
SENATE COMMITTEE ON TRANSPORTATION AND HOUSING

Senator Jim Beall, Chair

2017 - 2018 Regular

Bill No: SB 502

Hearing Date: 8/31/2018

Author: Portantino

Version: 08/27/2018 Amended

Urgency: No

Fiscal: Yes

Consultant: Manny Leon

SUBJECT: Commuter rail systems: availability of automated external defibrillators: Construction Manager/General Contractor Project delivery method: Metrolink commuter rail projects

DIGEST: This bill requires operators of commuter rail systems, by July 1, 2020, to ensure that each train be equipped with an Automated External Defibrillator (AED), as specified. This bill provides Construction Manager/General Contractor (CM/GC) authority to the Southern California Regional Rail Authority (Metrolink), as specified.

ANALYSIS:

Existing law:

- 1) Generally defines commuter rail service, intercity rail, and rail transit.
- 2) Provides funding for the state's five commuter rail systems for both operations and capital improvements.
- 3) Requires certain buildings with capacities of 200 persons or greater, as specified, constructed on or after January 1, 2017, to have an AED on the premises. Requires the building owner to test the AED at least biannually and inspect the AED at least every 90 days.
- 4) Generally exempts from civil liability any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency when certain conditions are met. Provides similar immunity from liability for school districts and their employees.
- 5) Outlines maintenance, testing, and training schedules, as specified, for the upkeep of AEDs.

- 6) Authorizes Caltrans to use CM/GC for highway, bridge, or tunnel projects as specified.
- 7) Requires all CM/GC projects administered by Caltrans to use department employees or consultants under contract with Caltrans to perform all construction inspection services, as specified.
- 8) Requires Caltrans to prepare and submit to the Legislature an annual report related to CM/GC project delivery.
- 9) Authorizes regional transportation agencies, as defined, to use CM/GC to design and construct certain projects not on the state highway system, as specified, if the agency completes an evaluation of various project delivery methods for the project and adopts the CM/GC method in a public meeting.
- 10) Provides definitions for CM/GC-qualified projects and regional transportation agencies accordingly.

This bill:

- 1) Authorizes Metrolink to utilize CM/GC authority on Metrolink commuter rail projects.
- 2) Makes findings and declarations relative to the necessity to provide Metrolink CM/GC authority.
- 3) Requires a public entity that operates, or contracts for the operation of, a commuter rail system to ensure that each train has an AED as part of its safety equipment.
- 4) Specifies that "commuter rail" does not include intercity passenger rail services, as defined, light rail or rapid transit services.
- 5) Requires commuter rail operators to comply by July 1, 2020.
- 6) Exempts the Peninsula Joint Powers Authority (Caltrain) from this requirement and instead requires Caltrain to ensure new trainsets acquired as part of its electrification project are equipped with AEDs.
- 7) Authorizes a commuter rail operator to provide training for their employees on the use of AEDs as part of regularly scheduled safety training sessions.

- 8) Requires commuter rail operators to confirm, in writing, their compliance with AED requirement to the California Public Utilities Commission.
- 9) Exempts the commuter rail operator from civil liability for the use of an AED, if the current required maintenance schedule is followed.

COMMENTS

- 1) *Purpose.* According to the Author, “SB 502 provides the necessary statutory authorization for Metrolink to pursue a Construction Management/ General Contractor (CM/GC) approach to facilitate the delivery of the Southern California Optimized Rail Expansion (SCORE) program by 2028. In addition, requires all operators of commuter rail systems, by July 1, 2020, to ensure that each train is equipped with an Automated External Defibrillator (AED). The bill has a consistent vision to deliver quality, passenger focused commuter rail service.”
- 2) *AEDs.* An AED is a lightweight, battery-operated portable device that checks the heart rhythm and can deliver an electric shock through the chest to the heart to try to restore a normal heart rhythm. AEDs are used to treat Sudden Cardiac Arrest (SCA). An SCA is a condition in which the heart suddenly and unexpectedly stops beating, which stops blood flowing to the brain and other vital organs. According to the National Heart, Lung, and Blood Institute of the National Institutes of Health (NHLBI), 95% of people who have SCA die from it within minutes.

A built-in computer in the AED checks a victim's heart rhythm through adhesive electrodes, and calculates whether defibrillation is needed. If defibrillation is needed, a recorded voice instructs the rescuer to press the shock button on the AED. This shock momentarily stuns the heart and stops all activity, giving the heart the chance to resume beating effectively. Instructions guide the user through the process, and the device prompts the user to let them know if and when they should send a shock to the heart. AEDs advise a shock only for ventricular fibrillation or another life-threatening condition relating to the heart.

This bill would mandate that certain commuter rail systems ensure that each train in its system has an AED as part of the train's safety equipment by July 1, 2020, and extends civil liability exemptions for the operators. The U.S. Department of Transportation does not currently require AEDs on public transit vehicles, although they have been required equipment on all airlines since 2004.

Similarly, there is no state requirement for AEDs to be installed on the public transportation systems in California.

There are currently five commuter rail operators in the state, the Altamont Corridor Express (ACE), which connects the San Joaquin Valley to the Bay Area; Caltrain, which operates in the Bay Area peninsula; the Coaster serving San Diego County; Sonoma-Marin Area Rail Transit (SMART) connecting Sonoma and Marin Counties; and Metrolink. Metrolink operates commuter trains on seven routes across a six-county, 538 route-mile network in Southern California. Currently, ACE, and SMART already carry AED's on their trains and train their personnel in their use as part of regular safety training.

- 3) *CM/GC*. The *CM/GC* project-delivery method allows an agency to engage a construction manager during the design process to provide assistance to the design team, which can ultimately lead to a more constructible project. When the design is nearly complete, the agency and the construction manager negotiate a guaranteed maximum price for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor. Studies have suggested *CM/GC* often leads to less costly or more expediently delivered projects because of the construction manager's involvement in the design process.

The *CM/GC* process is meant to provide continuity and collaboration between the design and construction phases of the project. Construction managers have an incentive to provide input during the design phase that will enhance constructability of the project later, because they know that they will have the opportunity to become the general contractor for the project. Furthermore, *CM/GC* promises to save project delivery time, provide earlier cost certainty, transfer some risks from the public agency to the contractor, and ensure project constructability. Finally, *CM/GC* allows each agency to design the project to complement the general contractor's strengths and capabilities, thereby providing maximum competitiveness in a low-bid procurement.

The *CM/GC* provisions specified in this bill will allow Metrolink to deliver projects under their SCORE (Southern California Optimized Rail Expansion) program in a more timely and cost-effective manner. Ultimately, the completion of the SCORE program will allow Metrolink to provide passenger rail service with 15 and 30 minute headways across its 400-plus track mile service area in Southern California.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday,
August 29, 2018.)

SUPPORT:

Southern California Regional Rail Authority (Metrolink)

OPPOSITION:

None received.

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or to a political subdivision of the city, for purposes of an emergency shelter or feeding program.

- 2) Requires, for up to 10 parcels, the lease amount for emergency shelter or feeding programs to be \$1 per month.
- 3) Allows the lease amount to be paid in advance of the term covered in order to reduce the administrative costs associated with the payment of the monthly rental fee.
- 4) Requires the lease to require the payment of an administrative fee not to exceed \$500 per year, unless Caltrans determines that a higher administrative fee is necessary, for its cost of administering the lease.
- 5) Finds and declares that the lease of real property pursuant to these provisions serves a public purpose.

COMMENTS:

- 1) *New Bill.* As approved by the Senate on January 22, 2018, this bill dealt with water districts. This bill has been referred to this committee pursuant to Senate Rule 29.10(d). The committee may either hold the bill or return the bill to the Senate floor for consideration. Amendments are not permitted.
- 2) *Author's Statement.* According to the author, California's homeless population has skyrocketed over the last several years. This sharp increase in the state's homeless population has sent local jurisdictions throughout the state scrambling to address the issue. Several cities have developed emergency shelters on Caltrans owned land but these projects will not be economically feasible if the cities are required to lease them at market rate.

This bill would expand Caltrans' existing authority by allowing Caltrans to lease real property to the cities of Los Angeles and San Jose for the purposes of establishing an emergency shelter or feeding program, for \$1 per month. This will give these local jurisdictions the ability to leverage state and local assets to take bold and aggressive actions to address the state's homelessness crisis.

- 3) *Exception for emergency shelter and feeding programs.* Existing law grants Caltrans the authority to enter into airspace leases, and it generally obligates Caltrans to secure fair market value lease rates for airspace under freeways or other available parcels, based on the estimated highest and best use of the property. Notable exceptions to the fair market value requirement authorize

Caltrans to lease unused parcels of land below market rates (e.g., \$1 per month) to various cities and counties for the purposes of emergency shelters and feeding programs. In each of these exceptions, the Legislature has found that below-market rate leases for these particular uses serve a public purpose.

- 4) *Similar bills.* This year, there were three similar bills, AB 2629 (Eggman), AB 3061 (Gloria), and AB 3139 (Bonta), passed by the Legislature that also provide or extend authorization for Caltrans to lease airspace parcels in specific cities and counties for the purposes of emergency shelter or feeding. These bills, in addition to this one, give these cities and counties a helpful tool to address California's significant homelessness crisis.

RELATED LEGISLATION:

AB 2629 (Eggman, 2018) — authorizes Caltrans to lease airspace parcels in San Joaquin and Santa Barbara Counties for emergency shelter or feeding purposes regardless of whether there are other prospective buyers and removes the current restriction that the San Joaquin County airspace lease be limited to a 10-year term with two possible 10-year lease renewals. *This bill has been approved by the Legislature and is awaiting action from the Governor.*

AB 3061 (Gloria, 2018) — authorizes Caltrans to lease specified additional property in the City of San Diego to another public entity for purposes of an emergency shelter, feeding program, or children's day care facility, at a lease amount of \$1 per month and an administrative fee not to exceed \$500 per year, as specified. *This bill has been approved by the Legislature and is awaiting action from the Governor.*

AB 3139 (Bonta, 2018) — authorizes Caltrans to lease airspace under a freeway or other real property to the City of Oakland for emergency shelter or feeding programs. *This bill has been approved by the Legislature and is awaiting action from the Governor.*

AB 1898 (Mathis, 2018) — would have required Caltrans to lease at a discount to a city or county any airspace under a freeway or other real property in a disadvantaged community for various purposes. *AB 1898 was held on Suspense in the Assembly Appropriations Committee.*

AB 857 (Ting, Chapter 822, Statutes of 2017) — directed Caltrans to lease to San Francisco up to 10 parcels of airspace under a freeway at 30% of fair market lease value for park, recreational, or open-space purposes.

SB 120 (Kopp, Chapter 750, Statutes of 1993) — authorized Caltrans to lease to San Francisco any airspace under a freeway or property for an emergency shelter or feeding program at a rate of \$1 per month.

SB 1441 (Johnston, Chapter 143, Statutes of 1992) — enabled the City of Stockton to renew its airspace lease at the SR 4 and I-5 interchange for ten years, and authorized two subsequent ten-year renewals following that first renewal.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, August 29, 2018.)

SUPPORT:

City of Los Angeles
City of San Jose
County of Santa Clara

OPPOSITION:

None received.

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING

Senator Jim Beall, Chair

2017 - 2018 Regular

Bill No: SB 715 **Hearing Date:** 8/31/2018
Author: Delgado
Version: 8/27/2018
Urgency: No **Fiscal:** Yes
Consultant: Erin Riches

SUBJECT: Vehicular air pollution: regulations: exemption

DIGEST: This bill requires the state Air Resources Board (ARB) to exempt specified equipment from any in-use, off-road, diesel-fueled vehicle emission regulation, but provides that if ARB determines the exemption violates federal air quality requirements, it must delay implementation of the exemption.

ANALYSIS:

Existing federal law:

- 1) Sets, through the Federal Clean Air Act (FCAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, designates air basins that do not achieve NAAQS as nonattainment, and requires states with nonattainment air basins to submit a State Implementation Plan (SIP) that describes how an area will comply with NAAQS.

Existing state law:

- 1) Establishes ARB as the air pollution control agency in California and requires the ARB, among other things, to control emissions from a wide array of mobile sources and implement the FCAA.
- 2) Establishes the in-use off-road diesel-fueled fleets regulation (in-use off-road regulation) to reduce diesel particulate matter (PM) and oxides of nitrogen (NOx) emissions from in-use (existing) off-road heavy-duty diesel vehicles in California.

This bill:

- 1) Requires ARB to exempt, except from labeling and reporting requirements, a vehicle owned or operated by a state-registered nonprofit apprenticeship training program from any regulation to reduce emissions of diesel particulate matter, oxides of nitrogen, and other criteria air pollutants from in-use, off-road, diesel-fueled vehicles.
- 2) Requires ARB, if ARB makes a determination at a public hearing that the implementation of the exemption would violate the state's SIP, to delay the implementation until ARB has submitted an amended SIP to the United States Environmental Protection Agency (US EPA) for approval.

COMMENTS:

- 1) *Purpose.* The author states ARB has adopted regulations, in an effort to reduce harmful carbon emissions from in-use, off-road, diesel-fueled vehicles. These regulations provide that certain nonprofit apprenticeship training programs, such as Job Corps, are not required to meet the performance standards specified in the regulations. This bill would add state-registered apprentice programs for heavy equipment and cranes to that same standard, thereby ensuring that construction apprentices who operate heavy equipment and cranes have ample opportunities to learn their trade and further their careers.
- 2) *Air quality standards.* Under the FCAA, the US EPA establishes National Ambient Air Quality Standards (NAAQS) that apply to outdoor air throughout the country. US EPA reviews each NAAQS at five-year intervals to ensure that the standards are based on the most recent scientific information. Regions that do not meet the national standards for any one of the standards are designated "nonattainment areas." The FCAA sets deadlines for attainment based on the severity of nonattainment and requires states to develop comprehensive plans, known as the state implementation plan (SIP), to attain and maintain air-quality standards for each area designated nonattainment for NAAQS.
- 3) *State Implementation Plan (SIP).* SIPs are comprehensive plans that describe how an area will attain NAAQS. The 1990 amendments to the FCAA set deadlines for attainment based on the severity of an area's air pollution problem. Many of California's SIPs rely on the same core set of control strategies, including emission standards for cars and heavy trucks, fuel regulations and limits on emissions from consumer products. State law makes ARB the lead agency for all purposes related to the SIP. Local air districts and other agencies, such as the Bureau of Automotive Repair and the Department of

Pesticide Regulation, prepare SIP elements and submit them to ARB for review and approval; ARB then forwards SIP revisions to USEPA for approval.

- 4) *In-use off-road regulation.* The in-use off-road regulation applies to all self-propelled off-road diesel vehicles 25 horsepower or greater used in California, as well as most two-engine vehicles (except on-road two-engine sweepers). This includes vehicles that are rented or leased. Personal use vehicles, vehicles used solely for agriculture, vehicles that are awaiting sale, and vehicles already covered by the Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards, are exempt from the in-use off-road regulation. Emergency operations vehicles, dedicated snow removal vehicles, low-use vehicles (used under 200 hours per year, as confirmed by a non-resettable hour meter), and vehicles used a majority of the time (but not solely) for agricultural operations, must be reported to ARB and labeled, but are exempt from the performance requirements of the in-use off-road regulation.
- 5) *How many vehicles are we talking about?* According to the International Union of Operating Engineers, their fleet has 142 machines with about 45 of those machines being low-use. According to the Division of Apprenticeship Standards, there are currently 838 “committee” (non-profit) programs and 309 single employer programs. Given the last-minute nature of this bill, it is not possible to further assess the total number of vehicles this legislation could affect. The number could be in the hundreds, or possibly much, much higher, depending on the size of the 1,147 programs identified by the Division of Apprenticeship Standards.
- 6) *Low-use exemption.* As noted above, the in-use off-road regulation includes an exemption for low-use vehicles, e.g., used under 200 hours per year. The author states that heavy equipment used for training is used significantly less than equipment used on a job site – approximately 200 hours per year for training equipment, as opposed to anywhere between 1,500 to 3,000 hours per year for equipment on a job site. If this is indeed the case, then the training equipment should qualify for exemption. In addition, small fleets (as nonprofit training centers are considered), do not have to begin meeting the fleet average targets until 2019, and do not have to reach full compliance until 2028.
- 7) *Process concerns.* The author notes that the regulation currently exempts some training programs such as Job Corps. It is the committee’s understanding, however, that this exemption was instituted as an amendment to the regulation through the formal regulatory process, not through legislation introduced late in session. Providing an exemption for one category through legislation could

lead to other industries coming to the Legislature in the future to seek further exemptions.

- 8) *29.10 referral.* When this bill was passed by the Senate last year, it was authored by Senator Newman and pertained to regulatory boards under the Department of Consumer Affairs. It was amended on August 24, 2018 to make Senator Delgado the author and to instead pertain to the in-use off-road regulation. This bill passed off the Assembly Floor on August 31, 2018 on a 42-11 vote. Consistent with Senate Rule 29.10, the Senate Rules Committee referred it to the Transportation and Housing Committee to consider the amendments.

RELATED LEGISLATION:

AB 2365 (Acosta, 2018) — would have exempted a crane owner from complying with any regulation requiring the installation of air pollution control technology, until the crane is sold or transferred. *This bill failed in the Assembly Transportation Committee earlier this year.*

SB 41 (Galgiani, 2017) — would have deemed a person to be in compliance with the Truck and Bus Regulation and would have prohibited ARB from (i) requiring the person to spend additional money on compliance or (ii) taking enforcement actions against a person if various specified conditions were met. *SB 41 died in the Senate Environmental Quality Committee.*

AB 345 (Caballero, 2018) — would have exempted specified agricultural vehicles from complying with Truck and Bus Regulation that requires lower-emitting oxides of nitrogen engines and diesel particulate matter filters for nearly every heavy-duty vehicle operated in California. *AB 345 failed in the Senate environmental Quality Committee by a vote of 3-3.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee on August 31, 2018.)

SUPPORT:

California Conference of Carpenters
International Union of Operating Engineers

OPPOSITION:

American Lung Association in California
California Air Pollution Control Officers Association
California Environmental Justice Alliance
Central California Asthma Collaborative
Coalition for Clean Air
Regional Asthma Management and Prevention
Sierra Club California
Union of Concerned Scientists

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