

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 6, 2016

To: The Commission
(Meeting of June 9, 2016)

From: Hazel Miranda, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 650 (Low) – Public Utilities Commission: regulation of taxicabs.
As amended: May 27, 2016**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: NONE

SUMMARY OF BILL

AB 650 would transfer regulatory jurisdiction for taxicab operations from cities and counties to the California Public Utilities Commission (CPUC). More specifically, the bill would:

- Require the CPUC to adopt statewide regulations to license taxicab carriers, and to test and register each individual taxicab driver.
- Maintain a distinction between taxicab and charter-party carrier services.
- Open a formal proceeding to implement the provisions specified in the proposed legislation.
- Exclude taxicabs that operate within the City and County of San Francisco and at the San Francisco Internal Airport from CPUC jurisdiction.

CURRENT LAW

- California Constitution Article XII, Section 4: Provides that the CPUC may fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges.
- Public Utilities Code Chapter 5, (Passenger State Corporations).
- Public Utilities (PU) Code Chapter 8, (Passenger Charter-party Carriers of Passengers).

- PU Code §§5430-5444 provide for regulations specific to transportation network companies regarding insurance and participation in the Department of Motor Vehicles' Employer Pull Notice program.

AUTHOR'S PURPOSE

The author's purpose is to transfer regulation of taxicab services from cities and counties to the CPUC, and thereby standardize a number of taxicab regulations that may currently vary across different localities, including pricing restrictions, background checks, franchise or medallion caps, and restrictions on refusal of service.

EXPLANATION OF BILL'S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY

In general, the CPUC's regulatory framework for passenger and household goods carriers is to enforce rules and regulations at the level of the permit holder, not individual drivers. As a whole, the proposed Taxicab Transportation Services Act introduces a new mix of permit holder-level and driver-level requirements.

1) Registration and Exams for Individual Taxicab Drivers

The CPUC does not currently register or administer exams for passenger carrier drivers; it only administers exams to the owner of a household goods carrier. The CPUC would institute a new rulemaking to determine the appropriate components of a taxicab driver exam, the minimum passing requirements, how to administer exams, conditions under which applicants may re-take the exam and how frequently.

2) Taxi Company Permits

Proposed PU Code §§5451.6, 5454.2, and 5454.10 reflect another significant addition to the CPUC's regulatory framework for passenger carriers, most of whom hold permits to operate statewide and with no restriction on the "trade name" or name(s) under which they do business. The benefits of requiring a taxicab carrier to submit multiple permit applications are not readily apparent. The regional approach requires the CPUC to permit duplicative applications and to enforce the taxicab regulations against one carrier on a regional basis.

Proposed PU Code §5458 appears to mirror the CPUC's vehicle inspection requirements for transportation network companies (TNCs), adopted September 2013.¹ However, the CPUC modified those requirements in April 2016² and may make further refinements based on stakeholders' input. The bill's prescriptive nature restricts the CPUC's ability to establish and modify vehicle inspection requirements for taxicab carriers by requiring legislation for each and every subsequent change to the inspection rules.

¹ Decision 13-09-045 <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=77192335>

² Decision 16-04-041 <http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=161474505>

The proposed standardized regulations for taxicab carriers are silent regarding any requirements that localities may have otherwise adopted and enforced, such as accessibility provisions for persons with disabilities and restrictions on refusal of service. Presumably, the CPUC retains the flexibility to consider such requirements within a formal and public proceeding. On that presumption, it would be important to facilitate participation in such proceedings by stakeholders that represent the public interest. However, parties to transportation-related proceedings are not eligible for intervenor compensation.³ When the CPUC confirmed this limitation in the TNC rulemaking, participation decreased and became limited to those groups / individuals with either a direct financial interest in the proceeding and/or the financial means to participate independent of such compensation. Indeed no non-profit, public interest groups are currently active in the CPUC's TNC proceeding. Modifying PU Code §1801.3 to clarify that intervenors in proceedings involving regulated transportation carriers are eligible for intervenor compensation, would enhance the CPUC's ability to develop a fuller record on which to consider and assess any taxi-specific regulations or policies.

3) Enforcement

Proposed PU Code §5453 requires the CPUC to adopt criteria that establish the type of information, if contained in a complaint, sufficient to warrant an investigation into alleged operations as a taxicab without authority. The CPUC developed such requirements for complaints regarding TCPs, attached, applicable to complaints regarding TCPs, including TNCs that could similarly apply to taxicab complaints.⁴

Currently, the CPUC utilizes graduated enforcement tools to bring a carrier into compliance. A cease and desist notice motivates some carriers to acquire a permit; others may require a citation and fine. In most cases, a carrier appeals the citation, a CPUC judge holds a hearing within ten days where enforcement staff defends the citation, the carrier presents an argument against the citation, and the judge decides the outcome. If a carrier remains noncompliant or the violation is particularly egregious, enforcement staff may pursue litigation against the carrier through the CPUC's adjudication system or civil and/or criminal courts. Limited resources require prioritization based on the magnitude and number of violations. Similarly, local prosecutors and courts also resource-constrained, prioritize cases based on the relative severity of criminal activity and/or revenue at stake. Cases against a carrier without a permit are considered a victimless crime and local prosecutors are inclined to dismiss such cases in favor of more serious criminal activities.

The bill does not explicitly provide the CPUC with the same enforcement tools utilized against other CPUC-regulated passenger carriers to investigate, suspend and prosecute illegal taxicab carriers. Missing tools include the right to:

- Inspect accounts, books and records - PU Code § 5389.
- Access to land, buildings and equipment - PU Code §5389.

³ Public Utilities Code §1801.3

⁴ The passenger carrier complaint form is available on the CPUC's website at <http://www.cpuc.ca.gov/carriercomplaint/>

- Telephone disconnects - PU Code § 5371.6 et seq.
- Delegation to staff – PU Code § 5374(a) 1.

4) Insurance Requirements

Proposed insurance levels for taxicab carriers are comparable to what statute dictates for TNCs operating in “Period 1”, which is significantly lower than those for TCPs. Pursuant to PU Code §5436, the CPUC and Department of Insurance are required to collaborate on a study of TNC insurance to assess whether coverage requirements are appropriate to the risks of TNC services. This study, which is due to the Legislature by December 31, 2017, may be instructive for future taxicab insurance requirements.

5) Potential Policy and Market Impacts

Taxicab service is distinct from charter-party carrier service in that rides can be hailed and need not be prearranged. The proposed taxicab regulations generally amalgamate those currently in effect for taxis, TCPs and TNCs.

Several proposed distinctions could have the effect of motivating existing TCPs to surrender or augment their TCP permits in favor of either seeking a taxicab permit or seeking employment with a taxicab permit holder. TNC drivers may similarly be motivated to seek a taxicab carrier or taxicab driver permit. Those motivating factors include: 1) significantly lower amounts of required insurance coverage for taxicab companies; 2) the ability of taxicab carriers to provide on-demand services; 3) the absence of any caps on the number of taxicab carriers or drivers; and 4) the intention to restrict CPUC jurisdiction regarding taxicab fares and fees, which may not be legal, as it conflicts with the CPUC’s constitutional authority over transportation company rates. Combined, the differences may provide sufficient incentive for drivers to work for one or a combination of TCP, TNC and taxicab services, and to potentially drive the same vehicle.⁵

6) Information Technology Requirements

The bill presents a number of opportunities to utilize technology to reduce resource costs and optimize efficiency.

First, the bill requires an unknown influx of taxicab carriers and drivers to register with, and provide a significant amount of new information to the CPUC. Currently, the CPUC can only accept paper applications. Staff must manually input application information in to a legacy transportation database that is over 30 years old and insufficient for existing workload. An efficient alternative to the manual permit process is to develop an online application process. Taxi companies and drivers would enter and submit their respective applications and required documents directly to the CPUC.

⁵ TCPs/TNCs may only provide prearranged transportation service.

Second, proposed PU Code §§5460 and 5460.4 imply that the CPUC must be able to track which drivers are associated with which carriers, in order to bring enforcement actions against those carriers when their drivers violate a code, rule, etc., but does not require taxicab carriers to provide the CPUC with a list of taxicab drivers contracted or employed by the taxi company. To collect, maintain and utilize taxi company and driver information for both licensing and enforcement purposes requires a new relational database system.

Third, for efficiency and cost-savings, the CPUC could administer the taxi driver exam online, grade the exams electronically and provide drivers with a score almost instantaneously, which requires a significant level of programming on the front end.

Finally, the proposed bill requires the CPUC to register taxicab carriers to operate in specific regions of the state. As stated earlier, the purpose and benefit of the regions is not apparent, and to implement a permit program for seven regions requires additional staff and a sophisticated database, for use by CPUC permitting and enforcement staff.

7) Fees

The bill is silent regarding any requirement for taxicab carriers to remit a percentage of their revenues to the CPUC to implement and enforce those regulations. Most likely, the intent is for the CPUC to utilize its existing carrier funding authority under PU Code §421.1 and §423.

SAFETY IMPACT

Unknown.

RELIABILITY IMPACT

Unknown.

RATEPAYER IMPACT

Regions with substantial competition could see lower rates and charges with increased service quality, while regions with little to no competition could experience the opposite effect.

FISCAL IMPACT

The CPUC would experience significant increased workload and fiscal impacts in two general categories: costs associated with initial implementation of a new taxi regulatory program and costs associated with ongoing administration of the program.

Phase I - Initial Implementation

The CPUC would initiate a formal proceeding (Rulemaking) to implement the proposed taxi regulation legislation and establish programmatic and administrative rules and procedures for both taxi drivers and taxicab carriers, such as carrier permits, driver registration and permits, exams and enforcement. The CPUC estimates the workload, allocated among nine new positions, below.

- Develop outreach strategies to encourage and maintain broad stakeholder participation in the proceeding; and meet with regional taxi companies, drivers, consumers; community members, consumer protection advocates and law enforcement entities across the state regarding AB 650. Staff will redeploy to Phase II outreach activities. **One PURA III and one PURA II.**
- Research the taxi industry, existing regulations, anticipated innovations in the transportation industry; identify potential policy, enforcement and legal issues associated with the passenger carrier market; conduct technical workshops and write staff reports, as required, to launch the proceeding; analyze collected data and comments provided by stakeholders; determine the appropriate components of a taxicab driver exam, the minimum passing requirements, how to administer exams, conditions under which applicants may re-take the exam and how frequently; and develop technical and policy options for consideration by decision makers. When the proceeding ends, staff will be redeployed for Phase II enforcement activities. **One PURA IV, one PURA III, one PURA II and one Public Utilities Counsel III**
- Preside over the formal proceeding; issue rulings; hold regional hearings; analyze input provided by stakeholders and staff; and write the formal decision for the Commissioners to consider. When the proceeding concludes, staff will be redeployed for Phase II. **One Administrative Law Judge II (ALJ II)**
- Develop and incorporate an online application system and database able to associate drivers with taxicab carriers and retain, sort and analyze program data. **\$500,000 for a consultant.**

Phase II - Ongoing Administration

It is difficult to assess the magnitude of the increased CPUC workload prior to the formal proceeding. The CPUC lacks information regarding the number of taxicab carriers and drivers to estimate resource needs. The estimated new workload reflects the CPUC's past experience to implement statutes and CPUC regulations to license carriers, enforce compliance, prosecute cases and receive informal complaints, plus the new anticipated workload associated with driver registration and enforcement. The CPUC utilized public data posted by the current regulatory agencies in Los Angeles and San Francisco. The two cities likely among the largest taxi regulators in the state, license a combined total of 34 taxicab companies and over 4,100 vehicles;⁶ San Francisco

⁶ City of Los Angeles Taxi Services, <http://www.taxicabsla.org/>; and San Francisco Municipal Transportation Agency, <https://www.sfmta.com/getting-around/taxi/taxi-companies>

maintains a waiting list of 7,500 individuals seeking to operate taxicabs, while other cities no longer accept applications.

Given the absence of a cap on the number of taxi carriers and drivers, plus the pent-up supply of taxi driver applicants blocked by city moratoriums, the number of taxicab carriers and drivers will increase. Some percentage of current TCP and TNC drivers, roughly 6,100 active and suspended TCP carriers, 13,500 TCP vehicles and well over Uber's recent estimate of 120,000 Uber drivers in California,⁷ may also elect to apply for a taxi carrier or driver permit, which would likely not increase the total driver population. Based on those factors and the statewide estimate of existing taxicab carriers and drivers likely to register in one or more of the proposed regions could require the CPUC to register at least 100 taxicab carriers and thousands of taxicab drivers.

The ongoing functions to implement AB 650 would require 23 positions: 11 redeployed from Phase 1, and 12 new positions to:

1. Analyze applications from taxicab carriers and drivers to ensure the applicant obtains the required insurance and fingerprints; enrolls in drug testing and DMV Pull Notice Programs; takes and passes the driver exam; submits a vehicle maintenance program and driver training plan and otherwise meets mandated requirements, respond, research and resolve carrier problems and concerns; and issue permits. **Four PURA I positions.**
2. Create and subsequently refresh at least ten driver exams and rating criteria, and develop an exam retention policy, all in accordance with the Rulemaking. Schedule exams; maintain electronic exam records; and analyze metrics. **One redeployed PURA III.**
3. Receive and attempt to resolve informal complaints against taxicab carriers and drivers. Refer complex and unresolved complaints to the enforcement team. **One Consumer Affairs Representative.**
4. Educate regional taxi companies, drivers, consumers; community members, consumer protection advocates and law enforcement entities across the state regarding statutes and CPUC regulations regarding the taxi industry. Speak at regional and industry events, meetings of consumer protection groups, etc. Hold quarterly training sessions on the application process for carriers and drivers. Develop a brochure, presentation, handouts and other collateral materials. **One PURA II and one PURA III, redeployed from Phase I outreach.**
5. Investigate complex and unresolved complaints, initiate investigations on own motion, issue citations and litigate carrier/driver citation appeals, adjudicate such appeals and prepare resolutions, accept and process carrier/driver appeals, and process completed resolutions. **One redeployed PURA II and two new PURA II positions, three new PURA III positions, allocated across the seven**

⁷ California Legislature, Senate Committee on Energy, Utilities and Communications and Senate Committee on Transportation and Housing, Joint Oversight Hearing held February 17, 2016, http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=3363.

regions; one PU Legal Counsel I, one redeployed ALJ, and one Legal Typist.

6. Gather evidence and analyze quantitative and qualitative data; prepare evidence, staff reports and formal testimony; negotiate settlements and undergo cross-examination. **One redeployed PURA IV and one new PURA IV, one redeployed PU Counsel III.**
7. Support and enhance the new electronic IT and database systems, troubleshoot IT problems. **One Senior Programming Analyst (Specialist) or equivalent contractor.**
8. Manage 17 new regulatory analysts to implement the additional permitting, outreach and enforcement functions. **One Program Manager, two Program and Project Supervisors.**

ECONOMIC IMPACT

To the extent that cities and counties currently assess various fees on taxicab carriers under their jurisdiction, the bill would result in lost revenues to those jurisdictions. The CPUC would experience an increase in revenue from permitting and regulatory fees, which would be offset by regulatory costs. Cities and counties may incur fewer expenses, as the CPUC would prosecute and adjudicate most taxi enforcement cases instead of local prosecutors and courts.

LEGAL IMPACT

Unknown.

LEGISLATIVE HISTORY

None.

BACKGROUND INFORMATION ON IMPACTED PROGRAMS, PRACTICE OR POLICY

In December 2012, the CPUC opened a Rulemaking to determine whether and how Transportation Network Company (TNC) services arranged through online-enabled apps such as Uber and Lyft might impact consumer protection and public safety.

The CPUC determined that the Public Utilities Code conferred the CPUC with authority to regulate TNCs as a subset of TCPs. In Decision 13-09-045 the CPUC established a number of TNC rules, including vehicle inspections, background checks, and reporting requirements regarding requests for accessible vehicles. In April 2016, the CPUC adopted a decision to require licensed mechanics to inspect TNC and TCP vehicles, front and rear trade dress for TNC vehicles and additional data reporting requirements.

OTHER STATES' INFORMATION

Unknown.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

NA.

SUMMARY OF SUGGESTED AMENDMENTS

This bill could improve if amended in the following ways:

1. Remove proposed Article 7 and other requirements regarding CPUC administration of taxicab driver regulations, exams or individual driver data collection, which would also reduce any CPUC staffing costs associated with those activities by one PU Legal Counsel I, two PURA I positions and one PURA III position; and reduce IT costs from \$500,000 to \$200,000 for a consultant. Consistent with the CPUC's regulation of charter-party carriers and passenger stage corporations, taxicab carriers should assume and maintain responsibility for ensuring their drivers comply with applicable regulations.
2. Remove provisions that require the CPUC to issue taxicab carrier permits on a regional basis, and instead establish a single statewide permit for all taxicab carriers. Taxicab carriers that operate in San Francisco and/or the San Francisco International Airport would remain regulated by the San Francisco Municipal Transportation Agency.
3. Clarify that taxicab carriers fall within "every other common carrier" or "related business subject to the jurisdiction of the commission," per PU Code §421. This amendment is necessary to require taxicab carriers to remit fees to the CPUC's Public Utilities Commission Transportation Reimbursement Account (PUCTRA)
4. Add essential enforcement tools similar to TCP regulation to authorize CPUC staff to inspect records and access land, buildings or equipment (PU Code §5389); delegate telephone disconnects (PU Code §5371.6), issue fines and citations (PU Code §§5384.5, 5411-5416) for carrier violations, failure to accurately report gross revenues and other authorities to staff (PU Code §5411.6); and require carriers to file gross revenue statements annually (or quarterly if \$100,000 or more) (PU Code §423).
5. Remove the requirement that the CPUC adopt formal criteria regarding the type of complaint information sufficient to warrant an investigation. The CPUC already adopted such criteria for currently regulated passenger carriers, and specifies such on existing transportation complaint forms. Removal of this requirement would also reduce any CPUC costs associated with those activities, by one PURA II position.
6. Modify proposed PU Code §5455 to set the required insurance amount at \$1 million. Since taxicab service is hail-able, it lacks a consistent, tangible means to

distinguish between “available but not yet matched” (the TNCs’ Period 1) and “matched, en route to pick up” (TNC Period 2). In essence, taxicab service is always in Period 2 or 3, for which TNCs must maintain a \$1 million policy requirement.

7. Remove proposed PU Code §5456 (inconsistent with the California Constitution regarding CPUC authority, and §5458 (prescriptive requirements lack flexibility, any change identified as necessary requires subsequent legislation). Instead, require that taxicabs clearly display a placard showing current rates and any applicable surcharges, including surge price percentages.
8. Clarify what the permit fees should be set at in proposed PU Code Sections 5452.8 and 5452.18.
9. Specify that all taxicabs must be equipped with a mobile telephony device and a mount that enables drivers to comply with applicable Vehicle Code regulations regarding the use of hands-free telephone devices when operating a motor vehicle.
10. Specify that all taxicab carriers must participate with a partner mobile app to accept e-hails.
11. Specify that, technology permitting, prior to commencing a ride, a taxicab driver must enter the destination address in a partner mobile app that will be used to track time in vehicle and distance travelled for the purposes of estimating total fare and calculating final fare. The app shall include, if desired by passenger, opportunity to register a user profile following the ride.
12. Specify that all apps used in conjunction with taxicab service must have an active Certificate of Approval with the California Department of Food and Agriculture’s Division of Measurement Standards.
13. Specify that taxicabs must be equipped to enable payment processing with credit cards.
14. Establish in statute clear standards for taxicab trade dress that all taxicab carriers must follow.
15. Remove proposed PU Code Section 5460.8, consistent with the CPUC’s proposed amendment to remove all provisions for the CPUC to register or issue permits to taxicab drivers.
16. Make all penalty amounts (proposed Article 10) consistent with the penalty amounts in place for charter-party carriers.
17. Establish an in-bill appropriation of \$250,000 to the PUCTRA to immediately cover new staff in licensing to cover the surge in taxicab carrier permit applicants.
18. Set an urgency clause, but also specify that taxicab carriers need not be under CPUC jurisdiction until July 1, 2017. The urgency will allow the CPUC to initiate and conclude an OIR and to increase its staff in time to start processing taxicab-related applications.

Note: Many of the concerns articulated in the above suggested amendments could otherwise be resolved by moving taxicab jurisdiction under the charter-party carrier statute rather than in its own standalone Chapter of Division 2 of the Public Utilities Code.

STATUS

AB 650 is pending hearing on June 13, 2016 in the Senate Energy, Utilities and Communications Committee.

SUPPORT/OPPOSITION

None on file.

VOTES

Prior votes not relevant.

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BILL LANGUAGE

AB 650 (Low), as amended May 27, 2016: 'Public Utilities Commission: regulation of taxicabs.' can be viewed online at

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB650.