

**Prepared Testimony by James Ghielmetti, Vice Chair  
California Transportation Commission**

**April 23, 2012**

**To the Little Hoover Commission**

**Re: Governor's Reorganization Plan - Transportation Agency**

The California Transportation Commission (Commission) consists of eleven voting members and two non-voting ex-officio members. Of the eleven voting members, nine are appointed by the Governor, one is appointed by the Senate Rules Committee, and one is appointed by the Speaker of the Assembly. The two ex-officio members are appointed from the State Senate and Assembly, usually the respective chairs of the transportation policy committee in each house. While the Governor and the Legislature are responsible for the respective appointments to the Commission, the Commission remains largely independent and autonomous in its actions.

The Commission was established in 1978 by Chapter 1106, Statutes of 1977 (Assembly Bill 402), to provide a unified state transportation policy. The Commission is responsible for the programming and allocating of funds for the implementation of highway, passenger rail and transit improvements throughout California. The Commission also advises and assists the Secretary of BTH and the Legislature in formulating and evaluating policies and plans for California's transportation programs. Additionally, the Commission is an active participant in the initiation and development of State and federal legislation that seeks to secure financial stability for the State's transportation needs.

The Commission is a part-time body that is supported by an executive director who oversees a staff of 17 and an annual budget of approximately \$4 million. Commission staff develops policies and procedures that carry out the mandates of the Commission. The Commission also relies on Caltrans to perform certain work that is necessary for the Commission to carry out its duties and responsibilities. The executive director acts as a liaison with the Secretary of the Business, Transportation and Housing Agency (BTH), the Director of the California Department of Transportation (Caltrans), and regional transportation agencies' executive directors and their respective staff. The executive director also acts as a liaison between the Commission and the Legislature and its staff, interpreting actions taken by the Commission and reporting to the Commission on areas of concern to the Legislature.

In your invitation letter to testify before the Little Hoover Commission you specifically asked for input on three issues as they apply to the Governor's reorganization proposal:

1. Does your organization support the portion of the reorganization plan that pertains to it?

The Commission applauds Governor Brown's efforts to streamline government, make it more efficient, reduce unnecessary spending, and improve the management and

coordination of government activities. The Commission also appreciates the Governor's attempt to put greater emphasis on transportation by creating new agency with a much more focused mission. The Commission wholeheartedly supports the proposed alignment of transportation related governmental functions into one agency in order to facilitate more effective coordination of critical transportation issues affecting our state economy and quality of life. The Commission is however concerned of what appears to be unintended consequences that may affect the Commission's independence within the proposed structure of the new agency.

The Commission is viewed by its constituents of state and regional transportation agencies as having a substantial degree of independence and a considerable degree of autonomy. This increases the Commission's transparency and limits the perception of undue influence by the either the Governor or the Legislature. The Commission, as is currently organized, has however enjoyed a very productive and an extremely successful relationship with the Governor and the Legislature. The Legislature has proposed and governors, previous and current, have approved expanded roles and responsibilities that enhanced and strengthened the statutory role of the Commission.

The reorganization plan appears to create a superficial clash between the autonomy of the Commission and the type of supervision the plan suggests by implication. The reorganization presupposes supervision, oversight, budgetary control, and so forth, as reflected in existing state statutes as well as the Governor's proposal which describe the responsibilities of the agency secretary. Such responsibilities bring about a significant concern regarding the perceived independence of the Commission. Sections of statutes that generally cover the powers of agency secretaries are included in Government Code sections 12850 through 12856 and those specific to the BTH Secretary are contained in Government Code sections 13975 through 13984 and the proposed section 12800(b). These sections, some of which are cited below, highlight several concerns but the most critical is related to the Commission's independence and current statutory authority. The Commission is concerned, for example, as to what would happen if the Commission denies an allocation request or the sale of excess highway property, or refuses to approve a Resolution of Necessity? Is the Secretary going to have the power to "adjudicate" the conflict and direct the Commission to change its decision? What is the extent of the Secretary's authority over the administrative and operational functions of the Commission when considering its supposed independent role? This power would undermine the Commission's independence with regard to many aspects of its duties where the independence and autonomy of the Commission have been understood to exist.

Government Code section 13978 states: *"The secretary has the power of general supervision over, and is directly responsible to the Governor for, the operations of each department, office, and unit within the agency. The secretary may issue such orders as the secretary deems appropriate to exercise any power or jurisdiction, or to assume or discharge any responsibility, or to carry out or effect any of the purposes vested by law in any department in the agency."*

Government Code section 13978.4 states: *"The Secretary of the Business, Transportation and Housing Agency shall exercise the authority vested in the Governor in respect to the*

*functions of each department, office, or other unit within the agency, including the adjudication of conflicts between or among the departments, offices, or other units; and shall represent the Governor in coordinating the activities of each such department, office, or other unit with those of other agencies, federal, state, or local."*

The proposed Government Code section 12800(b) states: "*The secretary of an agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit. The secretary shall review the operations and evaluate the performance at appropriate intervals of each department, office, or other unit, and shall seek continually to improve the organization structure, the operating policies, and the management information systems of each department, office, or other unit.*"

2. What advantages and risks would need to be considered?

There is no doubt from the Commission's perspective that coordinating transportation policy is a significant advantage to ensuring state transportation priorities are addressed. The Commission, while independent, has made this a focal point of its business practice ensuring regular contact and interaction with BTH and Caltrans. Although not required by statutes, the Commission invites the Secretary of BTH and the Director of Caltrans, or their direct representatives, as well as the legislative ex-officio members, to attend all meetings of the Commission. The Secretary and Director, as well as the legislative members, are seated at the dais, have standing agenda items, and allowed to participate, in an ex-officio capacity, in any discussions related to any Commission agenda item. As a matter of current practice, the Commission and staff are in regular contacts with BTH and Caltrans staff, and legislative staff, coordinating and developing policy and addressing potential issues before the Commission and those that relate to statewide transportation items.

With the reorganization plan as proposed, and with the Commission's responsibilities remaining unaltered, the Commission may find itself in an awkward position of being unable to fulfill its role as an independent entity that is charged with advising and assisting the Transportation Agency and the Legislature in formulating and evaluating state policies and plans. The role of the Commission may be perceived as just another layer in a decision matrix that ends with the Agency Secretary. From discussions with Mr. Brian Kelly, BTH Acting Secretary, we understand that the independence of the Commission is a high priority for the Governor, and the reorganization proposal was not meant to alter the Commission's independent function or its autonomy. However, as discussed above, existing statutes support a different argument. As a result, the Commission urges the Governor and the Legislature to create a firewall to protect the independence of the Commission, both by letter and in spirit, so that potential ministerial and administrative conflicts can be avoided. The Commission is ready and willing to be placed in the Transportation Agency so long as such separations of duties and the Commission's autonomy are clearly articulated.

3. Does the reorganization plan position the state to operate more effectively and efficiently? If not, what additional action is needed?

As discussed above, the Commission is already in close contact with BTH and Caltrans on issues related to transportation policy development and coordination. The Commission routinely requests Caltrans to perform such work as the Commission deems necessary in carrying out its duties and responsibilities, including the review of transportation issues and concerns that the Commission determines to be of interest. The Commission values its effective and productive relationship with Caltrans as well as regional transportation agencies from around the state.

As for efficient operations, the Commission is always looking for opportunities to streamline processes and eliminate duplicative and unnecessary requirements. However, the Commission is unsure that more efficiency can be achieved at least from a Commission organizational perspective. Commission staff is small, extremely efficient and well respected. Commissioners and staff enjoy an open and unfettered relationship with BTH, Caltrans and regional transportation agencies, the Legislature, and other transportation stakeholders at large. The Commission is able to respond to issues quickly and efficiently, and the Commission's direct access and feedback is lauded by almost all those who have approached the Commission. This unconstrained access and direct feedback are critical to the Commission's ability to administer the multi-billion dollar programs it has been charged with by the Legislature and the Governor. The Commission is, however, extremely cognizant and sensitive to the priorities, political, fiscal or otherwise, under consideration by both the Legislature and the Administration. In contrast, the proposed reorganization will result in an Agency-centric relationship, creating additional layers of approvals and authorization that will divert staff's and Commissioners' attention, thus negating the Commission's independent status and its mandate to provide policy advice to both the Agency and the Legislature. Again, to make the proposed reorganization plan work, we urge the Governor and Legislature to put in place such mechanisms that are necessary to protect the independence of the Commission, both by letter and in spirit, so such separations of duties and the Commission's autonomy are clearly articulated.

In conclusion, although we are very concerned about what appears to be unintended consequences of this proposal, the Commission stands ready to work with the Governor and Legislature to ensure successful implementation of the reorganization plan. The Commission and its staff are available to assist in drafting and/or reviewing necessary legislative language that provides for the firewalls addressed above. The Commission is determined to continue to work collaboratively with BTH, Caltrans and regional transportation agencies, and the Legislature keeping its focus on the transportation needs of the state and together identifying possible solutions and strategies to address such needs. A diminished Commission leadership role, even of only perceived, will serve to distract and take away from providing the open public forum for a badly needed constructive debate on how to address the next steps of funding and prioritizing our state transportation needs.