

AMENDED IN ASSEMBLY AUGUST 9, 2010

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

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 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, the adoption of
6 the guidelines by the commission shall be exempt from the
7 rulemaking provisions of the Administrative Procedure Act
8 (Chapter 3.5 (commencing with Section 11340) of Part 1). Except
9 for the State Transportation Improvement Program (STIP)
10 guidelines adopted pursuant to Sections 14526, 14527, and 14529,
11 on or after January 1, 2011, the commission shall adopt guidelines
12 using the procedures established pursuant to this section.

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

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

36 (d) Following the close of the written comment period, the
37 commission staff shall review all written and oral comments and
38 shall prepare a summary of the objections and recommendations
39 made in those comments and an explanation of how the proposed
40 guideline is proposed to be changed to accommodate the objections

1 or recommendations, or the reason or reasons for proposing no
2 change.

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

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

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

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