

Date of Hearing: March 30, 2022

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Jim Cooper, Chair

AB 2441 (Kalra) – As Introduced February 17, 2022

SUBJECT: Public employment: local public transit agencies: new technologies

SUMMARY: Requires a public transit district to notify an employee organization of its intent relating to new technologies for public transit services, as prescribed, among other provisions. Specifically, **this bill:**

- 1) Requires a public transit employer to notify the exclusive representative of its intention to begin any procurement process or plan to acquire or deploy in relation to new technologies for public transit services, as provided, not less than 12 months before commencing the process, plan, or deployment. More specifically, regarding the notification:
 - a) The notification must apply to new technology for public transit services that either:
 - i) Changes or introduces new products, services, or type of operation, including, but not limited to, automated vehicles, which affect the nature of work or require job training of the workforce to which they will apply, or
 - ii) Eliminates job functions or jobs of the workforce to which they will apply.
 - b) The notification must include the following information:
 - i) A comprehensive analysis of the effects of new services, or type of operation on workers, including workers who may not be adequately skilled in their use or may be fully displaced by them;
 - ii) The potential gaps in skills that may result from the new service on the workers to which it will apply, and
 - iii) The total amount budgeted for, and description of, training and retraining programs for affected workers.
- 2) Following the prescribed notification, a public transit employer must engage in collective bargaining with an affected exclusive employee representative on developing and implementing the new product or service, creating a transit plan for affected workers and plans to train and prepare the affected workforce to fill new positions created by the new service or product.

- 3) Expressly establishes that these provisions must not be construed to create any labor requirements that are less protective of employees than other labor requirements created pursuant to a collective bargaining agreement.
- 4) Includes a severability clause to shield otherwise valid provisions and the application of the law from becoming invalid, if other provisions are later deemed to be invalid.
- 5) Defines the following for these purposes:
 - a) “Plan to acquire or deploy” to include any public notification on the subject of acquisition or deployment.
 - b) “Procurement process” to mean a request for information, proposal, quotation, or any similar request intended to begin the process of acquiring new equipment or technology.
 - c) “Public transit employer” to mean any local government agency, including a city, county, special district, transit district, or joint powers authority that provides public transit services within the state.
 - d) “Public transit services” to mean the provision of passenger transportation services to the general public, including paratransit service.

EXISTING LAW:

- 1) Establishes, pursuant to various sections of the Public Utilities Code (P.U.C.) and generally referred to as “Transit District Law,” public transit districts for the purposes of providing mass transportation services to public passengers and their baggage by any means within designated areas of geographic service.¹
- 2) Governs collective bargaining in the private sector under the federal National Relations Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors.

While the NLRA and the decisions of its National Labor Relations Board often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights.

- 3) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving

¹ Sections 24501 through 107025 of the Pub. Util. Code.

disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the Meyers-Milias-Brown Act (MMBA) which provides for public employer-employee relations between local government employers and their employees, including some, but not all public transit districts.

- 4) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight.
- 5) Does not cover California's public transit districts by a common collective bargaining statute. Instead, while some transit agencies are subject to the MMBA, the majority of transit agencies are subject to labor relations provisions that are found in each district's specific P.U.C. enabling statute, in joint powers agreements, or in articles of incorporation and bylaws.

These provisions provide employees with basic rights to organization and representation, but do not define or prohibit unfair labor practices. Unlike other California public agencies and employees, these transit agencies and their employees have no recourse to the PERB. Instead, they must rely upon the courts to remedy any alleged violations. Additionally, they may be subject to provisions of the federal Labor Management Relations Act of 1947 and the 1964 Urban Mass Transit Act (now known as the Federal Transit Act).

FISCAL EFFECT: None. This bill is keyed nonfiscal by Legislative Counsel.

COMMENTS: According to information provided by the author, "[m]any transit agencies have begun embracing autonomous technology. Unfortunately, the rollout of these new technologies can result in safety and equity issues, as well as the sudden displacement of public jobs.

"Autonomous technologies and other products that may displace workers are enticing to transit agencies as it would allow them to save money on labor costs. However, transit employees play a critical role in facilitating a safe and smooth passenger experience for commuters and passengers across the state. In fulfilling non-driving responsibilities, workers can increase accessibility for riders with disabilities, elderly riders, riders who speak other languages, and even younger riders.

"Autonomous technology extends past "self-driving," as self-driving technology is very slowly being implemented and still has a ways to go to contend with all the variables of the road. Other autonomous technology being rolled out include camera and voice systems that seek to replicate what a transit worker would do in anticipating rider needs and answering common questions. Some autonomous technology companies also attract transit agencies by offering their own staff

to perform maintenance on these systems so the transit agency does not need to keep staff in-house to work on systems issues.”

That author states that, “[a]s technology continues to advance, we do not need to leave workers behind. Workers deserve a seat at the table when it comes to major changes in their workplace. “[This bill] would restore and protect transit workers’ voice in the implementation of new transit services and technologies, including automated vehicles.”

1) Technology and Public Transit Districts: Employer-Employee Common Interests: Harmonious Relations

This bill prescribes that certain specified information be provided by a public transit employer to an employee organization and includes provisions relating to collective bargaining that generally involve the acquisition, implementation, and use of *any technology* by a public transit district. While technological advances may bring improvements and efficiencies to the provision of public transit services, certain (but not all) technologies may also require that employers hire employees, employees be trained in the use of the technology, or the technology may relieve employees of their employment.

As discussed under “Existing Law” above, many public transit districts are not subject to a common statutory scheme or an administrative agency that has jurisdiction over the conduct of employer-employee relations. The governance of these relations for some are embedded in the P.U.C., whereas, the MMBA may apply to others, or relations are stipulated in joint powers agreements or articles of incorporation.

This bill does not foreclose a public transit district from acquiring or implementing the use of new technology, and is substantially broad in its coverage as to what forms of technology to which it would apply.

Given the potential that any of the aforementioned employment circumstances come to exist and that affect employer-employee relations, this bill remains consistent with the aspirational and practical intent of existing law regarding such relations. In addition, the broad scope of the bill regarding *any technology* and its potential impact on public transit employers should be thoughtfully considered.

2) Suggestions to the Author for Future Consideration

This bill includes provisions that impose an obligation on a public transit district employer, confers certain rights to information for an employee organization representing employees of said employers, and addresses matters involving collective bargaining.

For purposes of practical and operational implementation, and to resolve ambiguity and the potential for misinterpretation or misapplication of the law, *the author may wish to amend the bill in the future to address the following, if necessary:*

a) Clarify or define “new technologies.”

The author may wish to consider the scope of whether this bill is intended to cover all forms of new technology, or certain specified forms. As currently written, this bill would cover *any* new technology ranging from office computers, phones systems, fare collections systems, vehicle cleaning, autonomous vehicles, and many others. Thus, it is unclear if that is the intent of the author, or if the scope of this bill is intended to be narrow to cover specific new technologies.

b) Amend subdivision (c) of section 3125 to read as follows:

“(c) “Public transit employer” means any local government agency, including any city, county, city and county, special district, transit district, or joint powers authority that provides public transit services within the state.”

c) Amend subdivision (a) of section 3126 to read as follows:

“(a) A public transit employer shall notify the exclusive employee representative in writing of its intention to begin any procurement process or plan to acquire or deploy in relation to new technologies for public transit services as described in subdivision (b) not less than 12 months before commencing the process, plan, or deployment.”

3) Comments by Supporters

Both the California Teamsters Public Affairs Council (Teamsters) and the California Conference of the Board of the Amalgamated Transit Union (ATU) state, among other things, that, “[this bill] is a comprehensive measure meant to restore and protect transit workers’ voice in the implementation of new transit services, including automated vehicles,” and that, “[t]hese new technologies may cut labor costs in the short term but fail to recognize the importance transit employees play in facilitating a safe and smooth passenger experience for commuters and passengers across the state.” Both organizations also state that, “[w]e fundamentally believe that workers deserve a voice in these conversations can bring invaluable insight informed by their own experiences in the field,” and that, “...new technologies should assist workers to provide a better overall transit service, not replace them. By requiring employers to bargain over the implementation of these products, transit workers will have a seat at the table....”

In part, the California State Legislative Board of the SMART Transportation Division states that, “[t]he requirements of this bill will put workers and riders’ safety at the forefront of transitions to the future of work with autonomous technology in public transit.

4) Comments by Others

Expressing concerns, among other things, the California Transit Association (CTA) states that, “...the bill is overly broad and would trigger a lengthy, and potentially fraught process prior to the deployment of any number of technological advancements. As used in the context of the bill,

“new technology” is not defined. Therefore, it is not clear what projects or programs instituted by a transit agency would qualify as new technology. While the bill does list “automated vehicles” as a new technology, the bill could apply to any number of technologies that improve transit operations, including: zero-emission bus or rail purchases; charging or fueling infrastructure; new ticketing machines on buses or at stations; wayfinding technologies; bike racks on vehicles (or other vehicle upgrades like driver cages); and computers in employee offices. We believe the author’s intent is to require notification and potentially bargaining prior to the deployment of autonomous vehicles and language entirely focused on that specific technology should be the starting place for negotiations with our member agencies.”

In addition, the CTA states that, “...transit agencies routinely engage in collective bargaining with their employees and believe that how employees are managed vis-à-vis autonomous vehicle deployment would be subject to those processes moving forward. As such, this bill may be unnecessary.”

5) Prior or Related Legislation

Assembly Bill 2873 (Kalra, 2020) proposed to require a public transit operator to also take recommendations and best practice standards developed by an exclusive representative into consideration for the purpose of changing or introducing new technology that may affect the nature of work of the transit operator’s employees, among other provisions. This bill was held in the Assembly Committee on Transportation.

Senate Bill 336 (Dodd, 2019) proposed to require, until January 1, 2025, transit operators to staff their autonomous transit vehicles with at least one trained employee. This bill was held in the Assembly Committee on Transportation at the request of the author.

Chapter 375, Statutes of 2013 (Assembly Bill 179, Bocanegra) extends privacy protections that state law gives to toll bridge and toll road users to riders of transit systems employing electronic fare collection systems.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference Board of the Amalgamated Transit Union (*Co-sponsor*)
California Teamsters Public Affairs Council (*Co-sponsor*)
California Labor Federation, AFL-CIO
California-Nevada Conference of Operating Engineers
SMART – Transportation Division California State Legislative Board
Transport Worker Union of America, AFL-CIO

Opposition

None on file.

Other

California Transit Association (*Concerns*)

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