

SB 827 (Glazer) Analysis and Recommendation

TITLE: San Francisco Bay Area Rapid Transit District: Office of the Inspector General

AUTHOR: Glazer (D-Orinda)

SPONSORS: N/A

RECOMMENDATION: Support if Amended

BACKGROUND: BART's Office of the Inspector General (OIG) was created under Senate Bill (SB) 595 (Stat. 2017, Ch. 650, Sec. 2) and the affirmative passage of Regional Measure 3 (RM3) in 2018. The measure, which raised toll rates on the Bay Area's seven state-owned bridges, was on the ballot for voters in the City and County of San Francisco, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma Counties.

The OIG was established to ensure BART makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws. Duties and responsibilities for the BART OIG include, among others, conducting fraud and waste investigations, conducting audits and making recommendations to improve the efficiency and effectiveness of BART programs and operations, identifying opportunities to improve the data used to determine project resource allocations, and identifying and recommending best practices in the delivery of capital projects.

SB 595 requires the Bay Area Toll Authority (BATA) to provide \$1 million annually from an allocation of bridge toll revenue to the BART OIG. It allows BATA to increase the funding in the second and subsequent years of operation of the office, to the extent the BART OIG requests and justifies the need for funds and such requests can be accommodated in BATA's budget.

SB 827 is Senator Glazer's second bill regarding the OIG. In 2022, he introduced SB 1488, which the Board voted (6-3) to oppose unless amended. The bill passed the Legislature but was vetoed by Governor Newsom. The Governor cited the unresolved issue of notification for all represented employees of their right to representation as the reason for his veto.

PURPOSE: SB 827 amends Sections 28840 and 28841 of the District Act found within the Public Utilities Code (PUC). A section-by-section summary is provided below.

Section 1: IG Authority

- Section 28840 of the PUC is amended to clarify the IG is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program.

Section 2: IG Access to District and Third-Party Documents and Other Property

- Adds Section 28841.2 to the PUC, granting the OIG access and authority to examine all records, files, documents, accounts, reports, correspondence, or other property of the District and any third-party entities that perform work for the District.
- The OIG may enter any District office or facility and access, examine, and reproduce, during regular business hours, any materials needed for an audit or investigation.
- Any officer or employee of the District or third-party entity in possession of or with access to documents shall permit access and examination, upon request of the IG or their designee.

Section 3: Handling of Documents and Other Properties

- Adds Section 28841.4 to the PUC, granting the IG access to confidential records or property obtained in connection with any audit, evaluation, investigation, or review unless a law specifically refers to and precludes the IG from accessing, examining, and reproducing.
- Information or documents obtained by the IG are subject to any limitations on release of the information or documents that may apply to an employee or officer of the District or external entity.
- Providing confidential information that is subject to a privilege shall not be construed as waiving that privilege.
- The OIG shall not destroy any materials used to support a completed audit sooner than three years after the audit report is made public.
- Books, papers, records, and correspondence of the OIG pertaining to its work are public records and shall be filed at any of the regularly maintained offices of the IG, except for instances specified within the bill.

Section 4: Misdemeanor Charges for Obstructing the Work of the IG

- Section 28841.6 would be added to the PUC, specifying that it would be a misdemeanor, punishable by imprisonment in a county jail for up to six months and/or a fine up to \$1,000, to do any of the following:
 - Fail or refuse to permit the examination of, access to, or reproduction of the records, files, documents, accounts, reports, correspondence, cash drawers, or cash of their office by the IG or in any way interfere with such examination.
 - Interfere, intend to deceive or defraud, or obstruct the IG in the performance of an audit, evaluation, investigation, or review pursuant to this article.
 - Manipulate, correct, alter, or change records, documents, accounts, reports, or correspondence before or during any audit, evaluation, investigation, or review conducted pursuant to this article.
 - Distribute, reproduce, release, or fail to safeguard confidential draft documents exchanged between the IG and the entity subject to the audit, evaluation, investigation, or review conducted pursuant to this article before the release of the final report and without the IG's express permission.

DISTRICT IMPACT: SB 827 seeks to align the duties and responsibilities of the BART OIG with similar public offices including the State Auditor, California Department of Transportation (Caltrans) Independent Office of Audits and Investigations, and the Los Angeles County Metropolitan Authority Office of the Inspector General. The bill provides the OIG with explicit access to records and property commonly granted to professionals within the accountability field and seeks to enforce compliance with the OIG by establishing a new misdemeanor penalty.

SB 827 is less prescriptive than SB 1488, which sought several amendments related to removal of the IG, access to records and property, access to employees, subpoena authority, duties of the General Manager, the hiring of staff and consultants, and a separate computer network. SB 827 seeks to support the audit and investigation functions of the OIG and further clarifies the office's authority to conduct independent oversight of BART's programs and operations. The bill grants explicit access to information and vests the IG with the full authority to carry out prescribed duties and responsibilities, which the IG has identified as reoccurring challenges in reports to the Legislature, Audit Committee, and Board. The language within SB 827 aligns with the District's support of the OIG and staff are recommending a "Support if Amended" position based on the following input received from the Board, OIG, and various internal stakeholders.

Creation of a New Crime

SB 827 would make it a misdemeanor, punishable by imprisonment in a county jail for up to six months and/or a fine up to \$1,000, to obstruct the IG in the performance of an audit, evaluation, investigation, or review. While this language may provide an enforcement mechanism for the OIG to compel compliance by BART employees and contractors, there are concerns as to whether a criminal penalty is the appropriate approach. For example, a misdemeanor may require an individual to seek outside legal counsel and appear in court for a trial, potentially resulting in a criminal record that could impact future employment or professional licensing. Staff seek Board authorization to work with the author and OIG on amendments to lessen or remove the proposed criminal penalty within SB 827 while ensuring the work of the office is not obstructed.

Jurisdiction of Other Audit and Oversight Entities

Within SB 1488, BART secured amendments to clearly define the scope of the OIG as to not conflict with other audit and oversight offices including the Office of Civil Rights and the Office of the Independent Police Auditor. This language is not included within SB 827 and staff seek Board authorization to work with the author and OIG on similar amendments stating the OIG shall not interfere with the original jurisdiction nor unduly influence or undermine the independence of such entities, which goes beyond the District's Whistleblower Policy.

Governor's Veto of SB 1488

Governor Newsom's veto message for SB 1488 encouraged the author to work with the IG and BART Board on the issue of employee notification in either a charter or future legislation. SB 827 does not contain language granting the OIG access to employees, District officers, or contractors and does not address the issue of notification to represented employees of their right to representation. Staff are not seeking Board authorization for amendments on this issue as employee notification and rights to representation are likely to be addressed in an OIG charter and may be the focus of future discussions between the OIG, BART's labor partners, BART management, and the Board.

KNOWN SUPPORT/OPPOSITION: None on file.

STATUS: Introduced on February 17 and dual referred to the Senate Transportation Committee and Senate Judiciary Committee. First hearing date pending.