

## CONCURRENCE IN SENATE AMENDMENTS

AB 2850 (Low)

As Amended July 28, 2020

Majority vote

**SUMMARY:**

Grants the Public Employment Relations Board (PERB) jurisdiction over disputes relating to employer-employee relations between the San Francisco Bay Area Rapid Transit District (BART) and its employees, among other provisions.

**The Senate Amendments:**

- 1) Adopt numerous provisions from existing labor relations statutory frameworks and include them directly in the BART Act, rather than propose that the entirety of the Meyers-Milias-Brown Act apply to the BART and govern these relations, as previously passed by the Assembly. Inclusive of these changes, Senate amendments:
  - a) Make findings and declarations regarding the unique need of the BART to efficiently and cost-effectively adjudicate unfair labor practice complaints that support this special statute in lieu of a statute of general applicability.
  - b) Expressly provide that a primary purpose of the BART Act's labor provisions is to promote the improvement of personnel management and employer-employee relations within the district by providing a uniform basis for recognizing the rights of employees, among other things, to select one employee organization as the exclusive representative in an appropriate unit; be represented by the exclusive representative, and for the exclusive representative to provide representation.
  - c) Establish the jurisdiction of the PERB, as appropriate, over the Public Utilities Code enabling statute governing labor relations for the BART, including requirements regarding certain adjudicatory and remedial processes and procedures of the PERB and courts, and the authority and limitations of authority of the PERB regarding administration and enforcement.
  - d) Maintain the current procedure whereby the Governor may call a "time out" or "cooling off" period when labor relations between the BART and the employee representatives are at an impasse in negotiations and before employees may engage in a strike.
  - e) Provide that the BART Act as amended by this bill must not be interpreted as if it were in conflict with any collective bargaining agreement and must not be implemented to abrogate an agreement entered into before January 1, 2021, between the BART and an employee organization.
  - f) Clarify that the provisions of this bill must not be interpreted as if it conflicts with any collective bargaining agreement between the BART and an employee organization and must not be implemented to abrogate an agreement entered into before January 1, 2021.
  - g) Make changes throughout the BART Act to reflect conformity and consistency relative to the terminology or phraseology used by the PERB or in other existing employer-employee relations statutes, as appropriate, and require that certain provisions added to

the BART Act resulting from this bill must be interpreted in a manner consistent with the PERB's interpretation of parallel provisions in other statutes that it enforces.

- h) Require the BART to provide reasonable written notice to an exclusive representative of its intent to make changes to matters within the scope of representation.
- i) Make the BART subject to the Public Employee Communication Chapter (AB 110 (Committee on Budget), Chapter 21, Statutes of 2017), which guarantees a recognized employee organization access to certain information regarding employees for purposes of communication and employee orientation, and requires BART provide representatives of an employee organization 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.
- j) Include a prohibition on the BART and an employee organization from engaging in respective unlawful labor conduct, consistent with other existing labor relations statutes.
- k) Define "district," "employee organization," and "exclusive representative" for these purposes.

#### COMMENTS:

##### 1) Public Transit Districts: Jurisdictional Variation for Handling Disputes in Employer-Employee Relations

Existing law does not cover all public transit districts by common collective statute. For these transit districts not covered by a common collective statute, the PERB is not the venue for recourse relating to alleged workplace violations. Instead, these transit districts must rely upon the courts for a remedy; whereas, the PERB is the venue for those covered by a common collective statute.

This jurisdictional variation for handling alleged workplace violations may be viewed as inequity in public sector employer-employee relations in California, as well as result in inconsistent decisions issued by the courts and those of the PERB related to such violation.

##### 2) This Bill Does Not Establish a New and Separate Collective Bargaining Statute

This measure does not establish an entirely new employer-employee relations statutory framework. Rather, it builds upon the existing labor relations framework in the Public Utilities Code enabling the BART Act by adopting provisions that currently exist in other employer-employee relations frameworks, and provides the PERB with jurisdiction over these relations, as appropriate.

The approach utilized in this bill when compared to prior relatively similar attempts regarding the BART provide certain commonality with other statutory public sector employer-employee relations frameworks within the jurisdiction of the PERB.

Because the PERB is the expressly established venue for the administration and enforcement of various other public sector employer-employee relations matters and has multiple decades of substantial experience in this arena, it is uniquely positioned to also consistently,

efficiently and effectively administer and enforce such matters involving the BART and its employees when compared to California courts.

### 3) Other Items for Consideration

It is possible that costs associated with this bill may achieve savings in the future to the BART, its employees and their respective representatives, California courts, and taxpayers in future years. Further, this bill also may result in reserved restraint relating to labor relations between the BART and respective employee representatives in future years to the extent that it reduces the frequency of significant labor strife (e.g., work stoppage or strike) and disruption that substantially affect the BART's operations, employees, and service recipients within its broad geo-economic area of service.

#### **According to the Author:**

"Assembly Bill 2850 provides the guidance of an established, neutral administrative agency - PERB - to aid BART and its employees in resolving unfair labor practice disputes. This bill will encourage harmonious labor relations and industrial peace, setting up BART for success in its upcoming contract bargaining."

#### **Arguments in Support:**

The California State Council of the Service Employees International Union (SEIU CA) states that, "[u]nder current law, most public transit districts are not covered by a uniform collective bargaining statute such as [Meyers-Milias-Brown Act], but rather governed by the Public Utilities Code and accompanying regulations. Disagreements under this situation are handled unevenly and in costly litigation. Assembly Bill 2850 would require all labor disputes and claims to be resolved before the PERB; thus, reducing the need to take every dispute to the Superior Courts. The BART strike of 2013 demonstrated the need for a more timely adjudication process to resolve disputes and keep the trains running on time."

#### **Arguments in Opposition:**

None on file.

#### **FISCAL COMMENTS:**

According to the Senate Appropriations Committee, "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."

#### **VOTES:**

#### **ASM PUBLIC EMPLOYMENT AND RETIREMENT: 5-1-1**

**YES:** Rodriguez, Cooley, Cooper, O'Donnell, Reyes

**NO:** Voepel

**ABS, ABST OR NV:** Fong

**ASM APPROPRIATIONS: 13-4-1**

**YES:** Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas

**NO:** Bigelow, Megan Dahle, Diep, Voepel

**ABS, ABST OR NV:** Fong

**ASSEMBLY FLOOR: 59-17-3**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Daly, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

**NO:** Bigelow, Brough, Chen, Choi, Cunningham, Megan Dahle, Flora, Frazier, Gallagher, Kiley, Lackey, Mathis, Mayes, Obernolte, Patterson, Voepel, Waldron

**ABS, ABST OR NV:** Diep, Fong, Quirk

**SENATE FLOOR: 27-11-2**

**YES:** Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Bates, Borgeas, Chang, Dahle, Glazer, Grove, Melendez, Moorlach, Morrell, Nielsen, Wilk

**ABS, ABST OR NV:** Jackson, Jones

**UPDATED:**

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