

BILL ANALYSIS

SENATE TRANSPORTATION & HOUSING COMMITTEE
 SENATOR ALAN LOWENTHAL, CHAIRMAN

BILL NO: AB 2294
 AUTHOR: Block
 VERSION: 4/26/10
 FISCAL: no

Analysis by: Jennifer Gress
 Hearing date: June 15, 2010

SUBJECT:

Driver's licenses for pedicab operators

DESCRIPTION:

This bill defines "pedicab" and permits the County of San Diego, or a city therein, to adopt a pedicab licensing ordinance that includes a requirement that an operator obtain a valid California driver's license.

ANALYSIS:

The California Vehicle Code provides that its provisions are applicable and uniform throughout the state. One such provision, which is related to this measure, is that a person must have a valid driver's license in order to operate a motor vehicle upon a highway. A local authority may not enact or enforce any ordinance on matters covered by the Vehicle Code unless it expressly authorizes a local authority to do so.

Among the subject matters the Vehicle Code permits local authorities to regulate is the operation of vehicles for hire (e.g., taxis) and drivers of passenger vehicles for hire, excluding vehicles that are human-powered, as well as the operation of bicycles and electric carts on the public sidewalks. Local authorities may also regulate the registration of bicycles and the parking and operation of bicycles on pedestrian or bicycle facilities, provided such regulation is not in conflict with the California Vehicle Code.

Existing law defines a "bicycle" as a "device upon which any person may ride, propelled exclusively by human power through a

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belt, chain, or gears, and having one or more wheels." Every person riding a bicycle upon the highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle, except those provisions which by their very nature can have no application. Bicyclists are not required, however, to have a driver's license to operate a bicycle upon the highway.

This bill :

Defines "pedicab" as a bicycle that is operated by a person, that is used for transporting passengers for hire, that has three or more wheels or pulls a trailer, sidecar, or similar device, and that transports or is capable of transporting passengers on seats attached to the bicycle, trailer, sidecar, or similar device.

Allows the County of San Diego or any city therein to adopt a pedicab licensing ordinance that includes a requirement that the pedicab operator have a valid California driver's license.

COMMENTS:

1.Purpose . According to the author, pedicabs operate in high density areas frequented by tourists, and passengers expect that the operator will obey the rules of the road and transport them in a safe manner. The City of San Diego, the sponsor, contends that a valid California driver's license indicates that a person has been tested and understands the rules of the road, an essential competency expected of pedicab operators. Because of the commercial nature of pedicabs and the need for motor vehicles and pedicabs to operate in harmony with one another on the roadways, requiring a California driver's license will, according to the author, promote public safety.

2. History of pedicab regulation in San Diego and need for the bill . The City of San Diego has regulated pedicabs since 2000. In 2007, as the number of pedicabs operating in the city was increasing, the city received numerous complaints about pedicabs from downtown residents and businesses. The complaints primarily concerned the overcharging of fares, improper parking, and the lack of proof of insurance. There were also complaints about the volume of pedicabs in certain areas causing traffic disruption and interfering with pedestrian flow at intersections. To address these concerns, the city council engaged in a comprehensive examination of the

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licensing procedures for pedicabs and proposed a series of changes. The staff recommendations were not acted upon, however, until a pedicab passenger was fatally injured when she fell from a moving pedicab on July 4, 2009.

As a result of this accident, the recommendations were brought before the city council at which time the city attorney reviewed the existing ordinance and the proposed changes. The existing ordinance included a requirement that pedicab operators hold a valid California driver's license, which the San Diego City Council had originally adopted in 1999. Upon review ten years later, the city attorney concluded that the city did not in fact have authority to require a driver's license of pedicab operators. In a recent memo, the city attorney argued that the Vehicle Code preempts local ordinances and articulates the vehicles that require a license to operate. By specifying motor vehicles, the city attorney contends that provisions of the Vehicle Code regarding the types of vehicles that require licenses represent an intention to exclude human-powered vehicles or devices from licensing requirements, thus preempting local governments from establishing such requirements themselves.

Based on this interpretation, the city attorney recommended that the city council repeal the requirement from its existing ordinance and seek legislation to explicitly authorize the city to require one. This bill responds to that recommendation.

3. Need for the bill debated . Some believe that the City of San Diego does in fact have the authority to require pedicab operators to hold a driver's license, noting that several cities require pedicab operators to have one in order to operate a pedicab. The opposition contends that having knowledge of the safe operation of a motor vehicle and of motor vehicle laws would not have prevented the fatality that occurred on July 4, 2009. In that incident, according to media reports, the pedicab operator was riding in an unsafe manner, swerving from side to side in a "serpentine pattern," in an area that was clearly marked for pedestrians only. Additionally, the pedicab was not equipped with seatbelts, as required by San Diego's municipal ordinance. Furthermore, the safety concerns raised by pedicabs may be better addressed through providing or requiring training for pedicab operators. Finally, if the city wants to ensure that pedicab operators understand the rules of the road, the city could develop its

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own written exam, as the City of Portland has.

4. Driver's license to ride a bicycle ? Because a pedicab meets the definition of "bicycle," the opposition believes it is inappropriate to require pedicab operators or any bicyclist to have a driver's license and is concerned that allowing local governments to require that a pedicab operator possess a driver's license will pave the way for requiring all bicyclists to hold one. The opposition argues that many pedicab operators do not own a motor vehicle or have insurance and that driver training and testing does not include material specific to bicycles or pedicabs.

5. Statewide ? Because the need for the bill was disputed, the Assembly Transportation Committee amended the bill during committee to limit its applicability to San Diego County and any city therein. Some cities (e.g., San Francisco) also require a driver's license to operate a pedicab in that city. Limiting the authority to San Diego raises a question regarding whether these other cities would now be operating in

violation of the law. Furthermore, if the authority is appropriate for San Diego, why not allow it statewide? For this reason, if this bill moves forward, the author or committee may wish to amend the bill to provide that its authority apply statewide.

6. Technical amendments . Rather than create a new section in the Vehicle Code, the author or committee may wish to consider two technical amendments to incorporate provisions of the bill into the relevant areas of current law. First, the amendments could create a new section in Division 1 of the Vehicle Code defining "pedicabs." Second, granting authority to local authorities to require pedicab operators to hold a driver's license could be incorporated into subdivision (b) of Section 21100, which allows local authorities to license and regulate vehicles for hire.

Assembly Votes:

Floor: 73-1
Trans: 11-0

POSITIONS: (Communicated to the Committee before noon on Wednesday, June 9, 2010)

SUPPORT: City of San Diego (sponsor)

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City of San Marcos

OPPOSED: California Association of Bicycling Organizations