Date of Hearing: June 2, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair AB 2850 (Low) – As Amended May 4, 2020

Policy Committee: Public Employment and Retirement Vote: 5-1

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill places supervisory, professional, and technical employee units of the San Francisco Bay Area Rapid Transit (BART) District under the Meyer-Milias-Brown Act (MMBA) and brings them under the jurisdiction of the Public Employment Relations Board (PERB).

FISCAL EFFECT:

- 1) Annual Fund (GF) costs for PERB in the range of \$40,000 in the first two years and unknown costs each year thereafter. This cost estimate assumes four cases per year in first two years (see comment #3 for additional discussion of assumptions).
- 2) Potentially reimbursable costs to BART to the extent that placing employees under MMBA imposes new requirements for the local agency. Assuming four cases per year and that BART uses in-house counsel, annual costs would be in the range of \$112,000. State costs would depend on whether the Commission on State Mandates determines that a portion of these costs, if any, would be subject to state reimbursement.

COMMENTS:

- 1) **Purpose.** According to the author, AB 2850 will help BART and its supervisory unit resolve unfair labor practice disputes through the guidance of an established, comprehensive labor relations statute and a neutral administrative agency. As the Assembly Committee on Public Employees, Retirement, and Social Security notes in its analysis, AB 2850 does not establish a new collective bargaining framework for these employees. Rather, it places these employees, who are currently required to seek resolution in court, under coverage of MMBA and the jurisdiction of PERB.
- 2) A note of caution on PERB workload. This bill is one of two bills pending in this committee that increases PERB's workload. The other bill is AB 3096 (Chiu), which allows University of California (UC) employees to bring certain claims before PERB.

These bills will each result in additional new cases and could worsen PERB's persistent workload and budgetary challenges. PERB remains the best-equipped institution to resolve public employment disputes, but a growing number of cases and limited resources have led to significant backlog and delays. In response, PERB began a Case Processing Efficiency Initiative in 2017 to improve and streamline internal processes. Moreover, recent budget actions increased PERB's budget from \$10.4 million in 2017-18 to an estimated \$13.1

million by 2019-20. This committee has reached out to stakeholders to ask if PERB's backlog has improved and has received mixed responses.

While the Legislature and the administration have taken action intended to reduce PERB's backlog of cases, this problem is likely to persist in the near term. As state and local governments grapple with significant revenue shortfalls, the number of employment disputes is likely to increase.

3) **Cost assumptions.** This bill's cost estimates rely on a number of assumptions. First, this committee assumes four cases per year over the next two years. This assumption is based on BART's estimate that this bill will lead to eight new cases over the near term. Second, this committee assumes that BART uses in-house counsel. BART provided this committee a range of cost estimates that varied from \$28,000 per case to \$47,400 per cases, depending on whether BART uses in-house counsel or outside counsel with PERB expertise.

Analyses of previous versions this bill have questioned whether BART would see a significant increase in costs. After all, any new workload from this bill could be avoided by simply avoiding unnecessary labor disputes. After extensive discussions with BART, this analysis has been updated to reflect what will likely be some type of increase in workload for BART, but one that is not as dramatic as BART fears.

4) **Recent legislation**. AB 3034 (Low), of the 2017-18 Legislative Session, was substantively similar to this bill. AB 3034 was vetoed by the governor, whose veto message stated:

Over the years, the Legislature has expanded the Board's jurisdiction, but the necessary funding for the increased workload has not kept pace. This has resulted in significant backlogs at the Board - both labor and employers have complained about this problem. This Administration has recently increased the Board's funding to help correct this problem. The Board's jurisdiction should not be expanded again until the Board's ability to handle its previously expanded caseload is established.

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