

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Tina S. McKinnor, Chair

AB 96 (Kalra) – As Introduced January 9, 2023

SUBJECT: Public employment: local public transit agencies: autonomous transit vehicle technology

SUMMARY: Requires a public transit district to provide written notice to an exclusive representative of the workforce affected by autonomous transit vehicle technology, among other provisions. Specifically, **this bill:**

- 1) Requires a public transit employer to notify the exclusive representative in writing of the workforce affected by autonomous transit vehicle technology of its determination to begin, or substantive progress toward initiating, any procurement process or plan to acquire or deploy such technology for public transit services, as provided, not less than 12 months before commencing the process, plan, or deployment.
- 2) Establishes that the written notification must apply to any autonomous transit vehicle technology for public transit services, including automated vehicles, that eliminate job functions or jobs of the workforce to which such technology will apply.
- 3) Provides that after the aforementioned mandatory written notification, and upon written request by the exclusive representative, the public transit employer must provide the exclusive representative the following information within 15 days of the employer's next regular governing board meeting:
 - a) 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;
 - b) The potential gaps in skills that may result from the new service on the workers to which it will apply, and
 - c) The total amount budgeted for, and description of, training and retraining programs for affected workers.
- 4) Requires that following the prescribed written request by the exclusive representative and within 30 days of the exclusive representative receiving the aforementioned information from the employer, the public transit employer must commence collective bargaining over the following subjects:

- a) Developing the new autonomous transit vehicle technology;
 - b) Implementing the new autonomous transit vehicle technology;
 - c) Creating a transition plan for affected workers, and
 - d) Creating plans to train and prepare the affected workforce to fill new positions created by a new autonomous transit vehicle technology.
- 5) 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.
- 6) Expressly establishes that written notifications by a public transit employer and written requests by the exclusive representative to a public transit employer do not supersede the exclusive representative's right to disclosure of information by the employer pursuant to the California Public Records Act, as provided.
- 7) 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.
- 8) Defines the following for these purposes:
- a) "Autonomous transit vehicle technology" to mean technology that has the capability to drive a vehicle without the active physical control by a human operator.
 - b) "Plan to acquire or deploy" to include any public notification that initiates the acquisition or deployment of autonomous transit vehicle technology.
 - c) "Procurement process" to mean the issuance of a request for proposals, a solicitation of proposals, or a request for quotations.
 - d) "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.
 - e) "Public transit services" to mean the provision of passenger transportation services by the public transit employer to the general public, including paratransit service.

EXISTING LAW:

- 1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors.¹

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.

- 2) 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.²
- 3) 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.³
- 4) Does not cover all 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).

- 5) 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

¹ Sections 151 *et seq.*, Title 29, United States Code.

² Sections 3500 *et seq.* of the Gov. Code.

³ Sections 3541 *et seq.*, *ibid.*

mass transportation services to public passengers and their baggage by any means within designated areas of geographic service.⁴

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

COMMENTS: Information provided by the author states that, “[t]here are no existing protections for transit workers who face displacement with the implementation of autonomous technology. 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. 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. Additionally, some autonomous technology companies attract transit agencies by offering their own staff to perform maintenance on these systems. This eliminates the need for transit agencies to keep staff in-house to work on systems issues and further disrupts the existing workforce.”

“While a transit agency may score a cost-savings in labor costs when transitioning in autonomous technology, the state must be vigilant in ensuring public safety and maintaining an adequate workforce. [This bill] would require public transit employers to notify transit unions of their intention to procure or deploy new technologies for public transit services, including autonomous transit vehicles, at least one year prior. Additionally, employers would be required to provide the union with a detailed analysis on worker displacement, gaps in training, and plans to retrain eligible employees. Upon notification, the transit employer would be required to bargain with the union over the development and implementation of the new technology, as well as the creation of a transition or retraining plan for affected workers. Nothing in the bill would prohibit the use of or prevent a transit agency from exploring autonomous technology. Instead, [this bill] rightfully recognizes these technologies often come with impacts on the existing workforce that should be reviewed.”

Regarding this bill, the 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] will put workers and riders’ safety at the forefront of transitions to the future of work with autonomous technology in public transit.”

⁴ Sections 24501 through 107025 of the Pub. Util. Code.

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 development and implementation of autonomous transit vehicle technology, the creation of a transition plan for affected workers, and creation of plans to train and prepare such workers to fill new positions created by such technology. 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 supplant employees.

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 procuring, acquiring, or deploying use of autonomous transit vehicle technology. Rather, this bill resolves to allow employees, through their exclusive representative, the ability to have input, through receipt of written receipt of information from the employer and the collective bargaining process, regarding such technology, as provided.

2) Equity Solutions and Maximizing Benefits for Underserved and Marginalized Communities

Pursuant to House Resolution (HR) 39 (Gipson, 2021), to continue the Assembly’s commitment to investing in equity solutions and maximizing benefits for underserved and marginalized communities, legislative analyses of the Assembly must discuss the equity impact that a bill will, or may, have on such communities, if any.

This bill does not present a particular focus towards addressing equity in relation to maximizing benefits for underserved or marginalized communities as articulated in HR 39. However, under a broader context, information provided by the author states that, “[t]his bill would preserve union jobs and helping [individuals] stay in a good job with benefits and access to collective bargaining can help build up more equitable communities.”

3) Comments by Supporters

The California Teamsters Public Affairs Council (Teamsters) states in part 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. 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 country. These new technologies may cut costs in the short term, but fail to recognize the importance [that] transit employees play in

facilitating a safe and smooth passenger experience for commuters and passengers across the state.” In addition, “[m]ost recently, we have seen the necessity of transit employees in the face of a growing number of environmental disasters fueled by climate change. Just recently, workers at MTA in New York City helped evacuate passengers stranded by flash flooding during Hurricane Ida. Without a human operator on board, one can only imagine the chaos that would have ensued during a storm that took the lives of 20 residents of the city.”

The California State Legislative Board of the SMART Transportation Division states in part that, “[w]e believe that workers deserve a voice in how new technologies are implemented in the transit industry. New technologies should assist workers in providing a better overall transit service, not replace them. The requirements in this bill will put workers and riders’ safety at the forefront of transitions to the future work with autonomous technology in public transit.”

The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, and the California Labor Federation, AFL-CIO, express statements similar to those of the Teamsters.

4) Comments by Opponents

Registering a position of “oppose, unless amended” on this bill, the California Transit Association states in part that, “[w]e understand the bill is an effort to require notification and potentially bargaining prior to the deployment of autonomous vehicles if the technology would pose workforce impacts. As we have maintained since 2022, this bill is premature and unnecessary for two key reasons: 1) a lengthy regulatory process at the Department of Motor Vehicles to permit the use of heavy-duty autonomous transit vehicles has not been conducted and is needed before transit agencies could consider procuring such vehicles; and 2) 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.

“In addition to the lack of a regulatory path forward, it is worth noting again that there have been only a few nascent pilots of small-scale autonomous shuttles at business parks or for first-/last-mile connections on closed campuses. None of these have displaced workers and agencies do not currently have plans to procure autonomous vehicles that would replace existing service.”

The California Transit Associations further states that, “[the MMBA] 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.”

i) California Transit Association Proposes Amendments

As to its concerns, the California Transit Association states that, “... after meeting several times with the author and the sponsors, we still endeavor to find a compromise and have come to understand that the collective bargaining requirement is paramount to the purpose of the bill. Thus, we hope to work towards a compromise that contains bargaining. The Association, in our proposed amendments to the author... does just that. We suggest a path forward that does several things, including placing additional guardrails on bargaining to ensure only issues related to the vehicle deployment are raised and establishing reasonable timelines for meeting the bill’s requirements, as well as cleaning up the statutory text to ensure a transit agency’s role is clearly understood.”

It is noted that written correspondence to the committee from the California Transit Association includes their proposed amendments to this bill.

Among other things, the Autonomous Vehicle Technology Industry Association states that, “[b]y requiring transit agencies to notify employee workforce representatives at least one year before commencing a process to acquire or to deploy any “autonomous transit vehicle technology” for public transit, [this bill] would increase burdens on public transit agencies while reducing the ability of these agencies to swiftly deploy innovative transit solutions needed in California.” [This bill] would significantly inhibit transit agencies’ abilities to bring such solutions to Californians in a timely manner. Additionally, this may have the unintentional effect of incentivizing California-based companies to innovate and create jobs in neighboring states, which risks California losing its position as a leader in the advancement of autonomous vehicle (AV) technology. Finally, increasing barriers to transit agencies interested in using AVs stands in conflict with California’s own “Autonomous Vehicle Strategic Framework” (“Framework”) released last year.” Moreover, “[t]he Framework is intended to guide California policy with respect to AVs and reflects the collaborative work of multiple state agencies and stakeholder input to create a statewide vision for how AVs could be best integrated into California’s transportation ecosystem. In particular, the Framework recommends that California ‘[c]ontemplate a range of deployment models, including...integration with public transit.’ We believe [this bill] would make it more difficult for transit agencies to deploy AVs in such a way and reduce the ability for transit agencies to align with the Frameworks as a result.”

5) Prior or Related Legislation

Assembly Bill 2441 (Kalra, 2022) required a public transit district to provide written notice to an exclusive representative of the workforce affected by autonomous transit vehicle technology, among other provisions. This bill was vetoed by the Governor who stated that:

“I am supportive of ensuring workers affected by new technology are consulted and have input upon decision that will impact their job. However, I am returning this bill without my

signature because it contains some ambiguous terms that may lead to more adjudications than intended, and I believe more work is needed to clearly define the scope and application of the bill. I look forward to continuing to work on this issue with the stakeholders to ensure workers' voices are fairly represented and addressed when new transit technology is deployed."

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 Labor Federation, AFL-CIO (*Co-Sponsor*)
California State Legislative Board of the Sheet Metal, Air, Rail and Transportation (SMART) Workers – Transportation Division (*Co-Sponsor*)
California Teamsters Public Affairs Council (*Co-Sponsor*)
American Federation of State, County and Municipal Employees, AFL-CIO
California Nurses Association
California School Employees Association, AFL-CIO

Opposition

Autonomous Vehicle Industry Association
California Transit Association (Oppose Unless Amended)

Analysis Prepared by: Michael Bolden / P. E. & R. / (916) 319-3957