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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### **AB 2850 (Low) - Public transit employer-employee relations: San Francisco Bay Area Rapid Transit District**

**Version:** July 28, 2020

**Urgency:** No

**Hearing Date:** August 17, 2020

**Policy Vote:** L., P.E. & R. 3 - 1

**Mandate:** Yes

**Consultant:** Robert Ingenito

**Bill Summary:** AB 2850 would grant the Public Employment Relations Board (PERB) jurisdiction over labor disputes between the Bay Area Rapid Transit District (BART) and its employees.

**Fiscal Impact:** PERB indicates that it would incur first-year General Fund costs of \$124,000, and \$74,000 annually thereafter, to implement the provisions of the bill.

In addition, by requiring BART to represent itself before PERB, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The annual magnitude of these claims would likely be in the hundreds of thousands of dollars annually.

**Background:** PERB is a quasi-judicial agency that oversees public sector collective bargaining in the State. Its major functions involve the evaluation and adjudication of unfair practice charges filed, and the administration of the collective bargaining process through which employees select organizations to represent them in their labor relations with their employer.

Covered employees may file an unfair practice charge with PERB within six months of the alleged unfair practice. Once the charge has been properly filed, a Board agent reviews it to determine if a complaint should be issued, or dismisses it if there is insufficient factual evidence. A dismissal may be appealed. If a complaint is filed, the case proceeds to an informal settlement conference, or may proceed to a formal hearing conducted by an administrative law judge if no settlement can be reached.

Public transit districts in many cases have historical antecedents as private sector companies that were taken over by public agencies following World War II. Federal legislation linked transportation project funding to the preservation of transit district employees' collective bargaining rights at a time when public sector employees had not yet attained collective bargaining. Consequently, transit district employees often enjoyed collective bargaining protections earlier than other state and local public employees. When the State authorized collective bargaining for state and local public employees through various labor relations statutes, many transit districts already were governed by collective bargaining arrangements and were not included in the new labor relations statutes. Those districts retain the traditional method of resolving labor disputes through litigation in the court system. In contrast, the statutory frameworks for

most public sector labor relations regimes now provide for disputes to be resolved by PERB

Under current law, if BART and its employees' representatives cannot reach mutual agreement, they resolve labor disputes through arbitration and litigation in the court system. In contrast, the statutory frameworks for most public sector labor relations regimes now provide that the parties resolve their disputes through PERB.

**Proposed Law:** This bill would, among other things, do the following:

- Provide that PERB, and the powers and duties of PERB, as specified, shall apply, as appropriate, to the Public Utilities Code (PUC) enabling statutes governing labor relations for BART.
- Make conforming changes throughout the BART act to reflect PERB or MMBA terminology using defined terms.
- Require that exclusive representatives shall have the right to represent their bargaining unit members in employer-employee relations with the district, and employees shall have the right to representation by their exclusive representative.
- Require BART to give reasonable written notice to an exclusive representative of its intent to make any changes to matters within the scope of representation, as specified.
- Add to the BART Act a provision that prohibits BART and an employee organization from engaging in respective lists of unlawful labor actions reflective of similar prohibitions in the MMBA.
- Maintain the current procedure whereby the Governor can call a "time out" and "cooling" off" period when BART and the employee representatives are at an impasse in labor negotiations before employees can strike.
- Provide that PERB has jurisdiction over the initial determination whether an unfair practice charge is justified and, if so, the appropriate remedy.
- Specify that PERB shall have no authority in an action to recover damages due to an unlawful strike to award strike-preparation expenses as damages nor to award damages for costs, expenses, or revenue losses incurred during, or because of, an unlawful strike.
- Authorize any charging party, respondent, or intervener aggrieved by a final decision or order of PERB, as specified, to petition for a writ of extraordinary relief in the district court of appeal from PERB's decision or order and specifies how the court may review PERB's decision or order.
- Authorize PERB to seek enforcement of any final decision in the district court of appeal, as specified.

- Provide that the BART Act as amended by this bill shall not be interpreted as if it were in conflict with any collective bargaining agreement and shall not be implemented to abrogate an agreement entered into before January 1, 2021, between the district and an employee organization.
- Require that specified provisions added by this bill to the BART Act shall be interpreted in a manner consistent with PERB's interpretation of parallel provisions in other statutes it enforces.
- Make BART subject to existing Government Code sections guaranteeing unions' access to employee data and employees for purposes of communication, including at employee orientations, and requires BART provide union representatives reasonable leaves of absence without loss of compensation or benefits to serve as stewards or officers to the employee representative or affiliated statewide or national employee organizations.

**Related Legislation:** AB 3034 (Low, 2018) would have amended the Public Utilities Code by including BART's supervisory, professional, and technical employee units under the Meyers-Milias-Brown Act (MMBA) provisions; thereby, granting them certain statutory rights related to the employer-employee relationship, and bringing them under PERB's jurisdiction. The bill was vetoed by the Governor.

**Staff Comments:** PERB estimates that adding BART's five bargaining units to its jurisdiction would increase the number of unfair practice charges, on average, by eight per year, and would require one new position. In addition, PERB would need to promulgate new regulations, since the current ones do not reference the PUC. This will increase PERB's first-year costs by about \$50,000 on a one-time basis.

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