    (1) *Expertise: Members shall be well-credentialed, recognized*  
17    *experts in the field of bridge design and construction. The*  
18    *membership shall reflect extensive experience and knowledge*  
19    *related to the design and construction of structures that resemble*

1 *the East Span in terms of complexity and magnitude, and that raise*  
2 *similar design and construction obstacles and technical challenges.*

3 (2) *Independence: Members shall have minimal or no prior*  
4 *involvement in the design, construction, or review of the East Span*  
5 *as determined by the Legislative Analyst. If necessary, members*  
6 *may be appointed from outside of California.*

7 (c) *The task force shall select a chairperson from its members.*

8 (d) *The chairperson shall receive compensation of twelve*  
9 *thousand dollars (\$12,000). Each of the other members shall*  
10 *receive compensation of eight thousand dollars (\$8,000). Each*  
11 *member shall be reimbursed for actual and necessary expenses.*  
12 *The sum of one hundred thousand dollars (\$100,000) is hereby*  
13 *appropriated from the State Highway Account in the State*  
14 *Transportation Fund to the Legislative Analyst, without regard to*  
15 *fiscal year, for the purpose of paying for the compensation and*  
16 *expense reimbursement of the members of the task force.*

17 30964.15. *As used in this chapter, the following terms have*  
18 *the following meanings:*

19 (a) *“Task force” means the East Span, San Francisco-Oakland*  
20 *Bay Bridge Safety Review Task Force established in subdivision*  
21 *(a) of Section 30964.10.*

22 (b) *“East Span” means the self-anchored suspension bridge,*  
23 *and its associated 13 foundation piles, that was constructed as a*  
24 *component of the San Francisco-Oakland Bay Bridge.*

25 30964.20. (a) *All task force meetings shall be held in*  
26 *California, except that members may participate via conference*  
27 *call with the prior consent of the Legislative Analyst.*

28 (b) *Notwithstanding Section 11033 of the Government Code,*  
29 *members of the task force may be absent from the state on business*  
30 *of the state.*

31 (c) *Notwithstanding Section 11032 of the Government Code,*  
32 *the Legislative Analyst may approve actual and necessary travel*  
33 *expenses of members for travel outside the state.*

34 (d) *The task force is exempt from the Bagley-Keene Open*  
35 *Meeting Act (Article 9 (commencing with Section 11120) of*  
36 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*  
37 *Code) and from Article 2.2 (commencing with Section 9027) of*  
38 *Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government*  
39 *Code.*

1 (e) *The records and documents of the task force, or in the*  
2 *possession of the task force, are exempt from disclosure under the*  
3 *California Public Records Act (Chapter 3.5 (commencing with*  
4 *Section 6250) of Division 7 of Title 1 of the Government Code)*  
5 *and the Legislative Open Records Act (Article 3.5 (commencing*  
6 *with Section 9070) of Chapter 1.5 of Part 1 of Division 2 of Title*  
7 *2 of the Government Code) until the final written report pursuant*  
8 *to Section 30964.35 is submitted to the Legislature and the*  
9 *Governor. The task force shall provide copies of all of its records*  
10 *and documents to the Legislative Analyst, and, when the task force*  
11 *submits the final written report to the Legislature and the Governor*  
12 *pursuant to Section 30964.35, the task force records and documents*  
13 *in the possession of the Legislative Analyst, including the final*  
14 *written report, shall then be subject to disclosure under the*  
15 *Legislative Open Records Act.*

16 30964.25. *The task force shall assess the anticipated seismic*  
17 *structural performance of the East Span as follows:*

18 (a) *Review the seismic design criteria of the East Span. Evaluate*  
19 *the appropriateness of the approach, methodologies, and modeling*  
20 *assumptions of the Department of Transportation as they pertain*  
21 *to the ability of the structure as designed to withstand earthquakes*  
22 *of an assumed magnitude that could come from the Hayward, San*  
23 *Andreas, or other faults in the Bay Area.*

24 (b) *Review construction techniques, testing documents, and*  
25 *other pertinent information on the construction of the East Span.*  
26 *In performing this task, the task force shall address specifically*  
27 *questions that have been raised about construction quality due to*  
28 *possible problems with the oversight by the Department of*  
29 *Transportation of the construction contractor and subcontractors.*

30 (c) *Review and evaluate analyses performed by the Department*  
31 *of Transportation to assess the impact of construction defects*  
32 *identified pursuant to subdivision (b). The task force may request*  
33 *that the Department of Transportation run models of the East Span*  
34 *foundation or bridge, or both, using a different set of assumptions*  
35 *regarding the construction of the East Span foundation or bridge,*  
36 *or both, or using different assumptions about the type of anticipated*  
37 *earthquake.*

38 (d) *Perform a high-level assessment of the risk analysis*  
39 *conducted by the Department of Transportation as part of the East*  
40 *Span design to determine whether the department's evaluations*

1 of the East Span's seismic performance as a lifeline structure in  
2 the event of a design-level, large earthquake are appropriate.

3 30964.30. (a) The Department of Transportation shall  
4 cooperate fully with the task force in the performance of its duties  
5 pursuant to this chapter.

6 (b) Notwithstanding any other law, the Department of  
7 Transportation shall provide the task force with all relevant  
8 information and records that the task force requests.

9 (c) If so requested by the task force, the Department of  
10 Transportation shall run models of the East Span foundation or  
11 bridge, or both, using the assumptions requested by the task force  
12 pursuant to subdivision (c) of Section 30964.25, and shall provide  
13 all resulting information to the task force.

14 30964.35. (a) The task force shall submit a final written report  
15 to the Legislature and the Governor that sets forth the results of  
16 its reviews, including all of the following:

17 (1) Whether the Department of Transportation made proper  
18 assumptions and followed proper procedures to ensure that the  
19 East Span will perform as expected under the assumed design  
20 earthquake.

21 (2) Whether the evaluations of the Department of Transportation  
22 concerning the East Span's seismic performance as a lifeline  
23 structure in the event of a design-level, large earthquake are  
24 appropriate.

25 (b) Notwithstanding Section 9795 of the Government Code, the  
26 report to the Legislature shall be delivered to the Senate Committee  
27 on Transportation and Housing and the Assembly Committee on  
28 Transportation.

29 30964.40. This chapter shall become inoperative on July 1,  
30 2014, and, as of January 1, 2015, is repealed, unless a later  
31 enacted statute, that becomes operative on or before January 1,  
32 2015, deletes or extends the dates on which it becomes inoperative  
33 and is repealed.

34 SEC. 2. Notwithstanding any other provision of law, including  
35 Division 3.6 (commencing with Section 810) of Title 1 of the  
36 Government Code, neither the East Span, San Francisco-Oakland  
37 Bay Bridge Safety Review Task Force, as established in Chapter  
38 4.4 (commencing with Section 30964.10) of Division 17 of the  
39 Streets and Highways Code pursuant to this act, any member of  
40 the task force, the Legislative Analyst, nor any other public officer

1 or entity is or may be held liable for any injury arising out of an  
2 act or omission in connection with that chapter.

3 SEC. 3. Pursuant to paragraph (2) of subdivision (b) of Section  
4 3 of Article I of the California Constitution, the Legislature finds  
5 and declares all of the following:

6 (a) California has a strong public interest in making every effort  
7 to ensure that the East Span of the San Francisco-Oakland Bay  
8 Bridge is constructed in a manner that ensures that it is a safe and  
9 reliable lifeline structure that will survive a foreseeable  
10 earthquake.

11 (b) It is critical for the state to obtain a reliable, independent  
12 review of the structure as soon as possible, and the substantial  
13 public interest to have early access to documents and proceedings  
14 related to this review is outweighed by the public interest of  
15 ensuring that the structure is safe and can survive a foreseeable  
16 earthquake. All of the records and documents of the East Span,  
17 San Francisco-Oakland Bay Bridge Safety Review Task Force,  
18 including its final written report, will become subject to the  
19 disclosure requirements of the Legislative Open Records Act once  
20 the report is submitted to the Legislature and the Governor.

21 SEC. 4. It is the intent of the Legislature that the work of the  
22 East Span, San Francisco-Oakland Bay Bridge Safety Review Task  
23 Force established in Chapter 4.4 (commencing with Section  
24 30964.10) of Division 17 of the Streets and Highways Code not  
25 delay the opening of the new East Span of the San  
26 Francisco-Oakland Bay Bridge if the Department of Transportation  
27 determines at any time that the bridge is safe and ready to open.

28 SECTION 1. ~~The Legislature finds and declares all of the~~  
29 ~~following:~~

30 ~~(a) From time to time, the Legislature has authorized the~~  
31 ~~California Transportation Commission to adopt guidelines for the~~  
32 ~~development and administration of statutorily created transportation~~  
33 ~~programs.~~

34 ~~(b) Examples of the legislative authorization described in~~  
35 ~~subdivision (a) include, but are not limited to, the authority for~~  
36 ~~guidelines for the administration of transportation programs funded~~  
37 ~~by the Highway Safety, Traffic Reduction, Air Quality, and Port~~  
38 ~~Security Bond Act of 2006 (Chapter 12.49 (commencing with~~  
39 ~~Section 8879.20) of Division 1 of Title 2 of the Government Code);~~

1 including the Corridor Mobility Improvement Account (CMIA)  
2 and the Highway-Railroad Crossing Safety Account.

3 ~~(e) In 2009, the commission also adopted program guidelines  
4 for the implementation of the public-private partnership authority  
5 the Legislature granted to the Department of Transportation  
6 (Caltrans) and to regional transportation planning agencies pursuant  
7 to Section 143 of the Streets and Highways Code.~~

8 ~~(d) The Legislature has exempted program guidelines adopted  
9 by the commission from the Administrative Procedure Act (Chapter  
10 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
11 Title 2 of the Government Code) so that the commission may adopt  
12 guidelines quickly and may amend adopted guidelines in response  
13 to quickly changing circumstances.~~

14 ~~(e) On some occasions, the commission's process for adopting  
15 program guidelines has lacked transparency and has not provided  
16 the public with ample opportunity to fully review and comment  
17 on proposed guidelines.~~

18 ~~(f) To ensure the commission's process for the adoption of  
19 program guidelines is understandable, predictable, and transparent,  
20 and to ensure the commission's process provides ample opportunity  
21 for public review and comment on proposed guidelines, it is  
22 necessary to place into statute a process for the adoption of program  
23 guidelines by the commission.~~

24 ~~SEC. 2.— Section 14521.5 is added to the Government Code, to  
25 read:~~

26 ~~14521.5.— (a) Notwithstanding any other law, the adoption of  
27 guidelines by the commission shall be exempt from the rulemaking  
28 provisions of the Administrative Procedure Act (Chapter 3.5  
29 (commencing with Section 11340) of Part 1). Except for the State  
30 Transportation Improvement Program (STIP) guidelines adopted  
31 pursuant to Sections 14526, 14527, and 14529, on or after January  
32 1, 2014, the commission shall adopt guidelines using the  
33 procedures established pursuant to this section.~~

34 ~~(b) The commission's legal counsel shall review the proposed  
35 guidelines for matters such as necessity, authority, clarity,  
36 consistency, reference, and nonduplication, and recommend any  
37 proposed action to the commissioners. For purposes of this section,  
38 "necessity," "authority," "clarity," "consistency," "reference," and  
39 "nonduplication" shall each have the same meaning as defined in  
40 Section 11349. The commission's legal counsel's recommendations~~

1 and communications to the commission concerning the results of  
2 the review shall be subject to the attorney-client privilege, unless  
3 otherwise waived. The commission's executive director shall cause  
4 the recommendations and communications to be distributed to all  
5 commissioners:

6 ~~(e) Program or policy guidelines shall first be presented at a~~  
7 ~~commission meeting for purposes of receiving public comment.~~  
8 ~~At least 45 days prior to the meeting, the proposed or draft~~  
9 ~~guideline shall be sent to any person who has requested notices of~~  
10 ~~the meetings of the commission and shall be available to the public~~  
11 ~~in electronic format. The proposed or draft guideline shall include~~  
12 ~~notice of the right of the public to comment orally on the proposed~~  
13 ~~or draft guideline during the public meeting or to comment in~~  
14 ~~writing at any time prior to the meeting or within seven business~~  
15 ~~days following the meeting, at which time the written comment~~  
16 ~~period shall be closed.~~

17 ~~(d) Following the close of the written comment period, the~~  
18 ~~commission staff shall review all written and oral comments and~~  
19 ~~shall prepare a summary of the objections and recommendations~~  
20 ~~made in those comments and an explanation of how the proposed~~  
21 ~~guideline is proposed to be changed to accommodate the objections~~  
22 ~~or recommendations, or the reason or reasons for proposing no~~  
23 ~~change.~~

24 ~~(e) The staff recommendations and summary described in~~  
25 ~~subdivision (d) shall be made publicly available at least 15 days~~  
26 ~~prior to a subsequent regular meeting of the commission. At that~~  
27 ~~subsequent public meeting, the commission shall consider the staff~~  
28 ~~recommendations and any additional public comment made at the~~  
29 ~~meeting prior to voting on the adoption of the proposed guideline.~~  
30 ~~A program or policy guideline adopted by the commission shall~~  
31 ~~be adopted by an affirmative vote of a majority of the commission~~  
32 ~~membership.~~

33 ~~(f) The commission shall maintain a guideline adoption file~~  
34 ~~containing the public notice, public comments, and minutes of the~~  
35 ~~public meeting, including the action taken by the commission, and~~  
36 ~~a letter from the commission's legal counsel confirming that he~~  
37 ~~or she reviewed the proposed guidelines for compliance with the~~  
38 ~~standards set forth in subdivision (b).~~

39 ~~(g) The guideline adoption file shall contain a summary of each~~  
40 ~~objection or recommendation made and an explanation of how the~~

1 ~~proposed guideline was changed to accommodate each objection~~  
2 ~~or recommendation, or the reason or reasons for making no change.~~  
3 ~~(h) The commission shall include in its annual report to the~~  
4 ~~Legislature, required pursuant to Section 14535, a summary of its~~  
5 ~~activities related to the adoption of program or policy guidelines~~  
6 ~~during the previous calendar year, including, but not limited to, a~~  
7 ~~summary of the proposed guidelines considered by the commission,~~  
8 ~~a description of the actions taken by the commission, and the votes~~  
9 ~~of the commission on matters it considered.~~

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