

**[ORAL ARGUMENT NOT YET SCHEDULED]**

**No. 15-71780, 15-72570**

**STB No. FD 35861**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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KINGS COUNTY; KINGS COUNTY FARM BUREAU; CALIFORNIA  
CITIZENS FOR HIGH-SPEED RAIL ACCOUNTABILITY;  
COMMUNITY COALITION ON HIGH-SPEED RAIL; CALIFORNIA  
RAIL FOUNDATION; TRANSPORTATION SOLUTIONS DEFENSE  
AND EDUCATION FUND; and DIGNITY HEALTH

Petitioners

v.

UNITED STATES OF AMERICA AND SURFACE  
TRANSPORTATION BOARD

Respondents

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Intervenor and Respondent

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PETITION FOR REVIEW OF FINAL ORDER OF THE UNITED  
STATES SURFACE TRANSPORTATION BOARD

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**ADDENDUM TO PETITIONERS' OPENING BRIEF**

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## **FEDERAL CONSTITUTIONAL MATERIALS**

### **ARTICLE I, SECTION 8, CLAUSE 3:**

[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

### **TENTH AMENDMENT**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## FEDERAL STATUTES

### 5 U.S. Code § 554 - Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

- (1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
- (2) the selection or tenure of an employee, except a  [\[1\]](#) administrative law judge appointed under [section 3105 of this title](#);
- (3) proceedings in which decisions rest solely on inspections, tests, or elections;
- (4) the conduct of military or foreign affairs functions;
- (5) cases in which an agency is acting as an agent for a court; or
- (6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearing;
- (2) the legal authority and jurisdiction under which the hearing is to be held; and
- (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections [556](#) and [557](#) of this title.

(d) The employee who presides at the reception of evidence pursuant to [section 556 of this title](#) shall make the recommended decision or initial decision required by [section 557 of this title](#), unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to [section 557 of this title](#), except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e)

The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

## **5 U.S. Code § 702 - Right of review**

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States:

Provided,

That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

## 7 U.S. Code § 6503 - National organic production program

### (a) In general

The Secretary shall establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this chapter.

### (b) State program

In establishing the program under subsection (a), the Secretary shall permit each State to implement a State organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this chapter.

### (c) Consultation

In developing the program under subsection (a), and the National List under [section 6517 of this title](#), the Secretary shall consult with the National Organic Standards Board established under [section 6518 of this title](#).

### (d) Certification

The Secretary shall implement the program established under subsection (a) through certifying agents. Such certifying agents may certify a farm or handling operation that meets the requirements of this chapter and the requirements of the organic certification program of the State (if applicable) as an organically certified farm or handling operation.

## 7 U.S. Code § 6505 - Compliance requirements

### (a) Domestic products

#### (1) In general

On or after October 1, 1993—

(A) a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this chapter; and

(B) no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter.

#### (2) USDA standards and seal

A label affixed, or other market information provided, in accordance with paragraph (1) may indicate that the agricultural product meets Department of Agriculture standards for organic production and may incorporate the Department of Agriculture seal.

### (b) Imported products

Imported agricultural products may be sold or labeled as organically produced if the Secretary determines that such products have been produced and handled under an organic certification program that provides safeguards and guidelines governing the production and handling of such products that are at least equivalent to the requirements of this chapter.

### (c) Exemptions for processed food

Subsection (a) shall not apply to agricultural products that—

(1) contain at least 50 percent organically produced ingredients by weight, excluding water and salt, to the extent that the Secretary, in consultation with the National Organic Standards Board and the Secretary of Health and Human Services, has determined to permit the word “organic” to be used on the principal display panel of such products only for the purpose of describing the organically produced ingredients; or

(2) contain less than 50 percent organically produced ingredients by weight, excluding water and salt, to the extent that the Secretary, in consultation with the National Organic Standards Board and the Secretary of Health and Human Services, has determined to permit the word “organic” to appear on the ingredient listing panel to describe those ingredients that are organically produced in accordance with this chapter.

(d) Small farmer exemption

Subsection (a)(1) shall not apply to persons who sell no more than \$5,000 annually in value of agricultural products.

## 7 U.S. Code § 6506 - General requirements

(a) In general

A program established under this chapter shall—

(1) provide that an agricultural product to be sold or labeled as organically produced must—

(A) be produced only on certified organic farms and handled only through certified organic handling operations in accordance with this chapter; and

(B) be produced and handled in accordance with such program;

(2) require that producers and handlers desiring to participate under such program establish an organic plan under [section 6513 of this title](#);

(3) provide for procedures that allow producers and handlers to appeal an adverse administrative determination under this chapter;

(4) require each certified organic farm or each certified organic handling operation to certify to the Secretary, the governing State official (if applicable), and the certifying agent on an annual basis, that such farm or handler has not produced or handled any agricultural product sold or labeled as organically produced except in accordance with this chapter;

(5) provide for annual on-site inspection by the certifying agent of each farm and handling operation that has been certified under this chapter;

(6) require periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations to determine whether such products contain any pesticide or other nonorganic residue or natural toxicants and to require certifying agents, to the extent that such agents are aware of a violation of applicable laws relating to food safety, to report such violation to the appropriate health agencies;

(7) provide for appropriate and adequate enforcement procedures, as determined by the Secretary to be necessary and consistent with this chapter;

(8) protect against conflict-of-interest as specified under [section 6515\(g\) of this title](#);

(9) provide for public access to certification documents and laboratory analyses that pertain to certification;

(10) provide for the collection of reasonable fees from producers, certifying agents and handlers who participate in such program; and

(11) require such other terms and conditions as may be determined by the Secretary to be necessary.

(b) Discretionary requirements

An organic certification program established under this chapter may—

(1) provide for the certification of an entire farm or handling operation or specific fields of a farm or parts of a handling operation if—

(A) in the case of a farm or field, the area to be certified has distinct, defined boundaries and buffer zones separating the land being operated through the use of organic methods from land that is not being operated through the use of such methods;

(B) the operators of such farm or handling operation maintain records of all organic operations separate from records relating to other operations and make such records available at all times for inspection by the Secretary, the certifying agent, and the governing State official; and

(C) appropriate physical facilities, machinery, and management practices are established to prevent the possibility of a mixing of organic and nonorganic products or a penetration of prohibited chemicals or other substances on the certified area; and

(2) provide for reasonable exemptions from specific requirements of this chapter (except the provisions of [section 6511 of this title](#)) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(c) Wild seafood

(1) In general

Notwithstanding the requirement of subsection (a)(1)(A) requiring products be produced only on certified organic farms, the Secretary shall allow, through regulations promulgated after public notice and opportunity for comment, wild seafood to be certified or labeled as organic.

(2) Consultation and accommodation

In carrying out paragraph (1), the Secretary shall—

(A) consult with—

(i) the Secretary of Commerce;

(ii) the National Organic Standards Board established under [section 6518 of this title](#);

(iii) producers, processors, and sellers; and

(iv) other interested members of the public; and

(B) to the maximum extent practicable, accommodate the unique characteristics of the industries in the United States that harvest and process wild seafood.

(d) State program

A State organic certification program approved under this chapter may contain additional guidelines governing the production or handling of products sold or labeled as organically produced in such State as required in [section 6507 of this title](#).

(e) Availability of fees

(1) Account

Fees collected under subsection (a)(10) (including late payment penalties and interest earned from investment of the fees) shall be credited to the account that incurs the cost of the services provided under this chapter.

(2) Use

The collected fees shall be available to the Secretary, without further appropriation or fiscal-year limitation, to pay the expenses of the Secretary incurred in providing accreditation services under this chapter.

**28 U.S. Code § 2321 - Judicial review of Board's orders and decisions; procedure generally; process**

(a) Except as otherwise provided by an Act of Congress, a proceeding to enjoin or suspend, in whole or in part, a rule, regulation, or order of the Surface Transportation Board shall be brought in the court of appeals as provided by and in the manner prescribed in [chapter 158 of this title](#).

(b) The procedure in the district courts in actions to enforce, in whole or in part, any order of the Surface Transportation Board other than for payment of money or the collection of fines, penalties, and forfeitures, shall be as provided in this chapter.

(c) The orders, writs, and process of the district courts may, in the cases specified in subsection (b) and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49, run, be served and be returnable anywhere in the United States.

## 28 U.S. Code § 2342 - Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

- (1) all final orders of the Federal Communication Commission made reviewable by [section 402\(a\) of title 47](#);
- (2) all final orders of the Secretary of Agriculture made under chapters [9](#) and [20A](#) of title [7](#), except orders issued under sections [210\(e\)](#), [217a](#), and [499g\(a\)](#) of title [7](#);
- (3) all rules, regulations, or final orders of—
  - (A) the Secretary of Transportation issued pursuant to section 50501, 50502, 56101–56104, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or [chapter 315 of title 49](#); and
  - (B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter [421](#) or [441](#) of title [46](#);
- (4) all final orders of the Atomic Energy Commission made reviewable by [section 2239 of title 42](#);
- (5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by [section 2321 of this title](#);
- (6) all final orders under section 812 of the Fair Housing Act; and
- (7) all final agency actions described in [section 20114\(c\) of title 49](#).

**28 U. S. C. §2344 - Review of orders; time; notice; contents  
of petition; service**

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

- (1) the nature of the proceedings as to which review is sought;
- (2) the facts on which venue is based;
- (3) the grounds on which relief is sought; and
- (4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

### 33 U.S. Code § 1365 - Citizen suits

(a) Authorization; jurisdiction

Except as provided in subsection (b) of this section and [section 1319\(g\)\(6\) of this title](#), any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under [section 1319\(d\) of this title](#).

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any

such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections [1316](#) and [1317\(a\)](#) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; United States interests protected

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(3) Protection of interests of United States.—

Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation

For purposes of this section, the term “effluent standard or limitation under this chapter” means (1) effective July 1, 1973, an unlawful act under subsection (a) of [section 1311 of this title](#); (2) an effluent limitation or other limitation under section [1311](#) or [1312](#) of this title; (3) standard of performance under [section 1316 of this title](#); (4) prohibition, effluent standard or pretreatment standards under [section 1317 of this title](#); (5) certification under [section 1341 of this title](#); (6) a permit or condition thereof issued under [section 1342 of this title](#), which is in effect under this chapter (including a requirement applicable by reason of [section 1323 of this title](#)); or (7) a regulation under [section 1345\(d\) of this title](#).<sup>[1]</sup>

(g) “Citizen” defined

For the purposes of this section the term “citizen” means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

## **42 U.S. Code § 7604 - Citizen suits**

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except

that an action to compel agency action referred to in [section 7607\(b\) of this title](#) which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under [section 7607\(b\) of this title](#). In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) of this section shall be provided 180 days before commencing such action.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.<sup>[1]</sup>

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(i)(3)(A) or (f)(4) of this title or an order issued by the Administrator pursuant to [section 7413\(a\) of this title](#). Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; service of complaint; consent judgment

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.

(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality, against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see [section 7418 of this title](#).

(f) “Emission standard or limitation under this chapter” defined  
For purposes of this section, the term “emission standard or limitation under this chapter” means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive,  
or □

(3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment),, [section 7419 of this title](#) (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545(e) and (f) of this title (relating to fuels and fuel additives), [section 7491 of this title](#) (relating to visibility protection), any condition or requirement under subchapter VI of this chapter (relating to ozone protection), or any requirement under section [7411](#) or [7412](#) of this title

(without regard to whether such requirement is expressed as an emission standard or otherwise);  or

(4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations. which is in effect under this chapter (including a requirement applicable by reason of [section 7418 of this title](#)) or under an applicable implementation plan.

(g) Penalty fund

(1) Penalties received under subsection (a) of this section shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection  to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed \$100,000.

## **47 U.S. Code § 253 - Removal of barriers to entry**

### **(a) In general**

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

### **(b) State regulatory authority**

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with [section 254 of this title](#), requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

### **(c) State and local government authority**

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

### **(d) Preemption**

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

### **(e) Commercial mobile service providers**

Nothing in this section shall affect the application of [section 332\(c\)\(3\) of this title](#) to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in [section 214\(e\)\(1\) of this title](#) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

- (1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of [section 251\(c\)\(4\) of this title](#) that effectively prevents a competitor from meeting the requirements of [section 214\(e\)\(1\) of this title](#); and
- (2) to a provider of commercial mobile services.

## 49 U.S. Code § 721 - Powers

(a) In General.—

The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

(b) Inquiries, Reports, and Orders.

—The Board may—

- (1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV;
- (2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier;
- (3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and
- (4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of [chapter 5 of title 5](#).

(c) Subpoena Witnesses.

—

- (1) The Board may subpoena witnesses and records related to a proceeding of the Board from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Board, or a party to a proceeding before the Board, may petition a court of the United States to enforce that subpoena.
- (2) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the

proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) Depositions.

—

(1) In a proceeding, the Board may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending before the Board may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) If a witness fails to be deposed or to produce records under paragraph (1), the Board may subpoena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Board or agreed on by the parties by written stipulation filed with the Board. A deposition shall be filed with the Board promptly.

(e) Witness Fees.

—

Each witness summoned before the Board or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

## **49 U. S. Code § 722. Board action**

(a) Effective Date of Actions.-Unless otherwise provided in subtitle IV, the Board may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

(b) Terminating and Changing Actions.-An action of the Board remains in effect under its own terms or until superseded. The Board may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Board. A court of competent jurisdiction may suspend or set aside any such action.

(c) Reconsidering Actions.-The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances-

(1) reopen a proceeding;

(2) grant rehearing, reargument, or reconsideration of an action of the Board;  
or

(3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

(d) Finality of Actions.-Notwithstanding subtitle IV, an action of the Board under this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.

## 49 U.S. Code § 10501 - General jurisdiction

(a) (1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over

—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c) (1) In this subsection—

(A) the term “local governmental authority”

—

(i) has the same meaning given that term by section 5302(a) [□ \[1\]](#) of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term “mass transportation” means transportation services described in section 5302(a) [□ 1](#) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over

—

(A) mass transportation provided by a local government authority; or

(B) a solid waste rail transfer facility as defined in [section 10908 of this title](#), except as provided under sections [10908](#) and [10909](#) of this title.

(3) (A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to

—

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections [11102](#) and [11103](#) of this title over transportation provided by a local governmental authority only if the

Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

### **49 U.S. Code § 11701 - General authority**

(a) Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part.

(b) A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.

(c) A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.

## **49 U.S. Code § 11702 - Enforcement by the Board**

The Board may bring a civil action

—

- (1) to enjoin a rail carrier from violating sections 10901 through 10906 of this title, or a regulation prescribed or order or certificate issued under any of those sections;
- (2) to enforce subchapter II of [chapter 113 of this title](#) and to compel compliance with an order of the Board under that subchapter; and
- (3) to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

## FEDERAL REGULATIONS

### **49 CFR 1115.3 - Board actions other than initial decisions.**

- (a) A discretionary appeal of an entire Board action is permitted. Such an appeal should be designated a “petition for reconsideration.”
- (b) The petition will be granted only upon a showing of one or more of the following points:
  - (1) The prior action will be affected materially because of new evidence or changed circumstances.
  - (2) The prior action involves material error.
- (c) The petition must state in detail the nature of and reasons for the relief requested. When, in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously adduced.
- (d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.
- (e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize.
- (f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for reconsideration and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Board no later than 16 days after service of the action. In all proceedings, the action, if not stayed, will become effective 30 days after it is served, unless the Board provides for the action to become effective at a different date. On the day the action is served parties may initiate judicial review.

## **CALIFORNIA STATUTES**

### **EVIDENCE CODE**

#### **§664.**

It is presumed that official duty has been regularly performed. This presumption does not apply on an issue as to the lawfulness of an arrest if it is found or otherwise established that the arrest was made without a warrant.

### **PUBLIC RESOURCES CODE**

#### **§21000.**

The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted

efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.

### **§21001.1.**

The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

§21002. The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

### **§21002.1.**

In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.

(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on

potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

**§21080.**

(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division does not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, “highway” shall have the same meaning as defined in Section 360 of the Vehicle Code.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead

agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

### **§21080.13.**

This division shall not apply to any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation.

### **§21081.**

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

**§21167.**

An action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(b) An action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) An action or proceeding alleging that an environmental impact report does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) An action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or

approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(e) An action or proceeding alleging that another act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid. The date upon which this notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and (e).

### **§21168.9.**

(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could

result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

## **PUBLIC UTILITIES CODE**

### **§185030.**

The authority shall direct the development and implementation of intercity high-speed rail service that is fully integrated with the state's existing intercity rail and bus network, consisting of interlinked conventional and high-speed rail lines and associated feeder buses. The intercity network in turn shall be fully coordinated and connected with commuter rail lines and urban rail transit lines developed by local agencies, as well as other transit services, through the use of common station facilities whenever possible.

### **§185032.**

Upon an appropriation in the Budget Act for that purpose, the authority shall prepare a plan for the construction and operation of a high-speed train network for the state, consistent with and continuing the work of the Intercity High-Speed Rail Commission conducted prior to January 1, 1997. The plan shall include an appropriate network of conventional intercity passenger rail service and shall be coordinated with existing and planned commuter and urban rail systems.

(a) The authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 125 miles per hour in this state is exclusively granted to the authority.

(b) Except as provided in paragraph (2), nothing in this subdivision precludes other local, regional, or state agencies from exercising powers provided by law with regard to planning or operating, or both, passenger rail service.

## **STREETS & HIGHWAYS CODE**

### **§2704.**

This chapter shall be known and may be cited as the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.

#### **§2704.04.**

(a) It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008.

(b) (1) Net proceeds received from the sale of nine billion dollars (\$9,000,000,000) principal amount of bonds authorized pursuant to this chapter, upon appropriation by the Legislature in the annual Budget Act, shall be used for (A) planning and engineering for the high-speed train system and (B) capital costs, as described in subdivision (c).

(2) As adopted by the authority in May 2007, Phase 1 of the high-speed train project is the corridor of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim.

(3) Upon a finding by the authority that expenditure of bond proceeds for capital costs in corridors other than the corridor described in paragraph (2) would advance the construction of the system, would be consistent with the criteria described in subdivision (f) of Section 2704.08, and would not

have an adverse impact on the construction of Phase 1 of the high-speed train project, the authority may request funding for capital costs, and the Legislature may appropriate funds described in paragraph (1) in the annual Budget Act, to be expended for any of the following high-speed train corridors:

- (A) Sacramento to Stockton to Fresno.
- (B) San Francisco Transbay Terminal to San Jose to Fresno.
- (C) Oakland to San Jose.
- (D) Fresno to Bakersfield to Palmdale to Los Angeles Union Station.
- (E) Los Angeles Union Station to Riverside to San Diego.
- (F) Los Angeles Union Station to Anaheim to Irvine.
- (G) Merced to Stockton to Oakland and San Francisco via the

Altamont Corridor.

(4) Nothing in this section shall prejudice the authority's determination and selection of the alignment from the Central Valley to the San Francisco Bay Area and its certification of the environmental impact report.

(5) Revenues of the authority, generated by operations of the high-speed train system above and beyond operating and maintenance costs and financing obligations, including, but not limited to, support of revenue bonds, as determined by the authority, shall be used for construction, expansion, improvement, replacement, and rehabilitation of the high-speed train system.

(c) Capital costs payable or reimbursable from proceeds of bonds described in paragraph (1) of subdivision (b) include, with respect to the high-speed train system or any portion thereof, all activities necessary for acquisition of interests in real property and rights-of-way and improvement thereof; acquisition and construction of tracks, structures, power systems,

and stations; acquisition of rolling stock and related equipment; mitigation of any direct or indirect environmental impacts of activities authorized by this chapter; relocation assistance for displaced property owners and occupants; other related capital facilities and equipment; and such other purposes related to the foregoing, for the procurement thereof, and for the financing or refinancing thereof, as may be set forth in a statute hereafter enacted. The method of acquisition of any of the foregoing may also be set forth in a statute hereafter enacted.

(d) Proceeds of bonds authorized pursuant to this chapter shall not be used for any operating or maintenance costs of trains or facilities.

(e) The State Auditor shall perform periodic audits of the authority's use of proceeds of bonds authorized pursuant to this chapter for consistency with the requirements of this chapter.

#### **§2704.08.**

(a) Proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 shall not be used for more than 50 percent of the total cost of construction of each corridor or usable segment thereof of the high-speed train system, except for bond proceeds used for the purposes of subdivision (g).

(b) Not more than 10 percent of the proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 shall be used for environmental studies, planning, and preliminary engineering activities.

(c) (1) No later than 90 days prior to the submittal to the Legislature and the Governor of the initial request for appropriation of proceeds of bonds authorized by this chapter for any eligible capital costs on each corridor, or usable segment thereof, identified in subdivision (b) of Section 2704.04, other than costs described in subdivision (g), the authority shall

have approved and submitted to the Director of Finance, the peer review group established pursuant to Section 185035 of the Public Utilities Code, and the policy committees with jurisdiction over transportation matters and the fiscal committees in both houses of the Legislature, a detailed funding plan for that corridor or a usable segment thereof.

(2) The plan shall include, identify, or certify to all of the following:

(A) The corridor, or usable segment thereof, in which the authority is proposing to invest bond proceeds.

(B) A description of the expected terms and conditions associated with any lease agreement or franchise agreement proposed to be entered into by the authority and any other party for the construction or operation of passenger train service along the corridor or usable segment thereof.

(C) The estimated full cost of constructing the corridor or usable segment thereof, including an estimate of cost escalation during construction and appropriate reserves for contingencies.

(D) The sources of all funds to be invested in the corridor, or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means.

(E) The projected ridership and operating revenue estimate based on projected high-speed passenger train operations on the corridor or usable segment.

(F) All known or foreseeable risks associated with the construction and operation of high-speed passenger train service along the corridor or usable segment thereof and the process and actions the authority will undertake to manage those risks.

(G) Construction of the corridor or usable segment thereof can be completed as proposed in the plan.

(H) The corridor or usable segment thereof would be suitable and ready for high-speed train operation.

(I) One or more passenger service providers can begin using the tracks or stations for passenger train service.

(J) The planned passenger service by the authority in the corridor or usable segment thereof will not require a local, state, or federal operating subsidy.

(K) The authority has completed all necessary project level environmental clearances necessary to proceed to construction.

(d) Prior to committing any proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 for expenditure for construction and real property and equipment acquisition on each corridor, or usable segment thereof, other than for costs described in subdivision (g), the authority shall have approved and concurrently submitted to the Director of Finance and the Chairperson of the Joint Legislative Budget Committee the following: (1) a detailed funding plan for that corridor or usable segment thereof that (A) identifies the corridor or usable segment thereof, and the estimated full cost of constructing the corridor or usable segment thereof, (B) identifies the sources of all funds to be used and anticipates time of receipt thereof based on offered commitments by private parties, and authorizations, allocations, or other assurances received from governmental agencies, (C) includes a projected ridership and operating revenue report, (D) includes a construction cost projection including estimates of cost escalation during construction and appropriate reserves for contingencies, (E) includes a report describing any material changes from the plan submitted pursuant to subdivision (c) for this corridor or usable segment thereof, and (F) describes the terms and conditions associated with any agreement proposed to be entered into by the authority and any other party

for the construction or operation of passenger train service along the corridor or usable segment thereof; and (2) a report or reports, prepared by one or more financial services firms, financial consulting firms, or other consultants, independent of any parties, other than the authority, involved in funding or constructing the high-speed train system, indicating that (A) construction of the corridor or usable segment thereof can be completed as proposed in the plan submitted pursuant to paragraph (1), (B) if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation, (C) upon completion, one or more passenger service providers can begin using the tracks or stations for passenger train service, (D) the planned passenger train service to be provided by the authority, or pursuant to its authority, will not require operating subsidy, and (E) an assessment of risk and the risk mitigation strategies proposed to be employed. The Director of Finance shall review the plan within 60 days of its submission by the authority and, after receiving any communication from the Joint Legislative Budget Committee, if the director finds that the plan is likely to be successfully implemented as proposed, the authority may enter into commitments to expend bond funds that are subject to this subdivision and accept offered commitments from private parties.

(e) Subsequent to approval of the detailed funding plan required under subdivision (d), the authority shall promptly inform the Governor and the Legislature of any material changes in plans or project conditions that would jeopardize completion of the corridor as previously planned and shall identify means of remedying the conditions to allow completion and operation of the corridor.

(f) In selecting corridors or usable segments thereof for construction, the authority shall give priority to those corridors or usable segments thereof

that are expected to require the least amount of bond funds as a percentage of total cost of construction. Among other criteria it may use for establishing priorities for initiating construction on corridors or usable segments thereof, the authority shall include the following: (1) projected ridership and revenue, (2) the need to test and certify trains operating at speeds of 220 miles per hour, (3) the utility of those corridors or usable segments thereof for passenger train services other than the high-speed train service that will not result in any unreimbursed operating or maintenance cost to the authority, and (4) the extent to which the corridors include facilities contained therein to enhance the connectivity of the high-speed train network to other modes of transit, including, but not limited to, conventional rail (intercity rail, commuter rail, light rail, or other rail transit), bus, or air transit.

(g) Nothing in this section shall limit use or expenditure of proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 up to an amount equal to 7.5 percent of the aggregate principal amount of bonds described in that paragraph for environmental studies, planning, and preliminary engineering activities, and for (1) acquisition of interests in real property and right-of-way and improvement thereof (A) for preservation for high-speed rail uses, (B) to add to third-party improvements to make them compatible with high-speed rail uses, or (C) to avoid or to mitigate incompatible improvements or uses; (2) mitigation of any direct or indirect environmental impacts resulting from the foregoing; and (3) relocation assistance for property owners and occupants who are displaced as a result of the foregoing.

(h) Not more than 2.5 percent of the proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 shall be used for administrative purposes. The amount of bond proceeds available for administrative purposes shall be appropriated in the annual Budget Act. The

Legislature may, by statute, adjust the percentage set forth in this subdivision, except that the Legislature shall not increase that percentage to more than 5 percent.

(i) No failure to comply with this section shall affect the validity of the bonds issued under this chapter.

**§2704.21.**

Notwithstanding any provision of this chapter or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.