

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco**M e m o r a n d u m**

**Date:** March 25, 2015

**To:** The Commission  
(Meeting of March 26, 2015)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) – Sacramento

**Subject: SB 348 (Galgiani) – California Environmental Quality Act: exemption  
railroad crossings.  
As introduced: February 26, 2015**

**RECOMMENDED POSITION: SPONSOR****SUMMARY OF BILL**

This bill would preserve the California Public Utilities Commission's (CPUC's) authority to expeditiously close dangerous rail crossings by extending an exemption from the California Environmental Quality Act (CEQA) so as to not needlessly delay crossing closures. The bill would amend the Public Resources Code (PRC) Section 21080.14 of the California Environmental Quality Act (CEQA). Specifically, this bill would:

Delete the current sunset date of January 1, 2016 in PRC Section 21080.14, and extend this PRC Section to January 1, 2019. Thus, SB 348 would continue to exempt from CEQA the closure of dangerous highway-rail at-grade crossings by order of the CPUC due to safety concerns (excluding any high-speed rail crossings).

**CURRENT LAW**

- CEQA Guidelines Section 15061 requires the CEQA lead agency to evaluate whether a project subject to its discretionary approval may be exempt from CEQA before having to undertake an initial study to determine if an Environmental Impact Report (EIR) or a Negative Declaration (ND) must be prepared and to identify the significant environmental effects to be analyzed in an EIR.
- California Public Utilities Code, Division 1, Chapter 6 (commencing with Section 1201) grants the CPUC exclusive authority on the design, alternation, and/or closure approval of rail crossings in California.
- Senate Bill (SB) 549 of 1982 (Johnson): PRC Section 21080.13 provides that any railroad grade separation project which eliminates an existing at-grade rail crossing or reconstructs an existing grade separated rail crossing is exempt from CEQA.

- Assembly Bill (AB) 1665 of 2012 (Galgiani): PRC Section 21080.14, until January 1, 2016, exempts from CEQA the closure of an at-grade rail crossing by order of the CPUC if the CPUC finds the crossing to present a threat to public safety.

### **AUTHOR'S PURPOSE**

The purpose of the bill is to preserve the Commission's authority over dangerous rail crossings.

### **Rail Crossing Safety**

The CPUC currently has safety oversight responsibility for approximately 13,250 crossings, 10,000 of which are at-grade crossings (i.e., the rail and the road are at the same level). The CPUC's rail crossing responsibilities play a critical role in ensuring the safety of the State's residents, and the CPUC's Rail Crossings Engineering Branch (RCEB) is taking a number of steps to improve rail crossing safety throughout the State. CPUC authorization is required prior to modifying an existing rail crossing or constructing a new rail crossing. RCEB also investigates train-related incidents that occur at rail crossings and complaints regarding rail crossings safety or conditions.

### **Policy on Reducing Number of At-Grade Crossings**

As part of its mission to reduce hazards associated with at-grade crossings, and in compliance with the national goal of the Federal Railroad Administration (FRA), it is the CPUC's policy to reduce the number of at-grade crossings on freight or passenger railroad mainlines in California. The CPUC's General Order (GO) 75-D adopted this policy to make the policy clearly known to anyone proposing new rail crossings because there is always some risk associated with at-grade rail crossings.

Despite various warning devices installed at the at-grade rail crossings, train related collisions, injuries, and fatalities continue to occur. For grade separated rail crossing, the risk of train-related collisions essentially drops to zero. As California is always one of the top three states in crossing incidents, injuries, and fatalities, grade separation is the safest method to reduce rail related accidents at crossings.

Each year, there are more accidents involving fatalities reported to the CPUC from crossing related accidents than accidents from gas and electric utilities that the CPUC regulates. The following chart in Figure 1 illustrates the inherent danger of highway-rail at-grade crossings. Table 1 provides the data to produce the chart in Figure 1.

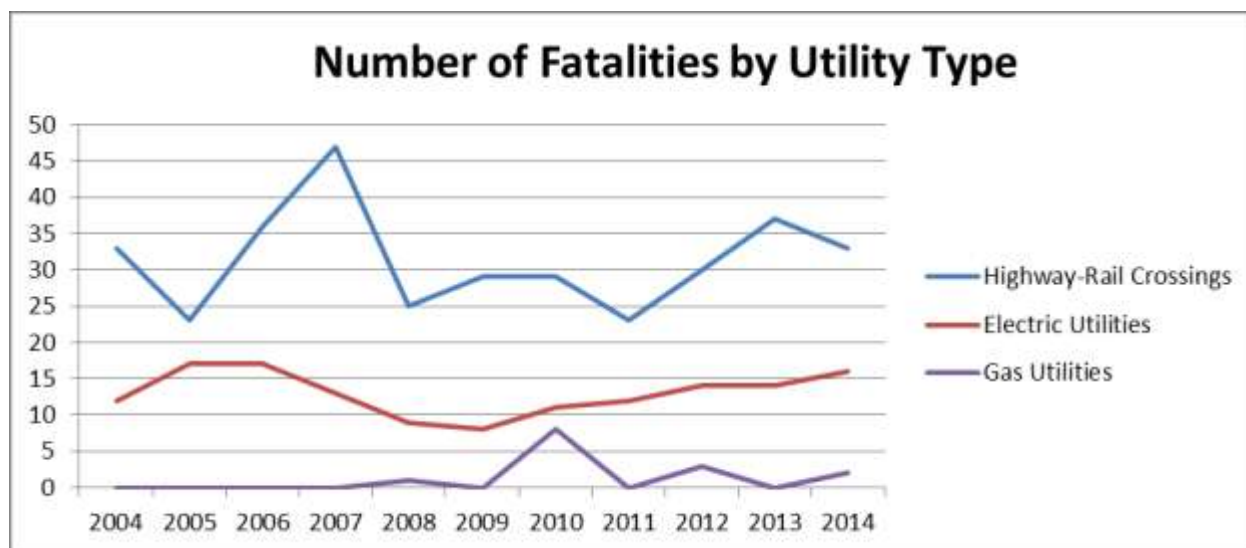


Figure 1

Utility Type	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Railroads at Highway-Rail Crossings	33	23	36	47	25	29	29	23	30	37	33
Electric Utilities	12	17	17	13	9	8	11	12	14	14	16
Gas Utilities	0	0	0	0	1	0	8	0	3	0	2

Table 1

RCEB performed an analysis of 64 grade crossings that the CPUC authorized for closure and construction of grade-separations. RCEB analyzed the accident history of each crossing while they were functioning as at-grade crossings. RCEB compared its findings to the accident history of all public at-grade crossings in California from 1990 to 2014. RCEB determined that at-grade crossings that the CPUC approved to be grade-separated had an accident to crossing ratio four times greater than other at-grade crossings. In Table 2 are the results of RCEB's analysis.

Crossing Type	Count	Accidents	Accidents / Crossing
All Grade Crossings	6470	3589	0.55
Grade to Sep Crossings	64	177	2.77

Table 2

### Closure of Unsafe Rail Crossings

The following two proceedings were cases in the 10-year period prior to the passage of AB 1665 in which staff sought to have the CPUC order a crossing closed. Whenever the CPUC engages in such action, it requires that the local authorities who object to the closure prove to the CPUC that the crossing is safe.

## 1. North Street Crossing of Selma, California

On August 21, 2003, the CPUC initiated an Order Instituting Investigation, (I.) 03-08-017, to determine whether the North Street at-grade rail crossing in the City of Selma, California should be closed. RCEB requested the investigation following a fatal collision between a truck and a train on June 6, 2003. This was the fifth fatality at the crossing in 14 years. The CPUC simultaneously issued an Order to Show Cause to the City of Selma to show cause why the crossing should not be closed. On September 2, 2003, the assigned Administrative Law Judge issued a ruling directing the City to take all actions necessary to prevent vehicles and pedestrians from using the crossing, pending further order of the CPUC. Subsequently, the CPUC staff and the City of Selma agreed that the crossing would remain closed during the remainder of the proceeding. On February 26, 2004, the CPUC issued an order approving this settlement agreement between the parties and closing the crossing. Had the CPUC review process over this rail crossing required a full-scale CEQA review, the CPUC would have been unable to reach an immediate agreement to temporarily close the crossing and the final order closing the crossing would have taken considerably longer than the six-month period that was entailed in the CPUC's proceeding.

## 2. Doran Street Crossing of Glendale, California

The CPUC found that the at-grade Doran Street crossing in the City of Glendale and bordering the City of Los Angeles was unsafe, primarily because it was immediately adjacent to a propane and industrial gas truck loading and storage facility. This hazard was compounded by the high frequency and speed of passenger and freight trains, the constricted intersection and crossing, the nature of the motor vehicle traffic, and the proximity of Freeway 134, among other factors.

In Application 98-06-054 the City of Los Angeles requested that the Doran Street Crossing be closed in turn for a new crossing at Mason Street in Los Angeles. The CPUC approved the application in Decision (D.) 98-12-020. On March 18, 2002 the City of Los Angeles submitted a Petition for Modification (Petition) of D.98-12-020. In the Petition the City of Los Angeles requested that the Goodwin Avenue Crossing be closed instead. The Goodwin Avenue Crossing is 1.2 miles south of the Doran Street.

The CPUC approved the Petition by D.02-08-029. In a letter, dated March 5, 2002, attached to the Petition, the Southern California Regional Rail Authority (SCRRA), who operates passenger trains at the Doran Avenue crossing, indicated that it supports the closure of the Doran Street crossing and that a future overpass might be constructed in the area that would eliminate the need for the crossing.

On February 25, 2010, the CPUC issued I.10-02-020 to investigate whether the at-grade Doran Street crossing should be closed due to safety concerns and to identify the effects of the closure on local residents in both cities.

The City of Los Angeles challenged the CPUC's interpretation of PRC Section 21080.13 as permitting the closure of a dangerous at-grade rail crossing without CEQA review. Courts have not yet settled the issue of whether PRC Section 21080.13 allows for the closure of at-grade rail crossings without CEQA review. Resolving this issue would needlessly require time, money, and staff resources. Instead, the CPUC sought the help of the California Legislature and sponsored AB 1665 of 2012 to solve the issue temporarily.

Subsequently on December 20, 2012, the CPUC issued D.12-12-021 to adopt the June 7, 2012 settlement among the settling parties, which included the City of Glendale, the City of Los Angeles, SCRRA, and the Pelanconi Homeowners Association (community members). The settlement provides for temporary safety improvement at the Doran Street crossing and the adjacent Broadway-Brazil crossing until a grade separation could be constructed at or near the Doran Street crossing.

There have been several other factors involved which have impeded that process to close the Doran Street crossing after the Legislature added the sunset clause to PRC 21080.14 on January 1, 2013. As the rail track and crossing owner, the Los Angeles County Metropolitan Transportation Authority (LACMTA) has recently reported to the CPUC that it plans to have the proposed grade separation project for the at-grade Doran Street crossing approved sometime in 2015. This is very close to the sunset date of January 1, 2016 of PRC Section 21080.14.

The CPUC anticipates that LACMTA may not complete its Notice of Exemption (NOE) for the project by January 1, 2016. LACMTA is proposing three alternatives, that once constructed, will permanently close the Doran Street crossing. The Metro Board will select the alternative. LACMTA then plans to file a NOE, based on the alternative the Metro Board selects by the end of 2015. The project may include closure of the Doran Street crossing and a new grade separated rail crossing (possibly at a different location) to replace the Doran Street crossing. Until the Metro Board selects the alternative, LACMTA will have difficulty in describing with sufficient detail the proposed design of the project to close the Doran Street crossing. Therefore, LACMTA may not file its NOE until 2016.

Another factor causing delay in the closure of the Doran Street crossing involves LACMTA's plans to enhance the safety of the crossing before and while the alternative selected by the Metro Board is constructed. In the interim, LACMTA plans to convert the existing Doran Street crossing into a one-way street for westbound traffic. LAMTA pursued support from the local community and CPUC staff to modify the crossing which consumed time and resulted in variations to LAMTA's crossing plans.

The proposed closure of the at-grade Doran Street crossing may lose its eligibility for a CEQA exemption in the year of 2016 if the sunset date of January 1, 2016 for PRC Section 21080.14 is not extended.

From 1990 to 2014, there have been seven accidents, resulting in two fatalities at the Doran Street highway-rail crossing. The accident to crossing ratio for Doran Street is approximately 12.5 times greater than the average for all at-grade crossings. Table 3 contains a list and brief description of the seven accidents that occurred at the Doran Street grade crossing.

<b>Date</b>	<b>Time</b>	<b>Description</b>
04/24/1995	9:55 AM	An Amtrak train hit a truck and trailer. There were no fatalities or injuries reported.
09/12/1995	7:48 AM	A Metrolink train hit a truck and trailer. There were no fatalities or injuries reported.
10/02/1998	10:00 AM	An Amtrak train hit a vehicle. There were no fatalities or injuries reported.
01/23/2003	3:10 PM	An Amtrak train hit a vehicle. There were no fatalities or injuries reported.
07/27/2004	9:38 PM	A UPRR freight train hit a pedestrian resulting in one fatality.
11/23/2009	11:34 AM	An Amtrak train hit a pedestrian resulting in one fatality.
24/03/2014	6:05 PM	A vehicle was blocked by traffic while attempting to cross Doran Street and was hit by a Metrolink train. There were no fatalities or injuries reported.

Table 3

The CPUC does not have a record when the Doran Street crossing was established. However, RCEB was able to determine that from February 1927 to the present there have been a total of 44 accidents at the crossing involving seven fatalities and 32 injuries.

### SB 348 (Galgiani)

SB 348 would extend the repeal date for PRC Section 21080.14 until January 1, 2019. Until then, the limited term CEQA exemption would continue to be available for closure of unsafe at-grade crossing by order of the CPUC to protect public safety in a safer, more efficient, and cost-effective manner.

### **DIVISION ANALYSIS (Safety and Enforcement Division)**

- The CPUC's Safety and Enforcement Division (SED) has analyzed the proposed Senate Bill (SB) 348 for any potential effects on its functions as a CEQA responsible agency and its jurisdiction over rail and transit facilities and crossings.
- While the CPUC rarely exercises authority to close crossings over the objection of local authorities, as in the case of the Doran Street crossing, it is important for the CPUC to have this authority. The proceedings discussed above were the only two cases where the CPUC staff sought to have the CPUC order a crossing closed in the past 10 years period prior to the passage of AB 1665 of 2012.

- The Legislature should affirm the CPUC's power to close an at-grade rail crossing in an efficient manner following a public hearing addressing transportation considerations, including economic and emergency safety issues. Preparation of a CEQA environmental review document (either an ND or EIR) and its subsequent potential litigation unnecessarily slows a process intended to protect public safety. AB 1665 provides a limited term CEQA exemption for closure of an unsafe at-grade rail crossing by order of the CPUC until January 1, 2016. The sunset clause was meant to give the California Legislature an opportunity to consider the effect of the CEQA exemption. As noted previously, the CEQA exemption under PRC Section 21080.14 is critical for the proposed closure of the at-grade Doran Street crossing, which is expected to take place in 2016.
- SB 348 would extend the January 1, 2016 sunset date in PRC Section 21080.14 to January 1, 2019. Without such an extension, the CPUC review process to close a dangerous rail crossing will require a full-scale CEQA review. As such, the CPUC would be unable to temporarily close crossings in an expeditious manner and the order closing the crossing would take considerably longer than the common six-month period seen in the CPUC's previous proceedings. This delay could needlessly jeopardize public rail safety. SB 348 will extend the period for the CPUC to close dangerous rail crossings without the delay caused by an unnecessary full-scale CEQA review.
- In addition, in 2015, the CPUC will engage into an extensive effort to improve its highway-rail crossing inventory for thousands of active and passive rail crossings throughout the state. The CPUC sees this project as an opportunity to identify unsafe and redundant crossings for closure. The CPUC anticipates that it will not complete this project until 2017. If PRC 21080.14 sunsets on January 1, 2016, crossings that the CPUC considers closing would not be exempt from the provisions of CEQA.

### **SAFETY IMPACT**

The bill would enhance the safety of California citizens by extending the sunset date of PRC Section 21080.14 from January 1, 2016 to January 1, 2019 and thereby continuing to allow a CEQA exemption for the closure of at-grade rail crossings as ordered by the CPUC due to safety concerns.

### **RELIABILITY IMPACT**

No known reliability impacts.

### **RATEPAYER IMPACT**

No known ratepayer impacts.

### **FISCAL IMPACT**

No known fiscal impacts. A local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the negligible compliance cost. Therefore, the bill provides that no reimbursement is required by this act for the specified reason.

**ECONOMIC IMPACT**

No known economic impacts.

**LEGAL IMPACT**

SB 348 would extend the provisions of AB 1665 for another three years until January 1, 2019 and continue to allow the CPUC to order the closure of dangerous at-grade rail crossings without conducting a CEQA environmental review. SB 348 will help to expeditiously close the at-grade Doran Street crossing as ordered by the CPUC due to its safety concerns.

**LEGISLATIVE HISTORY**

PRC Section 21080.14 was created by AB 1665 of 2012 and will sunset on January 1, 2016. However, the CEQA exemption provided by PRC Section 21080.14 is necessary for the expedient closure of at-grade crossings that present a risk to public safety. This includes the at-grade Doran Street crossing, which is set to close in 2016. The CPUC was the sponsor for AB 1665.

**PROGRAM BACKGROUND**

The CPUC had previously combined the statutory exemption for certain grade separation projects under PRC Section 21080.13 with the grade separation definition contained in the Streets and Highways Code Section 2450(b)(3) when exempting an at-grade crossing closure from CEQA. The California Legislature has determined that the exemption added by AB 1665 of 2012 is limited, non-controversial, and is appropriate where a rail crossing must be closed quickly to protect public safety.

Amending PRC Section 21080.14 as proposed will continue to affirm the CPUC's existing authority as exercised in the past. Public safety shall be the primary consideration in at-grade crossing closures and shall be handled in an expeditious manner while preserving the due process rights of the local community affected by the closure. Furthermore, since most, if not all, the considerations addressed under CEQA are considered by the CPUC in a crossing closure public hearing and proceeding, these important considerations will be more expeditiously aired and resolved. A number of fatalities occur every year in California at existing at-grade rail crossings. This bill will help ensure that dangerous crossings can be closed without the delay caused by an unnecessary CEQA review.

**OTHER STATES' INFORMATION**

Unknown.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION**

This bill should be supported for the following reasons:

- (1) Recent deadly at-grade rail crossing crashes in Oxnard, California and New York have sparked interest among lawmakers and regulators in improving safety



conditions at any at-grade rail crossing and as appropriate, closing unsafe crossings.

- (2) Available nation-wide FRA statistics shows that in 2013, 231 people died and 972 people were injured in 2,096 collisions. California accounts for the most rail crossing crashes, injuries, and fatalities. Rail crossing collisions and other accidents remain a serious problem and a challenge to the State of California.
- (3) The CEQA exemption codified in PRC Section 21080.14 allows for the expeditious closure of unsafe at-grade rail crossings without the long-delays and review process that often characterize a CEQA review. The short term CEQA exemption is limited, non-controversial, and appropriate where a dangerous at-grade rail crossing must be closed quickly to protect public safety.
- (4) The sunset clause for PRC Section 21080.14 will remove this important CEQA exemption and could cause delay for closures of unsafe at-grade crossings. Any delay in closing an unsafe at-grade rail crossing could potentially jeopardize public safety for motorists, pedestrians, train personnel, and passengers.

Amending PRC Section 21080.14 as proposed by SB 348 will temporarily remedy the problem and concern as noted above without adverse consequences to the purposes and provisions of the CEQA.

#### **SUMMARY OF SUGGESTED AMENDMENTS**

None.

#### **STATUS**

SB 348 is pending consideration in the Senate Environmental Quality Committee on April 15, 2015.

#### **SUPPORT/OPPOSITION**

##### Support:

Union Pacific Railroad

##### Opposition:

None

#### **VOTES**

None.

#### **STAFF CONTACTS**

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**BILL LANGUAGE****SECTION 1.**

Section 21080.14 of the Public Resources Code is amended to read:

**21080.14.**

(a) This division does not apply to the closure of a railroad grade crossing by order of the Public Utilities Commission, pursuant to the commission's authority under Chapter 6 (commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code, if the commission finds the crossing to present a threat to public safety.

(b) This section shall not apply to any crossing for high-speed rail, as defined in subdivision (c) of Section 185012 of the Public Utilities Code, or any crossing for any project carried out by the High-Speed Rail Authority, as described in Section 185020 of the Public Utilities Code, or a successor agency.

(c) (1) Whenever a state agency determines that a project is not subject to this division pursuant to this section, and it approves or determines to carry out the project, the state agency shall file a notice with the Office of Planning and Research in the manner specified in subdivisions (b) and (c) of Section 21108.

(2) Whenever a local agency determines that a project is not subject to this division pursuant to this section, and it approves or determines to carry out the project, the local agency shall file a notice with the Office of Planning and Research and with the county clerk in each county in which the project will be located in the manner specified in subdivisions (b) and (c) of Section 21152.

(d) This section shall remain in effect only until January 1, ~~2016~~, ~~2019~~, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2016~~, ~~2019~~, deletes or extends that date.

***SEC. 2.***

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*