

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 15, 2012

To: The Commission
(Meeting of February 16, 2012)

From: Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 1665 (Galgiani) – California Environmental Quality Act:
exemption: railroad crossings (Proposed Legislation on Railroad
Crossings)
As introduced: February 14, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT AS SPONSOR

SUMMARY OF BILL:

AB 1665 would clarify existing law and confirm the California Public Utilities Commission's (CPUC's) authority over rail crossings in California, particularly to close dangerous at-grade crossings without adverse consequences to the purposes and provisions of the California Environmental Quality Act (CEQA).

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

In its 2007-08 regular session, the California Legislature adopted AB 660 (Galgiani) which, among other things, modified Streets and Highways Code Section 2450. Subsection (b)(3) of Section 2450 had included within the definition of a grade separation projects that removed or relocated highways or railway tracks to eliminate existing grade crossings. The California Public Resources Code Section 21080.13 exempted these "grade separation projects" from a California Environmental Quality Act ("CEQA") review. By deleting subsection (b)(3) from Streets and Highways Code Section 2450, the removal or relocation of a highway or railroad tracks (i.e., crossing closure removing the street or highway from the railroad tracks) is no longer within the definition of a grade separation project for purposes of the CEQA exemption.

Amending the Public Resources Code as proposed will clarify the Commission's existing authority as exercised in the past.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Consumer Protection and Safety Division & Legal Division):

Certain of the Commission's powers are derived by direct grant from the Constitution which created it: "By direct grant from the Constitution, the Commission was empowered to prescribe uniform systems of accounts and fix rates for railroads "and other transportation companies", examine records, hear and determine complaints, issue subpoenas, and take testimony and punish for contempt...Legislative and judicial functions have been united in a single agency" (Roderick B. Cassidy, *Public Utility Regulation in California*, Commentary to the Public Utilities Code, 1954, pp. 2-3.).

The safety of rail crossings is an area of statewide concern and under the exclusive control of the Commission.¹ Public Utilities Code Section 1202 provides the CPUC with the exclusive power to "determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing" including the alteration, relocation, or abolishment by physical closure of any crossing: "[T]he subject of abolishing...grade crossings by the physical closing thereof is germane to the regulation of a railroad corporation performing state-wide or more than local service; that "the Railroad Commission has been vested with such power of regulation and control by the Constitution and by section 43 (b) of the Public Utilities Act [emphasis added]...." (*City of San Mateo v. Railroad Com.* (1937) 9 Cal.2d 1, 6.)

In instances where public safety requires closure of an at-grade crossing, a CEQA review is time-consuming and redundant since public safety, including transportation considerations, emergency services, and economic considerations are addressed in the CPUC's review of the need for closure. Crossing closures may be accomplished by simply blocking the street on either side of the rail right-of-way or by eliminating the street's road surface immediately on either side of the right-of-way.

Under AB 1665, public safety will be the primary consideration in at-grade crossing closures and will be handled in an expeditious manner while preserving the due process rights of the local community affected by the closure. Furthermore, since most, if not all, the considerations addressed under CEQA are considered by the Commission in its crossing closure public hearing and proceeding, these important considerations will be more expeditiously aired and resolved. A number of fatalities occur every year in California at existing at-grade highway-rail crossings. This legislation will help ensure

¹ *Northwestern Pac. R.R. Co. v. Superior Court*, (1949) 34 Cal.2d 454, 458, and *City of San Mateo v. Railroad Com.* (1937) 9 Cal.2d 1, 9-10. See also: "Under [Cal. Pub. Util. Code §§] 1201 and 1202 authorization is required for the creation of any grade crossing of a railroad and any public road or street. The Commission has exclusive power to prescribe terms of installation, use, and protection of crossings; to relocate or abolish crossings by physical closing; to require a separation of grades, and to apportion costs between railroads, the state, and political subdivisions [footnote omitted]." (*Public Utility Regulation in California*, *supra* at p. 15.)

that dangerous crossings can be closed with simple minor modifications without the delay of an unnecessary CEQA review.

PROGRAM BACKGROUND:

The CPUC has a long history of considering the safety of highway-rail and transit at-grade crossing design and safety in its proceedings. For instance, in I.03-08-017, the Commission instituted an order instituting investigation (OII) into a fatal accident at the North Street highway-rail at-grade crossing in the City of Selma, California, and simultaneously issued an order to show cause (OSC) why the crossing should not be closed. The Investigation and OSC was issued on August 21, 2003. On September 2, 2003, (12 days after issuance of the proceeding) the assigned Administrative Law Judge issued a ruling directing Selma to “take all actions necessary to prevent vehicles and pedestrians from using this crossing, pending further order of the Commission.”² Subsequent to that order, staff and the City of Selma agreed that the crossing would remain closed during the remainder of the proceeding. On February 26, 2004, the Commission issued an order approving the settlement agreement between the parties and closing the crossing.³ Had the Commission’s review process over this highway-rail crossing required a full-scale CEQA review, the Commission would have been unable to reach an immediate agreement to temporarily close the crossing and the final order closing the crossing would have taken considerably longer than the six-month period that was entailed in this CPUC OII/OSC proceeding.

The CPUC’s power to close an at-grade crossing in a deliberate and efficient manner following a public hearing addressing important transportation considerations including economic and emergency safety issues should be confirmed to avoid the necessity of preparing an Environmental Impact Report and its subsequent litigation. The elimination of the Commission’s previous exemption under Streets and Highways Code Section 2450(b)(3) permitting the Commission to close at-grade crossings without first performing a CEQA review has the potential to jeopardize public health and safety.

LEGISLATIVE HISTORY:

² *Investigation on the Commission's Own Motion Into the Fatal Accident at the North Street Crossing (MP 220.50) in the City of Selma, Fresno County, on June 6, 2003, and Order to Show Cause Why this Crossing Should Not Be Closed, ALJ's Ruling Setting Prehearing Conference, Directing Parties to Meet and Confer, and Ordering Crossing to Remain Closed, (Sept. 2, 2003)* at p. 1, See also: “The issues in this proceeding are urgent matters of public safety, requiring thorough and expeditious review. All available safety measures, including further crossing closures in Selma, will be considered.” *Id.* at p.2.

³ *Investigation on the Commission's Own Motion Into the Fatal Accident at the North Street Crossing (MP 220.50) in the City of Selma, Fresno County, on June 6, 2003, and Order to Show Cause Why this Crossing Should Not Be Closed, [D.04-02-064] (Feb. 26, 2004)*
____ Cal.P.U.C.4th ____.

In 2008, AB 660 (Galgiani) inadvertently removed the Commission's jurisdiction to close unsafe at-grade crossings without performing an initial CEQA review.

FISCAL IMPACT:

None.

STATUS:

AB 1665 is pending referral by the Assembly Rules Committee.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

Nick Zanjani, Legislative Liaison – OGA (916) 327-3277

nkz@cpuc.ca.gov

BILL LANGUAGE:

BILL NUMBER: AB 1665 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Galgiani

FEBRUARY 14, 2012

An act to amend Section 21080.13 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as introduced, Galgiani. California Environmental Quality Act: exemption: railroad crossings.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts from its requirements railroad grade separation projects that eliminate an existing grade crossing or reconstruct an existing grade separation.

This bill would specify instead that the exemption for a railroad grade separation project is for the elimination of an existing at-grade crossing.

Existing law grants the Public Utilities Commission (PUC) the authority to regulate railroad crossings, as prescribed.

This bill would exempt from the CEQA actions or activities taken by the PUC under its authority to regulate railroad crossings.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21080.13 of the Public Resources Code is amended to read:

21080.13. This division shall not apply to ~~any~~ an action or activity taken by the Public Utilities Commission pursuant to Chapter 6 (commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code or a railroad grade separation project ~~which~~ that eliminates an existing ~~grade~~ at-grade crossing or ~~which~~ reconstructs an existing grade

separation.