

SENATE RULES COMMITTEE

SB 281

Office of Senate Floor Analyses

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THIRD READING

Bill No: SB 281

Author: Wiener (D), et al.

Amended: 1/6/20

Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 4-2, 3/27/19

AYES: McGuire, Beall, Hurtado, Wiener

NOES: Moorlach, Nielsen

NO VOTE RECORDED: Hertzberg

SENATE GOVERNMENTAL ORG. COMMITTEE: 10-4, 4/9/19

AYES: Dodd, Allen, Archuleta, Bradford, Galgiani, Glazer, Hill, Portantino, Rubio, Wiener

NOES: Wilk, Borgeas, Jones, Nielsen

NO VOTE RECORDED: Chang, Hueso

SENATE PUBLIC SAFETY COMMITTEE: 4-2, 4/23/19

AYES: Skinner, Bradford, Jackson, Wiener

NOES: Moorlach, Morrell

NO VOTE RECORDED: Mitchell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 1/21/20

AYES: Portantino, Bradford, Durazo, Hill, Wieckowski

NOES: Bates, Jones

SUBJECT: Cow Palace Authority

SOURCE: Author

DIGEST: This bill prohibits the sale of firearms, on or after January 1, 2021, at the Cow Palace and makes a violation of that prohibition a misdemeanor.

ANALYSIS:

Existing law:

- 1) Divides the state into agricultural districts, and designates District 1-A as the County of San Mateo and the City and County of San Francisco. (Food & Agr. Code, §§ 3851, 3853.)
- 2) Establishes District Agricultural Associations (DAA) within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest, and states that each association is a state institution. (Food & Agr. Code, §§ 3951, 3893.)
- 3) States that a DAA may:
 - a) Contract for programs and for the purchase or lease of goods, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency;
 - b) Purchase, acquire, hold, sell, or exchange, or convey any interest in real property;
 - c) Lease for the use of its real property, or any portion of that property, to any person or public body for whatever purpose; and,
 - d) Use, manage, or operate any of its property jointly or in connection with any lessee or sublessee, for any purpose. (Food & Agr. Code, § 4051.)
- 4) Provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)
- 5) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)
- 6) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice (DOJ) from the prohibitions

on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

- 7) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)
- 8) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)
- 9) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from DOJ. (Pen. Code § 27200.)
- 10) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to DOJ, as specified. (Pen. Code §§ 27200, 27245.)

This bill:

- 1) Prohibits officers, employees, or lessees of the Cow Palace from contracting for, authorizing, or allowing the sale of any firearm or ammunition on the property.
- 2) Exempts gun buy-back events held by law enforcement agencies.
- 3) Becomes operative on January 1, 2021.

Background

Cow Palace is the 1-A DAA, a state agency of the California Department of Food and Agriculture, located in Daly City at the border of San Mateo and San Francisco counties. The Cow Palace arena was originally constructed in 1941, to serve as a permanent structure to house an animal livestock exposition. Cow Palace has since become a venue for various events including circuses, sports matches, concerts, and political conventions. Since the 1980s, the Cow Palace has hosted gun shows four or five times a year.

According to an editorial in the *San Francisco Chronicle*, “[t]he communities living near the Cow Palace, the enormous state-owned exhibition hall in Daly City, overwhelmingly want the venue to stop hosting gun shows.”

San Francisco has adopted local ordinances banning gun shows on city and county property. Likewise, since 1996, San Mateo County’s Board of Supervisors has barred gun shows at its county fairgrounds and expo center. But, because Cow Palace is situated on state-owned land between San Francisco and San Mateo County, the local governing bodies cannot regulate gun shows at Cow Palace. Thus, the Legislature would have to enact a state-law to specifically ban gun shows on the property.

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sell, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.

According to the NRA’s Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show. However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.”

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. Eighty-seven percent of firearms seized by Mexican authorities and traced in the last five years originated in the United States, according to data from DOJ’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of

prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes." (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as Cow Palace.

There have been several legislative attempts to regulate gun shows at Cow Palace—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

Like this bill, SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace DAA to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would "set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace." Unlike SB 585, this bill will not impair any of Cow Palace's ongoing contracts because, if chaptered, it will not become operative until January 1, 2020.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only

upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, "I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board." Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

Last session, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 had an implementation date in 2020 and exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- 1) Annual revenue loss in the low hundreds of thousands of dollars to the extent that the 1-A DAA is unable to secure alternative events to gun shows (that

would not have taken place at the facility already) that could generate similar levels of revenue. (Special fund)

- 2) Unknown loss of sales tax revenue if firearm and ammunition sales that would have taken place at the Cow Palace do not occur at another location within the state. (General Fund, local funds)

SUPPORT: (Verified 1/21/20)

California State Treasurer Fiona Ma
Bay Area Student Activists
Brady United Against Gun Violence – San Francisco Chapter
City Council of Daly City
San Francisco Board of Supervisors
San Francisco Mayor London Breed
San Mateo County Supervisor David J. Canepa

OPPOSITION: (Verified 1/21/20)

California Rifle and Pistol Association
California Sportsman's Lobby
Coalition to Save the Cow Palace
Crossroads of the West
Firearms Policy Coalition
Gun Owners of California
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International
Safari Club International Foundation
One individual

ARGUMENTS IN SUPPORT: According to the Brady United Against Gun Violence – San Francisco Chapter:

The Cow Palace hosts five gun shows every year, each featuring hundreds of tables of firearms and ammunition for sale and trade, with free admission for children under 12. Many patrons leave the gun shows with carts or wagons laden with boxes of ammunition, often bringing the boxes to cars parked in the surrounding neighborhoods. The communities near the Cow Palace have for years been calling on the venue to end the gun and ammunition shows there, without success.

In these times of horrific gun violence, we believe that no government agency or authority should promote or profit from the sale of firearms and ammunition. That is especially true where local communities oppose gun shows on public property, including at the Cow Palace.

Consistent with our mission of preventing gun violence, the SF Brady United wholeheartedly supports the provisions of SB 281 that will permanently ban gun and ammunition shows on the Cow Palace property. We take no position on the provisions of SB 281 that would transfer the Cow Palace property to a local operating authority.

ARGUMENTS IN OPPOSITION: According to the California Rifle and Pistol Association:

Gun shows are under attack in California. The anti-gun movement would like the public to believe that there are so-called “gun show loopholes” which would allow prohibited persons to gain access to firearms just by attending a gun show. They would like the general public to believe the lie that firearms and ammunition are freely traded to persons attending gun shows without any type of legal ramifications.

Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows. Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

Prepared by: Gabe Caswell / PUB. S. /
1/22/20 15:23:43

**** END ****