

AMENDED IN ASSEMBLY JUNE 17, 2010

AMENDED IN SENATE MAY 24, 2010

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 14, 2010

**SENATE BILL**

**No. 1348**

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**Introduced by Senator Steinberg**

February 19, 2010

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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

1 necessary to place into statute a process for the adoption of program  
2 guidelines by the commission.

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

5 14521.5. (a) Notwithstanding any other law, ~~in instances where~~  
6 ~~the commission adopts guidelines pursuant to a statutory~~  
7 ~~authorization or mandate~~, the adoption of the guidelines *by the*  
8 *commission* shall be exempt from the rulemaking provisions of  
9 the Administrative Procedure Act (Chapter 3.5 (commencing with  
10 Section 11340) of Part 1). Except for the State Transportation  
11 Improvement ~~Plan~~ *Program* (STIP) guidelines adopted pursuant  
12 to Sections 14526, 14527, and 14529, on or after January 1, 2011,  
13 the commission shall adopt guidelines using the procedures  
14 established pursuant to this section.

15 (b) The commission’s legal counsel shall review the proposed  
16 guidelines for matters such as necessity, authority, clarity,  
17 consistency, reference, and nonduplication, and recommend any  
18 proposed action to the commissioners. For purposes of this section,  
19 “necessity,” “authority,” “clarity,” “consistency,” “reference,” and  
20 “nonduplication” shall each have the same meaning as defined in  
21 Section 11349. The commission’s legal counsel’s recommendations  
22 and communications to the commission concerning the results of  
23 the review shall be subject to the attorney-client privilege, *unless*  
24 *otherwise waived*. The commission’s executive director shall cause  
25 the recommendations and communications to be distributed to all  
26 commissioners.

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

38 (d) Following the close of the written comment period, the  
39 commission staff shall review all written and oral comments and  
40 shall prepare a summary of the objections and recommendations

1 made in those comments and an explanation of how the proposed  
2 guideline is proposed to be changed to accommodate the objections  
3 or recommendations, or the reason or reasons for proposing no  
4 change.

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

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

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

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