
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**Senator Dave Cortese, Chair****2021 - 2022 Regular**

Bill No: AB 2441**Hearing Date:** June 1, 2022**Author:** Kalra**Version:** February 17, 2022**Urgency:** No**Fiscal:** No**Consultant:** Glenn Miles**SUBJECT:** Public employment: local public transit agencies: new technologies**KEY ISSUE**

Should the Legislature require public transit districts to notify their employees' unions of the district's intention to begin any procurement process or plan to acquire or deploy new technologies for public transit services not less than 12 months before commencing the process, plan, or deployment and to engage in collective bargaining thereon, as specified?

ANALYSIS**Existing law:**

- 1) Establishes transit districts pursuant to various sections of the Public Utilities Code (PUC) for the purposes of providing public transportation services. However, cities, counties, and other local governmental entities may also establish transit agencies pursuant to their local authority under the Government Code or local charter. (PUC §§ 24501 through §§ 107025).
- 2) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights. (29 United State Code § 151 et seq.)
- 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 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. (Government Code § 3500 et seq.)
- 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, respectively, local alternatives to PERB oversight. (GC § 3541)

- 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, many transit agencies are instead still subject to labor relations provisions found in each district's specific PUC enabling statute, in joint powers agreements, or in articles of incorporation and bylaws. (e.g., Public Utilities Code § 28500)
- 6) Provides transit employees not under the MMBA with basic rights to organization and representation, but does not define or prohibit unfair labor practices. Unlike other California public agencies and employees, these transit agencies and their employees generally rely upon the courts to remedy alleged violations unless otherwise provided in their enabling statute. Additionally, they may be subject to provisions of the federal Labor Management Relations Act of 1947 (Taft-Hartley) and the 1964 Urban Mass Transit Act, now known as the Federal Transit Act. (PUC § 24501 et seq.; 49 United State Code § 5333 (b))
- 7) Provides that the following provisions shall govern disputes between exclusive bargaining representatives of public transit employees and local agencies not covered by the MMBA:
 - (a) The disputes shall not be subject to any fact-finding procedure otherwise provided by law.
 - (b) Each party shall exchange contract proposals not less than 90 days before the expiration of a contract, and shall be in formal collective bargaining not less than 60 days before that expiration.
 - (c) Each party shall supply to the other party all reasonable data as requested by the other party.
 - (d) At the request of either party to a dispute, a conciliator from the California State Mediation and Conciliation Service shall be assigned to mediate the dispute and shall have access to all formal negotiations. (GC § 3611).

This bill:

- 1) Requires a public transit employer to notify the exclusive employee 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 specified, not less than 12 months before commencing the process, plan, or deployment.
- 2) Provides that the required notification shall apply to any new technology for public transit services that does either of the following:

- Changes or introduces new products, services, or type of operation, including, but not limited to, automated vehicles, which effect the nature of work or require job training of the workforce to which they will apply.
 - Eliminates job functions or jobs of the workforce to which they will apply.
- 3) Provides that the required notification shall include the following information:
- A comprehensive analysis of the effects of new products, 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.
 - The potential gaps in skills that may result from the new service on the workers to which it will apply.
 - The total amount budgeted for, and descriptions of, training and retraining programs for affected workers.
- 4) Requires a public transit employer, following the required notification, to engage in collective bargaining with an affected exclusive employee representative on the following subjects:
- Developing the new product or service.
 - Implementing the new product or service.
 - Creating a transition plan for affected workers.
 - Creating plans to train and prepare the affected workforce to fill new positions created by a new service or product.
- 5) Prohibits anyone from construing the bill's provision as creating any labor requirements that are less protective of employees than any labor requirements created pursuant to statute or a collective bargaining agreement.
- 6) Provides that the bill's provisions are severable. If any provision or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
- 7) Defines the following terms:
- "Plan to acquire or deploy" includes any public notification on the subject of acquisition or deployment.
 - "Procurement process" means any of the following:
 - A request for information.
 - A request for proposal.
 - A request for quotation.

- Any similar request that is intended to begin the process of acquiring new equipment or technology.
- "Public transit employer" means any local government agency, including any city, county, special district, transit district, or joint powers authority that provides public transit services within the state.
- "Public transit services" means the provision of passenger transportation services to the general public, including paratransit service.

COMMENTS

1. Need for this bill?

According to the author:

“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.”

“AB 2441 rightfully recognizes these technologies often come with impacts on the existing workforce that should be reviewed. While a transit agency may score a cost-savings in labor costs, the state must be vigilant in ensuring public safety and maintaining an adequate workforce.”

2. Committee Comments:

This bill essentially attempts to address transit employees’ concern that innovative technology may replace workers unless employee unions have input on the procurement, acquisition, and deployment of the technology. To that end, the bill requires substantial advanced notice of any *intention* to consider new technology and imposes, *as part of the notification*, significant analyses and reporting requirements. The bill is vague as to when any consideration, review, or discussion of possible new technology triggers the requirement to develop the required workforce impact, employee skill assessment, and workforce training budget analyses that the employer must include in the notification to the union. Because these analyses must be completed and submitted as part of the required notification and because of the vagueness of the notification trigger, the committee is concerned that the bill could eliminate all efforts at innovation rather than ensuring the employers provide the required opportunity for employee input. The author may wish to consider amendments beyond those already offered to better clarify what triggers the notification requirement and provide a reasonable period apart from the notification for the employer to provide the required analyses.

3. Author Amendments:

The author requests the committee adopt suggested Assembly amendments that do the following:

- Clarify that the required employer notification be in writing.
- Narrow the scope of the bill from new technologies to *any new vehicle technologies*.
- Modify the transit services to which the required notification applies, both broadening and narrowing its scope by referencing all services rather than services that meet two conditions (which the amendments delete) and referencing as an inclusive but not exclusive modifier, *automated vehicle services, that eliminates (sic) job functions or jobs of the workforce to which the new vehicle technology will apply*.

The opposition recognizes that the amendments narrow the bill but do not go far enough in addressing their concerns.

4. Opposition concerns:

The opposition has expressed concerns summarized as follows:

- Existing collective bargaining meet and confer requirements address the sponsors' concerns that consideration of new technology should receive union input before procured, acquired, or deployed.
- The author's amendments do not substantially define "new vehicle technologies". Thus, the bill remains vague, expansive, and difficult for employers to know what falls under its ambit.
- Requiring collective bargaining upon issuing the bill's required notification means that even insignificant but important technological updates could force the employer to enter into bargaining for unrelated employee demands, thereby holding even the casual assessment of new technology captive to unrelated employee demands.

The opposition has requested amendments to 1) narrow the bill's scope and requirements to *autonomous technology*; 2) delete the collective bargaining requirement; 3) require employers to provide notice 12 months prior to beginning a procurement process; and 4) require the union to notify the employer in writing if it determines that the technology deployment would displace workers, as specified.

Proponent Arguments

According to the California Teamsters Public Affairs Council:

"AB 2441 is a comprehensive measure meant to restore and protect transit workers' voice in the implementation of new transit services, including automated vehicles. Regrettably, public transit employers have already begun to earmark dollars or show interest in the implementation of services that displace career-sustaining jobs across the industry. These new technologies may cut labor cuts 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."

3. Opponent Arguments:

According to the California Transit Association:

“We recognize the bill’s intent is to require notification and potentially bargaining prior to the deployment of autonomous vehicles, and we believe language entirely focused on that specific technology should be the starting place for moving forward. That said, we will note that transit agencies routinely engage in collective bargaining with their employees and the Association believes that how employees are managed vis-à-vis autonomous vehicle deployment would be subject to those processes moving forward. The Meyers-Milias-Brown Act (Government Code 3500 et seq.) already requires that transit employers ‘meet and confer in good faith regarding wages, hours, and other terms and conditions of employment’ and that both parties are under an ‘obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year.’ Our member agencies consider worker displacement or loss of job function to be terms and conditions of employment that would trigger the meet and confer process; therefore, we argue this bill is unnecessary.”

4. Prior Legislation:

SB 336 (Dodd 2019) would have required transit operators to staff their autonomous transit vehicles with at least one trained employee, as specified. The bill died in the Assembly Transportation Committee.

SUPPORT

California Conference Board of the Amalgamated Transit Union (co-sponsor)
California Teamsters Public Affairs Council (co-sponsor)
American Federation of State, County and Municipal Employees
California Alliance for Retired Americans
California Conference of Machinists
California Labor Federation
California State Legislative Board, Smart Transportation Division
Engineers and Scientists of California, IFPTE Local 20
International Union of Operating Engineers, California-Nevada Conference
Transport Workers Union of America
Unite Here
Utility Workers Union of America

OPPOSITION

California Transit Association
Monterey-Salinas Transit (MST)

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