

California Rail Governance Structure: Issues to Consider in Alternative Reorganizations

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As mandated by Chapter 612, Statutes of 2008

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Draft for discussion

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Executive Summary

This report responds to the mandate of the Legislature in Senate Bill 53 (Ducheny, 2008), Chapter 612, Statutes of 2008. The statute required the California Research Bureau, in consultation with the Business, Transportation and Housing Agency; the Department of Transportation (Caltrans); the California Transportation Commission (CTC); the Public Utilities Commission (CPUC); the California High-Speed Rail Authority (HSRA); and the Office of the Legislative Analyst (LAO) to “analyze and report to the Legislature its recommendations and the estimated costs for improving the state’s rail functions.”

In order to meet this mandate, we interviewed approximately three dozen experts in rail transportation issues from various legislative committees, executive-branch agencies, local transportation agencies, transportation agencies in other states and the federal government, and the private sector. Additionally, we reviewed dozens of published reports and documents assessing various aspects of the railroad industry and government’s role in transportation planning to inform and shape our discussions with interviewees.

We used these interviews and background research to construct an overview and assessment of the current status of railroad policymaking in California.

We examined several options for reorganization of state rail functions in some detail, including consolidating part or all of the CPUC’s rail-related functions into the California Department of Transportation (Caltrans) or a successor department to the present Division of Rail; elevating the Division of Rail within Caltrans to raise its status and accessibility to the Director of Caltrans; elevating the Division to departmental status equivalent to that of Caltrans within the Business, Transportation & Housing Agency; and transforming the Division’s governance structure into that of an independent board or commission (similar to the Air Resources Board or the Energy Commission).

Our report identifies common themes about how California’s state railroad policymaking is organized and what aspects may merit restructuring. Those common themes, in brief, are as follows:

1. Reorganization of executive functions is costly and benefits generally are uncertain. Quantifiable costs and benefits of analogous past examples are largely unavailable. As a consequence, dramatic reorganization proposals typically entail relatively certain risks against relatively uncertain gains. This implies that significant restructuring proposals should tend to focus on agencies exhibiting clear, persistent and significant policy failures.
2. In the absence of obvious program failures, the greatest net benefits from reorganization generally can be found from streamlining the administration of programs and gathering like functions under a single administrative roof. This is because complex sets of checks and balances in an institutional design slow down

policy implementation and add costs. If there is broad constituent agreement on the goals of a program, institutional checks and balances impart costs to implementation without generating compensating procedural values. But elimination of checks and balances comes at a cost. It may weaken or remove representation of certain interests in the implementation process, thus allowing outcomes that hurt the interests of the institutionally disadvantaged group(s). It also may reduce the transparency of the policymaking process.

3. Experts we consulted had strongest agreement on four points:

First, experts generally agreed that state rail policies would benefit from increasing the visibility of the current Division of Rail, either by elevating its status within the California Department of Transportation (Caltrans) or by creating a new Department of Rail within the Business, Transportation and Housing Agency. Most experts contended that the current arrangement signals to the public too little institutional importance to rail transportation in the overall scheme of state transportation planning and implementation.

Second, most experts agreed that a single state agency could and should play a greater strategic role in statewide rail transportation planning.

Third, most experts agreed that the rail grade crossing and grade separation functions relating to the Section 130 and Section 190 programs currently housed in the California Public Utilities Commission (CPUC) could be relocated to the Division of Rail or a new Department of Rail at little risk to public safety and with some prospect of improved efficiency. The CPUC staff have raised objections, detailed in a staff report that we include as an attachment to this report.

Fourth, most experts agreed that other rail safety-related functions currently housed within the CPUC should remain with the Commission.

4. Many experts raised concerns about the future of the high-speed rail project under development by the California High-Speed Rail Authority. No strong consensus emerged in our interviews with respect to whether and how the HSRA should be restructured. Concern about the current staffing levels and capacity to conduct adequate oversight of the Authority's many consultant contracts was widespread, however.

Introduction

This report responds to the mandate of the Legislature in Senate Bill 53 (Ducheny, 2008), Chapter 612, Statutes of 2008. The statute required the California Research Bureau, in consultation with the Business, Transportation and Housing Agency; the Department of Transportation (Caltrans); the California Transportation Commission (CTC); the Public Utilities Commission (CPUC); the California High-Speed Rail Authority (HSRA); and the Office of the Legislative Analyst (LAO) to “analyze and report to the Legislature its recommendations and the estimated costs for improving the state’s rail functions.”

California faces several key challenges in the coming decades with respect to the role that railroads play in the state. First, California’s population has tripled since 1955 and is expected to grow by another 11 million individuals by 2025. The state’s transportation infrastructure has not grown in step with its population. For example, according to a RAND Corporation database, traffic congestion has more than tripled in the state since 1982.¹ Further, a 2002 Federal Bureau of Transportation Statistics report characterized roughly half of all urban roadways in California as being in either “mediocre” or “poor” condition.² The efficient movement of people and goods via California’s roadways has grown more difficult and will continue to grow more difficult absent significant changes to policy and infrastructure. Railways occupy an important position in the state’s strategic planning to address growing stresses on the surface roadway system.

Second, California’s major ports play a very important role in international trade. In 2007, goods valued at \$516 billion moved through the state’s ports, according to Census Bureau data. Currently, about 45 percent of intermodal traffic entering or leaving the U.S. passes through California ports, mainly Los Angeles/Long Beach and Oakland. The container volume through the Los Angeles/Long Beach combined ports is the fifth largest among all international container ports.³

Much of that goods movement depends on rail transportation into and out of the state. The state thus has a vested economic interest in the health and vitality of the freight rail industry in California. Balancing the needs of railway goods movement and railway people movement on shared infrastructure thus must be a key goal of the state’s transportation planning.

Third, the state faces severe challenges in meeting environmental goals spelled out in Assembly Bill 32 (Nuñez, Chapter 488, Statutes of 2006). That law commits the State to reducing California’s greenhouse gas emissions to 1990 levels by the year 2020. It is widely argued that intercity passenger rail transportation is more energy-efficient and generates lower greenhouse gas emissions per passenger than equivalent automobile transportation. Railways thus occupy a vital role in the state’s strategic planning with respect to environmental values and goals.

These challenges highlight the need to consider carefully the approaches the State takes toward addressing and managing transportation infrastructure and operational needs. Is the current distribution of institutional responsibilities well-suited to meeting the strategic

needs of the State, or would the State be better served by changing some aspects of the policymaking or regulatory environment?

Our charge in this report was to address:

- *“how to improve the efficiency, performance, and stability of rail activities funded in part or in whole with state funds”*;
- *“the benefits and liabilities of establishing one accountable state commission or department responsible for the oversight, regulation, identification, and prioritization of rail transportation and safety programs and projects, including, but not limited to, rail grade crossings and separations, rail equipment procurement and passenger service, the provision of traditional passenger rail and high-speed rail service, and rail safety regulation and oversight”*; and
- *“issues the Legislature should consider if legislation is introduced to consolidate any, or all, of the functions, responsibilities, or activities of the five state agencies with jurisdiction over rail-related matters into one or more state agencies, commissions, or departments”*.⁴

In order to address this charge, the California Research Bureau conducted semi-structured interviews with representatives of various state agencies, as well as experts from local transportation agencies, the federal government, other states’ transportation agencies, the railroad industry, and private consultants. The list of the experts who participated in the interviews is found in appendix I.

We supplemented the information gathered in interviews with reviews of agency documents and website materials. We also reviewed published literature, including various academic studies, government documents, and other reports recently published. References can be found in the bibliographic section of this report.

The central goals of reorganization of executive-branch policymaking functions are “to promote efficiency and responsiveness in the implementation of state policy.”⁵ Efficiency refers to the costs and quality of policy outcomes; responsiveness to the degree of match between policy implementation and the policy preferences of the people. The former requires knowledgeable policy actors motivated and empowered to produce good outcomes. The latter requires policymakers to be accountable for their actions to the people.

These two fundamental goals may conflict with one another. If policymakers are held accountable to a diverse set of constituent interests, responsiveness can lead to gridlock, delay and inefficiency. Conversely, efficient policymaking may create winners and losers in the policy process when constituent goals conflict. Hence, optimization of institutional arrangements for the State’s rail functions may offer some gains in efficiency and/or policy responsiveness, but no magic bullet.

The report proceeds as follows. In the next section, we provide an overview of the various components of the rail system in California to provide some context for our

discussion. We then describe the current distribution of governmental responsibilities vis-à-vis rail transportation, including strategic planning, construction, safety, and operations.

Fourth, we review the organization of state rail functions in selected states in order to compare California's institutional choices to those employed elsewhere in the country. Fifth, we present and discuss a series of alternative institutional arrangements for management of California's rail functions in light of what we have learned from the experiences of other states, the views of our expert interviewees, and our findings from the policy literature.

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Background

In this section, we provide a brief overview of the various components of the rail system in California, highlighting the impact of the rail industry on California's economy and some of the challenges facing the freight rail and passenger rail sectors. For a more detailed discussion of the rail industry in the state and transportation issues more generally, we refer interested readers to the California Department of Transportation's (Caltrans) latest biennial report to the legislature, *California State Rail Plan, 2007-08 to 2017-18*; the California Transportation Commission's (CTC) *Annual Report to the State Legislature* for 2008; and the Legislative Analyst's Office (LAO) 2007 report, *California Travels: Financing Our Transportation*.

The California Rail System⁶

The California rail system has three primary components: intercity passenger, commuter, and freight rail. All three components share the same infrastructure (e.g., tracks and signaling systems), most of which is owned by private railroads, although portions are controlled by public entities.⁷ High-speed rail projects, such as that currently in planning by the California High-Speed Rail Authority, generally would utilize different infrastructure, but could be considered a fourth component to the state system.

Urban rail transit systems are not considered to be part of the formal rail system. Instead, they are considered part of the mass transit system along with bus systems. Rail transit includes five light rail systems (Sacramento, San Francisco, San Jose, Los Angeles, and San Diego); the Bay Area Rapid Transit District (BART); the Los Angeles County Metropolitan Transit Association (LACMTA); Metro Rail Red Line; and the San Francisco Municipal Railway Cable Car. These networks primarily are funded locally and do not share the same infrastructure with intercity, commuter and freight rail. However, rail transit plays an important role in transportation systems because of its ability to connect stations to rural and urban destinations. Urban transit systems are, for the most part, outside the scope of our report.

Intercity Passenger Rail

Federal statutes and case law (but not state laws) draw a distinction between "intercity" and "commuter" passenger rail services. Commuter rail passenger transportation means "short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations."⁸ All other rail passenger service falls under intercity rail.

This distinction is potentially important because federal law guarantees the National Passenger Rail Corporation (Amtrak) access rights to freight railways at incremental cost for operation of intercity passenger service. Amtrak funds and operates four interstate rail routes with service in California:

- The Coast Starlight (Los Angeles-Oakland-Sacramento-Portland-Seattle).
- The California Zephyr (Emeryville-Reno-Denver-Chicago).
- The Southwest Chief (Los Angeles- Albuquerque-Kansas City- Chicago).
- The Sunset Limited (Los Angeles-San Antonio-New Orleans- Orlando).

Additionally the state funds or partially funds three intercity rail routes – the Pacific Surfliner (San Luis Obispo-Los Angeles-San Diego) and San Joaquin Routes (Sacramento-Fresno-Bakersfield-Los Angeles), both of which are managed by the state; and the Capitol Corridor (Auburn-Sacramento-Oakland-San Jose), which is administered by the Capitol Corridor Joint Powers Authority (CCJPA). All three routes are operated by Amtrak under contract. Amtrak is the only entity guaranteed access to privately-owned railways to operate passenger services, although entities may contract with other companies, as is the case with several commuter rail systems.⁹

The legislature budgeted \$90.3 million for Fiscal Year 2009-10 from the Public Transportation Account, up from \$86.3 million for 2008-09 and \$79.7 million in 2007-08 for State operating subsidies for these services. In addition, Amtrak provides about \$11 million annually to subsidize these operations (including about \$10 million per year for the 30 percent of the Pacific Surfliner that is not State supported).¹⁰

Commuter Rail Systems

There are four commuter rail systems controlled by regional agencies: Caltrain (San Francisco, San Jose, Gilroy), Altamont Commuter Express (ACE, Stockton-San Jose), Metrolink (Los Angeles-Orange-Riverside-San Bernardino, and Ventura), and Coaster (San Diego-Oceanside). Currently, Caltrain contracts with Amtrak for operations, whereas ACE contracts with Herzog Transit Services, Coaster with TransitAmerica (a subsidiary of Herzog) and Metrolink with Veolia Transportation.

Metrolink is the seventh largest commuter rail system in the U.S. by average daily ridership; Caltrain eighth; Coaster 16th and ACE 17th, respectively. The *combined* ridership of these systems is still substantially less than that of the sixth largest system, (SEPTA Regional Rail of Philadelphia).¹¹ Commuter systems are funded with various local, state, and federal contributions. Historically, the State Transit Assistance program has provided operating subsidies to these systems. The recent budget agreement between the Governor and Legislature suspends STA funding from the 2009-10 budget through Fiscal Year 2012-13.

Freight Rail

In the U.S., freight railroad companies are privately-owned and operate primarily on privately-owned tracks. Freight rail plays a significant role in goods movement. California has four major goods movement corridors: Los Angeles-Long Beach/Inland Empire; San Diego/Border; the Bay Area; and the Central Valley.

There are three classes of freight railroad companies in the United States, defined by the Federal Surface Transportation Board (STB) as a function of annual operation revenues. Class I railroads currently are defined as those having an annual operation revenue greater than \$258.5 million. Currently, there are seven Class I railroads operating within the U.S., accounting for 93 percent of total railroad revenues nationally. These companies are regulated by the STB and required to file annual and quarterly statistical and financial reports to the Board. Class II or regional railroads have annual operating revenue between \$40 million and \$258.5 million; and, Class III or local railroads (commonly known as “short lines”) have annual operating revenues of less than \$40 million. Class II and III companies have no reporting requirements to the STB.

California’s freight rail system is mostly operated by two Class I railroads:

- The Union Pacific Railroad (UP). By trackage and revenue, UP is the largest railroad company in the U.S. It incorporates the historic Union Pacific, the former Southern Pacific Transportation Company, the former Western Pacific Railroad, and the Chicago and North Western Transportation Company, among other properties.
- The BNSF Railways (BNSF) is the second-largest railroad company in the U.S. It was created from the merger of the Burlington Northern Railroad and the Atchison Topeka and Santa Fe in 1995.

One Class II regional railroad and 27 Class III short line railroads also operate in California. Most of short line railroads are privately owned, generate under \$5 million annually in revenues and employ between ten and 50 employees. Operating costs for short lines range from about 75 percent to 110 percent of revenues from freight movement. To break even, short lines may have other income sources such as income from rental property or lease income from placement of utilities in their rights of way.¹²

Switching and terminal (S&T) railroads constitute a fourth category of rail operations. Rather than point-to-point transportation, they usually perform pick up and delivery services within a specified area, such as a rail yard, or funnel traffic between other railroads. In 2005, there were eleven S&T railroad companies operating in the State.

Challenges in Rail Passenger and Freight Transportation

The major long-term challenges to the development of an efficient intercity passenger service in California are two-fold. First, most intercity passenger rail systems require substantial governmental subsidies to cover operating expenses. Demand for passenger rail services is held to be highly elastic with respect to both price and travel time, implying that full cost recovery through increased fares is impossible for most current services.¹³ Passenger rail service provides compensatory social benefits through reduced congestion on surface roads (thus saving other commuters time and money) and reduced air pollution from avoided automobile transportation. Allocating the costs to provide those social benefits is a political problem, exacerbated by difficult state budgetary times.

Second, passenger rail operates primarily on tracks owned or controlled by freight railroads. Private ownership of the rail infrastructure and right-of-way contrasts very sharply with the prevailing situation in the state's road system, where nearly all roadways are owned, built and maintained by public entities. The dramatic scale difference in California public financing of rail development versus highway development follows in significant part from the fact of predominantly private ownership of rail infrastructure and rights-of-way.

Policymaker and voter concerns about underfunded infrastructure development and maintenance in California are long-standing. Significant transportation infrastructure-related measures passed by the voters or the legislature in recent years include the Traffic Congestion Relief Act (2000), Proposition 42 (2002), Propositions 1A and 1B (November 2006) and Proposition 1A (November 2008). These efforts have begun to address a number of infrastructure shortcomings in the state's transportation system, including rail transportation. Nonetheless, legitimate concerns remain about the level of the State's long-term financial commitment to passenger rail development.

Specific complications arising from private ownership of railways for improving passenger-rail efficiency and capacity in existent rail corridors include:

- 1) Liability issues associated with the joint operation of passenger and freight service on shared tracks.
- 2) Differences in operational speed and acceleration that create scheduling and track capacity issues (passenger trains generally operate at higher speeds and accelerate and stop more rapidly than freight trains).
- 3) Increases in demand for freight transportation services that compete with passenger service for use of limited capacity and can lead to overall rail congestion, threatening freight rail company profitability. This makes freight rail companies less inclined to share tracks with passenger rail.

A strong working relationship between freight railroads; commuter and intercity passenger rail operators; and state and local governments is absolutely necessary to manage these challenges.

Economic Significance of the Railroads

The economic value of the industry to the state economy is somewhat difficult to quantify. Rail systems arguably generate significant positive externalities through their effects on property values and job creation near stations and transshipment points, as well as their effects on surface road congestion and avoided automobile and truck emissions. Furthermore, the rail system helps to stimulate economic activities in areas where

transport constraints and market access would otherwise be substantial barriers to business viability.

Nationwide, in 2006, the railroad freight industry generated \$54 billion in revenue (90 percent by Class I railroads) and provided almost 187,000 jobs.¹⁴ The Federal Bureau of Economic Analysis estimates that rail transportation contributes about 0.3 percent of Gross Domestic Product, compared to 0.9 percent of GDP for truck transportation.¹⁵

The California railroad industry employed more than 15,000 persons in 2006, out of which 10,478 were employed in freight rail. This figure represented 5.6 percent of US freight rail jobs. The average wage in the railroad industry in California is almost \$70,000.¹⁶

More than 70 million tons of freight rail traffic originated in the State in 2006, while freight rail traffic that terminated in California was about 110 million tons. Table 1 shows the break down of traffic for the top rail commodities. The primary commodities handled by rail in California include bulk shipments of chemicals, petroleum, food products, farm products, primary metals, paper products, and lumber.¹⁷

Freight rail connects California seaports with inland producers and consumers, facilitating domestic and international trade. Freight rail plays a significant role in the competitiveness of many industries in the state and in international trade growth. Nearly 20 percent of foreign trade passes through California, a value of \$436 billion in goods for 2006. According to Caltrans, it is estimated that total U.S. domestic and international freight tonnage will increase by 67 percent by 2020, with serious consequences for the movement of goods in California. The railroad industry must adjust to this growth trend. Caltrans estimates that if freight rail were to continue to carry the same volume of freight in 2020 as it does currently, 900 million tons of freight and 31 billion truck vehicle-miles-of-travel would be shifted to the highways, with a cost of \$326 billion to shippers, \$492 billion to highway uses, and an increase of highway costs of \$21 billion through 2020.¹⁸

Table 1

Rail Tons Originated in California, 2006		Rail Tons Terminated in California, 2006	
Chemicals	3,616,449.0	Farm Products	13,696,934.0
Mixed Freight	37,794,104.0	Chemicals	10,977,633.0
Food Products	6,250,236.0	Mixed Freight	28,407,880.0
Primary Metals	3,727,429.0	Food Products	11,616,124.0
Petroleum Products	3,225,716.0	Primary Metals	6,348,449.0
Glass and Stone Prod.	3,697,956.0	Petroleum Products	3,861,326.0
Lumber		Glass and Stone Prod.	3,759,104.0
Other	11,755,206.0	Lumber	6,843,232.0
		other	24,606,489.0
Total	70,067,096.0		110,117,171.0
<i>Source: Association of American Railroads.</i>			

Caltrans and Amtrak reported that 5.5 million passengers used California's state-supported intercity passenger trains in Fiscal Year 2008. The Pacific Surfliner transported more than 2.89 million passengers. The Capitol Corridor trains (ranked as the nation's third busiest line) carried 1.69 million people and about one million persons rode the San Joaquin's service (ranked as the sixth busiest line in the nation). Amtrak ridership was 28.7 million.¹⁹ State-supported intercity rail revenue from transportation of passengers for 11 months of the federal fiscal year (October 2007 through August 2008) was \$67.7 million.²⁰

Railroad Regulations

Federal Regulations

There are many federal laws dealing with different aspects of the railroads (federal railway-labor acts, environmental regulations, etc.). However, there are two main strands of federal railroad regulations:

- laws which regulate economic aspects of railroads (market structure, services provided and pricing) administered by the Surface Transportation Board (STB); and
- rail safety regulations, administered by the Federal Rail Administration (FRA).

Regulation of Economic Aspects of Railroads

In the early 1970s, railroads were experiencing economic hardship in part because they had lost significant market share to other modes of transportation. For many, the decline of the industry was the consequence of the railroad regulatory system, which constrained competition and impeded innovation. Concerns over the health of the railroad industry led Congress to pass three important pieces of legislation: 1) the Regional Rail Reorganization Act of 1973 ("3-R Act"); 2) the Railroad Revitalization and Regulatory

Reform Act of 1976 (“4-R Act”); and, 3) the Staggers Rail Act of 1980 (also known as the Staggers Act).

The 3-R Act was designed to salvage the rail services operated by seven insolvent Class I railroads in the Midwest and Northeast regions of the United States. This Act empowered the federal government to seize assets of bankrupt rail roads (including the Penn Central Transportation Company and Erie Lackawanna Railway) and reorganize them into a for-profit corporation, owned by the government, responsible for track acquisition and operation in the final rail system plan. This was the Consolidated Rail Corporation (Conrail), a quasi-public freight railroad. The 3-R Act also created the United States Railway Association for developing and funding a system plan and the Rail Services Planning Office of the Interstate Commerce Commission (ICC), for providing a forum for interested parties, setting standards, and planning assistance of local rail services for the states.

In 1976, Congress passed the Railroad Revitalization and Regulatory Reform Act (The 4R Act). A major purpose of the 4-R Act was to promote inter-railroad and intermodal competition. The 4-R Act limited the ICC’s authority to set rates only when the commission determined that a railroad was “market dominant”.

In 1980, the Staggers Rail Act partially deregulated rail rates and services by making federal policy to rely, where possible, on both competition and the demand for rail services to establish reasonable rates. It also allowed railroads to negotiate transportation contracts and permitted railroads to change their rates without challenge in accordance with a rail cost adjustment factor.

As a result of the deregulation process that culminated with the Staggers Act, the ICC’s role and responsibilities were significantly reduced. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) terminated the Interstate Commerce Commission and assigned the responsibility of continued oversight of railroad economic issues to the Surface Transportation Board (STB). The Act emphasized the need to minimize federal regulatory control over the rail transportation system while fostering competition and the demand for services to establish reasonable rates for rail transportation.

Currently the STB is an independent economic regulatory agency, administratively affiliated with the Department of Transportation, whose purpose is to resolve railroad rate and service disputes and reviewing proposed railroad mergers. The STB regulates rail rates where there is an absence of effective competition and adjudicating disputes about service. Other issues under the STB responsibility are line sales, line construction, and line abandonments.

Safety regulations

Rail Safety for heavy-rail freight and passenger rail is regulated by the Federal Rail Administration (FRA). The Federal Transit Administration (FTA) regulates safety and security of light-rail transit systems.

The Federal Rail Administration (FRA)

In 1966, the Department of Transportation Act created the Federal Railroad Administration as one of the operating units within the department of Transportation, an agency to oversee the development of national transportation policies. The FRA was given the authority over the federally-owned Alaska Railroad (from the Department of Interior), the Bureau of Railroad Safety (from the ICC), and the Office of High-Speed Ground Transportation (from the Department of Commerce). The act also created an independent National Transportation Safety Board, which investigates the causes of transportation accidents and makes recommendations to improve safety.

The FRA enforces rail safety regulations; administers railroad assistance programs; and conducts research and development in support of improved railroad safety and national rail transportation policy. The FRA regulates and enforces maintenance of track and railroad equipment, grade crossing warning devices, levels of noise (from rail operations including locomotive horns), railroad operations, and employee safety.²¹

Under its State Rail Participation Program, the FRA authorizes state agencies to enforce federal rail safety regulations. California is one of 30 states that participate in the program. The California Public Utilities Commission (CPUC) is the designated agency to which the FRA has delegated authority in this state.

The Transportation Security Administration (TSA) in the U.S. Department of Homeland Security (DHS) oversees security of railroads. The recommendations of the 9/11 Commission Act of 2007 included the development of a national rail-security strategy and risk assessment. On September 24, 2008, Congress passed a final version of the Rail Safety Improvement Act of 2008 (P.L. 110-432), which includes a number of provisions to improve rail safety.

The National Transportation Safety Board (NTSB) is an independent federal agency that has the responsibility of investigating accidents in aviation, railroad, highway, marine and pipeline modes of transportation. The agency is also responsible for issuing safety recommendations for the prevention of future accidents.

California Railroad Regulations

In the late 1800s, there was a movement in California, as in other states, against the “unfair high rates” and discriminatory practices of the railroads. This movement led to the creation of an advisory railroad commission (a three-member board) in 1876, to

control rates charged by railroads, assure safety, and abolish unjust discrimination by the carriers (O'Connor Act). In 1878 the Legislature abolished the board and authorized a Transportation Commissioner. The Constitution of 1879 subsequently created a three-district Railroad Commission to regulate the price of railroad transportation and to end discrimination between localities. The Railroad Commission faced many difficulties due to lack of resources and technical expertise.²² The Commission was also subject to accusations that its actions favored railroad and neglected public interest.²³ In 1911, the Public Utilities Act of 1911 changed the Commission to a five-member body appointed by the Governor with supervision over a wide range of public utilities. The new Commission's responsibilities included rate regulation, safety, and prohibition of discrimination. The body was renamed the California Public Utilities Commission in 1946.

Safety Regulations

The California Public Utilities Commission (CPUC)

The safety regulatory aspects of railroads are under the responsibility of the CPUC. The Commission regulates privately-owned and operated natural gas, electric, communication, transportation, and water companies in California. "It grants operating authority, regulates service standards, sets rates, and oversight utility operations for public and environmental safety and protects public interests."²⁴

The federal government has preempted the states from economic regulation of railroads²⁵. However, the CPUC has safety and security oversight of California railroads, as well as rail transit systems.

Additionally, the CPUC participates in the State Rail Safety Participation Program of the FRA. The Federal Rail Safety Act (45 U.S.C. Sec. 421m, et seq.) authorizes the FRA to work with state agencies to enforce rail safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation. FRA may delegate safety and security oversight to state agencies and the CPUC is the designated agency for this purpose in California. Out of the thirty states in which the FRA has delegated to a state agency for rail safety program management, thirteen also employ the state public utilities commission or similar body; fourteen delegate within the states' Department of Transportation, and two use other agencies.

Currently the CPUC oversees the safety of all railroads, six major rail transit agencies, five smaller transit systems, and public and private crossings. The CPUC has exclusive authority to approve or disapprove all highway-rail crossings in California, including the power to determine their design, location, terms of installation, operation, maintenance, use, and warning devices.²⁶

Public Utilities Code, Section 309.7 direct the functions of the CPUC Division performing railroad functions. The main mandatory functions of the Commission related to railroad regulation include:

- Inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of passenger and freight railroads.
 - Inspection of railroad locomotives and equipment and facilities located in class I railroad yards in California not less frequently than every 180 days
 - Inspection of all main and branch line tracks not less frequently than every 12 months.
- Inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of public mass transit guideways.
- Consultation with representatives of railroad corporations, labor organizations representing railroad employees, and the Federal Railroad Administration in performing its duties.
- Collection of fines and penalties resulting from the violation of any safety rule or regulation.
- Enforcement of safety requirements and state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail.

The Commission's Consumer Protection and Safety Division performs these functions. Railroad safety programs are carried out by the Railroad Operations Safety and the Rail Transit and Crossings Branches. The Rail Transit and Crossing Branch divides its programs into two sections, the Rail Transit Safety Section and the Rail Crossing Engineering Section. The Rail Transit Safety Section provides oversight of Rail Transit Agencies.

The Rail Crossing Engineering Section provides safety oversight for public crossings in the state. This section reviews applications to construct new or to alter existing crossings, as well as environmental impact documents for potential project-related effects on the safety of crossing. This section also administers the Rail Transit and Crossings Branch's Filings Database; the Commission's Rail Crossing Inventory Database and the Commission's Rail Accidents Database.

The Rail Crossings Engineering Section also participates in the "Section 130" and "Section 190" programs.

Section 130 Federal Crossing Improvement Program. Under the federal rail-highway crossing program (23 U.S.C. 130) each state is required to maintain a survey of all highways to identify those railroad crossings that may require separation, relocation, or protection devices, and establish and implement a schedule of projects for this purpose. The Federal Highway Administration is responsible for this program, but has delegated implementation responsibility to the states. The CPUC maintains a database of the more than 10,000 at-grade crossings in the state (approximately 6,500 of which are on public roads; of these, some 1,200 are ungated) and annually evaluates crossings accident data to help identify high-priority crossings. The program provides funds for grade crossing safety projects to Caltrans. Improvements include the installation of grade crossing safety devices, surface improvements, and crossing closures. State law requires CPUC

approval for any new at-grade crossings and modifications to existing crossings, including rail crossings on state and local roadways. The CPUC identifies and evaluates public crossings that are candidates for federal funding and submits priority recommendations to the California Department of Transportation, which issues services contracts to railroads and local agencies to implement the projects.

Section 190 State Grade Separation Program. This is a State-funded safety program that provides funds for the elimination of existing at-grade railroad crossings (crossing where roads and tracks intersect at the same level) and replacement with grade separations (underpasses or overheads where train tracks are above or below the roadway). Section 190 of the California Streets & Highways Code has required the state budget to include \$15 million annually since 1974 for this program. Consolidations or track removal projects that eliminate grade crossings are also considered. Local agencies, railroad companies, or the California Department of Transportation (Caltrans) can nominate projects. The CPUC evaluates the need for grade separation of these projects and prioritize them on a list. The need for grade separation is established using information on traffic volumes, accident history, and other factors. This list is developed every two years. Once the CPUC list has been established, Caltrans administers the program. The annual amount of State funding for the program is \$15 million.

Quiet Zones. The Rail Crossings Engineering Section evaluates all notices of the establishment or continuation of Quiet Zones (grade crossings at which trains are prohibited from sounding their horns).

In addition to the safety functions mentioned above, the CPUC implements the State Participation Program regarding regulation of rail transportation of hazardous materials as authorized by the Hazardous Materials Uniform Safety Act of 1990. CPUC also participates in the definition of security protocols for the implementation of the Local Community Rail Security Act of 2006 (AB 3023, effective January 1, 2007), which requires all rail operators to provide annual risk assessments to the CPUC, the Director of Homeland Security, and the Governor's Office of Emergency Services (OMS).

Planning and Operational Functions

The California Transportation Commission (CTC)

The California Transportation Commission was established in 1978 by Assembly Bill 402 (Chapter 1106, Statutes of 1977) to work towards a unified California transportation policy. The Commission replaced and assumed the responsibilities of four independent bodies: The California Highway Commission, the State Transportation Board, the State Aeronautics Board, and the California Toll Bridge Authority.²⁷

The California Transportation Commission consists of eleven voting and two non-voting ex-officio members. Nine of the eleven voting members are appointed by the Governor, one is appointed by the Senate Rules Committee, and one is appointed by the Speaker of

the Assembly. The two ex-officio non-voting members are appointed from the State Senate and Assembly.

The Commission is responsible for the programming and allocating of funds for the construction of highway, passenger rail, and transit improvements throughout California. The Commission advises and assists the Secretary of Business, Transportation and Housing Agency and the Legislature in formulating and evaluating state policies and plans for California's transportation programs. The Commission also participates in the initiation and development of state and federal legislation that help finance State's transportation needs.

The Commission²⁸:

- Adopts the biennial five-year state transportation improvement program (STIP)
- Approves the biennial four-year state highway operation and protection program (SHOPP)
- Estimates state and federal available funding for the STIP and SHOPP
- Allocates state and federal funds to projects nominated by Caltrans and regional agencies
- Allocates state funds for capital projects
- Allocates state funds for capital grants
- Adopts guidelines for the development of the state transportation improvement program and for the development of regional transportation plans
- Provides oversight on Caltrans and local project delivery
- Advises, assists, and informs the Secretary of the Business, Transportation and Housing Agency and the Legislature on the design, evaluation and planning of state transportation policies and programs.

The California Department of Transportation (Caltrans)

Caltrans administers rail activities mainly through its Division of Rail, whose goal is “to improve intercity rail transportation throughout the state by working with Amtrak and local agencies to improve the quality and quantity of train service”.²⁹

Government Code Section 14036 requires the California Department of Transportation to complete a ten-year State Rail Plan and update it every two years. The Plan should include both passenger and freight rail operations. The California Transportation Commission (Commission) is required by law to give its advice and consent on the Department of Transportation Plan. The report is transmitted to the Legislature, the Governor, and the Public Utilities Commission.

Transportation in California is guided by the Administration's “GoCalifornia vision”, where the links between transportation, housing, and land use are included in the planning strategy and implementation.

The Department's Interregional Transportation Strategic Plan (ITSP) for interregional capital projects relies upon the State Rail Plan to complement other means of transportation. The GoCalifornia vision supports the capacity enhancement of the freight rail system to contribute to goods movement capacity expansion, however, the Department's Rail Plan is primarily a Rail Passenger Plan.

The Division of Rail (DOR) manages and coordinates intercity rail passenger services. DOR manages two state supported routes operated by Amtrak, and financially supports a third.

The Division also participates in the San Joaquin Valley Rail Committee (established by SB 1118, Statutes of 1997), which consists of representatives of the counties along the San Joaquin Route (Alameda, Contra Costa, Fresno, Kern, Kings, Los Angeles, Madera, Merced, Sacramento, San Joaquin, Stanislaus and Tulare). The Committee's activities are to promote ridership on trains connecting the Sacramento and Bay areas to Southern California via the San Joaquin Valley; to make recommendations regarding service improvements, scheduling, and equipment; and to suggest and support federal and state legislation pertinent to passenger rail.³⁰

DOR, through the Office of Planning and Policy, prepares the biennial 10-year State Rail Plan (Passenger Rail) and annual Business Plans for Pacific Surfliner and San Joaquin Routes. The Office of Planning and Policy also conducts special feasibility studies and other reports on state intercity rail passenger service.

DOR has the responsibility of coordinating with other programs within Caltrans to present capital and operating fund allocation requests to the California Transportation Commission (CTC).³¹

The Capital Project Implementation within the Division ensures that the projects of the Division of Rail comply with environmental law and coordinates projects' environmental reviews with federal, state and local agencies.

The Rail Crossing Safety and Track Inspection Branch administers grade crossing programs, including the Federal Aid Section 130 Railroad-Highway Grade Crossing Protection Program and the State Section 190 Grade Separation Program. The Branch also ensures that passenger rail track and infrastructure construction projects meet contract specifications and legal requirements.³²

The Rail Equipment Technology Branch administers procurement, acquisition, overhaul, and maintenance of Caltrans owned locomotives.³³

Track and Signal Construction negotiates, implements, and oversees track and signal improvements on Amtrak carrier railroads.³⁴

The Office of Rail Capital Project Development, Operations, and Marketing performs the following functions:

- Planning, programming, and development of intercity rail capital projects.
- Assistance to local agencies in implementation of capital projects.
- Administration of capital project contracts.
- Development of plans for funding projects through STIP, and in coordination with other entities (freight railroads, Amtrak, commuter railroads, and local and regional agencies).
- Monitoring of train and bus services for quality and consistency.
- Marketing and public information services for intercity rail and connecting buses.

The California High-Speed Rail Authority

The High-Speed Rail Authority was created in 1996 (SB 1420, Chapter 796, Statutes of 1996) It is an independent authority established to direct the development and implementation of intercity high-speed rail service. The Authority has a nine-member policy board (five appointed by the governor, two appointed by the Senate Rules Committee, and two by the Speaker of the Assembly). (Public Utilities Code, Division 19.5. California High-Speed Rail Service. Chapter 2. The High-Speed Rail Authority. Section 185020)

Regional and Local Organizations:

There are numerous organizations that play a role in transportation planning and development, including Regional Transportation Planning Agencies (RTPAs), MPOs, County Transportation Authorities, transit agencies, cities and counties.

RTPAs are formed as a council (or association) of governments and local transportation commissions. Currently there are 26 RTPAs in California.³⁵ Based on regional priorities, these organizations administer state funds, allocate federal and local funds to projects, and select projects for the regional portion of the STIP.

Metropolitan Planning Organizations (MPOs) are responsible for planning, programming and coordination of federal highway and transit investments in urbanized areas. There are currently 18 MPOs in the state.³⁶ These organizations are required by the federal government and usually organize in a similar way as urban RTPAs. The Governor designates an MPO in every urbanized area with a population over 50,000.

County transportation authorities administer funds from local taxes for transportation purposes. Cities and counties set land-use policy and propose transportation projects for funding by the RTPAs. Transit agencies, such as Bay Area Rapid Transit also select projects for funding and provide transportation services.³⁷

The Organization of State Rail Functions: Other States

In this section, we review briefly the organization of rail-related state activities in other, selected states, in order to better identify potential strengths and weaknesses in California's current approach.

Florida

The Florida Department of Transportation (FDOT) has general responsibility over railroad-related state functions. Within the FDOT, rail safety, operations and planning functions are all the responsibility of the Rail Office, one of four offices that report to the Public Transportation and Modal Administrator who, in turn, reports to the Assistant Secretary of Intermodal Systems Development. The Rail Office deals with intercity passenger service (Amtrak), high-speed rail, and commuter rail services. It also has the following functions related to freight rail: policy, planning, and procedures; rail safety inspections; rail-highway crossing safety; and project development assistance.³⁸ The FDOT determines the relative hazard of crossings statewide using a Safety Index based on a combination of factors in each crossing. Crossings are ranked according to this index for installation of warning devices such as flashing lights or gates.

The system works well, according to the Rail Office Manager Mr. Fred Wise, because the system allows the planning integration of all modes that are under the responsibility of the Department of Transportation. Mr. Wise also reports that the inclusion of rail safety with other rail functions in the Department does not present problems.³⁹

Illinois

The state of Illinois has a similar rail regulatory structure to that of California, with rail safety regulations under the Illinois Commerce Commission and planning and operational functions under the Illinois Department of Transportation. The Bureau of Railroads and the Division of Public Transportation are part of the Division of Public and Intermodal Transportation. This Division is responsible for implementing the state's program of technical assistance and capital and operating grants to state public transportation systems, provides oversight for inter-city rail programs, and provides rail expertise (analysis and monitoring) to the Department of Transportation on technical and policy issues.⁴⁰

The Illinois Commerce Commission also participates in the selection of local projects under the federal 130 Section program. The Commission receives the applications from local agencies and the Department of Transportation allocates the funds. Additionally, Illinois houses with the Commission a state grade crossing improvements program (complementary to the federal 130 section program). The program is completely administered by the Commission, but the Department of Transportation finances the costs

of these projects.⁴¹ The administration of both programs requires planning coordination for the best utilization of the funds.

There have been many proposals to reorganize the Illinois rail regulatory system into one Rail Division or Rail Department. The arguments in favor of these proposals highlight savings in costs and efficiency by eliminating some redundant operations and eliminating some positions. One argument against the reorganization is that it would compromise rail safety. Critics argued that the rail regulatory functions should continue under the Illinois Commerce Commission because this agency has the experience and expertise to oversee rail safety, whereas the Department of Transportation does not perform and is not interested in performing safety oversight). Additionally, locating rail regulatory functions with the Illinois Commerce Commission provides railway workers and their representatives with a quasi-judicial forum in which to bring issues against the railroad industry, a situation that would be unavailable in the Department of Transportation.⁴²

North Carolina

North Carolina is of interest in part because the state reorganized rail functions in 1996, transferring safety functions from the state Utilities Commission to the state Department of Transportation. They house a Rail Division under the direction of the Deputy Secretary for Transit within the Department of Transportation. Other Divisions include Aviation, Public Transportation, Ferry and Bicycle and Pedestrian Divisions. There are three sections within the Rail Division: Planning and Environmental, Operations and Facilities, and Engineering and Safety Sections.

The Division of Rail coordinates safety, planning, and operational oversight through these separated sub-units. Main responsibilities of the Division are: maintaining a safe and efficient rail network; working with communities to improve and expand passenger services; contacting with Amtrak for operation of services; administering state and federal safety regulations; and, coordinate with various parties and develop a state rail plan. The Section 130 federal program is managed by the Engineering and Safety Section.

Administrative appeals and rulemaking structure for railroad matters are handled by the General Assembly, the Secretary of Transportation and the Board of Transportation.

Representatives of the Rail Division see advantages in having all railroad functions in an independent agency/division or board. They see the program can still be improved by continued streamlining to improve delivery. As is often true of state agencies, they view adequate funding for operations to be one of the Division's largest on-going challenges.

According to Mr. Paul Worley, Director of Engineering and Safety, local governments like this system. The advantages of having a Rail Division include:

- There is one point of contact, which is important for communications with the public and local governments;
- A coordinated program allows concerns to be fully addressed in several areas;

- There is better project delivery due to better coordination;
- There are cost and time savings from one centralized business process and coordinated projects and programs;
- The regulatory process is more efficient due to the ability to coordinate with other railroads and stakeholders as one Department of Transportation;
- Pooling functions under one Department is the best for program accountability because a unified Departmental process can be presented to stakeholders;
- Impacts on safety can be measured through public feedback and safety measurements.

Oregon

The Department of Transportation's Rail Division is responsible for freight and passenger rail planning and operations, rail safety, crossing safety, as well as for representing railroad customers on service issues. The Rail Division acts as an agent for the Federal Railroad Administration (FRA) by inspecting track, railroad equipment and cars, hazardous materials, and operating practices. It also manages 150 miles of state-owned railroad right of way and has the responsibility for safety oversight of transit agencies

Originally, the state safety rail functions were under the Public Utilities Commission, these responsibilities were transferred in 1996 to the Department of Transportation, together with the staff and the whole office that performed those functions. Representatives from the Department feel that the current structure is working quite well.

Texas

The Department of Transportation in Texas (TxDOT) has all powers and duties related to railroads, which previously were under the responsibility of the Texas Railroad Commission. The Department has the authority to 1) acquire, construct, maintain and operate freight or passenger; 2) administer federal funding used on construction or maintenance of rail infrastructure; and 3) enter into agreements with public or private entities for rail projects.

The Department of Transportation divides its activities under the responsibility of five Assistant Executive Directors: the Chief Financial Officer; the Assistant Executive Director for Innovative Project Development; the Assistant Executive Director for District Operations; the Assistant Executive Director for Engineering Operations; and the Assistant Executive Director for Support Operations.

Rail planning and operation functions are carried out by the Multimodal Section of the Transportation Planning and Program Division, which is under the responsibility of the Assistant Executive Director for Innovative Project Development. The Transportation Planning and Program Division is responsible for multimodal transportation systems planning and data collection. It also administers planning funds and programs projects. It acts as the central clearinghouse for project selection.

Two of the four branches in the Multimodal section perform rail related functions: 1) the Rail Branch oversees and coordinates the analysis and development of projects with state participation; and 2) the Rail Safety Branch is responsible for administering the state rail safety inspection program.

Planning functions of the department address capital and maintenance rail investments and freight and passenger rail service and safety needs. The Department conducts studies to identify freight capacity and infrastructure needs in specific areas, while considering alternative modes or alignments to improve freight efficiencies. Planning functions aim for the integration of different modes of transportation. The rail system is treated as a component of the overall transportation network. Rail planning integrates local and system-wide rail considerations. The TxDOT has 25 local districts that work closely with government agencies. These local districts are responsible for transportation planning, design, right-of-way acquisition, construction oversight, and maintenance in each region.

TxDOT's rail planning process coordinates efforts with regional mobility authorities (RMA's), rural rail transportation districts (RRTDs), commuter rail districts, counties, cities, and metropolitan planning organizations (MPOs), as well as with the private railroad sector.

From 1983 through 2005, the state's rules on rail safety were under the jurisdiction of the Texas Railroad Commission (RRC). The 79th Texas Legislature transferred the program to the Texas Department of Transportation (TxDOT), effective October 1, 2005.

The rail safety program is primarily concerned with the enforcement of state and federal rail safety standards for track, locomotives, freight cars, signal and train controls, operating practices of employees, and the transportation of hazardous materials. As do other states, Texas must comply with the requirements of the "State Safety Participation Regulations" in order to participate with FRA in the enforcement of federal standards. TxDOT's rail safety program is also tasked with collecting information on the transport of hazardous materials by rail. State and FRA safety inspectors monitor the compliance of safety regulations.

The Traffic Operations Division, under the direction of the Assistant Executive Director for Engineering Operations, oversees programs in traffic management, engineering, safety and railroads. This section manages the Federal Section 130 program and manages crossing inventories. The division is involved in planning and maintaining signs, signals, pavement markings, lighting and highway-rail crossings. The division also manages intelligent transportation systems, crash records, and safety initiatives to improve driver behavior, eliminate roadway hazards and increase traffic law enforcement.

When developing projects under the Section 130 program, analysts must first consider consolidation or closing of non-essential crossings. TxDOT selects projects using a federally required priority index to select candidates. The construction of this index is based on: average daily vehicle, train and school bus traffic; maximum train speeds; existing warning devices; and, auto/train accidents in the past five years.

Texas also has a state Transportation Commission, composed of five members and an executive director selected by the commission. Commission members serve overlapping six-year terms and are appointed by the governor with the advice and consent of the Texas Senate. This Commission allocates funds.

A High Speed Rail Authority (THSRA) was also created by Texas legislature, in 1989 as a separate agency to determine the feasibility of a high-speed rail in that state. One of the responsibilities of THSRA was to choose the best qualified applicant for award of a franchise to design, build, and operate a high-speed rail service in the state. In 1991, a 50-year franchise was awarded to a consortium of businesses, the Texas TGV (TTTGV) Corporation. However, insufficient funding and other pressures ended the project and the THSRA was abolished in 1995. By the late 1990's, the FRA began to encourage the incremental development of faster passenger train systems through the designation of "High-Speed Rail Corridors" (HSRCs) around the country, including two such corridors in Texas.

Currently there is a bill under consideration in the Texas legislature that proposes the elimination of the Texas Transportation Commission, to be replaced by a Transportation Commissioner, named by the governor and approved by the State Senate. The bill also proposes to transfer some functions from the Department of Transportation to other Departments and reorganize TxDOT into divisions, including the aviation, highways and roads, public transportation, and rail transportation.⁴³

DRAFT

Options for Governance Reorganization

SB 53 specifically requires the California Research Bureau to address the potential

benefits and liabilities of establishing one accountable state commission or department responsible for the oversight, regulation, identification, and prioritization of rail transportation and safety programs and projects, including, but not limited to, rail grade crossings and separations, rail equipment procurement and passenger service, the provision of traditional passenger rail and high-speed rail service, and rail safety regulation and oversight

We approach this charge by considering a range of possible governance changes in the organization of state rail transportation functions. The reorganization of a governance structure entails any or all of the following:

- 1) The transfer of part or all of the functions of one agency to the jurisdiction and control of another agency/Department/Board.
- 2) The delegation of a new authority to an existing agency that conditions the exercise of authority delegated to another agency.
- 3) A change in the position of a division in the organizational structure of the department.
- 4) The creation of a new agency, department, or board.

Credible, quantitative cost and benefit estimates for reorganizing governance structures are rare and difficult to achieve. Instead, policy analysis tends to focus on qualitative factors, such as how responsive and transparent an agency's decision-making process is to the public and on the informed opinions of stakeholders and area experts.

In this context, we consulted rail experts on the following four alternatives for changing the structure of the current rail governance structure in California:

- Transferring the CPUC's responsibilities for prioritizing grade crossing and grade separation projects (the "Section 130" and "Section 190" programs) to Caltrans or to a successor agency to the present Division of Rail.
- Transferring all of the CPUC's rail transportation responsibilities to Caltrans or a successor agency to the present Division of Rail.
- Elevating the status of the Division of Rail. This could be done either within Caltrans, by replacing the division chief with a Deputy Director who reports directly to the Director of Caltrans; or outside of Caltrans, by reconstituting the Division as an independent Department of Rail, headed by a Director on par with the current Director of Caltrans, within the Business, Transportation and Housing Agency. This elevation could be accompanied by consolidation of some or all rail functions currently performed by other agencies, such as the CPUC and the High-Speed Rail Authority (HSRA).
- Elevating the status of the Division of Rail by reconstituting the division as an independent board or commission within the Business, Transportation and

Housing Agency. This elevation likewise could be accompanied by consolidation of some or all rail functions currently performed by the CPUC and the HSRA.

Transfer CPUC's Responsibilities Regarding Section 130 and Section 190 Crossing Programs to the Division of Rail, Caltrans

As noted above, both the CPUC and Caltrans review the projects that apply for funding under these programs. CPUC reviews and ranks the projects from local entities according to the need for safety improvement in those crossings, as determined by a CPUC-established methodology. Caltrans uses this list and checks how these projects integrate with STIP and SHOPP programs before authorizing funding for these projects. Caltrans authorizes the projects and administer the contracts with railroads and/or local authorities for project construction. In essence, Caltrans applies a fiscal criterion to a priority list of projects ordered by the CPUC.

In many states, rail safety and crossing programs are the responsibility of the Department of Transportation. Most of the experts we consulted contend that in these states the prioritization process for the federally-supported Section 130 is simpler. For example, in North Carolina and New Hampshire the Departments of Transportation use formulas for ranking the applicants. The formula is based on factors such as roadway and train traffic, vehicle speeds, and accident history of the crossing locations.⁴⁴

Some experts believe that there is no need for two agencies to be involved in the selection of projects under the 130 and 190 programs. Several experts described these programs (particularly the Section 190 grade separation program) as largely having to do with highway construction rather than rail safety *per se*. Similarly, several experts described the evaluation and implementation processes for the Section 130 program as highly routinized.⁴⁵

This option is consistent with the recommendations of the California Performance Review Commission (recommendation INF 20).⁴⁶

No experts, other than the representatives we spoke with from the CPUC, forecast any significant safety or policy risk from relocating management aspects of the 130 and 190 programs from the CPUC to another agency or department. Most argued that Caltrans (or a successor rail agency) should have the complete responsibility for these programs, including the prioritization of projects. Perhaps more importantly, most experts we consulted highlighted inadequate funding levels as their primary concern about both programs. As we noted above, the legislature has not changed the statutorily-mandated budget allocation for the Section 190 program since 1974.

Some interviewees mentioned that the prioritization process has been a source of problems, taking six to eight months to approve projects. For contested projects due to the identification of potential adverse impacts at the proposed sites, an Administrative Law Judge (ALJ) is assigned and public hearings are held. The ALJ issues a decision and

PUC adopts a final priority list that is then forwarded to Caltrans, a process that can take as long as two years.

These expert opinions echo statements made more than a decade ago to the Little Hoover Commission:

In an ideal world there would be only one agency to handle the program. (Having two agencies) can be a big problem in places like Oakland where there are a lot of railroad crossings over local streets. The PUC interfaces with the railroads while Caltrans interfaces with cities and counties. Traffic lights are not the PUC's bailiwick.⁴⁷

Representatives of Caltrans and the CPUC report that the problems cited by others in relationship to the 130 and 190 programs reflect past problems that have been addressed, and that the system has become responsive over time. To streamline the process even further, these two agencies are developing a Memorandum of Understanding between the two agencies, which defines and coordinates their participation.⁴⁸

A potential benefit of implementing this reorganization option would be an increase in efficiency by avoiding duplication of effort, shortening the time to project selection, and clarifying the process for applicants. This option could decrease state and local government costs related to the 130 and 190 programs. The magnitude of any gains that may be achieved through this consolidation is uncertain, given the developing MOU between the CPUC and Caltrans.

This option could be implemented by reallocating staff to a Caltrans' local office or to the Division of Rail, which would be the primary cost to the state of reallocating these functions. Considerations about short term expenses related to staff reallocation and logistics issues must be considered. For example, how would state employees transfer to a new entity? Would some employees switch jobs as the result of the change? If this is the case, would skills and knowledge be preserved?

Transfer of all CPUC's Rail Functions to the Division of Rail or a successor agency

This option would be to move both the Section 130/Section 190 program administration and the rail safety functions of the CPUC to the Division of Rail (DOR) or its successor. The main purposes of pooling all rail functions together under the Division of Rail in Caltrans would be to avoid some duplication, utilize some resources more efficiently, and to provide one focal point of communication on rail-related issues between the state, local governments, the industry, and the public.

Some experts we consulted argued that there is no rational, policy-based justification for the separation of the regulatory and safety aspects of rail from other rail functions, such

as project planning and management. The reasons for this separation appear to lie in historical happenstance.

In the 1880s, California and numerous other states initiated movements to control a series of alleged abuses of power by the railroad industry. As a result of this process, the Public Utilities Act of 1911 created the California Railroad Commission (renamed as the California Public Utilities Commission in 1946). The Railroad Commission's initial charge was economic regulation of railroads. Over time, its responsibilities expanded to include safety regulations in rail and other industries. The economic regulation aspects of its jurisdiction over railroads largely have been preempted by federal law and deregulation. Conversely, the state government, through Caltrans, has become a significant source of funds for capital projects and operating subsidies to intercity and commuter rail systems.

Other states have similar histories. However, several states have consolidated rail-related functions in their transportation departments through reforms initiated in the 1990s. Currently the majority of states have rail safety under a division (department, bureau, or office) of Rail in the Department of Transportation, while more than one third of the states continue to locate their rail safety functions under the responsibility of a Commission comparable to the CPUC.

The idea of transferring rail safety functions to Caltrans is not new. The Business, Transportation and Housing Agency and the CPUC discussed this issue in 1996 in the context of the Governor Pete Wilson's "California Competes" initiative to consolidate duplicative regulatory functions.⁴⁹ The then-Undersecretary of the Business Transportation and Housing Agency wrote in a memorandum:

The rail safety divisions of the [PUC] would be more appropriately located under the BT&H Agency.... Rail safety could be improved by the consolidation of [PUC] rail safety activities with the Department of Transportation's Rail Division through increased coordination and communication of rail engineers and safety inspectors....Transferring the [PUC] rail safety divisions to the BT&H Agency will improve policy coordination with other transportation issues statewide".⁵⁰

A proposal to co-locate the CPUC's related employees in Caltrans' Oakland Office was considered at that time, but ultimately not adopted by the CPUC.⁵¹

On the other hand, more than half of the experts that we interviewed believe that the rail regulatory and safety functions (other than the grade crossings and grade separations programs) should be separated from other functions and continued under the responsibility of the CPUC.

Some of the justifications cited for keeping these functions separated in the CPUC were:

1) The CPUC is more insulated from external pressures than is Caltrans.

The governance structure of the CPUC arguably is better insulated from political control than that of Caltrans because it relies on a board composed of five members appointed to fixed terms of office rather than a single, at-pleasure appointee.

There are many examples that highlight the principle of independent oversight. One example is the separation of the National Transportation Safety Board (NTSB) from all organizational ties to the U.S. Department of Transportation in 1975 to assure NTSB' objective oversight. An argument made for this separation was that the functions of the US Department of Transportation (regulation and promotion of transportation in the United States) could conflict with the reporting and investigation of accidents, as accidents could be the result of deficiencies in the regulations of the Department of Transportation. For more discussion of this point, see the CPUC report, "Analysis of Senate Bill No. 53. Submission to the California Research Bureau," attached to this report as an addendum.

Self-financing of the activities of the Commission is another aspect that supports a higher degree of independence from political influence in the CPUC when compared to a state agency funded by the state general fund. A secure, dedicated revenue stream for enforcement activities insulates a regulatory agency from the annual budgetary process. The CPUC receives funding from a variety of state transportation funds, most significantly, the Public Utilities Commission Transportation Reimbursement Account, for which the Commission collects fees from railroad corporations to fund the Railroad Safety Program. The Commission also receives reimbursements for transportation-related activities from the State Highway Account, the Public Transportation Account, and the Transportation Rate Fund.

A 2004 Bureau of State Audits report emphasized the fact that the fees collected by the CPUC from railroad corporations for the Public Utilities Commission Transportation Reimbursement Account are not taxes, but rather are fees that the CPUC must demonstrate are spent on their intended functions.⁵² The legislature may wish to consider carefully the funding implications associated with reorganization of fee-financed rail regulatory activities.

2) The transfer of regulatory functions to Caltrans may raise conflicts of interest.

Caltrans promotes and provides for rail services, has operational responsibilities, and also owns locomotive equipment. Both organizational theory and experience suggest that it would be difficult for an operational agency to self-police its own operational activities and that it may be more difficult for such an agency to be objective in carrying out safety regulations on other operators in that industry and less inclined to impose fines or sanctions.

An agency charged with both operating a service and evaluating the quality of that service has institutional incentives to measure quality or success in ways that place the agency in a favorable light. Basic institutional theory suggests three remedies for this threat to the quality of government service. First, if the agency happens to employ the

right agents responsible for implementation, those agents will be self-motivated to provide high-quality service and to be responsive to the public. This approach potentially provides the best outcomes at lowest cost. But the success of the strategy is completely dependent on the ability to find, hire and retain appropriate agents.

Second, the legislature can impose reporting requirements that limit the agency's ability to misrepresent outcomes. Reporting requirements increase agency overhead costs. Further, agency reports are valuable tools only to the degree that (a) they include performance indicators sufficiently relevant to the desired outcomes and (b) the legislature, or motivated third parties (i.e., constituencies) to whom the legislature would be responsive are willing to scrutinize and respond to the reports.

Third, the legislature can employ a watchdog agency empowered and motivated to collect appropriate measures with which to evaluate the original agency's performance. As with a reporting requirement-based solution, this remedy requires the legislature to be responsive to the watchdog agency's activities and sensitive to its competence.

Some analysts contend that the conflict of interest argument is less strong than it appears to be. In Florida, where the Rail Office in the Department of Transportation operates and owns locomotive equipment and is also responsible for rail safety, the system appears to work well. Representatives of the Rail Office in Florida argued that there is no conflict of interest because the state is responsible for both protecting the citizens and efficiently running the rail system, and claimed that both goals can be pursued concurrently.⁵³

On the other hand, the Louisiana experience supports the case for independence of safety functions. The Louisiana Legislature passed a law in 2008 returning to the Public Service Commission (PSC) the authority to oversee rail safety issues. The railroad related responsibilities of the PSC, an agency with similar history and responsibilities to the CPUC, were transferred to the state Department of Transportation in 1970s. The recent reassignment of safety functions to the PSC was attributed to a finding that railroads had been arbitrarily closing a number of track crossings in recent years, compromising private safety.⁵⁴

Any agency faced with competing values it has been directed to address must choose a strategy for balancing those values in policy implementation. Agencies will tend to internalize in their formal and informal operating procedures mechanisms for adjudicating between competing values. If organizational outcomes do not reflect the politically desirable balance between values, the legislature would be well served by reexamining the reporting requirements and/or watchdog processes it has in place for shaping implementation behaviors.

3) The CPUC's central transportation mission is safety, whereas Caltrans' main focus is to improve mobility.

This mission focus arguably allows the Commission to create a "safety culture" among staff and may lead to organizational efficiencies.

Analysts of governance structure point out that tasks that are not central to an agency's mission often are performed poorly or are starved of resources. Shifting safety functions to Caltrans may compromise rail safety in the short run by disrupting accumulated organizational expertise. It also could reduce rail safety in the long run, since safety issues could become secondary to the promotion and administration of rail transportation services.⁵⁵ This argument was also used in the state of Illinois when various proposals for transferring rail safety functions from the state Commerce Commission to the Bureau of Rail in the Illinois Department of Transportation were presented to that state's legislature.⁵⁶

The basis of this argument again lies in agency procedures for balancing values. If an agency is rewarded or recognized for high-quality performance with respect to one value but not for a second value, we should expect the agency to internalize this reward structure in its formal and informal procedures. If rail safety functions were to be transferred to Caltrans or to a successor to the Division of Rail, those functions should be accompanied with a reward structure for safety outcomes that is consistent with the legislature's goals for balancing rail planning and development values with safety values.

Conversely, when related functions are separated in two different agencies, the balancing between competing values is more difficult to achieve. Each separate agency must be motivated to work cooperatively with the other by rewarding each based on their joint product rather than separately based on their isolated responsibilities.

Consistent with the advantages of an organizational "safety culture," CPUC staff have developed experience and expertise in rail safety oversight. Any reallocation of rail safety functions runs the risk of losing accumulated organizational wisdom and expertise. This same argument was also presented in Illinois when this type of reorganization was proposed.⁵⁷

We currently lack state-by-state data with which to test the hypotheses that rail consolidations in other states have led to either short-run or long-run reductions in rail safety. It should be noted that national data on railroad system safety indicate that the rates of railroad-related injuries have fallen by two-thirds since 1990, although the numbers and rates of deaths and accidents have remained steady in that time period.⁵⁸

4) The CPUC oversees safety for all forms of rail transportation, including rail transit.

There may be synergistic advantages in housing all rail safety functions, including rail transit safety, in a single entity. The Division of Rail in Caltrans (DOR) is not responsible for rail transit functions. The majority of rail experts we consulted recommended maintaining the current separation between rail transit functions in the Mass Transportation division of Caltrans and the rail functions in DOR. Hence, there may be some duplication of functions and loss in efficiency from separating rail safety functions from rail transit safety functions at the CPUC and relocating those functions to DOR or a

successor agency if the rail transit safety functions were not also transferred. According to CPUC representatives, the Commission “takes a system approach to safety and captures synergies between its different regulatory units and various inspective and investigative activities.”

Some of the experts in our interviews felt that transferring the rail safety functions from one agency to another would not entail significant risk. They cite other states that have done this where the transfer of authority seems to have worked well (e.g., Oregon and Florida). These experts suggest that after federal deregulation of railroads, many states took rail safety out of the public utilities organizations and placed them in their respective departments of transportation to no ill effect for rail safety.

5) The CPUC’s rail authority is Constitutionally granted.

According to representatives from the CPUC, there are legal constraints that complicate the transfer of functions from the Commission to Caltrans. The most serious is that the authority of the CPUC to regulate rail has been granted by the California Constitution, and cannot be transferred to another entity without changing the California Constitution, by amendment or revision. Changing the Constitution entails a long and expensive process.⁵⁹

This is a point of contention amongst the rail experts we consulted, although we have not obtained a legal opinion. The California Constitution defines “private corporations...that own, operate, control, or manage a line, plant or system for the transportation of people or property...and common carriers” as “public utilities subject to the control of the legislature” (Article 12, Sect. 3). This would seem to confer on the legislature discretion to delegate or re-delegate regulatory functions as it sees fit through ordinary legislation.

Article 12, Sect. 4 goes on to state that “The [Public Utilities] commission may ... establish rules for the transportation of passengers and property by transportation companies...” The CPUC emphasizes this section as its primary evidence that the Commission possesses exclusive, constitutional authority to regulate rail safety. Nothing in this Article speaks directly to a necessary, exclusive Constitutional role for the CPUC in rail safety regulation generally or rail grade crossings/separations safety specifically, however.

Instead, the constitution speaks to rules for the *transportation* of people and things. Narrowly read, this would seem not to include the regulation of equipment or facilities incidental to rail transportation, such as signals and barriers at rail crossings. Thus, the question remains as to what minimal authority regarding rail transportation is conferred by the Constitution to the CPUC. Legislative attempts to realign rail safety functions away from the CPUC may well be challenged in court, although we have not been able to clarify who would have standing to challenge such legislation in court. The legislature may wish to investigate specifically the question of standing with respect to legal challenges that may arise in the event of a realignment of CPUC functions via ordinary legislation.

One of the advantages of moving safety functions to Caltrans cited by rail experts is that Caltrans through its District Offices could resolve local issues in a more expeditious way than the CPUC and consequently, shorten approval time for safe crossings. Also, some experts argued that the railroad industry has a less contentious relationship with Caltrans and that the cumbersome processes of the CPUC makes them feel they are purposely targeted by the agency. It is also difficult for the industry to deal with the administrative appeals and rulemaking structure of the CPUC because most hearings are held in San Francisco and most representatives of the industry are located in Southern California. These experts argued that railroads generally choose to pay the fines rather than go through the process of challenging alleged violations.

If functions were transferred, the “quasi-judicial” system of appeals and rulemaking offered by the CPUC would need to be replaced. Some experts think that this process could be replaced by an Administrative Law Process or exercised by an alternative independent body, perhaps as part of the Transportation Commission, which would follow established regulations.

This reorganization alternative presents implementation problems, such as

- how the transfer of the program would take place;
- how state employees would be reallocated; and,
- how skills and knowledge would be preserved if employees choose to move to other positions within the CPUC or transfer to other agencies rather than move to Caltrans.

Another important consideration is whether the transition would produce disruptions in the performance of safety functions and by how long.

Create an Independent Rail Program within Caltrans or as a Department in the Business, Transportation, and Housing Agency

We considered two alternatives for the creation of an independent rail program. One would be to elevate the status of the Division of Rail within Caltrans (option A). The other would be to create a new Department of Rail, co-equal to Caltrans and headed by its own Director directly under the Business, Transportation, and Housing Agency (option B).

Most experts who participated in this study felt that the creation of an independent rail program under either of these two alternatives (either option A or B) would contribute to improved statewide planning and operations of the rail transportation system in California. The majority of experts emphasized the need for a strong rail organization to integrate the rapidly growing intercity rail and rail transit systems, the construction of a high speed rail system, and the growing needs of freight rail transportation. These rail systems compete for rights of way, tracks, and funding. There is also the opportunity for

receiving money from the stimulus package for high speed rail and the need to allocate efficiently federal and bond funds. To address these issues, a strong leadership is necessary to negotiate solutions with various stakeholders, including various levels of governments, rail transit private organizations, and the rail industry. Railroad functions are complex and need more support and skills.

Most experts we interviewed held that the state would benefit from a direct policy-making body that could set directions for the whole rail system. Experts indicated that the current structure does not allow for strong leadership in the rail program for two reasons. First, the Division of Rail within Caltrans is a small division in a very large organization that specializes in highway issues. Experts suggested that Caltrans has a culture that focuses on highways and its attention will be captured to solve numerous highway problems that will be faced in the near future. This organizational culture, they contend, limits the ability of the Division of Rail to receive adequate attention in internal Caltrans policy discussions.

Second, most experts argued that the Division of Rail receives insufficient external attention because of its subordinate position within the Caltrans organizational hierarchy. Promoting the division within Caltrans to be headed by a Deputy Director or elevating it to the status of an independent department headed by its own Director would enhance the credibility of rail policymakers in budgetary negotiations within the administration as well as with the legislature and the public.

However, some of the experts felt that the system is operating well as it is. Creating an independent Division/Department of Rail potentially would increase bureaucratic complexity and costs rather than improving processes. Further these experts contend, the lack of visibility of rail transportation is a consequence, rather than a cause, of the small level of resources allocated for rail operations and development. Hence, elevating DOR would simply raise bureaucratic costs without offering any compensating policy gains.

This criticism is well placed. Article XIX of the State Constitution and current law dedicate the large majority of state gas tax and weight fee revenues to highway maintenance and operations; local assistance; highway rehabilitation and safety projects; and highway capital improvement projects. Reallocation of more of these funds to passenger rail (and rail transit) projects and operation may be justified by the environmental gains and traffic congestion relief gains that expanded and improved rail services could provide.

The following essential aspects need to be considered before creating a new organization:

Visibility of Rail Issues

The creation of a new Department of Rail under the BTH agency would almost certainly enhance the visibility of railroad issues. With the creation of a Division of Rail directly under the supervision of the Director of Caltrans the relative attention to railroad issues would increase, but railroad issues would remain a small part of the state intermodal

transportation system, whose importance is overshadowed within Caltrans by highway issues, according to many of the experts we consulted.

Stronger Role of Rail Transportation

The creation of an independent Department of Rail may eliminate potential conflict between internal policy-setting and service delivery functions. By focusing only on rail activities, a Department of Rail could operate more efficiently than a Division of Rail within a structure where other competing activities require management attention. A new Department would be able to focus on problems that have the greatest impact and greatest potential for railroad development, rather than balancing rail interests with those of other mass transit systems and broader concerns about the highway system.

Stronger Leadership

The creation of a Department of Rail would shorten the reporting chain of command to the Secretary of Business, Transportation and Housing by deleting two levels of communication. Top management support is critical to the success of change efforts or other organizational initiatives. A new Department responsible for state railroad functions, which would communicate directly with the Agency Secretary, allows for stronger leadership for the state's railroad program, helping railroad transportation development and the design of more efficient and effective policies.

A counter-argument would be that an independent Department of Rail, without a major increase in its funding stream, would potentially languish even worse without the sponsorship of a Caltrans director committed to rail development. A new Department of Rail would constitute a very small constituency in intra-agency policy and budgetary discussions. Small departments easily can become afterthoughts in agency-wide planning. Hence, elevating the Division of Rail to an independent Department could lead to an even weaker situation for future rail development if the Agency Secretary and the Governor are not strongly invested in its success.

Better Policy Coordination

Organizational changes would not lead automatically to a more coherent railroad policy strategy and a more integrated statewide planning process. Policy scholars generally contend that state programs work better when they are closely coordinated with other programs of similar functions or goals and under a centralized point of authority. In this context, many experts preferred the alternative of an independent Division of Rail within Caltrans (option A) to facilitate the coordination of functions and planning with other modes of transportation. However, under option A the Division of Rail would probably continue operating much as it does today.

Criticisms of the adequacy of the current structure for rail planning have persisted. Rail experts pointed out the following issues during the interviews:

- The state needs a strategic plan to guide statewide, currently rail planning is not well coordinated across players and is a very small portion of California transportation planning. An independent entity that focuses on rail operations, planning and having a voice for freight rail in a uniform and coherent fashion is needed.
- The current emphasis of rail planning is on passenger rail. Freight rail is not given enough attention. The analysis of freight rail is weak. Freight rail should have been given more attention since railroads have expansion plans and the improvement of goods movement is an important issue in California. Integrated planning is important for the development of intermodal rail (the combination of rail and other modes of transportation, usually trucks and/or ocean-going vessels). Passenger and freight rail planning should be done in concert. Other states have more cohesive policies supporting both passengers and freight rail (Florida, Georgia, for example).
- Coordination between commuter and intercity plan is needed but this is a difficult task.
- Caltrans does not have the capacity for rail, facility, station design, environmental planning.
- Land use is an important aspect of planning that should be integrated.

With stronger leadership and the ability to focus intensively on rail problems a new Department of Rail should be able to improve rail planning and policy coordination with various stakeholders.

One of the tasks of the new department would be to establish an efficient new framework for planning coordination and cohesiveness. The new Department would need to coordinate its planning functions with Caltrans' and with local government. How coordination with other agencies and the private sector would take place is an important aspect that has to be addressed in the design of the organizational structure of the new Department.

Since both Caltrans and the new Department of Rail would be part of the same agency (BT&H Agency), current flows of information and strategies for coordination with various levels of government and private entities can be preserved. Coordination may also require the creation of new mechanisms of communication to involve multiple levels of government and the public in the planning and policy making process.

One way to achieve coordination across programs that experts suggested is using personnel on rotating assignments from Caltrans and other entities. The Department may also place staff in various Caltrans offices to increase public and local government participation in rail issues. For example, personnel from a new Department of Rail could co-locate with Caltrans staff in regional offices where appropriate.

Another simple way to achieve policy coordination in rail function decisions of a department of rail is by requirement by the state legislature. One example of this type of requirement would be for the Department of Rail to consult with other government and

regional transportation agencies before making operational decisions for certain types of rail projects. There are many consultation requirements in California law, taking different forms according to the type of decision and the number of parties affected by them. These requirements could still give the ultimate authority to make decisions to the Rail Department while assuring participation of various stakeholders in the process.⁶⁰

One-stop Shopping for State Requirements and Negotiations

Pooling planning and operation functions under a Department of Rail would provide a focal point for different levels of government and different players in connection with rail issues. This aspect would benefit the coordination of activities with the public, industry, and government entities.

Accountability, Transparency, Informed Public Process

The creation of a new Department of Rail would create a primary point of accountability for state railroad programs. Conversely, the level of transparency and accountability of railroad operations, planning and policies would not be expected to change significantly with the simple elevation of the Division of Rail under Caltrans.

A new Department of Rail would increase the visibility of railroad policy issues and state actions. Proposed statutory language in SB 409 (Ducheny, 2009) would delegate exclusive responsibility for state railroad functions to that Department. Hence, accountability and transparency of state rail activities arguably would be enhanced. Independent oversight of rail activities would be more direct than under the current situation, in which rail is a small part of the transportation activities under Caltrans responsibility. The new Department could also enhance accountability and transparency by 1) establishing its own rules for access of information, 2) and developing more effective performance measures and reporting procedures.

Expedited Decision Making Process

At a departmental level, a shorter chain of command with closer access to cabinet-level decision makers offers the potential to significantly expedite the decision making processing and bring more attention of rail issues to top administration leaders. Pooling together railroad functions also could result in the elimination of overlapping and redundant bureaucracies. For example, the organization would handle only rail issues rather than share the organizational process with other transportation modes.

More Effective Leverage of State Resources

An independent Department of Rail may be able to leverage state resources more effectively. With fewer layers of bureaucracy to implement rail policies and independence of decision, the Department could have more freedom for entering in contracts, participating in private-public partnerships, and devoting efforts to leverage federal and other funding for rail issues.

Safety Functions

Considerations regarding the transfer of safety functions together with planning and operation rail functions were presented earlier, in the discussion of pooling safety functions under a Division of Rail in Caltrans. The same considerations generally apply to the integration of safety functions in a new Department of Rail. However, the argument that rail safety can be compromised when it is the responsibility of a Department of Transportation that does not have safety as its primary mission weakens when considering a new Department of Rail with all rail functions as its central mission. Dedicated Department of Rail safety officials would specialize in rail safety issues, whereas delegation of rail safety functions to Caltrans could lead to competition between different modes of transportation for safety resources and attention.

Effects on the Public

Increases in the efficiency of state rail activities would benefit the public and increase its access to information and rail services. It is too early to know the extent of this benefit.

More efficient train systems reduce travel times and costs, thus allowing consumers to access more distant markets and enable workers to access a larger labor market. A large component of the potential benefits from an expedited rail transportation system is the value of time recouped from avoiding traffic congestion.

Effects on the Railroad Industry

A more efficient public sector to negotiate railroad issues would save time and efforts for the industry. Rail experts have mentioned during the interviews that the industry fears that a new Department may impose additional reporting requirements on the industry, which may multiply over time and increase their cost of doing business. On the other hand, better integrated freight and passenger planning and efficient policies that facilitate capital improvements would benefit the industry by decreasing costs of operations and shortening transportation times.

Benefits to Local Government

An expedited state system for rail functions would benefit local government if project delivery becomes faster and negotiations are more effective. Also the local industries as well communities may benefit from more efficient planning and train operations through various economic development benefits discussed below.

Rail Transit Issues

All rail experts recommended keeping Rail Transit functions separated from Heavy Rail functions (Intercity Freight Rail). However, Rail Transit needs have to be integrated in planning and rail operation considerations. This would require an effective system of

coordination between these transportation systems and therefore presents a potential cost of separating a Department of Rail from Caltrans, which also houses mass transportation functions.

Economic Development Benefits

Proponents of rail development contend that the social benefits of passenger and freight rail development justify substantial governmental subsidies. An efficient railroad system could lead to more sustainable land use, since train stations stimulates denser infill development that links directly with local and regional transit systems, airports, and freeway systems.

Implementation Issues

Fiscal Impact. The fiscal impact of the creation of a Department of Rail cannot be assessed without a detailed proposal of the structure of the organization. The creation of an independent Division of Rail under the supervision of Caltrans Director would involve added personnel costs, including upgrading the Chief of Rail position to a Deputy Director position. If the Caltrans Division of Rail is transferred intact to a new Department of Rail under the BTH Agency, a minimum of two new management positions would be required (Director, Deputy Director). A decision to integrate safety functions would also complicate implementation, because this would require the transfer of staff from one agency to another. If the program is transferred intact, costs would be minimized. However, logistic issues and other type of accommodations would create extra expenses.

There could be some savings resulting from avoidance of duplication and more expedite process resulting from an organization focused on rail functions. The degree of independence resulting from the reorganization could save costs and generate economic benefits derived from more efficient processes (through increased coordination, shortening of negotiation time, and more expedite approval process).

A new department would need to establish a new reporting structure, new advisory bodies, new technical and operational (legal, administrative, and financial) activities, new procurement practices, and a new financial authority. The new organization would require creating some positions to perform these and other activities currently carried out in various offices of Caltrans. For example, the Division of Rail currently benefits from extensive administrative and legal support from other Caltrans divisions.

Another consideration is what stable source of funding would be established in the future and how funding would be allocated. As the program expands and functions are added, what incremental costs can the State finance in the future and how would these changes be funded?

Create a Board/Commission of Rail Directly under the Business, Transportation and Housing Agency Rather than a Department.

Some experts felt that a board or commission structure for management of rail functions could offer some advantages over a single-administrator structure. An alternative to a Department of Rail is a structure similar to the Energy Commission or the Air Resources Board, where a Board of representatives from various local transportation systems or with experience in different aspects of rail would oversee rail planning and policies. Such a Board or Commission would direct an Executive Director for the implementation of its policy decisions.

Boards/Commissions vary in composition and duties. One advantage with this structure is the potential to internalize to the agency's governance structure competing values or constituency interests. This is important for rail issues. Rail experts emphasized that rail planning and operational problems differ between northern and southern California and that local issues play a central role in rail functions. The potential benefit of a board structure would depend on the way members are appointed and the requirements established for the appointments.

A department with a single political appointee serving at the pleasure of the Governor allows for greater policy responsiveness than from an agency governed by a board of members serving staggered, fixed terms of office. Greater responsiveness also implies less secure commitment to long-term strategies, which are integral to the success of large capital projects and planning.

A board/commission structure can institutionalize and internalize a balance of stakeholder interests to agency decision making.⁶¹ An independent board/commission whose members serve fixed terms of office may facilitate long term planning prioritization while also insulating board members from short-term political considerations. Similarly a board/commission to which some appointments are made by the Governor, some by the Assembly and some by the Senate creates opportunities for internalizing the diverse values of the different branches directly into the agency's decision-making processes. Another possibility could be a board/commission appointed by the Governor, but for which the legislature establishes expertise requirements.⁶²

High Speed Rail Authority and a New Organizational Rail Structure

One important issue to address in the design of an efficient organization for state's rail policy and planning is the place of emerging high speed rail functions.

Currently, high speed rail functions are the responsibility of the High Speed Rail Authority (HSRA), created to make policy decisions relative to planning, construction,

and operation of a state-sponsored, intercity high-speed rail system in California. High-speed rail is defined in state law as trains that operate in excess of 125 miles per hour. The proposed system would connect major metropolitan areas between Northern and Southern California. The Legislature required the HSRA to prepare a plan for construction and operation of the high speed train network.

The Authority currently has an authorized staff of 9.5 positions. It is headed by an independent board and an executive director appointed by and serving at the pleasure of the board. Because of its small size and, it argues, the constraints the civil service system imposes on hiring qualified staff, it conducts most of its work through consulting contracts. The HSRA estimates it will have spent roughly \$45 million on consultant fees during the 2008-09 Fiscal Year out of a budget of \$46.5 million.

Californians demonstrated their support for the construction of a high speed rail system with the approval Proposition 1A in November of 2008, which allows the state to sell \$9 billion in general obligation bonds to partially fund this system. The measure also authorized \$950 million in bonds for the improvement of other passenger rail systems in the state. Proposition 1A specifies the first phase of the high-speed rail project to be the corridor between the San Francisco Transbay Terminal and the Los Angeles Union Station and Anaheim. Bond proceeds can be used for no more than 50 percent of construction costs. Consequently, at least one-half of construction funding for each segment must come from some other sources (federal, state, local, or private funds).

So far, the HSRA has certified its Final Environmental Impact Report/Environmental Impact Study (FEIR/EIS) (in November of 2005) and developed a business plan. That plan was criticized as being too general. AB 3034 (Galgiani), Chapter 267, Statutes of 2008, required the Authority to submit an updated business plan for the high-speed train system, which was released in November of 2008. This plan also has been criticized as lacking in adequate detail. For example, a recent presentation by the Legislative Analyst's Office (LAO) to the Senate Committee on Transportation and Housing described the current business plan as lacking in specifics generally expected of business plans. The LAO further stated that the Authority's budget request "provides almost no justification for the specific amounts requested for each contract" in the request.⁶³ The authority has also been criticized for providing little justification in their budget requests to finance contracts.

Some experts believe that the HSRA is doing a good job and credit the organization for its vision while recognizing that most of the problems that the Authority face are the result of dealing with a huge task with unprecedented challenges and with limited resources at hand. Passage of Proposition 1A last November is expected to markedly ease the Authority's resource constraints as bonds are sold.

Some interviewees recognized that the high speed rail project should continue being handled by a separate entity because it is an independent project and very different from other intercity rail projects. The position of the HSRA is that the Authority should operate independently at least until the first phase of construction is completed and high

speed rail operations begin, at which point the role of the organization should be reexamined.

Other rail experts emphasized the importance of coordinating planning for high speed rail and intercity rail. In their view, the high-speed rail plan needs to be more integrated in the intermodal system. Some experts with whom we consulted argued that the authority's reliance on consulting contracts, with limited capacity for oversight of those contracts, has left the Authority relatively unaware of or unresponsive to a host of criticisms, including concerns about local and environmental impacts of construction and operations. These experts implied that the Authority's business plan needs to be revised by taking better account of competing or complementary intercity services, as well as various considerations about access to right-of-way owned by freight rail companies and, in some cases, local authorities.

The main problem that the HSR project will have to solve is right-of-way related legal issues. The establishment of track for high speed rail between Orange County and San Diego presents particular problems because the route faces capacity challenges already for competing intercity passenger, commuter and freight rail track. Additional tracks are difficult to implement because of community groups' opposition to track constructions along the coast.

Control design and environmental analysis also require local approval. The high-speed rail project has raised many local concerns. For example, three cities have objected to the proposed connection between San Francisco and San Jose. Similar situations will emerge as the project expands and a good deal of effort and money will be required to achieve consensus among localities and various stakeholders.

Other experts thought that the main problem for HSRA is operational planning. Many of the experts we consulted agreed that the Authority should consider contracting with Caltrans for a variety of services the Authority lacks, such as contract management and construction oversight. According to Judge Quentin L. Kopp, Chairman of the Board, the HSRA has contracted with Caltrans and does not oppose continuing to do so.

Some experts with whom we consulted recommended reconstituting representation on the HSRA board to better incorporate the views and interests of Caltrans, local transit agencies and perhaps intercity rail. Other experts suggested that the HSRA be placed in a new Department of Rail or under a Division of Rail in Caltrans.

Current legislative proposals under consideration by the Legislature include AB 1375 (Galgiani, 2009), which proposes the creation of a Department of High-Speed Trains under the BTH Agency to implement policies designed by the HSRA. The HSRA would have the responsibility to make policy decisions relative to HSR consistent with Proposition 1A. The Authority board would act as the governing body of the Department and would select a Director to serve at the pleasure of the board. Additionally, the Governor would be authorized to appoint up to ten exempt employees to serve under the Director. Under this proposal, the HSRA would see little change in its independence,

although the Governor's ability to appoint up to ten exempt staff presumably would likely improve policy coordination between the Authority and the Governor's office.

Conversely, SB 409 (Ducheny, 2009) proposes the creation of a Department of Railroads in the BTH agency responsible for all rail function in the states, including the High-Speed Rail Program. This bill would place the High Speed Rail Authority as a division of the Department. Additionally, it would require the Executive Director of the Authority to report to the Director of the Department of Railroads and require the Authority's budget to be developed jointly between the Authority board and the Director.

Under a Department of Rail as proposed by SB 409, the HSRA would be part of a centralized decision making structure, losing independence and flexibility to make decisions on high-speed rail planning and construction, while gaining added incentives for coordination with other rail systems in the state. This flexibility could be preserved if the new governance structure of the Department were to take the form of a "Board" or "Commission" where members of the HSRA board were part of that governing board.

The primary advantages of the structure proposed by SB 409 would lie in opportunities for greater coordination of planning and operations of a high-speed passenger rail system with existing intercity and commuter services. An executive director of a high-speed rail division within a new Department of Rails who is appointed by the High-Speed Rail Authority board but reports to a Director appointed by the Governor and confirmed by the Senate creates potential conflicts for the executive director. If the legislature were to go forward with a version of SB 409, it may wish to consider amending the bill to make the executive director of the HSRA appointable by the Governor upon the recommendation of the Director and/or the board, in parallel to the language included for appointment of a deputy director. This would allow for better alignment of policy goals between the Director and the executive director.

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Final Remarks.

Any change in governance structures brings new unknown challenges because all environments are different and conditions change.

The first consideration is the identification of the problems the legislature wishes to address and whether its solution requires the actual reorganization of functions or simply the allocation of more resources within the current structure. Experts we consulted pointed out that much has been achieved already in California railroad transportation and that the current structure has worked well in some areas. To some experts, the most fundamental problem facing rail development in California is insufficiency of funds provided by the Legislature for capital improvements and expansion of services.

Most experts felt that a stronger Division or Department of Rail was justified to promote and coordinate rail policies in the state. The current Division of Rail is a very small program housed in a very large organization that specialized mainly in highways. Experts with whom we consulted generally agreed that elevation of the Division of Rail to an independent Department would improve the standing and visibility of rail policies within the state. Further, such an elevation would send an important signal of commitment to an enhanced role for intercity passenger and commuter rail services in the state's strategic planning, which could help the state better coordinate regional land use and transportation planning with local authorities and possibly could help the state better obtain federal funding for rail projects.

Second, most experts with whom we consulted agreed that rail development would benefit from greater attention to statewide and regional attention to strategic planning in rail transportation. A number of local transportation agencies have formed cooperative bodies, ranging from joint powers authorities to memoranda of understanding, to better coordinate rail services. Nonetheless, experts told us, numerous bottlenecks remain that constrain the growth and overall efficiencies of regional rail passenger service in key transportation corridors in the state. A state coordinating body focused on rail issues could help resolve many of these inefficiencies.

The change of an organizational arrangement will not lead inexorably to increased efficiency of operations. Many experts pointed out that the importance of commitment from the people in the organization was more important than the organizational arrangements themselves. "It is not the structure but the accessibility of the people" that counts, said Mr. William Bronte, chief of the Division of Rail, pointing out that current leadership style has improved communications and "made things happen."⁶⁴

The following aspects identified by our research as critical for the efficiency of an organization should be considered in the creation and design of a new Rail Department (or Board, or Commission):

- A well defined vision and strategic plan to achieve clear goals and objectives. For example, there is a need for establishing clear objectives for rail planning taking into account the available resources and current challenges.
- Established near- and long-term targets or objectives.
- Enough resources to perform operations and a stable multiyear funding source that isolates the organization from State government budget cycles posing problems for long term development. The Department will need adequate numbers of qualified staff to carry out all assigned responsibilities.
- Established communication and coordination strategies with local governments and various stakeholders (formal and informal).
- Engaged leadership and staff.
- Executive leaders who are technically capable and have experience and knowledge in rail issues

Additionally, in our discussions with various rail experts, we found the following:

- 1) Widespread agreement, outside of representatives of the California Public Utilities Commission, that the CPUC's current functions with respect to the Section 130 grade crossings program and the Section 190 grade separations program were at least partially redundant with functions performed within Caltrans. Most experts agreed that full responsibility for prioritizing and funding should lie with Caltrans or a successor Department of Railroads entity, and the California Transportation Commission.
- 2) No widespread agreement that the CPUC's rail safety program should be relocated. While some other states have consolidated rail safety functions with other rail functions into a general Department of Transportation structure, no compelling case was offered as to how relocating those functions from the CPUC would improve rail safety or rail planning.
- 3) No widespread agreement that the functions of the High-Speed Rail Authority should be folded into or subordinated to a new Department of Rail. While many experts were critical of aspects of the HSRA's performance or plans, few saw a compelling case for combining the Authority with existing management or planning structures for intercity passenger rail development. Many experts did, however agree that the HSRA could benefit from working more closely with Caltrans in order to achieve appropriate oversight of the Authority's various consultant contracts.

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Appendix I: List of Experts Consulted in this Study

Juan Acosta, Director Government Affairs, BSNF Railway.

Art Bauer, Staff Director, California Senate Transportation and Housing Committee.

William Bronte, Chief of the Division of Rail, California Department of Transportation.

Mike Calhoun, Transportation Safety Program Specialist, Federal Rail Administration.

Robert Chung, Deputy Director for Legislation, California Transportation Commission.

Clark, Richard, Director of Consumer Protection and Safety Division, California Public Utilities Commission.

Dana Curry, Transportation Analyst, California Legislative Analyst's Office.

Gail Davis, Program Project Supervisor for Heavy Railroad, California Public Utilities Commission.

Ken Devore, California Senate.

John Ferrera, California Senate.

Justin Fox, Lossan Project, California.

Rick Gallant, Program Manager for Heavy Rail Safety (Los Angeles) California Public Utilities Commission.

Georgetta Gregory, Program Manager Rail Transit Safety and Rail Crossing Safety, California Public Utilities Commission.

Julie Halligan, Division of Energy and Consumer Protection and Safety Division, California Public Utilities Commission.

John Hummer, Goods Movement, Business, Transportation, and Housing Agency, California.

Orlando Jamandre, Texas Department of Transportation, Texas.

Darrell Johnson, Director, Transit Project, Orange County Transportation Commission, California.

John Johnson, Manager, Railroad Safety Oregon Department of Transportation, Oregon.

Bill Julian, Legislative Director, California Assembly.

Dan Kevin, Analyst for the Railroad Program, California Public Utilities Commission.

Paul King, Deputy Director, Consumer Protection and Safety Division, California Public Utilities Commission.

The Honorable Quentin Kopp, Chairman, High Speed Rail Authority.

Loomis Devina Florez, Legislative Office, California Public Utilities Commission.

Tom Matoff, Lossan Project, California.

Jennifer Moczegemba, Director Multimodal Section, Texas Department of Transportation, Texas.

Edward Morley, California Republican Caucus.

Mehdi Morshed, Executive Director, California High Speed Rail Authority.

April Mulqueen, Project Supervisor for Rail Transit Safety, California Public Utilities Commission.

David Pickett, Assistant General Attorney, Union Pacific Railroad.

William A. Schulte, Consultant, Los Angeles Development Corporation, Long term serving in the Division of Consumer Protection and Safety Division, California Public Utilities Commission.

Skoropowski, Eugene, Managing Director, Capitol Corridor Joint Powers Authority (CCJPA), California.

David Solow, Metrolink Chief. California.

Michael E. Stead, Railroad Safety Program Administrator, Illinois Commerce Commission, Illinois.

Warren Weber, Long serving Chief of the Division of Rail, California Department of Transportation, California.

Ken Whitters, Consultant, R.L. Banks & Associates.

J.S, Wilmoth, Union Pacific Railroad.

Fred Wise, Rail Office Manager, Florida Department of Transportation, Florida.

Paul Worley, Director, Engineering and Safety Branch, Rail Division, North Carolina
Department of Transportation, North Carolina.

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Notes

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