



State Legislation - Senate Bill 827 (Glazer)

BART Board of Directors
July 11, 2024



SB 827 Legislative History and Key Dates

2023

- Feb. 17 Introduced in the Senate
- March 23 Board adopts a Support if Amended position
- April 11 Failed passaged in the Senate Transportation Committee. Reconsideration granted.

2024

- Jan. 9 Passes the Senate Transportation Committee
- Jan. 11 Passes the Senate Judiciary Committee with amendments
- Jan 29 Passes the Senate Floor, ordered to Assembly
- June 17 Passes the Assembly Transportation Committee
- June 24 Amended by the author
- July 2 Passes the Assembly Judiciary Committee with amendments
- Aug. 31 Last day for each house to pass bills
- Sept. 30 Last day for Governor to sign or veto bills

BART Requested Amendments from March 2023

- Remove the misdemeanor penalty for obstruction of an Office of the Inspector General (OIG) investigation.
- Grant the OIG subpoena authority as an enforcement mechanism to compel witness attendance, document production, and sworn statements necessary for an audit, investigation, or review.
- Add language clarifying the scope of the OIG as to not conflict with other audit and oversight offices, namely the Office of the Independent Police Auditor (OIPA) and the Office of Civil Rights (OCR).

Bill Amendments

Misdemeanor Penalty and Subpoena Authority

- Removal of proposed misdemeanor penalty for obstructing an OIG audit, evaluation, investigation, or review.
- OIG granted subpoena authority and process defined for how subpoenas will be served and carried out by a county superior court.
- Before issuing a subpoena, the OIG shall first seek voluntarily compliance.
- When seeking the voluntary attendance of a represented employee, the OIG shall act in accordance with any collective bargaining agreements and applicable laws.

Employee Survey Data

- Data from an employee survey can be made public, but information that could lead to the identification of or retaliation against an employee is to remain private.

Bill Amendments (Cont.)

Jurisdiction of the OIG and Other Audit and Oversight Entities

- The OIG, in carrying out its duties and responsibilities, shall not unduly interfere with the OIPA or OCR.
- Additionally, the OIPA and OCR shall also not unduly interfere with the duties and responsibilities of the OIG as outlined in statute.

Rights to Union Representation and Rights Under Applicable Labor Laws

- Before any interview is conducted with a represented employee, the OIG shall notify the employee of their right to a union representative and shall be afforded rights under *N.L.R.B. v. J. Weingarten, Inc., 420 U.S. 251 (1975)* and all collectively bargained rights.
- The OIG shall interact with any employee organization in a manner consistent with applicable labor laws and all collectively bargained rights.

Bill Amendments (Cont.)

Rights to Union Representation and Rights Under Applicable Labor Laws

- If an employee foregoes the right to be represented, the OIG shall furnish and obtain a written waiver before conducting an interview and maintain that waiver for at least two years.
- The OIG and impacted employee organizations shall collaborate to develop a standard waiver form that includes a summary of applicable labor laws and a represented employee's rights.
- The OIG shall keep interview records confidential and provide the appropriate Board Appointed Officer(s) or General Manager with summaries or information as needed to conduct investigations.
- The OIG is not obligated to inform an employee organization if a represented employee freely and willingly initiates contact for the purpose of whistleblowing, as defined.
- If the OIG fails to properly obtain a valid waiver, as defined, any evidence obtained from an interview shall not be admissible in disciplinary action taken against the employee.

Staff Recommendation on SB 827: Support

- Aligns the duties and responsibilities of the OIG with similar oversight and accountability offices.
- Supports the audit and investigative functions of the OIG and clarifies authority to conduct independent oversight of BART's programs and operations.
- Addresses challenges identified by the OIG regarding access to information and independence necessary to conduct work according to professional standards.
- Removes misdemeanor penalty and grants subpoena authority, while ensuring the work of the OIG is not obstructed.
- Clarifies original jurisdiction between BART's audit and oversight offices and seeks to prevent undue interference.