

AMENDED IN SENATE MAY 24, 2010

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 1348

Introduced by Senator Steinberg

February 19, 2010

An act to add Section 14521.5 to the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, Steinberg. California Transportation Commission: guidelines.

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 pursuant to a statutory authorization or mandate and would exempt the adoption of those guidelines from the requirements of the Administrative Procedure Act.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) From time to time, the Legislature has authorized the
4 California Transportation Commission to adopt guidelines for the
5 development and administration of statutorily created transportation
6 programs.

7 (b) Examples of the legislative authorization described in
8 subdivision (a) include, but are not limited to, the authority for
9 guidelines for the administration of transportation programs funded
10 by the Highway Safety, Traffic Reduction, Air Quality, and Port
11 Security Bond Act of 2006 (Chapter 12.49 (commencing with
12 Section 8879.20) of Division 1 of Title 2 of the Government Code),
13 including the Corridor Mobility Improvement Account (CMIA)
14 and the Highway-Railroad Crossing Safety Account.

15 (c) In 2009, the commission also adopted program guidelines
16 for the implementation of the public-private partnership authority
17 the Legislature granted to the Department of Transportation
18 (Caltrans) and to regional transportation planning agencies pursuant
19 to Section 143 of the Streets and Highways Code.

20 (d) The Legislature has exempted program guidelines adopted
21 by the commission from the Administrative Procedure Act (Chapter
22 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
23 Title 2 of the Government Code) so that the commission may adopt
24 guidelines quickly and may amend adopted guidelines in response
25 to quickly changing circumstances.

26 (e) On some occasions, the commission's process for adopting
27 program guidelines has lacked transparency and has not provided
28 the public with ample opportunity to fully review and comment
29 on proposed guidelines.

30 (f) To ensure the commission's process for the adoption of
31 program guidelines is understandable, predictable, and transparent,
32 and to ensure the commission's process provides ample opportunity
33 for public review and comment on proposed guidelines, it is
34 necessary to place into statute a process for the adoption of program
35 guidelines by the commission.

SEC. 2. Section 14521.5 is added to the Government Code, to read:

14521.5. (a) Notwithstanding any other law, in instances where the commission adopts guidelines pursuant to a statutory authorization or mandate, the adoption of the guidelines shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). Except for the State Transportation Improvement Plan (STIP) guidelines adopted pursuant to Sections 14526, 14527, and 14529, on or after January 1, 2011, the commission shall adopt guidelines using the procedures *established pursuant to this section*.

(b) The commission's legal counsel shall review the proposed guidelines for matters such as necessity, authority, clarity, consistency, reference, and nonduplication, and recommend any proposed action to the commissioners. For purposes of this section, "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication" shall each have the same meaning as defined in Section 11349. The commission's legal counsel's recommendations and communications to the commission concerning the results of the review shall be subject to the attorney-client privilege. The commission's executive director shall cause the recommendations and communications to be distributed to all commissioners.

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

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

1 (e) The staff recommendations and summary described in
2 subdivision (d) shall be made publicly available at least 15 days
3 prior to a subsequent regular hearing of the commission. At that
4 subsequent public hearing, the commission shall consider the staff
5 recommendations and any additional public comment made at the
6 hearing prior to voting on the adoption of the proposed guideline.
7 A program or policy guideline adopted by the commission shall
8 be adopted by an affirmative vote of a majority of the commission
9 membership.

10 (f) The commission shall maintain a guideline adoption file
11 containing the public notice, public comments, and minutes of the
12 public hearing, including the action taken by the commission, and
13 a letter from the commission's legal counsel confirming that he
14 or she reviewed the proposed guidelines for compliance with the
15 standards set forth in subdivision (b).

16 (g) The guideline adoption file shall contain a summary of each
17 objection or recommendation made and an explanation of how the
18 proposed guideline was changed to accommodate each objection
19 or recommendation, or the reason or reasons for making no change.

20 (h) The commission shall include in its annual report to the
21 Legislature, required pursuant to Section 14535, a summary of its
22 activities related to the adoption of program or policy guidelines
23 during the previous calendar year, including, but not limited to, a
24 summary of the proposed guidelines considered by the commission,
25 a description of the actions taken by the commission, and the votes
26 of the commission on matters it considered.