

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 19-20, 2010

Reference No.: 4.13
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Jane Perez
Division Chief
Division of Mass Transportation

Subject: **COMMISSION ADVICE AND CONSENT ON TRANSPORTATION DEVELOPMENT ACT (TDA) REGULATIONS RESOLUTION G-10-12**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) approve the attached resolution giving its advice and consent on the attached Transportation Development Act (TDA) regulations.

ISSUE:

The Commission is required by the Public Utilities Code (PUC) Section 99241 to give advice and consent on the Transportation Development Act (TDA) regulations, as prepared by the Department. The regulations are updated to incorporate legislative changes and to interpret and clarify the statutes. As part of the review process, the Department provided the proposed revisions of the TDA regulations to the Commission for comment at its April 2010 meeting.

The Department is proposing to amend California Code of Regulations (CCR) section 6680 of the TDA. The agency that can designate a Consolidated Transportation Service Agency (CTSA) is no longer the San Diego Metropolitan Transit Development Board, so its reference in this section needs to be removed. In subsection (d) of CCR section 6680, the description of a non-profit corporation is no longer in section 9000 of the Corporations Code, but is now referenced in section 5000 of the Corporations Code. The Department has reviewed the proposed changes with regional agencies, transit operators and affected agencies, and sent out a notice of proposed rule making, allowing a time period of 45 days for review, comment and/or request of a public hearing.

BACKGROUND:

The Mills-Alquist-Deddeh Act, better known as the Transportation Development Act (TDA), was enacted in 1972 by the California legislature and is administered by the Department. It provides two major sources of funding for public transportation in California implemented by regional transportation planning agencies (RTPA). These funds are for the development and support of public transportation needs that exist in California and are allocated to areas of each county based on population, taxable sales and transit performance. The first, the county Local Transportation Fund

(LTF), has been in existence since 1972. The second, the State Transit Assistance (STA) fund, came into being in 1980.

TDA statutes are located under the Government Code Title 3, Division 3, Chapter 2, Article 11 and under the Public Utilities Code Division 10, Part 11, Chapter 4, Articles 1-9. Additional implementing provisions can be found under the California Code of Regulations Title 21, Chapter 3, Subchapters 2 and 2.5. The Department produces the *Transportation Development Act Statutes and California Code of Regulations*, which is updated periodically depending on TDA-related legislative actions.

PROPOSED CHANGES:

The Department is proposing two amendments to TDA regulation section 6680, with the advice and consent of the Commission, under the authority granted by Section 99241 of the PUC, which allows the Director of the Department to amend, add, and repeal the regulations as statutes change. The Department proposes to amend section 6680, by removing the reference “San Diego Metropolitan Transit Development Board”, because they are no longer the Regional Transportation Planning Agency for San Diego County. The second proposed amendment will change the reference section of the California Corporations Code (CCC) from section 9000 to section 5000. Section 9000 no longer exist in the CCC and has been replaced with section 5000. Below is the text of CCR Section 6680 identifying the areas of the proposed amendments, as reflected in strikethrough and underline.

SECTION 6680. Designation.

Consolidated transportation service agencies shall be designated by the transportation planning agency, except that within the area of the Southern California Association of Governments, they shall be designated by the county transportation commissions and the County of Imperial, ~~and that for the area of the San Diego Metropolitan Transit Development Board, they shall be designated by the Board.~~ The consolidated transportation service agencies shall be designated in accordance with the action plan adopted pursuant to section 15975 of the Government Code.

Each consolidated transportation service agency shall be an entity other than the transportation planning agency and shall be one of the following:

- (a) A public agency, including a city, county, operator, any state department or agency, public corporation, or public district, or a joint powers entity created pursuant to Chapter 5 (commencing with section 6500) of division 7, title 1 of the Government Code.
- (b) A common carrier of persons as defined in section 211 of the Public Utilities Code, engaged in the transportation of persons, as defined in section 208.
- (c) A private entity operating under a franchise or license.
- (d) A nonprofit corporation organized pursuant to division 2 (commencing with section ~~9000-5000~~) of title 1 of the Corporations Code.

The transportation planning agency or other designating agency may designate one or more consolidated transportation service agencies. The geographic areas of consolidated transportation

service agencies may be overlapping. For the purpose of filing claims, the division of responsibility between designated consolidated transportation service agencies shall be by the transportation service provided (i.e., by geographic area, route, time, clientele, etc.) and not by service function (i.e., operation, maintenance, marketing, etc.). This does not preclude a consolidated transportation service agency from contracting with various contractors to perform different service functions.

The transportation planning agency or other designating agency may rescind the designation of a consolidated transportation service agency if it finds that the agency has failed substantially to comply with the terms of its allocations, with the Act or with the action plan. The rescission of the designation of the consolidated transportation service agency may be appealed pursuant to Public Utilities Code section 99242 by any claimant, including the consolidated transportation service agency, even where the designating agency is not the transportation planning agency.

Whenever the designation of a consolidated transportation service agency is rescinded or a new agency is designated, other than in the text of the action plan originally submitted, the transportation planning agency or other designating agency shall notify the Department within ten (10) days.

Note: Authority cited: Section 99241, Public Utilities Code. Reference Sections 99203, 99204.5, 99233.7, 99241, 99242, and 99275-99278, 130050.1, Public Utilities Code; and Sections 15975 and 15978, Government Code.

Attachments:

1. Resolution
2. Regulation Package

**CALIFORNIA TRANSPORTATION COMMISSION
CONSENTING TO PROPOSED AMENDMENTS OF THE
TRANSPORTATION DEVELOPMENT ACT REGULATIONS**

RESOLUTION G-10-12

- 1.1 WHEREAS, Section 99241 of the Public Utilities Code provides that the implementation of the Transportation Development Act (Act) shall be subject to the regulations adopted by the Director of the Department of Transportation (Department), with the advice and consent of the California Transportation Commission; and,
- 1.2 WHEREAS, the Director has proposed changes to the California Code of Regulations Section 6680 to implement amendments to the Act, and,
- 1.3 WHEREAS, the Department has mailed the proposed changes to city councils, boards of supervisors, county auditor controllers, transportation planning entities, and transit operators statewide for review and comment; and
- 1.4 WHEREAS, the Department provided a 45-day period, ending 5:00 p.m., September 18, 2009, for any interested party to request a public hearing, receiving no request within the said period.
- 2.1 NOW, THEREFORE, BE IT RESOLVED that the California Transportation Commission does hereby consent to the proposed changes to the Transportation Development Act regulations, as presented by the Director of the Department of Transportation.

TITLE 21. DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

TO ALL INTERESTED PERSONS:

The California Department of Transportation (Department) proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5 p.m. on September 18, 2009. The Department will consider only comments received at the Department by that time. Please submit comments to:

Gordon Arruda
California Department of Transportation
Division of Mass Transportation – MS 39
P.O. Box 942874
Sacramento, CA 94274-0001

AUTHORITY AND REFERENCE

Public Utilities Code section 99241 authorizes the Department to adopted proposed regulations with the advice and consent of the California Transportation Commission (CTC), which would amend and correct (CCR) section 6680.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to amend section 6680 in Title 21 of the CCR.

Public Utilities Code section 99241 authorizes and requires the Department to promulgate regulations to enforce the Transportation Development Act (Public Utilities Code section 99200 et seq.). The existing regulations were enacted in 1979 and have been amended several times to implement State and federal statutory and regulatory authority.

This proposed regulatory action will bring the regulations into conformance with amendments to the California Corporations Code (CCC).

Section 6680(d) identifies the agency(s) that can be designated as a Consolidated Transportation Service Agency. The proposed amendment reflects changes to the CCC, which is referenced in CCR section 6680.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, inclusive: None.

Other nondiscriminatory costs or savings imposed on local agencies: None.

Costs or savings in federal funding to the State: None.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: None.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within the State of California.
- (2) Create new businesses or eliminate existing businesses within the State of California.
- (3) Affect the expansion of businesses currently doing business within the State of California.

Significant effect of housing costs: None.

Small Business Determination

The Department has determined that the proposed regulatory action will not affect small businesses. These actions only affect transportation planning agencies, public transportation operators, and transit service providers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a) (13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Gordon Arruda
California Department of Transportation
Division of Mass Transportation – MS 39
P.O. Box 942874
Sacramento, CA 94274-0001
Telephone: (916) 654-9396

The backup contact person for these inquiries is:

Brian Travis
California Department of Transportation
Division of Mass Transportation – MS 39
P.O. Box 942874
Sacramento, CA 94274-0001
Telephone: (916) 654-9842

Questions on the substance of the regulatory action may be directed to Gordon Arruda or Brian Travis.

Please direct requests for copies of the proposed text (the “express terms”) of the regulatory action, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which this rulemaking is based to Gordon Arruda at the above address.

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the following address during regular business hours:

California Department of Transportation
Division of Mass Transportation
1120 N Street
Room 3300
Sacramento, CA 95814
Telephone: (916) 654-9396

As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Gordon Arruda at the above address and telephone number.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any requested public hearings and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to Gordon Arruda at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Gordon Arruda at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's Web site at www.dot.ca.gov/hq/MassTrans/State-TDA.html.