

**Introduced by Senator Steinberg**

February 18, 2011

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An act to amend Section 185020 of the Public Utilities Code, relating to high-speed rail; add Section 14521.5 to the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 749, as amended, Steinberg. ~~High-speed rail. 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, except as specified, and would exempt the adoption of those guidelines from the requirements of the Administrative Procedure Act.*

~~Existing law creates the High-Speed Rail Authority with specified powers and duties relative to development and implementation of a~~

high-speed train system. The authority is composed of 9 members, including 5 members appointed by the Governor.

This bill would provide that the members of the authority appointed by the Governor are subject to appointment with the advice and consent of the Senate.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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
- 6     transportation 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
- 10    funded by the Highway Safety, Traffic Reduction, Air Quality, and
- 11    Port 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
- 19    pursuant 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 on
- 29    proposed guidelines.

1 (f) To ensure the commission’s process for the adoption of  
2 program guidelines is understandable, predictable, and  
3 transparent, and to ensure the commission’s process provides  
4 ample opportunity for public review and comment on proposed  
5 guidelines, it is necessary to place into statute a process for the  
6 adoption of program guidelines by the commission.

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

9 14521.5. (a) Notwithstanding any other law, the adoption of  
10 guidelines by the commission shall be exempt from the rulemaking  
11 provisions of the Administrative Procedure Act (Chapter 3.5  
12 (commencing with Section 11340) of Part 1). Except for the State  
13 Transportation Improvement Program (STIP) guidelines adopted  
14 pursuant to Sections 14526, 14527, and 14529, on or after January  
15 1, 2013, the commission shall adopt guidelines using the  
16 procedures established pursuant to this section.

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

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

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

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

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

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

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

35 ~~SECTION 1. Section 185020 of the Public Utilities Code is~~  
36 ~~amended to read:~~

37 ~~185020. (a) There is in state government a High-Speed Rail~~  
38 ~~Authority.~~

39 ~~(b) (1) The authority is composed of nine members as follows:~~

1 ~~(A) Five members appointed by the Governor, with the advice~~  
2 ~~and consent of the Senate.~~

3 ~~(B) Two members appointed by the Senate Committee on Rules.~~

4 ~~(C) Two members appointed by the Speaker of the Assembly.~~

5 ~~(2) For the purposes of making appointments to the authority,~~  
6 ~~the Governor, the Senate Committee on Rules, and the Speaker of~~  
7 ~~the Assembly shall take into consideration geographical diversity~~  
8 ~~to ensure that all regions of the state are adequately represented.~~

9 ~~(e) Except as provided in subdivision (d), and until their~~  
10 ~~successors are appointed, members of the authority shall hold~~  
11 ~~office for terms of four years. A vacancy shall be filled by the~~  
12 ~~appointing power making the original appointment, by appointing~~  
13 ~~a member to serve the remainder of the term.~~

14 ~~(d) (1) On and after January 1, 2001, the terms of all persons~~  
15 ~~who are then members of the authority shall expire, but those~~  
16 ~~members may continue to serve until they are reappointed or until~~  
17 ~~their successors are appointed. In order to provide for evenly~~  
18 ~~staggered terms, persons appointed or reappointed to the authority~~  
19 ~~after January 1, 2001, shall be appointed to initial terms to expire~~  
20 ~~as follows:~~

21 ~~(A) Of the five persons appointed by the Governor, one shall~~  
22 ~~be appointed to a term which expires on December 31, 2002, one~~  
23 ~~shall be appointed to a term which expires on December 31, 2003,~~  
24 ~~one shall be appointed to a term which expires on December 31,~~  
25 ~~2004, and two shall be appointed to terms which expire on~~  
26 ~~December 31, 2005.~~

27 ~~(B) Of the two persons appointed by the Senate Committee on~~  
28 ~~Rules, one shall be appointed to a term which expires on December~~  
29 ~~31, 2002, and one shall be appointed to a term which expires on~~  
30 ~~December 31, 2004.~~

31 ~~(C) Of the two persons appointed by the Speaker of the~~  
32 ~~Assembly, one shall be appointed to a term which expires on~~  
33 ~~December 31, 2003, and one shall be appointed to a term which~~  
34 ~~expires on December 31, 2005.~~

35 ~~(2) Following expiration of each of the initial terms provided~~  
36 ~~for in this subdivision, the term shall expire every four years~~  
37 ~~thereafter on December 31.~~

38 ~~(e) Members of the authority are subject to the Political Reform~~  
39 ~~Act of 1974 (Title 9 (commencing with Section 81000)).~~

- 1     ~~(f) From among its members, the authority shall elect a~~
- 2     ~~chairperson, who shall preside at all meetings of the authority, and~~
- 3     ~~a vice chairperson to preside in the absence of the chairperson.~~
- 4     ~~The chairperson shall serve a term of one year.~~
- 5     ~~(g) Five members of the authority constitute a quorum for taking~~
- 6     ~~any action by the authority.~~

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