

San Francisco Bay Area Rapid Transit District

300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688



BOARD MEETING AGENDA

Thursday, April 8, 2021

9:00 AM

via Teleconference Only.

Board of Directors

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

BOARD MEETING AGENDA

April 8, 2021

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, April 8, 2021.

Please note, pursuant to Governor Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate, which prevents all but essential travel, public participation for this meeting will be via teleconference only.

You may watch the Board Meeting live or archived at <https://www.bart.gov/about/bod/multimedia>

Presentation materials will be available via Legistar at <https://bart.legistar.com>

You may also join the Board Meeting via Zoom by calling 1-669-900-6833 or logging in to Zoom.com and entering access code 929 5696 9217

If you wish to make a public comment:

- 1) Submit written comments via email to board.meeting@bart.gov, using "public comment" as the subject line. Your comment will be provided to the Board and will become a permanent part of the file. Please submit your comments as far in advance as possible. Emailed comments must be received before 4:00 p.m. on April 7, 2021 in order to be included in the record.
- 2) Call 1-669-900-6833, enter access code 929 5696 9217, dial *9 to raise your hand when you wish to speak, and dial *6 to unmute when you are requested to speak; OR log in to Zoom.com, enter access code 929 5696 9217, and use the raise hand feature.

Public comment is limited to three (3) minutes per person.

Any action requiring more than a majority vote for passage will be so noted.

Items placed under "consent calendar" are considered routine and will be received, enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from a Director or from a member of the audience.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>).

Meeting notices and agendas are available at bart.legistar.com; via email (<https://cloud.info.bart.gov/signup>); or via regular mail upon request submitted to the District Secretary.

Complete agenda packets (in PDF format) are available for review at bart.legistar.com no later than 48 hours in advance of the meeting.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

Jacqueline R. Edwards
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

1. CALL TO ORDER

- A. Roll Call
- B. Pledge of Allegiance
- C. Introduction of Special Guests.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of March 25, 2021. Board requested to authorize.

Attachments: [Approval of Minutes of the Meeting of March 25, 2021](#)

- B. BART Police Citizen Review Board Member Appointment. Board requested to ratify.

Attachments: [BART Police Citizen Review Board Member Appointment - Memo](#)

- C. Award of Agreement No. 6M2075, Independent Audit Services. Board requested to authorize.

Attachments: [Award of Agreement No. 6M2075, Independent Audit Services - EDD](#)

- D. Revision of Equal Employment Opportunity (EEO) Policy. Board requested to authorize.

Attachments: [Revision of Equal Employment Opportunity \(EEO\) Policy - EDD](#)

- E. Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the Fiscal Year 2020-2021 Low Carbon Transit Operations Program (LCTOP). Board requested to adopt.

Attachments: [Resolution Authorizing the Submittal of BART to Antioch Operations Application - EDD](#)

- F. Agreement with Alameda-Contra Costa Transit District for Feeder Service Payments for Fiscal Year 2021. Board requested to authorize.

Attachments: [Agreement with Alameda-Contra Costa Transit District for Feeder Service - EDD](#)

- G. Cooperative Agreement with California Department of Transportation (Caltrans), K-Line Interlocking Replacement Project. Board requested to authorize.

Attachments: [Cooperative Agreement with California Department of Transportation \(Caltrans\) - EDD](#)

- H. Additional Increase in Authority to Execute Third Party Agreements and Work Authorizations to Support the Hayward Maintenance Complex Project. Board requested to authorize.

Attachments: [Additional Increase in Authority to Execute Third Party Agreements and Work Authorizations - EDD](#)

- I. Waiver of Board Rule 5-2.3 for Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit. Board requested to authorize.

Attachments: [Waiver of Board Rule 5-2.3 Contract No. 09AU-120, Earthquake Safety Program - EDD](#)

3. PUBLIC COMMENT - 15 Minutes

(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda.)

4. ADMINISTRATION ITEMS

Director Li, Chairperson

- A. Budget Update: District Retirement Incentive Program (DRIP). For information.

Attachments: [Budget Update District Retirement Incentive Program \(DRIP\) - Memo](#)
[Budget Update District Retirement Incentive Program \(DRIP\) - Presentation](#)

- B. Future Service Scenarios for Consideration. For information.

Attachments: [Future Service Scenarios for Consideration - Memo](#)
[Future Service Scenarios for Consideration - Presentation](#)

5. ENGINEERING AND OPERATIONS ITEMS

Director Simon, Chairperson

- A. Award of Agreement No. 6M6145, Construction Management Services for the TBT. Board requested to authorize.

Attachments: [Award of Agreement No. 6M6145, Construction Management Services for the TBT - EDD](#)

- B. Change Order to Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit, with Shimmick/CEC, Joint Venture, for Additional Work Windows (C.O. No. 190). Board requested to authorize.

Attachments: [Change Order to Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit - EDD](#)

- C. Richmond Interlocking Replacement Update. For information.

Attachments: [Richmond Interlocking Replacement Update - Memo](#)
[Richmond Interlocking Replacement Update - Presentation](#)

6. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS

Director Raburn, Chairperson

- A. State Legislation for Consideration. Board requested to authorize

Attachments: [State Legislation for Consideration - Memo](#)
[State Legislation for Consideration - Bill Packet](#)
[State Legislation for Consideration - Presentation](#)

- B. Update on Sustainability Action Plan. For information.

Attachments: [Update on Sustainability Action Plan - Memo](#)
[Update on Sustainability Action Plan - Presentation](#)

7. GENERAL MANAGER'S REPORT

- A. Report of Activities, including Updates of Operational, Administrative, and Roll Call for Introductions Items.

8. BOARD MATTERS

- A. Resolution Condemning Violence Against the Asian American Pacific Islander (AAPI) Community. Board requested to adopt. (Director Li's request.)

Attachments: [Resolution Condemning Violence Against the Asian American Pacific Islander \(AAPI\) Community](#)

- B. Resolution in Support of the 2020 Revised California High-Speed Rail Authority Business Plan as Part of an Integrated Zero-Emission Public Transit System. Board requested to adopt. (Directors Li and Saltzman's request).

Attachments: [Resolution in Support of the 2020 Revised California High-Speed Rail Authority Business Plan](#)

- C. Board Member Reports.

(Board member reports as required by Government Code Section 53232.3(d) are available through the Office of the District Secretary. An opportunity for Board members to report on their District activities and observations since last Board Meeting.)

- D. Roll Call for Introductions.

(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

- E. In Memoriam.

(An opportunity for Board members to introduce individuals to be commemorated.)

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,882nd Meeting
March 25, 2021

A regular meeting of the Board of Directors was held on March 25, 2021, convening at 9:00 a.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. President Foley presided; Jacqueline R. Edwards, District Secretary.

Directors Present: Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley.

Absent: None. Director Allen entered the Meeting later.

Director Allen entered the Meeting.

President Foley gave instructions on viewing the Meeting, accessing presentation materials online, and Public Comment.

President Foley inquired whether public comments had been submitted prior to the Meeting. Jacqueline R. Edwards, District Secretary, confirmed that no public comments had been submitted prior to the Meeting.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of March 11, 2021.
2. BART Accessibility Task Force (BATF) Membership Appointment.
3. Special Compensation Pay Provisions for Non-Represented Employees.
4. Selection of Underwriting Pool from Which Senior Manager and Co-Managers Will Be Designated for the Issuance and Sale of the District's Bonds.

Director Simon made the following motions as unit. Director McPartland seconded the motions.

1. That the Minutes of the Meeting of March 11, 2021, be approved.
2. That the BART Board accepts the recommendation of the BATF and appoints the nominated candidate, Larry Bunn, for membership to the BATF for a term beginning March 25, 2021 for one year, or until the Board makes new appointments and/or reappointments for a new term, whichever occurs later.
3. That the Board approves the attached special pay provisions for Non-Represented employees effective July 1, 2013. (The Special Pay Provisions are attached and hereby made a part of these Minutes.)

4. That the Controller/Treasurer be authorized to designate the firms listed in the attached Exhibit A, as members of BART's Underwriters Pool from which the Controller/Treasurer be authorized from time to time to select members and enter into agreements with underwriters relating to the issuance of bonds. (Exhibit A is attached and hereby made a part of these Minutes.)

President Foley called for Public Comment on the Consent Calendar.

President Foley announced that the order of agenda items would be changed.

Surlene Grant addressed the Board.

The motions brought by Director Simon and seconded by Director McPartland carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0.

President Foley called for general Public Comment. Aleta Dupree addressed the Board.

President Foley brought the matter of Transit Security Advisory Committee Membership Appointments before the Board. District Secretary Edwards presented the item.

The following individuals addressed the Board:

Janet Abelson
Yulanda Williams
Armando Sandoval
Gary Gee
Angela Jenkins
Aleta Dupree
Joseph Mateu

Directors Dufty, Saltzman, Simon, and Allen commented on Armando Sandoval and/or Janet Abelson.

Director McPartland inquired about potential conflict of interest for Armando Sandoval and Joseph Mateu.

The Board Members announced their selection for the Mental Health representative. All Board Members selected Armando Sandoval as the Mental Health representative.

The Board Members announced their selection for the Youth Advocate representative. All Board Members selected Janet Abelson as the Youth Advocate representative.

Director Raburn moved that Armando Sandoval be appointed as the Mental Health representative and that Janet Abelson be appointed as the Youth Advocate representative on the Transit Security Advisory Committee. Director Saltzman seconded the motion, which carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0.

Directors Raburn and Dufty commented on Angela Jenkins.

The Board Members announced their selection for the Public-at-Large representative. Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley selected Angela Jenkins and Director Allen selected Gary Gee as the Public-at-Large representative.

Director Raburn moved that Angela Jenkins be appointed as the Public-at-Large representative on the Transit Security Advisory Committee. Director Dufty seconded the motion, which carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0.

Directors Dufty, Raburn, and Ames commented on Yulanda Williams and Directors McPartland and Allen commented on Gary Gee.

Director Ames inquired about appointing an Alternate Public-at-Large representative.

The Board Members announced their selection for the Law Enforcement representative. Directors Ames, Dufty, Li, Raburn, Saltzman, Simon, and Foley selected Yulanda Williams and Directors Allen and McPartland selected Gary Gee as the Law Enforcement representative.

Director Raburn moved that Yulanda Williams be appointed as the Law Enforcement representative on the Transit Security Advisory Committee. Director McPartland seconded the motion, which carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0.

Director Ames inquired about asking Gary Gee if he would be interested in being appointed as the Alternate Public-At-Large representative.

President Foley inquired about Director Ames' question and appointing an Alternate Committee Member.

President Foley recommended that staff advertise the Alternate Committee Member vacancy on bart.gov and Director Ames expressed agreement with Director Foley's recommendation.

President Foley thanked the candidates for their participation.

President Foley brought the matter of Independent Police Auditor Quarterly Update before the Board. Russell Bloom, Independent Police Auditor, presented the item.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director Li commented on fare enforcement and submitted several requests regarding the fare enforcement task force.

Director Saltzman supported Director Li's comments; commented on body-worn camera activation; and requested monthly updates from the Independent Police Auditor and periodic reports on body-worn camera activation.

Director Raburn inquired about the revision of the San Francisco Bay Area Rapid Transit District Citizen Oversight Model.

Director Simon inquired about Independent Police Auditor Bloom's outreach strategy for new media and ethnic radio and the duration of the outreach effort.

Director Ames inquired about monitoring BART Police Officers' participation in Integrating Communications, Assessment, and Tactics (ICAT) training, decrease in use of force and de-escalation in relation to fare evasion, and frequency of ICAT training; and requested that Independent Auditor Bloom and Chief Alvarez conduct joint outreach.

Director Allen commented on studying fare evasion/enforcement; requested that data be included in future reports; and inquired about cases investigated by the Office of the Independent Police Auditor in 2020 and Independent Auditor Bloom's recommendations for the appeal process.

President Foley brought the matter of Quarterly Report of the Controller/Treasurer for the Period Ending December 31, 2020 before the Board. Christopher Gan, Interim Controller/Treasurer, presented the item.

Director Ames inquired about use of government relief funding, investment decisions, BART's investment firm, and the maximum spending amount for bonds; and requested a review of the investment policy and a discussion of investments and potential risks.

Director Allen exited the Meeting.

Director Li, Chairperson of the Administration Committee, brought the matter of Resolutions Ratifying the Collective Bargaining Agreements with BART Police Officers' Association and BART Police Managers' Association before the Board.

Director Raburn moved that Resolution No. 5475, In the Matter of Ratifying the Agreement to Extend the Collective Bargaining Agreement and Create a Successor Agreement for 2022-2025 between the District and the BART Police Officers' Association (BPOA); and Resolution No. 5476, In the Matter of Ratifying the Agreement to Extend the Collective Bargaining Agreement and Create a Successor Agreement for 2022-2025 between the District and the BART Police Managers' Association (BPMA), be adopted. Director Dufty seconded the motion, which carried by unanimous roll call vote. Ayes: 8 – Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0. Absent: 1 – Director Allen.

Director Li brought the matter of 2020 Customer Satisfaction Survey Results – Next Steps before the Board. David Martindale, Director of Marketing and Research; Maureen Wetter, Principal Research Project Analyst, Customer and Performance Research; Leonardo Pica, Assistant Chief Mechanical Officer, Rolling Stock and Shops; Shane Edwards, Chief Maintenance and Engineering Officer; Roy Aguilera, Chief Transportation Officer; Ed Alvarez, Chief of Police; and Pamela Herhold, Assistant General Manager, Performance and Budget, presented the item.

Director Allen re-entered the Meeting.

Aleta Dupree, Sal Cruz, and John Arantes addressed the Board.

The item was discussed, with the following highlights:

Director Duffy commented on train cleanliness and staffing positions; requested that staff provide information about positions related to increasing service and ridership on a monthly basis; and inquired about staffing at high-impact stations and staffing figures.

Director Saltzman supported Director Duffy's comments; commented on staff's responsiveness to the Customer Satisfaction Survey, refreshing restrooms, and train service; and inquired about adding trains into service.

Director Ames inquired about scrub crews; commented on employing additional scrub crews; and requested that additional scrub crews be deployed.

Director Allen commented on the perception of cleanliness, improving restrooms, BART Police Department train teams, and studying the cause of unclean stations; and inquired about the number of workers in one scrub crew and deployment of scrub crews to the East Bay Area during the COVID-19 pandemic.

Director Simon commented on BART staff's public presence and work, the cause(s) of uncleanliness within the system, and understanding how to mitigate the cause(s) of uncleanliness within the system.

Director Li expressed agreement with investments around cleaning.

Director Li brought the matter of COVID-19 Update before the Board. Jeffrey Lau, Chief Safety Officer, System Safety; Tamar Allen, Assistant General Manager, Operations; Chief Alvarez; Alicia Trost, Chief Communications Officer; and Assistant General Manager Herhold presented the item.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director McPartland thanked staff for improving public service announcements (PSAs) on trains.

Director Saltzman requested regular updates until the COVID-19 pandemic is over.

Director Li commented on staff's responsiveness to Board Members' requests and thanked employees for their work.

President Foley announced that the Board would enter into closed session under Item 11-A (Conference with Legal Counsel – Pending Litigation) of the Regular Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

The Board Meeting recessed at 12:48 p.m.

The Board reconvened in closed session at 1:02 p.m.

Directors present: Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, and Foley.

Absent: None. Directors Allen and Simon entered the Meeting later.

Directors Allen and Simon entered the Meeting.

The Board Meeting recessed at 1:12 p.m.

The Board reconvened in open session at 1:15 p.m.

Directors present: Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, and Foley.

Absent: Director Simon.

President Foley announced that the Board had concluded its closed session under Item 11-A and that there was no announcement to be made.

Director Simon, Chairperson of the Engineering and Operations Committee, had no report.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Federal and State Legislation for Consideration before the Board. Emily Bacque Da Silva, Director of Policy at CJ Lake, LLC, and Amanda Cruz, Manager of Government Relations and Legislative Affairs, Government and Community Relations, presented the item.

Director Simon entered the Meeting.

The item was discussed, with the following highlights:

Director Raburn inquired about circumventing the limitation on allocating funds for large projects that may not be delivered within ten years.

Director Dufty inquired about partnering with other jurisdictions to seek set-aside funds for large-scale transportation projects.

Director Ames commented on the Link21 project and inquired about addressing the freight component of the Link21 project and re-allocating highway funding to public bus rapid transit.

Director Allen exited the Meeting.

Government Relations and Legislative Affairs Manager Cruz gave a presentation on federal legislation.

Director McPartland exited the Meeting.

Director Dufty moved that the Board of Directors support Senate Bill (S.) 303, U.S. House of Representatives Bill (H.R.) 867, and H.R. 1280. President Foley seconded the motion, which carried by unanimous roll call vote. Ayes: 7 – Directors Ames, Dufty, Li, Raburn, Saltzman, Simon, and Foley. Noes: 0. Absent: 2 – Directors Allen and McPartland.

Government Relations and Legislative Affairs Manager Cruz gave a presentation on state legislation.

Director Raburn expressed support for Senate Bill (SB) 2.

Director Raburn moved that the Board of Directors support Assembly Bill (AB) 455, AB 816, AB 917, AB 1401, SB 17, SB 339, and SB 2. Director Dufty seconded the motion.

Director Li inquired about SB 2.

Director Ames inquired about the current process to revoke a peace officer's license to work as a peace officer, police officer associations' concern about SB 2, and the training proposed by SB 2.

Director Simon exited the Meeting.

Director Li expressed support for SB 2 and proposed a friendly amendment to Director Raburn's motion to postpone the vote on AB 917 to a future Board meeting.

Director Raburn accepted Director Li's friendly amendment.

Discussion continued, with the following highlights:

Director Li commented on the recent violence against the Asian American Pacific Islander (AAPI) community, AB 557, and AB 886.

President Foley requested that the vote on SB 2 be continued to a future Board Meeting.

Director Saltzman indicated desire to vote on SB 2 and agreement with postponing AB 917.

Director Ames expressed agreement with President Foley's comments regarding postponing SB 2.

The motion brought by Director Raburn, as amended by Director Li, and seconded by Director Dufty failed by roll call vote. Ayes: 4 – Directors Dufty, Li, Raburn, and Saltzman. Noes: 0. Abstentions: 2 – Directors Ames and Foley. Absent: 3 – Directors Allen, McPartland, and Simon.

Director Saltzman moved that the Board of Directors support AB 455, AB 816, AB 1401, SB 17, and SB 339; and that SB 2 be presented to the Board for consideration at the next Board meeting. Director Dufty seconded the motion, which carried by unanimous roll call vote. Ayes: 5 – Directors Dufty, Li, Raburn, Saltzman, and Foley. Noes: 0. Abstentions: 1 – Director Ames. Absent: 3 – Directors Allen, McPartland, and Simon.

Director Raburn brought the matter of Update on BART Headquarters Office Building (2150 Webster St., Oakland, CA) before the Board. Carl Holmes, Assistant General Manager, Design and Construction, presented the item.

Sal Cruz and Leah Turner addressed the Board.

The item was discussed, with the following highlights:

Director Dufty inquired about privacy phone booths and roof access for the new BART headquarters building.

Director Ames commented on the telecommuting policy and rooftop access on the new BART headquarters building.

President Foley requested that staff provide a draft telecommuting policy at the next Board meeting and commented on safely populating the new BART headquarters building.

President Foley announced that Item 8-B, Update on Regional Transit Coordination, would be continued to a future Board meeting.

President Foley called for the General Manager's Report. Robert Powers, General Manager, reported on his participation in meetings with the Bay Area Council and elected officials, ridership, Metropolitan Transportation Commission (MTC) briefings, and working with the Oakland Athletics to provide train service for evening games.

President Foley called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Raburn submitted the following Roll Call for Introductions (RCI) request:

I'm very interested in ensuring the building of a good working relationship between our Office of Inspector General (OIG) and BART's labor unions, and I know both sides want that also. BART has many resources, including the General Manager, Labor Relations, and Legal department, to name a few that are available to provide support to the OIG to establish mutually agreed-upon procedures for interactions with represented employees. I request the General Manager immediately facilitate this broader engagement followed by a report back from staff to the Board no later than June 10, 2021.

Directors Dufty, Foley, and Li seconded Director Raburn's RCI request.

Director Raburn reported that he had attended Oakland Chinatown events and met with MTC Commissioner Damon Connolly regarding Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act funding distribution.

Director Li commented on violence and hate against the Asian American Pacific Islander (AAPI) community; expressed appreciation for General Manager Powers and Chief Alvarez's assistance with collecting data; and indicated that she would bring a resolution for the Board's condemnation of violence and hate against the AAPI community.

Director Ames recognized Kerry Hillis, Principal Government and Community Relations Representative, for his assistance with arranging meetings with her constituents in Hayward regarding construction projects.

President Foley thanked Richard Fuentes, Manager of Special Projects, Grant Development, for his coordination with the MTC Commissioner meetings and thanked Abby Thorne-Lyman, Group Manager, Transit-Oriented Development, Systems Development, and Kamala Parks, Senior Planner, Station Area Planning, for their presentation to the Concord City Council regarding Transit-Oriented Development (TOD)

The Meeting adjourned at 2:29 p.m.

Jacqueline R. Edwards
District Secretary

San Francisco Bay Area Rapid Transit District
Non-Represented Employee Special Compensation Pay Provisions for CalPERS Compliance
As of July 1, 2013
ATTACHMENT A

Holidays

The District shall observe the following fixed holidays:

New Year's Day (January 1st)
Martin Luther King Day (3rd Monday in January)
Presidents Day (3rd Monday in February)
Memorial Day (last Monday in May)
Independence Day (July 4th)
Labor Day (1st Monday in September)
Veterans' Day (November 11th)
Thanksgiving Day (4th Thursday in November)
Christmas Day (December 25th)

Except as provided below or otherwise required by law, an employee must be in a paid status to be eligible for holiday compensation. Situations in which employees in an unpaid status are eligible for holiday compensation include:

- 1) during a suspension of fifteen (15) days or less;
- 2) while absent due to an approved industrial disability;
- 3) while on Labor Code 4850 leave (equivalent); and
- 4) during the first continuous thirty-one (31) days in an unpaid status due to a nonindustrial disability.

Should a fixed holiday fall on a Saturday, the holiday will be observed the preceding Friday; if on a Sunday, the holiday shall be observed the following Monday. Should a holiday be observed on an employee's regular day off (RDO) other than on Saturday or Sunday as cited above, or during his/her/their recognized vacation, the employee, at his/her/their option, shall receive either one (1) shift (i.e., 4/10, 9/80 or 5/8 schedule as applicable) of pay at the employee's existing straight-time rate or one (1) shift off with pay consistent with department/section scheduling. Employees on shifts scheduled for 10 or more hours will receive 10 hours. Should an employee be required to work on a holiday, the employee at his/her/their option, may receive either one (1) shift of pay for the holiday at the employee's straight-time rate for that pay period or the employee may "float" the holiday.

Shift Differential

Some Non-Represented employees work a schedule other than a normal day shift, Monday through Friday schedule. When fifty percent (50%) or more of an employee's regularly scheduled shift occurs between the hours of 4 p.m. and 12 midnight, a swing shift premium of seven percent (7%) will be paid for all hours worked during the shift. When an employee works on a holiday and receives one and one-half (1.5) times their regular rate of pay, this swing shift premium will be multiplied by 1.5 times as well (i.e., 10.5%).

When fifty percent (50%) or more of an employee's regularly scheduled shift occurs between midnight and 8 a.m., a graveyard shift premium of nine and one-half percent (9.5%) will be paid for all hours worked

San Francisco Bay Area Rapid Transit District
Non-Represented Employee Special Compensation Pay Provisions for CalPERS Compliance
As of July 1, 2013
ATTACHMENT A

during the shift. When an employee works on a holiday and receives one and one-half (1.5) times their regular rate of pay, this graveyard shift premium will be multiplied by 1.5 times as well (i.e., 14.25%).

The shift time premium will be calculated using the employee's straight-time rate of pay. The shift differential is not considered to be part of an employee's base salary. This benefit is not applicable to employees in Pay Band 9 and above except for Managers of Central Control.

Temporary Upgrade

Non-Represented employees from time to time receive temporary assignments in which they are to perform the duties regularly assigned to a higher classification. Such assignments are made in writing by the employee's supervisor or higher level. These temporary assignments are considered career development opportunities and are not eligible for temporary upgrade pay during the first fifteen (15) working days of the employee's assignment. The prior approval of the affected department manager and the manager over classification & compensation is required to extend any temporary assignment to a higher classification beyond 15 workdays. Such approval must be obtained before the fifteenth (15th) working day. Employees in an approved temporary upgrade assignment will be compensated at five percent (5%) above their base pay rate after the 15th consecutive day of work in the higher classification. Leave taken while assigned to a higher classification will not be compensated at the premium rate. Prior to 7/1/2013, the waiting period was 45 working days.

Management Incentive

Due to the unique nature of the duties and responsibilities of executive management employees reporting directly to the General Manager, all executive level classifications reporting directly to the General Manager are eligible to receive Management Incentive Pay of \$4,800 annually and paid equally over the number of pay periods for the year (e.g. 26 equal pay period installments of \$184.61). The current list of classifications eligible are as follows:

Assistant General Manager, Operations
Assistant General Manager, Design & Construction
Assistant General Manager, Administration
Assistant General Manager, Performance & Budget
Assistant General Manager, Technology
Assistant General Manager, External Affairs
Deputy General Manager
Police Chief
Managing Director, Capitol Corridor

Deputy Police Chief Management Incentive

Due to the unique nature of the job as first level management over Police Lieutenants, the Deputy Police Chief classification is eligible to receive Deputy Police Chief Management Incentive Pay in the amount of 10% of the regular base pay rate.

San Francisco Bay Area Rapid Transit District
Non-Represented Employee Special Compensation Pay Provisions for CalPERS Compliance
As of July 1, 2013
ATTACHMENT A

Uniform Allowance

Non-Represented sworn employees (Police Chief and Deputy Police Chief) shall be provided with uniforms, appropriate to their classification, upon hire. The District will pay these employees annually for the cleaning, upkeep, and maintenance (excluding custom tailoring) of all District-issued uniforms and the purchase of uniform shoes (excluding safety shoes). A payment in the amount of \$1,005 shall be made in the first pay period in October.

The District shall reimburse employees for actual costs incurred for replacement of worn-out or damaged uniforms and damaged shoes. The District shall also reimburse employees for actual costs incurred for replacement of damaged, lost or destroyed equipment if such damage, loss or destruction is the direct consequence of the discharge of the employee's duties or of his/her/their obedience to the directions of the District. The value of all uniforms initially allotted to employees or replaced, excluding items that are solely for personal health and safety (such as protective vests, pistols, bullets and safety shoes), is anticipated to be less than \$2,000 per employee in a year with an anticipated increase of 5% per year.

Employees must obtain prior approval for replacement of worn-out, damaged, lost or destroyed uniforms or items of equipment listed above. After approval is received, employees may purchase the uniform or item of equipment with an approved replacement. Compensation to employees for such replacement shall be accomplished by means of reimbursement upon presentation of a valid receipt.

Employees who are absent from work on leave of absence or non-industrial disability leave for extended periods of time shall receive a reduced uniform allowance in accordance with the following schedule:

<u>Absence</u>	<u>Percentage Reduction</u>
30 days	25%
60 days	50%
90 days	100%

Approved by Board of Directors on: _____

Exhibit A

Barclays Capital, Inc.
Blaylock Van, LLC*
Citigroup Global Markets Inc.
Goldman Sachs & Co. LLC
J.P. Morgan Securities LLC
Morgan Stanley & Co. LLC
Siebert Williams Shank & Co., LLC*
Stifel, Nicolaus & Company Incorporated
Wells Fargo Securities

Notes

**Minority Business Enterprise (MBE)*

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Memorandum

TO: Board of Directors

DATE: April 2, 2021

FROM: District Secretary

SUBJECT: Ratification of BART Police Citizen Review Board Member

In accordance with Chapter 2-05(A) of the BART Citizen Oversight Model (Model), vacancies on the BART Police Citizen Review Board (BPCRB) shall be filled by the respective Director for the unexpired portion of the term. Director Allen has selected Pedro Babiak to fill the upcoming vacancy for District 1. Information about Mr. Babiak accompanies this memorandum.

According to Chapter 2-07(K) of the Model, the District Secretary's Office will facilitate the application process for seats on the BPCRB and will coordinate the selection process with the Board of Directors (Board).

Mr. Babiak's appointment to the BPCRB must be ratified by the Board prior to the start of his service. Pending ratification, Mr. Babiak would be appointed to complete the term of service that currently ends on June 30, 2022. He would be eligible for reappointment, again pending ratification, to a full two-year term thereafter.

Attached is a motion which, if adopted by the Board, will ratify Director Allen's appointment.

Please contact Mag Tatum at (510) 464-6089 or mtatum@bart.gov or me at (510) 464-6080 or Jedward@bart.gov if you have any questions about this matter.


Jacqueline R. Edwards

RATIFICATION OF BART POLICE CITIZEN REVIEW BOARD APPOINTMENT

MOTION:

That the Board of Directors ratifies the appointment of Pedro Babiak – District 1, to the BART Police Citizen Review Board, for a term expiring on June 30, 2022.



APPLICATION FOR APPOINTMENT TO THE BART POLICE CITIZEN REVIEW BOARD

The BART Board of Directors established the BART Police Citizen Review Board (BPCRB) to increase visibility for the public into the delivery of BART Police services, to provide community participation in the review and establishment of BART Police Department policies, procedures, practices and initiatives, and to receive citizen complaints and allegations of misconduct by BART Police Department (BPD) employees. The BPCRB is an advisory committee that reports to the BART Board of Directors. Meetings are generally held once per month, and service on the BPCRB is voluntary.

As a volunteer member of this board you will:

- Receive citizen allegations of on-duty police misconduct
- Participate in recommending appropriate disciplinary action
- Advise Board of Directors, Independent Police Auditor and Police Chief
- Review, recommend and monitor implementation of changes to police policies, procedures & practices
- Meet periodically with representatives of the BART Police associations
- Participate in community outreach

All BPCRB members must reside in one of the following counties: Alameda, Contra Costa, San Francisco, or San Mateo. BPCRB members must be fair-minded and objective with a demonstrated commitment to community service. No person currently employed in a law enforcement capacity, either sworn or non-sworn, shall be eligible for appointment to the BPCRB. No current or former or relative of BART Police Department personnel may serve on the BPCRB. Appointees to the BPCRB are subject to a background check and must not have any felony convictions. Members serving on the BPCRB are not required to be U.S. citizens.

Personal Information

First Name: Pedro

Last Name: Babiak

Home/Mailing Address: _____

City: _____

Zip: _____

Daytime Phone: _____

Alternate Phone: _____

Email: _____

Occupation/Profession: Computer Consultant

General Information/Qualifications

In what county do you reside? Contra Costa

Are you currently employed in a law enforcement capacity, either sworn or non-sworn?
☐ Yes ☒ No

Are you a current or former BPD employee? ☐ Yes ☒ No

Are you a relative¹ of a current or former BPD employee? ☐ Yes ☒ No

Have you ever been convicted of a felony? ☐ Yes ☒ No

References: Please provide the names and contact information of three (3) references who are qualified to discuss your candidacy for service on the BPCRB:

Name: Clarice Hernandez

Address: _____ Phone: _____

Name: Enrique Ruiz

Address: _____ Phone: _____

Name: Joe Partida

Address: _____ Phone: _____

List any organizations or groups that you belong to or are involved with that you believe bear relevance to your candidacy for service on the BPCRB:

Hispanic Chamber of Commerce of Contra Costa County

_Martinez Chamber of Commerce_____

_California Hispanic Chambers of Commerce

¹Relatives include spouse, domestic partner, child, parent, brother, sister, grandparent, step-parent, step-child, legal guardian, father-in-law and mother-in-law.

Briefly explain your interest in serving on the BPCRB:

All too often, I find that the small business community and the Latino community are underrepresented in groups like the CRB.

I want to be able to bring that point of view to the CRB when it comes to police activity. BART plays a critical role in allowing Latinos, especially women, get from one side of the Bay to the other safely. A strong and reliable police force is critical for that to happen. We need to know that when we encounter a BART police officer, we have confidence that the officer is well-trained and is backed by a strong organization.

What qualifications/assets do you have that make you a strong candidate for service on the BPCRB? Please feel free to attach a resume or an additional page.

Small Business Owner – 25 years

Hispanic Chamber of Commerce of Contra Costa – 2-time president

Contra Costa Workforce Development Board – past board member

School-to-Career, Alhambra High School, Martinez – past chairman

Generally good guy (usually)

Signature of Applicant:



Date: March 20, 2021

Return this form to the BART Office of the District Secretary:
300 Lakeside Drive, 23rd Floor, Oakland, CA 94612
or fax to (510) 464-6011
or email to mtatum@bart.gov
Call (510) 464-6089 with any questions.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Milind</i> 4/2/2021		GENERAL MANAGER ACTION REQ'D:		
DATE: 4/1/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pen Romero Dept: General Accounting <i>Chris Gan</i> Signature/Date: 4/1/21	General Counsel <i>Manu Henry</i> 4/2/21 []	Controller/Treasurer <i>Chris Gan</i> 4/1/21 []	District Secretary <i>[Signature]</i> []	BARC <i>[Signature]</i> 4/1/21 []

Award Agreement No. 6M2075 for Independent Audit Services FY 2021-2025

PURPOSE:

Request the Board to authorize the Controller/Treasurer to award Agreement No. 6M2075 for Independent Audit Services to Crowe LLP for a five-year period from fiscal year 2021 to fiscal year 2025.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District Act (California Public Utilities Code Section 28769) requires that an annual audit be made of all books and accounts of the District by an independent certified public accountant. In addition, as a recipient of federal, state, and local grants, the District is also required to submit annually, in addition to the annual audited financial statements, other financial reports such as the National Transit Database Report, The Single Audit Report, Transit Development Act Report, Proposition 1B, Measure B, BB and other compliance reports, which are required to be audited in order to comply with funding agreements or District requirement.

On December 30, 2020 the RFP documents for Agreement No. 6M2075 were advertised in several Bay Area publications. Advance notices were sent to prospective and past Certified Public Accounting Firms. A pre-submittal meeting was held on January 19, 2021 and attended by eleven (11) prospective firms via Zoom.

The scope of the RFP requires an audit of the basic financial statements of the District, the Retiree Health Benefit Trust (RHBT), the Other Post Employment Benefit Trust (Other

OPEB), and for the Capitol Corridor Joint Powers Authority (CCJPA). It also includes all other audits that were identified in the RFP required by government agencies, which provides grant funds to the District.

On March 9, 2021, five (5) proposals were accepted from the following firms:

1. Crowe LLP, San Francisco, CA ("Crowe")
2. Macias Gini & O'Connell LLP, Walnut Creek, CA ("MGO")
3. Eide Bailly LLP, Menlo Park CA ("Eide Bailly")
4. Moss Adams LLP, San Francisco, CA ("Moss Adams")
5. BDO USA, LLP, San Francisco, CA ("BDO")

The submittals were first reviewed for responsiveness to the requirements of the RFP. The proposals were then reviewed by a Technical Evaluation Committee (Evaluation Committee) consisting of staff from the Office of Civil Rights, Performance and Audit, Office of the Inspector General, Grants Management and Finance Department. The proposals were evaluated and scored on the basis of the criteria contained in the RFP with respect to technical qualifications of the proposing firms and key personnel, and depth of resources and experience in the audits required in the RFP. Scores were tabulated and forwarded to the Audit Committee for the next steps on the selection process. The Audit Committee conducted an oral interview of the five proposers on March 30, 2021. Based on the oral and written evaluations, the five proposers' scores were ranked and it was determined that Crowe LLP received the highest overall scores.

The Audit Committee evaluated the proposals using the best value methodology. Under this approach, the District evaluates not only the price of the proposals submitted, but also other criteria which when assessed together, identifies the proposer that best meets the District's needs. Based on the best value analysis, the Audit Committee unanimously determined that Crowe LLP offered the best overall value to the District.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% Small Business Prime Preference for this Agreement for Small Businesses certified by the California Department of General Services (DGS). It was determined that there were no certified Small Businesses certified by the DGS among the responsive Proposers and, therefore, the Small Business Prime Preference is not applicable.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Agreement are 5.5% for Minority Business Enterprises ("MBEs") and 2.8% for Women Business Enterprises ("WBEs"). The Office of Civil Rights has determined that Crowe LLP has exceeded both the MBE and WBE Availability Percentages

for this Agreement at 50% for MBEs and 50% for WBEs.

FISCAL IMPACT:

The maximum compensation for this agreement by fiscal year is as follows:

			BART	RHBT	Other OPEB	CCJPA	Total
			-----	-----	-----	=====	-----
	FY 2021		\$160,500	\$17,900	\$17,900	\$40,600	\$236,900
	FY 2022		\$175,190	\$18,310	\$18,310	\$41,540	\$253,350
	FY 2023		\$167,970	\$18,730	\$18,730	\$42,500	\$247,930
	FY 2024		\$171,830	\$19,160	\$19,160	\$43,470	\$253,620
	FY 2025		\$175,780	\$19,600	\$19,600	\$44,470	\$259,450
			-----	-----	-----	-----	-----
	Total		\$851,270	\$93,700	\$93,700	\$212,580	\$1,251,250
			=====	=====	=====	=====	=====

Funding for the District and for the OPEB's audits for FY 2021 is included in the adopted operating budget of the Controller-Treasurer's Office under account 681300, Department 0303310. Funding for each subsequent year will be included in the future operating budgets of the Controller-Treasurer's Office, subject to board approval. The audit fees for the RHBT and CCJPA will be paid by RHBT and CCJPA.

ALTERNATIVES:

Annual audit of the District's books and records is a legal requirement and is also necessary to comply with reporting requirements imposed by various government agencies, which provides fund to the District. The annual audit of the RHBT is required under the Agreement and Declaration of Trust approved by the Board in 2004. The annual audit of CCJPA is required per Fund Transfer Agreement between CCJPA and the State of

California, Department of Transportation. The District could reject the proposals and re-solicit new proposals, which most likely will generate the same response from the same accounting firms.

RECOMMENDATION:

That the Board adopts the following motion:

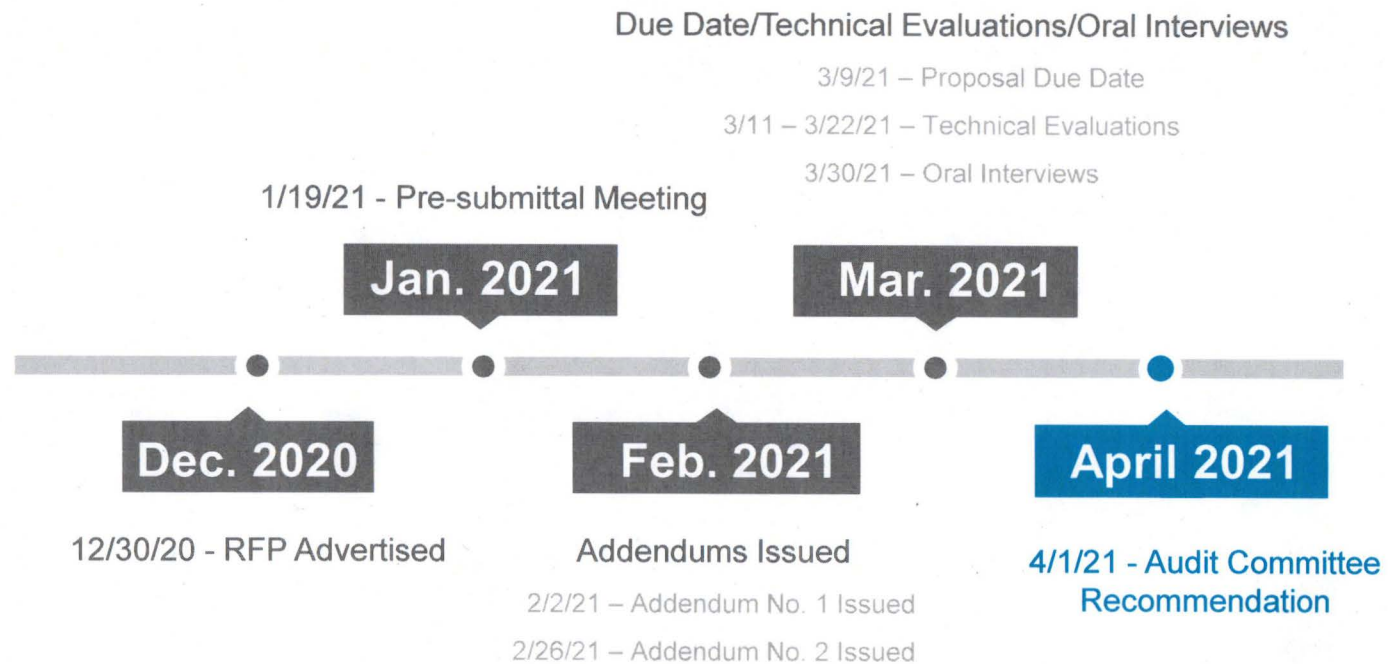
MOTION:

That the Controller-Treasurer be authorized to award Agreement No. 6M2075 to Crowe LLP to provide independent audit services to the District, RHBT, Other OPEB and CCJPA for an amount not to exceed \$1,251,250 for a five-year period from FY 2021-2025.

Overview

- Recommended Firm: Crowe, LLP
- Duration of Contract: 5 years
- Point of Contact: Assistant Controller-Treasurer
- Firm will report directly to the Audit Committee

RFP Timeline



Summary of Audits to be Performed

- Audit of Financial Statements – BART, RHBT, other OPEB and CCJPA
- Single Audit – BART
- National Transit Database Report Audit – BART
- PTMISEA Proposition 1 B Audit – BART
- Measure B and Measure BB Audit – BART
- Transportation Development Act Audit – BART
- Audit of Board of Directors' Travel Expenses – BART
- SB1 Compliance Audit - CCJPA


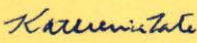
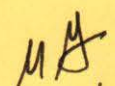

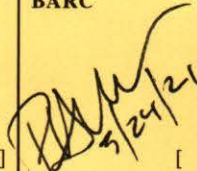


Total Scores & Cost

Proposer's Name	Total Score=0.65(Technical) + 0.35(Oral)	Price
Crowe, LLP	$=0.65(210.0) + 0.35(126.67) = 180.83$	\$1,251,250.00
Macias Gini & O'Connell, LLP	$=0.65(213.8) + 0.35(78.33) = 166.39$	\$1,424,935.00
Eide Bailly, LLP	$=0.65(200.6) + 0.35(101.67) = 165.97$	\$1,198,750.00
Moss Adams, LLP	$=0.65(172.2) + 0.35(112.33) = 151.25$	\$1,946,261.00
BDO USA, LLP	$=0.65(137.4) + 0.35(91.67) = 121.39$	\$1,351,097.00



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D:		
DATE: 3/17/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kay Tate Dept: Civil Rights  Signature/Date: 3/24/2021	General Counsel  3/24/21 []	Controller/Treasurer  3/25/21 []	District Secretary []	BARC  3/24/21 []

Adoption of the Revised Equal Employment Opportunity Policy

PURPOSE:

To request that the Board of Directors adopt the revised Equal Employment Opportunity (EEO) Policy for the District.

DISCUSSION:

Recipients and sub-recipients of Federal Transit Administration (FTA) financial assistance that employ 50 or more transit-related employees are required to adopt a formal EEO Policy.

The Board of Directors initially adopted an Affirmative Action Program and Districtwide goals for minorities and women in September 1974. The most recent adoption of the District's EEO Policy was on October 24, 2019.

Pursuant to the State of California EEO statutes, the proposed EEO Policy includes the following revisions:

- Expands the protected category of "Race" to include "hair texture and protective hair styles."
- Revises the statute of limitations to file complaints with the Department of Fair Employment and Housing (DFEH) from 365 days to three (3) years from the date of the last discriminatory incident.

The proposed revised EEO Policy additionally adds language to encourage employees to file a complaint with BART's Office of Civil Rights "within 30 days of the incident."

FISCAL IMPACT:

There is no fiscal impact.

ALTERNATIVES:

Adopt amended or modified policy statement.

RECOMMENDATION:

Adopt the following motion.

MOTION:

The Board adopts the revised Equal Employment Opportunity (EEO) Policy.



EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Statement of Policy:

The San Francisco Bay Area Rapid Transit District (District) is committed to providing a work environment free from discrimination, harassment, and retaliation, including discrimination and harassment based on the EEO protected categories covered by this policy. The District is committed to providing equal employment opportunities to all employees and applicants for employment. This policy extends to conduct with a connection to an employee's work, even when the conduct takes place away from the District's premises, such as a business trip or business-related social function.

As an equal opportunity employer, we strive to have a workforce that is reflective of the community we serve and to provide a professional and respectful work environment. No person is unlawfully excluded from employment opportunities in any personnel transaction including recruitment, hiring, promotion, selection for training, termination, transfer, layoff, demotion, rates of pay or other forms of compensation, benefits and other terms and conditions of employment based on race (includes hair texture and protective hair styles), color, marital status, sexual orientation, religion (includes religious dress and grooming practices), national origin (including language use restrictions), ancestry, age (40 and above), sex/gender (includes pregnancy, childbirth, breastfeeding, and/or related medical conditions), gender identity/ gender expression, disability (mental and physical, including HIV and AIDS), medical condition (cancer or a record or history of cancer/genetic characteristics and information), request for family care leave, request for pregnancy disability leave, request for leave for an employee's own serious health condition, or military or veteran status, domestic violence victim status and any other status protected by state or federal law.

District employees who meet state and federal eligibility requirements are:

- Guaranteed leave if disabled because of pregnancy;
- Guaranteed reasonable accommodation for pregnancy;
- Guaranteed leaves for the birth or adoption of a child, for the employee's own serious health condition, or to care for a "family member" (as defined by law) with a serious health condition;
- Protected from harassment because of their sex, race, or any other category covered under the law;
- Protected from retaliation for filing a complaint, for participating in the investigation of a complaint, or for protesting possible violation of the law; and/or
- Protected from prohibited harassment by coworkers, third parties, as well as supervisors and managers with whom the employee comes into contact.

The District is committed to providing reasonable accommodation to applicants and employees because of a disability or to practice or observe their religion, absent undue hardship. Employees with disabilities are also entitled to reasonable accommodation when necessary in order to perform the essential functions of the job.

The District recognizes and values the diversity of its workforce and the benefits to the District programs and services that are promoted by diverse viewpoints, life experiences, and cultural perspectives. The District supports and encourages diversity and provides education and training related to the benefits and challenges of working productively in a culturally diverse environment.

Implementation

As General Manager, I maintain overall responsibility and accountability for District compliance with the EEO Policy and Program. To ensure day-to-day management, including program preparation, monitoring, and complaint investigation, I have appointed **Maceo Wiggins, Director, Office of Civil Rights** as the EEO Officer (510) 464-7194. The EEO Officer reports directly to me and acts with my authority with all levels of management, labor unions, and employees.

All District executives, management and supervisory personnel, however, share in the responsibility for implementing and monitoring the EEO Policy and Program within their respective areas and will be assigned specific tasks to ensure compliance is achieved. Managers and supervisors will be evaluated based on their successful implementation of the District's EEO Policies and Procedures as they are regarding other District goals.

Consistent with applicable federal and state laws, the District is committed to developing a written nondiscrimination program setting forth the policies, practices and procedures, with stated goals and timetables. Upon request, the District will make the EEO Program available for inspection by an employee or applicant for employment.

All District personnel, including Board members, are responsible for and required to comply with the EEO Policy and Program. District hiring personnel are accountable for evaluating a diverse pool of candidates to select a qualified individual in a manner that is free of artificial impediments.

All BART employees are responsible for conducting themselves in accordance with the District's EEO Policy.

Corrective Action Guidelines

The District will take appropriate corrective action(s) up to and including formal discipline against any employee(s) when an investigation has found that misconduct occurred. Such corrective action(s) may include, but are not limited to, letters of reprimand, suspension, demotion, or termination. Additionally, depending on the nature of the violation, civil liability could be imposed on the violator as well as the District.

Reporting

All applicants and employees have the right to file complaints alleging a violation of the EEO Policy. The District complaint procedure does not require an employee to complain directly to their immediate supervisor. Any employee who believes that they have experienced EEO discrimination, harassment and/or retaliation is encouraged to file a complaint with the District's Office of Civil Rights within 30 days of the incident. Complaints of discrimination, harassment or retaliation should be directed to:

Office of Civil Rights
ATTN: Katherine Tate, Supervisor of EEO Programs
300 Lakeside Drive, Suite 1682T
Oakland, CA 94612
(510) 464-6107
ktate1@bart.gov or eeocomplaint@bart.gov

District policy and state law prohibit retaliation against an individual who files a charge or complains about EEO discrimination or harassment, who participates in an employment discrimination proceeding (such as an investigation or lawsuit), or who otherwise engages in protected activity including participation as a witness in an EEO investigation. Any such retaliation is strictly prohibited and is a violation of the District's Equal Employment Opportunity Policy, regardless of whether the original complaint is sustained.

All BART employees have the right to file their complaint with the Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), or the U.S. Department of Transportation (DOT). The statute of limitations to file with DFEH is three (3) years from the date of the last discriminatory incident. The statute of limitations for the EEOC is 300 days from the date of the alleged harm. Complaints should be filed with DOT within 180 days of the alleged act of discrimination.

Robert M. Powers
General Manager

Date



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- Protected from retaliation for filing a complaint, for participating in the investigation of a complaint, or for protesting possible violation of the law; and/or
- Protected from prohibited harassment by coworkers, third parties, as well as supervisors and managers with whom the employee comes into contact.

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ATTN: Katherine Tate, Supervisor of EEO Programs
300 Lakeside Drive, Suite 1682T
Oakland, CA 94612
(510) 464-6107

ktate1@bart.gov or eeocomplaint@bart.gov

Adopted 10/24/2019/8/2021

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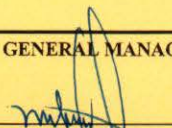
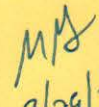
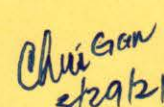
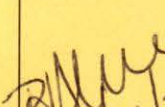
Robert M. Powers
General Manager

Date

Adopted ~~10/24/2019~~4/8/2021



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D:		
DATE: 3/23/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Richard Fuentes Dept: Grant Development	General Counsel  3/29/21 []	Controller/Treasurer  3/29/21 []	District Secretary	BARC  3/29/21 []

Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the FY 20-21 Low Carbon Transit Operations Program (LCTOP)

PURPOSE: To obtain Board approval of a Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the FY 20-21 Low Carbon Transit Operations Program (LCTOP).

DISCUSSION: The Low Carbon Transit Operations Program (LCTOP) is one of several programs established by the California Legislature through Senate Bill 862 in 2014 and further amended in 2016 through Senate Bill 824. Drawing funds from the state's Cap-and-Trade Program's annual proceeds, the LCTOP was created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities.

Projects eligible to receive LCTOP funding are those that demonstrate greenhouse gas emissions reductions and are consistent with both BART's Short Range Transit Plan and the region's Sustainable Communities Strategies (e.g., Plan Bay Area). In addition, 50% of the total funds received by a transit agency must be expended on projects that benefit disadvantaged communities within the agency's service area. LCTOP funds can be used for either operating or capital programs or projects including new or expanded bus or rail services, expanded intermodal facilities, equipment acquisition, maintenance and other operating costs.

The LCTOP is formula-based program, administered by the California Department of Transportation (Caltrans). BART receives the funds directly from the state once the

application is approved. For FY 20-21, BART is eligible to receive \$4,368,203.

LCTOP guidelines require transit agencies that receive LCTOP funds to authorize, by Board resolution, its agents to execute application documents and provide certain certifications and assurances.

FISCAL IMPACT: If the proposed project is approved by Caltrans, the funds will be applied to the operating budget of BART to Antioch.

By adopting this Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the FY 20-21 Low Carbon Transit Operations Program (LCTOP), BART may receive \$4,368,203 on or before June 30, 2021.

This action will have no fiscal impact on unprogrammed District Reserves.

ALTERNATIVES: Do not approve the Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the FY 20-21 Low Carbon Transit Operations Program (LCTOP). BART could choose another project.

RECOMMENDATION: Adoption of the following motion.

MOTION: The BART Board approves adoption of the attached Resolution “**In the Matter of Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for FY 20-21 Low Carbon Transit Operations Program (LCTOP).**”

**BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**In the Matter of Authorizing the Submittal of BART
To Antioch Operations Application, and Supporting
Documents, for FY 20-21 Low Carbon Transit
Operations Program (LCTOP)**

Resolution No. _____

AUTHORIZATION FOR THE EXECUTION OF THE CERTIFICATIONS AND
ASSURANCES AND AUTHORIZED AGENT FORMS FOR THE LOW CARBON TRANSIT
OPERATIONS PROGRAM (LCTOP) FOR THE FOLLOWING PROJECT:

BART TO ANTIOCH OPERATIONS / \$4,368,203

WHEREAS, San Francisco Bay Area Bay Area Rapid Transit District is an eligible sponsor and may receive state funding for transit projects from the Low Carbon Transit Operations Program (LCTOP) now or sometime in the future; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by applicable regulations; and

WHEREAS, Senate Bill 862 (2014) named the California Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, BART wishes to delegate authorization to execute these documents and any amendments thereto to its General Manager .

WHEREAS, BART wishes to implement the following LCTOP project listed above,

NOW, THEREFORE, BE IT RESOLVED that Robert Powers, General Manager be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District that it hereby authorizes the submittal of the following project nomination and allocation request to the Department in FY 2020-2021 LCTOP funds:

List of project, including the following information:

Project Name: BART to Antioch Operations

Amount of LCTOP funds requested: \$4,368,203

Short Description of projects: The new service between the Pittsburg/Bay Point Station and Antioch is 10 miles long, adds two new stations, and provides much needed congestion relief on California State Route 4.

Benefit to a Priority Populations: Yes

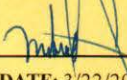
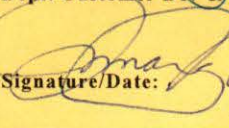
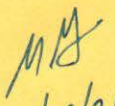
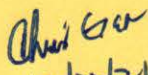
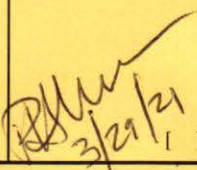
Contributing Sponsors (if applicable): None

AGENCY BOARD DESIGNEE

BY: _____



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D:		
DATE: 3/22/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jumana Nabti Dept: Customer Dev & Station Access	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date:  3/29/21	 3/29/21 []	 3/30/21 []	[]	 3/29/21 []

To Request Board Authorization to Execute FY21 BART/AC Transit Feeder Agreement

PURPOSE:

To authorize the General Manager to execute the Fiscal Year 2021 ("FY21") BART/AC Transit Feeder Agreement for an amount not to exceed \$2.7 million.

DISCUSSION:

Twenty-four BART stations are located in the Alameda-Contra Costa Transit District ("AC Transit") service area, and fifty-seven AC Transit routes stop at BART stations, allowing passengers to transfer between the two systems.

BART has made feeder service payments to AC Transit since 1985. Payments have ranged from \$2.46 million ("M") to \$6.7M. Over the years, adjustments in the payment amounts to AC Transit have primarily been linked to BART's sales tax growth. The FY15-FY20 BART/AC Transit Feeder Agreement used a new methodology for calculating payments. The formula for the current fiscal year adjusted the previous fiscal year's feeder service payment by the year-to-year percentage change in actual individual trips transferring from AC Transit to BART based on Clipper® data plus the year-to-year percentage change in inflation based on the San Francisco Bay Area Consumer Price Index ("CPI"), with a maximum increase or decrease of five percent (5%) annually. A provision was also added to place a percentage of payments in an escrow fund (the "Fare Coordination Fund") held by the Metropolitan Transportation Commission ("MTC"), to be used towards fare coordination efforts between the two agencies, with an amount not to exceed \$1M. However, only a small portion of these funds were used to date.

BART and AC Transit intended to extend the terms of the FY15-FY20 agreement for two to three years in order to allow for the completion of the MTC-led Fare Coordination and Integration Study ("FCIS"); however, due to the COVID-19 pandemic's negative impacts on funding and ridership, the parties negotiated new terms. Both parties agreed that a one year agreement would allow FCIS recommendations to inform future negotiations and recognized the uncertainty of ridership recovery from the pandemic.

Key terms of the FY21 BART/AC Transit Feeder Agreement include:

- Period of Agreement: FY21 - July 1, 2020 through June 30, 2021
- Feeder Agreement payment from BART to AC Transit for FY21: \$2.7M
- With BART's support, AC Transit will request MTC to disburse the full balance of the Fare Coordination Fund to AC Transit (approximately \$802,000 as of October 2020).
- BART and AC Transit will begin to work as soon as possible on an agreement for FY22 and beyond, with the goal to find a mutually beneficial way to incentivize transfers between systems.
- BART and AC Transit will also work in conjunction with the FCIS, which may inform future agreements.

The FY21 BART/AC Transit Feeder Agreement will be approved as to form by the Office of the General Counsel.

The BART/AC Transit Interagency Liaison Committee ("ILC") has been briefed on these terms and the AC Transit Board of Directors adopted the agreement on March 10, 2021.

FISCAL IMPACT:

The financial impact for FY21 is a payment of \$2.7M to AC Transit.

Release to AC Transit of funds currently held in the Fare Coordination Fund by MTC does not have a fiscal impact on BART's current or future funds.

The expenditures for FY21 have been included in the operating budget of the Customer Access and Accessibility Department (Department 1102491, Account 686653). This action is not anticipated to have any impact on unprogrammed District reserves.

ALTERNATIVES:

Do not authorize execution of the FY21 BART/AC Transit Feeder Agreement and direct staff to renegotiate the terms of the agreement.

RECOMMENDATION:

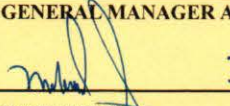
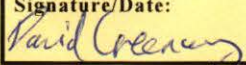

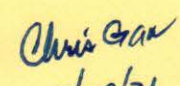
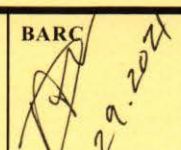
It is recommended that the Board adopt the following motion.

MOTION:

The General Manager is authorized to execute the FY21 BART/Alameda-Contra Costa Transit District ("AC Transit") Feeder Agreement for an amount not to exceed \$2.7 million.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D: Approve		
DATE: 3/2/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Linda Lee Dept: Strategic Engineering DAVID GREENAWAY FOR LINDA LEE Signature/Date:  3/29/2021	General Counsel  3/29/21 []	Controller/Treasurer  3/29/21 []	District Secretary []	BARC  3/29/2021 []

Authorize the General Manager to Execute Cooperative Agreement With Caltrans to Support the K Line Interlocking Replacement Project

PURPOSE:

To obtain Board authorization for execution of cooperative agreement with the California Department of Transportation (Caltrans) to advance the K Line Interlocking Replacement Project (Project). The agreement will provide for Project support services, including, but not limited to: engineering, applicable fees, field investigation, and permit access to property for limited purposes.

DISCUSSION:

In support of BART's Track Renewal Program, the K-Line Interlocking Replacement Project is proposed along approximately a 3.5-mile-long section of the BART rail within an easement in the Interstate (I)-980 and State Route (SR) 24 median between 23rd Street and Chabot Road in Oakland, California. The Project will remove and replace the mainline and special trackwork along the K Line and C Line that was installed as part of the initial system in 1972 and expanded upon in 1987. The existing infrastructure is showing signs of significant wear and needs replacement. The work will help ensure the long-term safety and reliability of the system and support increasing ridership.

During design and construction of the Project, BART will interface with Caltrans. This Cooperative Agreement clearly defines the roles and responsibilities for BART and Caltrans to execute an encroachment permit for construction of the Project. BART is required to reimburse Caltrans for their costs involved in quality management work including Quality Management Assessment, environmental document quality control, and owner/operator approvals for the portions of work within the Caltrans right-of-way.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights requires any contracts or agreements let out by Caltrans in relation to this Agreement to apply the District's Small Business Program which would include a Local Small Business Preference of 7% of the lowest responsible Bidder's Bid, up to a cap of \$150,000.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Office of Civil Rights requires any contracts or agreements let out by Caltrans in relation to this Agreement to apply the District's Non-Discrimination Program for Subcontracting.

FISCAL IMPACT:

The total amount of \$356,750 is included in the total project budget for 15CQ008 K Line Interlocking Replacement Project. District financial obligations will be subject to Work Authorizations (WAs). Each WA will have a defined scope of services and separate schedule and budget. Any WA assigned for funding under a State or Federal grant will include State or Federal requirements.

The table below lists funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed will be expended from the following sources:

Proposed Funding	
F/G 802A/B/C – Measure RR GOB	113,247,506
TOTAL	113,247,506

As of March 24, 2021, \$113,247,506 is the total budget for BART for this project. BART has expended \$8,718,601, committed \$2,516,638 and reserved \$335,168 to date. This action will commit \$356,750 leaving an available fund balance of \$101,320,349 in these fund resources for this project.

The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation. This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

ALTERNATIVES:

In the absence of this authorization, the General Manager, or designee, will have no vehicle to reimburse Caltrans for support services associated with development of Project Initiation Document (PID) and Project Study Report – Project Report (PSR-PR).

RECOMMENDATION:

Staff recommends adoption of the Motion.

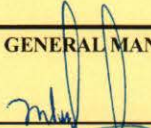
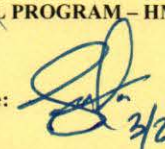
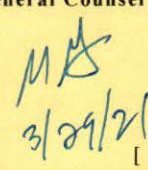
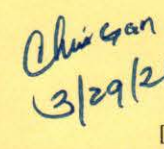
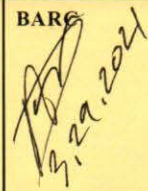
Obtain Board Authorization to Execute Cooperative Agreement with Caltrans to Support the K Line Interlocking Replacement Project

MOTION:

The General Manager, or designee, is authorized to execute agreements with Caltrans, including authority to expend a total of \$356,750 (three hundred fifty-six thousand seven hundred fifty dollars) to support the K Line Interlocking Replacement Project.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 6/1/2020		BOARD INITIATED ITEM: No		
Originator/Prepared by: Sonny Au Dept: CAPITAL PROGRAM - HMC Signature/Date:  3/29/2021	General Counsel  3/29/21 []	Controller/Treasurer  3/29/21 []	District Secretary []	BART  3/29/2021 []

Additional Increase in Monetary Authority for Third Party Agreements and Work Authorizations to Support the Hayward Maintenance Complex Project

PURPOSE:

To obtain Board authorization for an increase of monetary authority of an additional \$1,500,000 for the General Manager to be used for the execution of Third Party Agreements and Work Authorizations for the Hayward Maintenance Complex Project.

DISCUSSION:

The Hayward Maintenance Complex (HMC) Project was adopted by the BART Board of Directors on May 26, 2011. The Project will provide expanded and enhanced maintenance facilities necessary, in part, to support BART's future system demands, including the new BART revenue vehicles associated with the Core Capacity Program. Phase 1 of the HMC Project provides for construction of a Component Repair Shop, a Central Warehouse, a Vehicle Overhaul & Heavy Repair Shop, and a Maintenance & Engineering Shop. Phase 2 of the HMC Project provides for construction of the East Vehicle Storage Yard that will provide storage for as many as 250 BART revenue vehicles.

In November 2012, the Board authorized \$1,000,000 to be used for Third Party Agreements and Work Authorizations in support of the HMC Project, and in November 2015, the Board authorized an increase of \$750,000 in that authority, for a total of \$1,750,000 in authority.

The cost of future support services is expected to exceed the \$1,750,000 previously authorized. These services include support for the Phase 2 construction of the East Vehicle Storage Yard, which will be constructed on twenty (20) acres of undeveloped land, and requires support from numerous entities including Union Pacific Railroad, Pacific Gas & Electric, telecom providers, special use districts, and cities and agencies within Alameda

County. The estimated cost of the future support services, which will be performed under Third Party Agreements and Work Authorizations to be executed, is \$1,500,000. The Office of the General Counsel will approve new agreements as to form prior to execution.

FISCAL IMPACT:

Funding for this \$1,500,000 to execute Third-Party Agreements and Work Authorizations is included in the total project budget for 01RQ100 & 01RQ103, HMC Phase 2.

The table below lists funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

Proposed Funding		
Fund Number	Fund Description	Amount
354S	FTA CA-2020-047 TCCCP FFGA	\$107,263,962.29
802A	2017 Measure RR GOB	\$2,280,315.11
802B	2019 Measure RR GOB	\$5,081,191.95
802C	2020 Measure RR GOB	\$9,527,527.65
8524	FY12 Operating Alloc to Cap	\$15,000.00
01RQ100 Total:		\$124,167,997.00
354S	FTA CA-2020-047 TCCCP FFGA	\$4,736,037.71
802B	2019 Measure RR GOB	\$78,059.27
802C	2020 Measure RR GOB	\$6,615,906.02
01RQ103 Total:		\$11,430,003.00
HMC2 Grand Total:		\$135,598,000.00

As of March 10, 2021, \$135,598,000 is the total budget for projects 01RQ100 & 01RQ103. BART has expended \$16,972,078, committed \$8,185,818 and reserved \$41,968,052 to date. This action will commit \$1,500,000 leaving an available fund balance of \$66,972,052 in these fund sources for these projects.

The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

ALTERNATIVES:

If the Board does not grant the requested additional increase of \$1,500,000 in authority, Staff will be required to obtain individual Board authorizations for new Third Party Agreements and Work Authorizations prior to performance of the support services, which will likely result in construction delays and will impact the overall project schedule.

RECOMMENDATION:

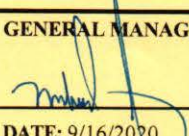
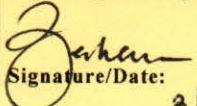

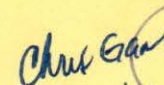
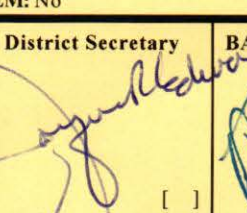
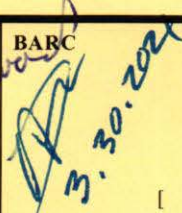
It is recommended that the Board adopt the following motion:

MOTION:

The General Manager, or designee, is authorized with an additional increase of \$1,500,000 in monetary authority to execute Third Party Agreements and Work Authorizations with various public and private entities, including cities, agencies, utilities, special districts and the Union Pacific Railroad, in order to provide support services for the Hayward Maintenance Complex Project including, but not limited to, design, installation, minor construction, relocation, permitting, and inspections.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: 9/16/2020		BOARD INITIATED ITEM: No		
Originator/Prepared by: Zecharias Amare Dept: Capital Program ESP/HMC  Signature/Date: 3/30/21	General Counsel  3/30/21 []	Controller/Treasurer  3/30/21 []	District Secretary  []	BARC  3/30/2021 []

TBT Seismic Retrofit Project / A Waiver of Board Rule 5-2.3

PURPOSE:

To request Board authorization of a waiver of Board Rule 5-2.3 for Contract No. 09AU-120, BART Earthquake Safety Program Transbay Tube (TBT) Internal Retrofit and to allow the rule to be applied when Change Orders issued within the General Manager's authority reach \$49.0 Million or 15.0% of the current Contract Price of approximately \$326 Million.

DISCUSSION:

On December 1, 2016, the Board authorized the award of Contract No. 09AU-120, BART Earthquake Safety Program TBT Internal Retrofit to Shimmick/CEC Joint Venture with a base Contract value of \$267 Million. Notice to Proceed was issued on February 2, 2017.

To date the General Manager has issued Change Orders for approximately 7% of the original Contract Price. Under Board Rule 5-2.3, the General Manager is required to notify the Board when the value of Change Orders issued reaches 10% of the original Contract Price, or \$26.7M.

Considering the significant revisions made to the Contract Scope, Schedule, and Bid Schedule, Staff anticipates additional Change Orders will be required that will soon exceed 10% of the original Contract price. In order to proceed with the remaining work without delays to this vital project, Staff requests a waiver of Board Rule 5-2.3 and requests that it be applied when Change Orders issued within the General Manager's authority reach \$49 Million or 15.0 % of the revised Contract Price.

Although the Contract has been progressing for the past three years, the most challenging aspects of the work in the bores is underway. The nightly track and bore plate work are complicated and performed in short work windows. Therefore, these activities carry significant financial and technical risks. As these potential risk elements arise, the District will need to issue timely Change Orders to implement the appropriate mitigation measures.

Accordingly, staff requests that the Board authorize the requested waiver of Board Rule 5-2.3.

FISCAL IMPACT:

The table below lists funding assigned to 09AU000, TBT Retrofit and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

Earthquake Program Funds	
801F & 801J - ESP GO Bond	\$ 334,160,266
801I - ESP GO Bond Interest Earnings	\$ 62,550,328
802A & 802B - 2017 Measure RR GO Bond	\$ 188,424,447
850V, 850W & 850X - Capital Allocations	\$ 207,229
6820 – SF County Transportation Authority	\$ 175,000
TOTAL	\$ 585,517,270

As of March 9, 2021, \$585,517,270 is the total budget for this project. BART has expended \$353,353,934, committed \$94,745,773, and reserved \$1,318,919 to date. Total available fund balance of \$136,098,644 remains in these fund sources for this project.

There are sufficient funds to cover the anticipated Change Orders.

The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves

ALTERNATIVES:

The Board can elect not to authorize a waiver of Board Rule 5-2.3. This may result in delays in addressing changes needed for the Contract to keep the work going uninterrupted, and likely lead to increased costs to the District.

RECOMMENDATION:

That the Board approve the following motion:

MOTION:

The General Manager is authorized to issue Change Orders up to an amount of \$49.0 Million, or 15% of the current Contract Price, which is approximately \$326 Million, prior to providing the Board with the 10 days advance notice required by Board Rule 5-2.3.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

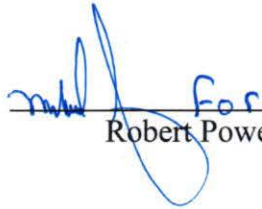
DATE: April 2, 2021

FROM: General Manager

SUBJECT: Administration Agenda: Budget Update - District Retirement Incentive Program

At the April 8, 2021 BART Board of Director's meeting, the District will present a summary of the DRIP, which includes the results, implementation, and next steps.

If you have any questions about this presentation, please contact Pamela Herhold, Assistant General Manager, Performance & Budget, at Pherhol@bart.gov, or (510) 464-6168.



Robert Powers

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



District Retirement Incentive Program

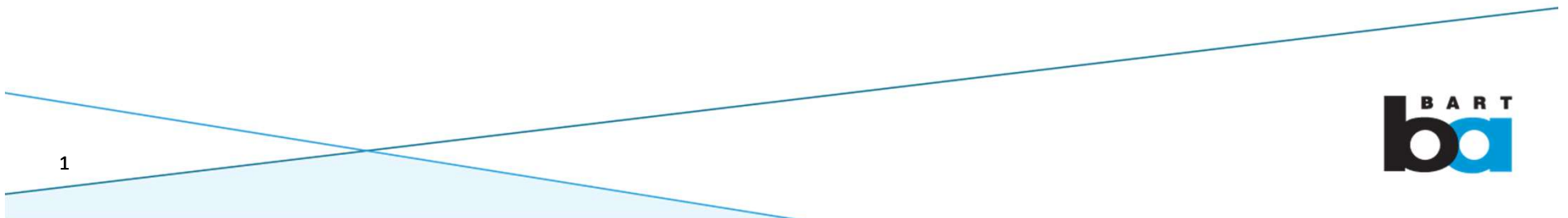
BART Board of Directors

April 8, 2021



District Retirement Incentive Program Recap

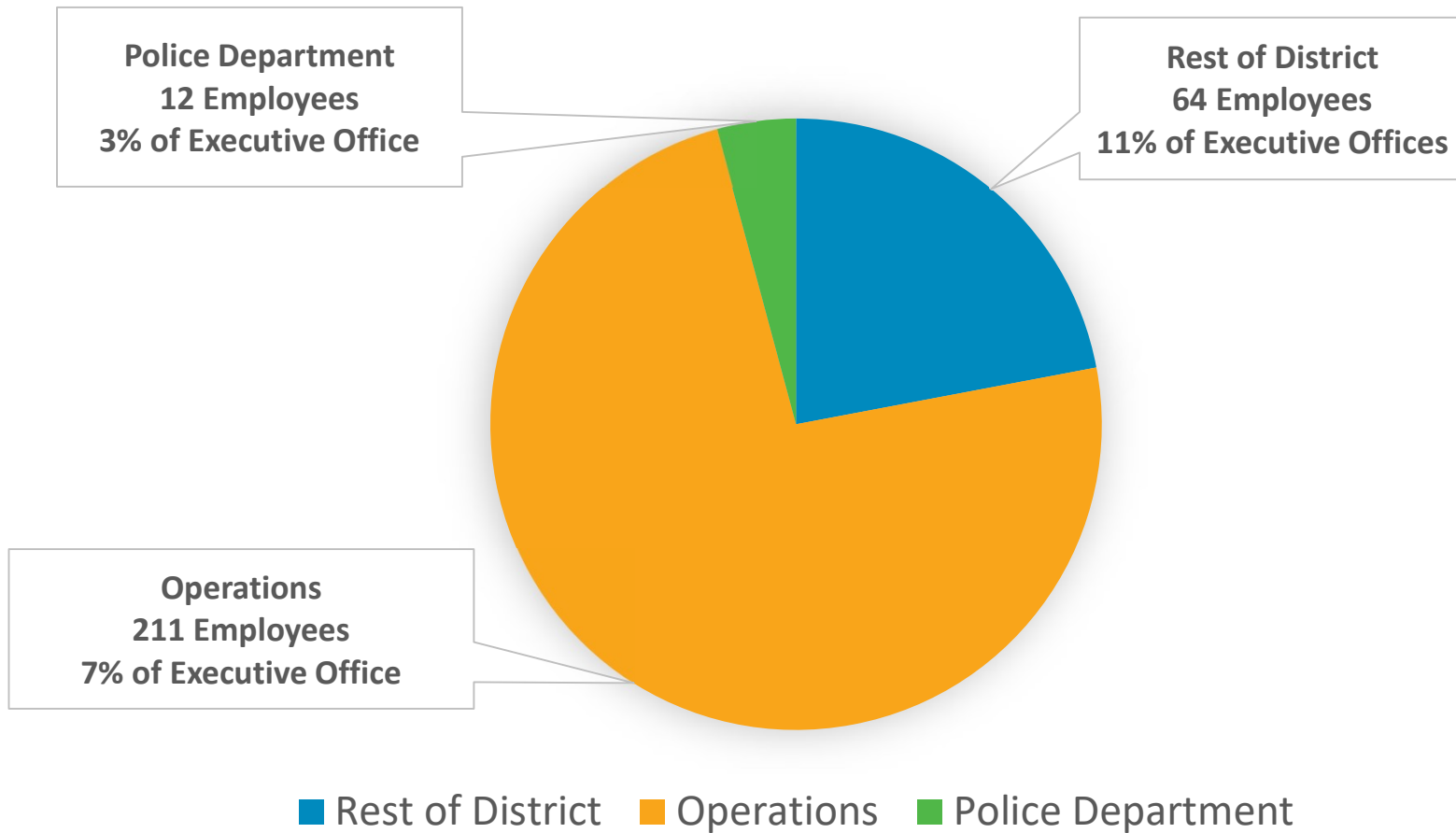
- Approximately 1,650 BART employees eligible to retire by March 21, 2021 (40% of total BART employees).
 - **Eligible to Retire:** 50 years of age (52 for PEPRA* Non-Safety) with at least 5 years of service at BART or CalPERS.
- **Incentive:** 1 week of base pay per full year of BART service, capped at 20 years, with an additional 4 weeks of base pay.
- Incentive pay deposited into Retirement Accounts



DRIP Timeline

TIMELINE	ACTION	UPDATE
November 19, 2020	Board Approval	Implementation
November 23-December 18, 2020	Interest Application Filing Period	474
December 23, 2020-February 8, 2021	Release and Separation Agreement	291
February 9-February 15, 2021	Revocation Period	4
February 16, 2021	Confirmation -total DRIP Participants	287
March 21, 2021	Final Processing of DRIP Retirements	287

DRIP Participation District Overview



DRIP Participation by Executive Office

Executive Office	Total Population on 3/21/2021	DRIP Eligible Employees	DRIP Participants	% of Total Population
Capitol Corridor	20	9	0	0%
Design and Construction	64	32	10	16%
District Secretary	7	2	1	14%
Finance	94	55	9	10%
General Counsel	21	10	4	19%
General Manager	52	17	5	10%
Independent Police Auditor	3	0	0	0%
Inspector General	3	2	0	0%
Office of Administration	141	54	13	9%
Office of External Affairs	42	18	3	7%
Office of the CIO	63	34	6	10%
Operations	3204	1313	211	7%
Performance & Budget	40	17	9	23%
Planning & Development	47	23	4	9%
Police	354	60	12	3%
Grand Total	4155	1646	287	7%

DRIP Participation by Bargaining Unit

Bargaining Unit	Total Population on 3/21/2021	DRIP Eligible Employees	DRIP Participants	% of Total Population
AFSCME, Local 3993	419	205	43	10%
ATU, Local 1555	936	408	44	5%
BART Police Managers Assn	56	9	2	4%
BART Police Officers Assn	291	49	10	3%
Non-Represented Employees	584	210	48	8%
SEIU, Local 1021- Prof Chapter	175	78	24	14%
SEIU, Local 1021 - CI & Maint	1694	687	116	7%
Grand Total	4155	1646	287	7%

DRIP FY21 Costs and Savings

Operating and capital positions

DRIP Participants	One-Time Incentive Costs	FY21 Salary + Benefits Savings	FY21 Net Costs
287	\$14.1M	\$10.2M	\$3.9M

DRIP Implementation

- **Frequent communication with Executive Offices, managers, union leaders, and employees**
- **Backfill considerations**
 - Consider staging/timing of filling vacant positions
 - Potential to upgrade or flex employees
 - Consider 7 Point Plan
 - Re-assign or re-train staff wherever possible to fill critical gaps created by departures
 - Fill critical capital budget vacancies with operating staff wherever possible
 - Load shed service dependent staff to capital projects to accelerate capital program delivery
- **Next step: GM to evaluate backfill requests**

Summary

- Backfill approved positions
- FY22 savings target: \$20M-\$25M
 - From Operating and Capital positions
- September service change will require frontline backfills which could reduce savings



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

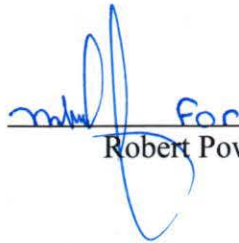
DATE: April 2, 2021

FROM: General Manager

SUBJECT: Administration Agenda: Future Service Scenarios

At the April 8, 2021 BART Board of Director's meeting, the District's "Future Service Scenarios" will be presented as an information item.

If you have any questions about this presentation, please contact Pamela Herhold, Assistant General Manager, Performance & Budget, at Pherhol@bart.gov, or (510) 464-6168.



Robert Powers

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



FY22 Rail Service Plan

April 8, 2021

FY22 service scenarios under consideration

Scenario	Name	Service Notes
A	Current Service	30 min headways, 9:00pm close Additional commute trains
B	Restore 15 Minute Headways	15 min headways, 9:00pm close 30 min weekend headways + Sat peak trips
C	Extend System Hours to Midnight	30 min headways, midnight close 6 nights/week, additional commute trains 6:00am Sat opening, some Sat peak trains
D	15 Minute Headways and Midnight Close	Combine scenarios B + C 15 min headways, midnight close (6 nights/week)

Six revised priorities to balance tradeoffs in service modifications

Prioritization changes over different time horizons (e.g. 6 months, 12 months, 24 months)

Priorities	Key Question	Metrics
Ridership	How can BART match service effectively to post-pandemic ridership patterns and demand?	How service matches projected ridership recovery
Financial	What is the net financial impact of different levels of service provision?	Operating expense less revenue generated
Equity	How can BART minimize impacts to protected populations?	Risk of equity impact
Capacity recovery	Can BART scale up service to support ridership growth when needed?	Frontline staff levels
Health guidance	While health directives are in effect, does BART provide adequate space for riders to socially distance?	Projected demand served within public health guidance thresholds
Capital reinvestment	What is the impact on BART's ability to continue to accelerate capital re-investment?	Cost and efficiency of capital project delivery

Scenario A: existing base service with 44 commute trips

Current schedule since March 22

	Peak Trips	Day		Night
Weekday	44	5:00	5 route / 30 min	9:00
Saturday		8:00	3 route / 30 min	9:00
Sunday		8:00	3 route / 30 min	9:00

Benefits:

- ✓ Appropriate service during pandemic
- ✓ Allows for load shedding – redirects BART staff to accelerate capital projects and saves operating costs

Costs & Risks:

- ✓ Maximizes service at lowest cost

Scenario B: 15-minute headways & service to 9:00pm

Expands weekday service frequency

	Peak Trips	Day		Night
Weekday		5:00	5 route / 15 min	9:00
Saturday	10-20	8:00	3 route / 30 min	9:00
Sunday		8:00	3 route / 30 min	9:00

Benefits:

- ✓ Very good weekday service
- ✓ Increased Saturday service
- ✓ Allows for load shedding – redirects BART staff to accelerate capital projects and saves operating costs

Costs & Risks:

- ✓ Large service increase at lower cost
- ✓ Continues 9:00pm closure

Scenario C: 30-minute headways & midnight service 6 days

Adds late-night service

	Peak Trips	Day		8:00pm 30 min 3 route	Night
Weekday	44	5:00	5 route / 30 min		12:00
Saturday	10-20	6:00	3 route / 30 min		12:00
Sunday		8:00	3 route / 30 min	9:00	

Benefits:

- ✓ Service until midnight
- ✓ Increased Saturday service

Costs & Risks:

- ✓ Higher cost, moderate benefit
- ✓ Continues 30 minute weekday service

Scenario D: 15 minute headways & midnight service 6 days

Expands weekday service frequency, plus late-night service

	Peak Trips	Day		8:00pm	Night
				30 min 3 route	
Weekday		5:00	5 route / 15 min		12:00
Saturday	10-20	6:00	5 route / 30 min		12:00
Sunday		8:00	3 route / 30 min	9:00	

Benefits:

- ✓ Very good weekday service
- ✓ Service until midnight
- ✓ Increased Saturday service

Costs & Risks:

- ✓ Highest cost, highest benefit

Financial impact of service increase over scenario A (current service)

(\$ millions)	Scenario B	Scenario C	Scenario D
Revenue			
Fare revenue	5.1	4.3	9.2
Other revenues	5.3	3.2	7.8
<i>Subtotal - Revenue</i>	<i>10.5</i>	<i>7.5</i>	<i>17.2</i>
Expense			
Transportation	5.7	10.6	12.5
Maintenance and Engineering	0.0	32.6	32.6
Rolling Stock and Shops	6.3	1.2	7.5
Traction power	5.0	3.2	7.0
<i>Subtotal - Expense</i>	<i>17.0</i>	<i>47.6</i>	<i>59.6</i>
<i>Net Budget Impact</i>	<i>6.5</i>	<i>40.1</i>	<i>42.6</i>

- BART's FY22 Preliminary Budget, which funds Scenario D, shows a ~\$31M deficit.
- Shortfall will be balanced by a combination of District Retirement Incentive Program (DRIP) ongoing savings, targeted cost reductions and forthcoming federal stimulus funds.

Each of the four service scenarios was evaluated for impact against revised priorities



Impact of service scenarios compared to current staffing level across priorities

Scenario	Ridership	Financial	Equity	Capacity recovery	Health guidance	System reinvestment
A Current service	Scenarios evaluated against current service level baseline					
B Restore 15 minute headways	Positive	Limited	Limited	Limited	Positive	Positive
C Extend system hours to midnight	Positive	Negative	Positive	Positive	Limited	Negative
D 15 minute headways and midnight close	Positive	Negative	Positive	Positive	Positive	Negative

Scenario D best supports the Bay Area's recovery

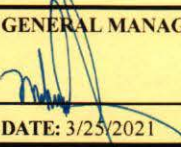
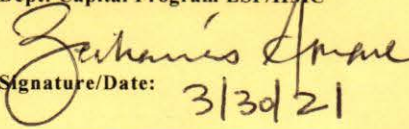
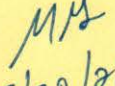
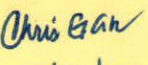
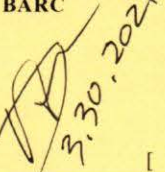
- ✓ Improves service when many Bay Area residents will be establishing post-pandemic routines
- ✓ More frequent mid-day service to attract more non-work trips and better serve workers on non-peak schedules
- ✓ Evening service to restore mobility for workers on non-peak schedules, supports reopening of entertainment and restaurant industries
- ✓ Invests in regional economic recovery and long-term BART ridership return



Discussion



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/21/2021		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: 3/25/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Zecharias Amare Dept: Capital Program ESP/HMC  Signature/Date: 3/30/21	General Counsel  3/30/21 []	Controller/Treasurer  3/30/21 []	District Secretary []	BARC  3/30/2021 []

Award of Professional Services Agreement No. 6M6145 Construction Management Services for TBT

PURPOSE:

Request the Board to authorize the General Manager to award Agreement No. 6M6145 to Gannett Fleming to provide Construction Management Services for the Transbay Tube (TBT).

DISCUSSION:

On December 1, 2016, the Board authorized the award of Contract No. 09AU-120, BART Earthquake Safety Program Transbay Tube (TBT) Internal Retrofit to Shimmick / CEC Joint Venture. Notice to Proceed was issued on February 2, 2017. The work, which is limited to certain sections of the TBT, includes installation of plates on the concrete surfaces of the tunnel bores and galleries, trackway reconstruction, and upgrading of the pump system. To date, substantial work has been accomplished in M1 bore and upper and lower galleries. Work in M2 bore is scheduled to begin later this year. The construction contract is anticipated to continue through the beginning of 2023.

The current construction management services consultant under Agreement No. 6M8114 is out of capacity. As a result, Staff issued Request for Proposal (RFP) No. 6M6145 on December 11, 2020 on the District's procurement portal to solicit professional construction management services. The RFP indicated that one (1) Agreement would be awarded to support this TBT Internal Retrofit project.

The District placed advertising soliciting interest in the RFP in various publications. On

December 11, 2020, an Advance Notice to Proposers was emailed to approximately eighty-three (83) proposers and was also posted on BART's website. A virtual Pre-Proposal meeting for this RFP was held on December 28, 2020 providing details regarding the procurement process and RFP submittal requirements with fifty-eight (58) individuals in attendance representing forty-five (45) firms. On December 29, 2020 a networking session for potential subconsultants to meet potential prime consultants was led by the District's Office of Civil Rights, with ninety-six (96) participants. The electronic copy of the RFP that was posted on the District's procurement portal was downloaded by ninety-three (93) interested firms.

On February 2, 2021, proposals were received from the following three (3) firms:

1. PreScience Corporation, Alameda, CA
2. C2PM, San Ramon, CA
3. Gannet Fleming, Inc., Oakland, CA

The proposals were reviewed by a Selection Committee consisting of BART staff from, Engineering Design and Construction, Maintenance and Engineering, Office of Civil Rights, and Contract Administration. The proposals were first reviewed to determine if the proposers were considered responsive to the requirements of the RFP. Subsequently, the proposals were evaluated and scored based on the criteria contained in the RFP with respect to qualifications of the proposing firms and the project team. Based on the evaluation, all proposers were short-listed and invited for oral interviews conducted by the Selection Committee on March 3, 2021. The following firms are listed in the order of the final ranking:

1. Gannet Fleming, Inc., Oakland, CA
2. PreScience Corporation, Alameda, CA
3. C2PM, San Ramon, CA

Based on the oral and written evaluations, the Selection Committee determined that the highest scoring firm was Gannett Fleming. After making this determination, BART Contract Administration with support from Internal Audit and Engineering Design and Construction evaluated and discussed the rates and markups (for a cost-plus-fixed-fee rate agreement) received from the proposer. These discussions were concluded on terms favorable to BART and the proposer. Staff determined that the recommended rate structure is fair and reasonable, and that Gannett Fleming is a responsible organization.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Agreement are 21.9% for Minority Business Enterprises (MBEs) and

13.5% for Women Business Enterprises (WBEs). Gannett Fleming committed to 19.08% MBE and 13.68% WBE participation. Gannett Fleming did not meet the MBE Availability Percentage; therefore, Gannett Fleming was requested to provide the Office of Civil Rights with supporting documentation to determine if it had discriminated on the basis of race, national origin, color, or ethnicity. Based on the review of the information submitted by Gannett Fleming, the Office of Civil Rights found no evidence of discrimination.

Accordingly, the Selection Committee recommends the award of Agreement No. 6M6145 in an amount not to exceed \$20,000,000 for a three (3) year period of performance to Gannett Fleming, Oakland, CA

Work Plans under the Agreement will define individual assignments in each case subject to funding availability. Each Work Plan will have its own scope, schedule and budget.

The Office of the General Counsel will approve the Agreement as to form.

FISCAL IMPACT:

Funding in the amount of \$20,000,000 for award of Agreement No. 6M6145 is included in the total project budget for the TRT Retrofit Project Number 09AU000.

The table below list funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

Project 09AU000:

Fund	Fund Description	Source	Amount
801I	INT ERNGS FR GEN OBLGA	INTERNAL	62,550,328
6820	SFCTA - 20SF02 Early Bird Proj	LOCAL	175,000
801J	2019F Measure AA GOB Proj Fund	INTERNAL	306,144,561
802B	2019B Measure RR GOB #2	INTERNAL	1,064,570
850X	CAP ALLOC.-SEISMIC NON	INTERNAL	134,514
802A	2017A Measure RR GOB #1	INTERNAL	254,190
801F	EARTHQUAKE SAFETY GEN	INTERNAL	28,015,706
850V	CAPITAL ALLOCATION-SEI	INTERNAL	65,470
850W	FY00-06 CAPITAL ALLOCA	INTERNAL	7,245
802C	2020C Measure RR GOB #3	INTERNAL	187,105,686

As of March 24, 2021, \$585,517,270 is the total budget for this project. BART has expended \$360,681,863 committed \$89,624,382 and reserved \$0 to date. This action will commit \$20,000,000 leaving an available fund balance of \$115,211,024 in this fund source for this project.

The office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

ALTERNATIVES:

The District could reject all proposals and re-solicit new proposals. Since the construction Contract is currently in progress, repeating the procurement process will require a temporary extension of the current CM services, and will extend the transition time needed for a prospective new CM firm to take over the work from the current firm into the future, leading to a significant delay in the performance of CM services for this TBT project.

RECOMMENDATION:

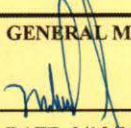
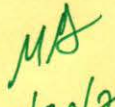
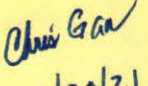
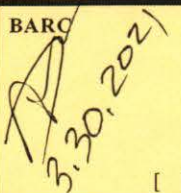
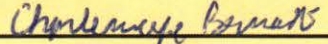
That the Board approve the following motion:

MOTION:

The General Manager is authorized to award Agreement No. 6M6145 to provide Construction Management Services for TBT to Gannett Fleming for an amount not exceed \$20,000,000.00 pursuant to notification to be issued by the General Manger and subject to the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  3/31/2021		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 3/18/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Chuck Bernardo Dept: Capital Program ESP/HMC	General Counsel  3/30/21 []	Controller/Treasurer  3/30/21 []	District Secretary []	BARC  3.30.2021 []
Signature/Date:  03/30/21				

Contract 09AU-120 Earthquake Safety Program TBT Internal Retrofit, Change Order No. 190 - Gallery/Bore Work during Additional Work Windows

PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order No. 190 for Gallery/Bore Work during Additional Work Windows to Contract No. 09AU-120 BART Earthquake Safety Program Transbay Tube (TBT) Internal Retrofit for an amount not to exceed \$2,000,000 with Shimmick/CEC Joint Venture.

DISCUSSION:

On December 1, 2016, the Board authorized the award of Contract No. 09AU-120, BART Earthquake Safety Program TBT Internal Retrofit to Shimmick/CEC Joint Venture. Notice to Proceed was issued on February 2, 2017.

The Work in Contract No. 09AU-120 is to, among other things, retrofit key segments of the TBT with steel plating and to provide an upgraded pumping system. The construction activities must be tailored to be completed within the night time work windows to allow for regular BART revenue service to start the next morning.

Changes in BART's normal revenue service due to the COVID-19 pandemic resulted in additional night weekend work windows for the Contractor to conduct work within the TBT. Staff determined that working during these work windows minimizes the risk of delays to the schedule and increases the likelihood of completing the work on or before the forecasted completion date at the end of November 2022. Work during these windows has already mitigated a delay due to a differing site condition encountered in the trackway invert slab in

the M1 Bore. This same condition will need to be addressed in the M2 Bore later this year. Staff has therefore directed the Contractor to utilize the additional night weekend work windows in completing Gallery/Bore work. Change Order No. 190 compensates the Contractor for costs associated with working during the additional night weekend work windows.

Pursuant to Board Rule 5-2.3, for construction contracts over \$200,000,000 in value, Change Orders involving expenditures greater than \$500,000 require Board approval.

The Office of the General Counsel will approve the Change Order as to form prior to execution. The Procurement Department will review the Change Order for compliance with procurement guidelines prior to execution.

FISCAL IMPACT:

The total not to exceed amount of \$2,000,000 for the award of Change Order No. 190 to Contract 09AU-120 is included in the total budget for 09AU000 – TBT Retrofit #1 (Underwater).

The table below lists funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

Proposed Funding	
801F & 801J - ESP GO Bond	\$334,160,266
801I - ESP GO Bond Interest Earnings	\$ 62,550,328
802A, 802B & 802C - 2017 Measure RR GO Bond	\$188,424,447
850V, 850W & 850X - Capital Allocations	\$207,229
6820 – SF County Transportation Authority	\$ 175,000
TOTAL:	\$585,517,270

As of March 9 2021, \$585,517,270 is the total budget for this project. BART has expended \$353,353,934, committed \$94,745,773, and reserved \$1,318,919 to date. This action will commit \$2,000,000 leaving an available fund balance of \$134,098,644 in these fund sources for this project.

The Office of Controller /Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

ALTERNATIVES:

The Board can elect not to authorize the execution of this Change Order for performing Work in these additional windows. Failure to issue this Change Order may lead to claims from the Contractor and could cause a delay to the construction schedule, thus increasing the final cost to the District.

RECOMMENDATION:

Recommend that the Board approve the following motion:

MOTION:

The General Manager is authorized to execute Change Order No. 190 Gallery/Bore Work during Additional Work Windows for an amount not to exceed \$2,000,000 to Contract No. 09AU-120, BART Earthquake Safety Program TBT Internal Retrofit with Shimmick/CEC Joint Venture.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

EXECUTIVE DECISION DOCUMENT

ATTACHMENT No 1

CHANGE ORDER SUMMARY

BACKGROUND

Program:	Earthquake Safety Program
Name of Contractor:	Shimmick/CEC Joint Venture
Contract No. / NTP:	09AU-120 / February 2, 2017
Contract Description:	TBT Internal Retrofit
Percent Complete as of 03/01/21	78.15%

COST

	<u>% of Award</u>	<u>CO Totals</u>	<u>Contract Amount</u>
Original Contract Award Amount			\$ 267,083,110
Change Orders			
Board Authorized COs	14.95%	\$ 39,932,904	
Other Than Board Authorized COs	7.01%	\$ 18,723,257	
This Change Order No. 190	0.75%	\$ 2,000,000	
Subtotal of all Change Orders	22.71%	\$ 60,656,161	
<u>Revised Contract Amount</u>			<u>\$ 327,739,271</u>

SCHEDULE

Original Contract Duration	1,800	days
Time Extension to Date		
Time Extension Due to Approved Cos	325	days
Time Extension Due to these CO 190	0	days
Revised Contract Duration	2,125	days

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

EXECUTIVE DECISION DOCUMENT

ATTACHMENT No 1

SUMMARY REASON FOR THIS CHANGE ORDER(S)

CO 190: Gallery/Bore Work during Additional Work Windows

Compensates Contractor for costs associated with working during additional weekend work windows created from lower ridership due to COVID-19. Working these windows minimizes the risk of delays to the project and increases likelihood of completing the work on or before the forecasted completion date at the end of November 2022.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors


DATE: April 2, 2021

FROM: General Manager

SUBJECT: R65 Interlocking Replacement Update

Attached is the "R65 Interlocking Replacement Update" presentation that will be presented at the April 8, 2021 meeting as an information item.

If you have any questions about the document, please contact Tamar Allen, Assistant General Manager, Operations at (510) 464-7513.



Robert M. Powers

cc: Board Appointed Officers
Executive Staff



R65 Interlocking Replacement





R65 Interlocking Replacement

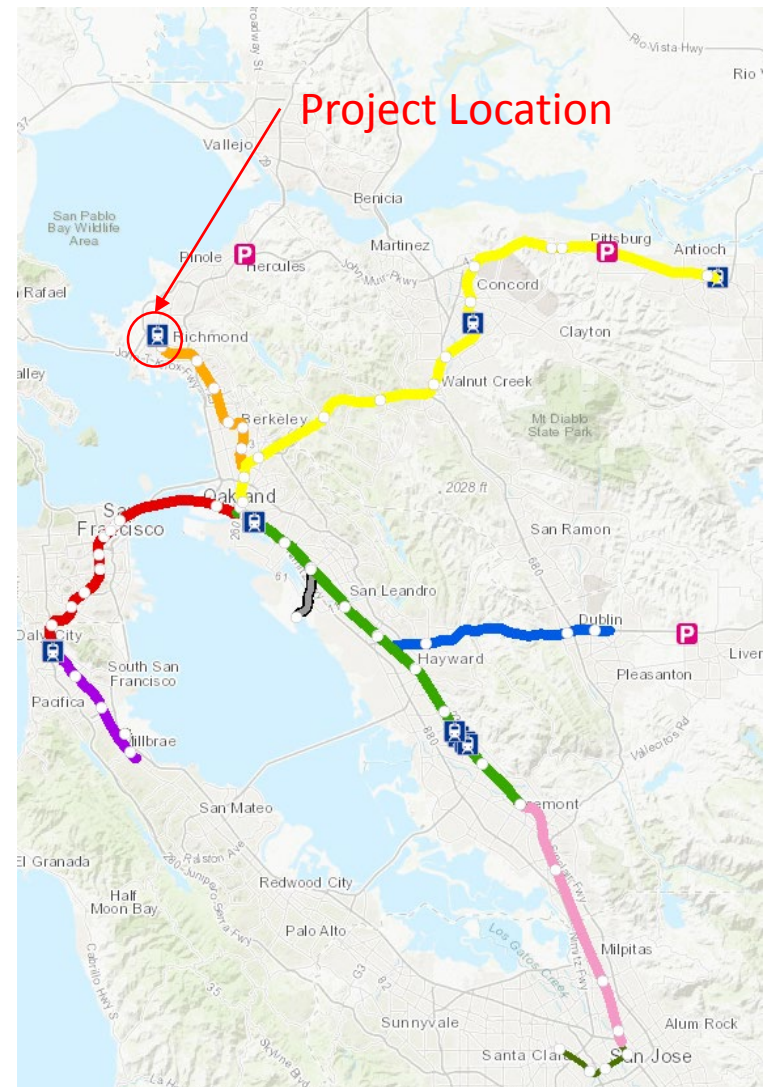
An interlocking provides a route for train traffic to crossover to another track or remain on its existing track by locking the route in place.

Location

- North of Richmond Station/Entrance of Richmond Yard
- Movement of Trains from Mainline to Transfer Tracks
- End of Line Interlocking (Trains Turnaround to return to Oakland)

Background

- Interlocking in Service Since 1972
- Location Difficult to Maintain
- 270 Trains Move Through Interlocking Daily
- Caused Delays and Large Number of False Occupancies
- Major Reasons for Delays to On-Time Performance in the System
- Maximum Speed 27 mph
- Integral to Operations





R65 Interlocking Replacement

Purpose and Scope

- Replace Wood Ties with Concrete Ties
- Increase turnout curve radius to improve train traffic flow
- Reduce Maintenance and Repairs
- Reduce Impacts to BART's revenue service
- Improve On-Time Performance



Project Challenges and Constraints

- Performed Completely by In-House Forces
- Coordination with Richmond Yard and Train Operations
- Potential COVID-19 Impacts
- Location within Residential Neighborhood
- Limited Crane Staging Area
- Proximity to UPRR train tracks
- Coordination with Other Projects
 - Richmond Yard Fence Project
 - CBTC
 - R Line 34.5 kV Project
 - Traction Power Substation





R65 Interlocking Replacement

	FY2018				FY2019				FY2020				FY2021			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Planning																
Design																
Procurement																
Construction																
Closeout																

Schedule

- 6/2018 – Project Initiation
- 7/2018 – Procurement
- 12/2019 - Design
- 6/2020 – Construction
- 4/2021 - Closeout

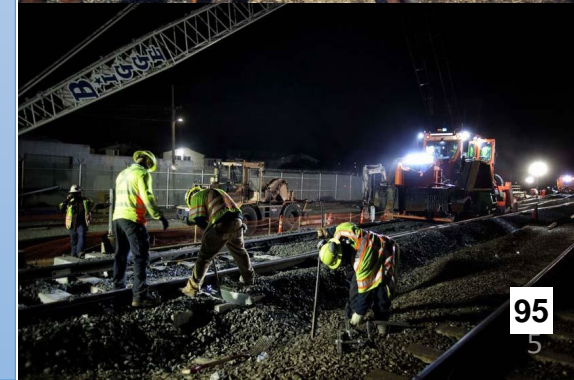
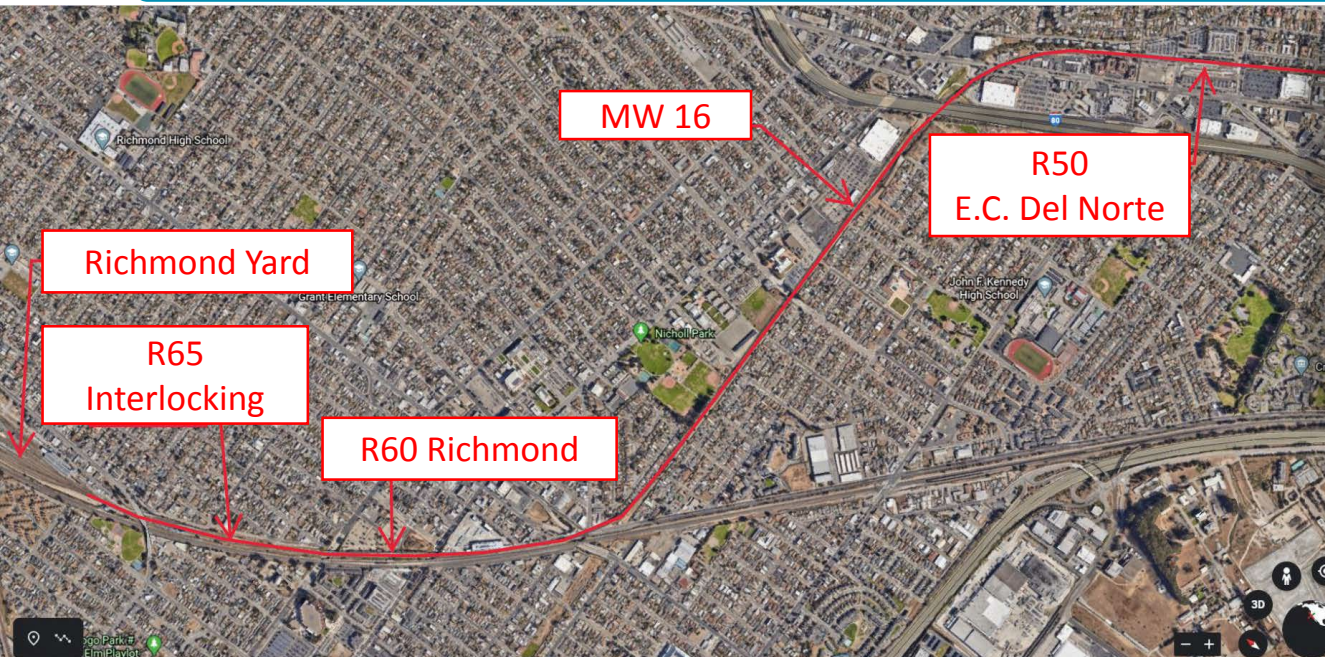
Total Estimated Project Costs - \$12 M

- Engineering (Track/ Civil/ Structures/ Systems/ Traction Power)
- Construction Management Division
- Maintenance (Track/ Wayside/ Grounds/ Structures/ Traction Power/ Train Control/ ROW Capital/ NRVE)
- Track Allocation (Ops Liaisons, PM Planning and Scheduling, Ops Planning & Analysis)
- Government & Community Affairs/Marketing
- Bus Bridge (OCC, Systems Services, Station Agents)
- BART Police
- AC Transit
- Seconded Consultant Support





R65 Interlocking Replacement



Overcoming Site Challenges

- ✓ Richmond station shutdown
 - ✓ Bus bridge between El Cerrito del Norte and Richmond stations
- ✓ Saturday shutdowns for turnout installations
 - ✓ All trains dispatched from the yard in the morning and return in the evening
 - ✓ 10-hour shutdown window between morning and evening train movement for positioning turnouts
- ✓ End of Line Transfer from #1 track to #2 track in and out of Oakland



R65 Interlocking Replacement



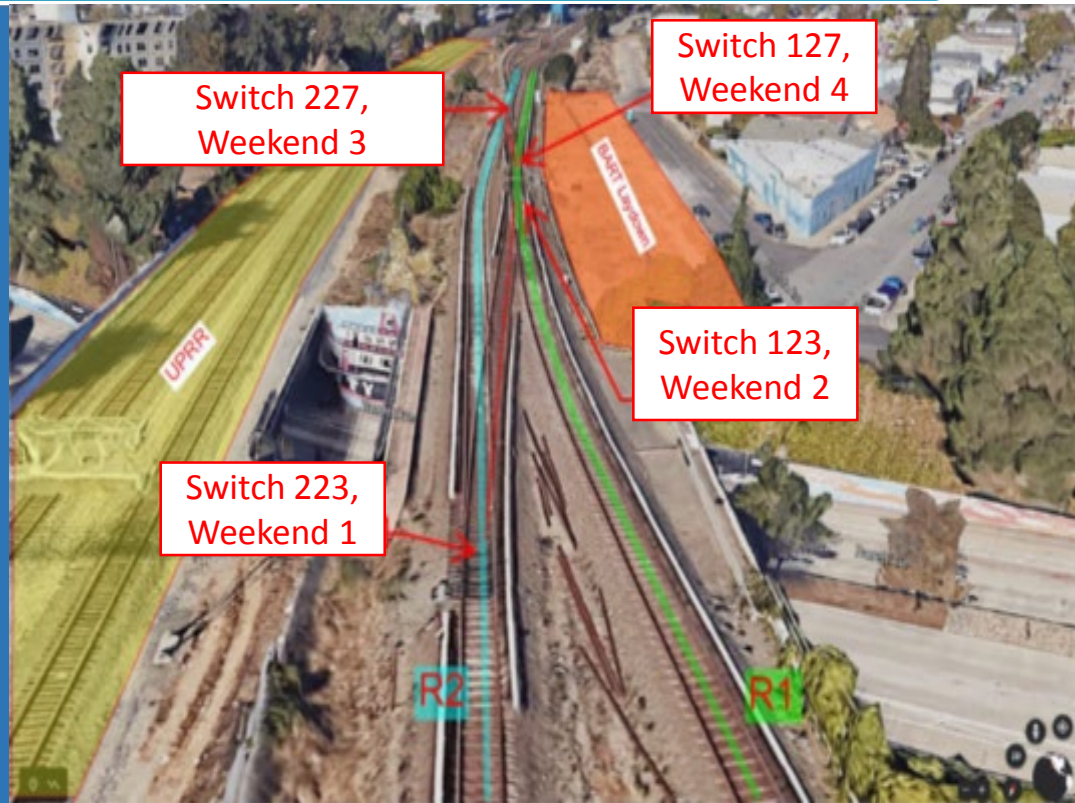
- 350-ton crane used to move turnouts – Largest Crane ever erected and used on BART property
 - Crane pick distance up to 150 ft
 - Each turnout piece weighs 87 tons (two pieces per turnout)
 - Each turnout piece is lifted into place separately
- All other work (i.e. ballast installation, 3rd rail replacement, switch point alignment, etc.) occurs while trains single track to and from the yard through the work site



R65 Interlocking Replacement

Accomplishments

- Replaced four turnouts and associated traction power and train control equipment
 - Replaced 2000ft of 3rd rail, insulators, and coverboard
 - Replaced train control coils, loops, and junction boxes
 - Replaced all traction power and train control infrastructure (i.e. duct banks and cabling)
 - Maintenance Way access improvements
- Increased turnout curve radius to improve train traffic flow
- No accidents or COVID-related incidences
- Use of BART manpower to load shed from operating forces



Project Team

BART ROW Capital Construction, Engineering, Traction Power, Systems Engineering, Train Control, Track Maintenance, Grounds Maintenance, Structures Maintenance, PM Planning and Scheduling, Operations Planning & Analysis, Marketing, Safety, etc.



R65 Construction Time Lapse Video

[R65 Track Interlocking Replacement Time Lapse Video](#) (link)

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: April 2, 2021

FROM: General Manager

SUBJECT: State Legislation for Consideration

At the April 8, 2021 Board of Directors meeting, staff will present state legislation for your consideration and action. The legislation being presented has a nexus to BART policies or programs and aligns with the Board's adopted State Advocacy Program for 2021.

Attached are staff's analyses and text for each bill. Following the staff presentation, a request will be made of the Board to consider passing the draft motion shown below.

LEGISLATION FOR CONSIDERATION AND ACTION

SUPPORT

AB 557 (Muratsuchi & Chiu)

Hate crimes: hotline

AB 886 (Bonta)

Victims of crimes

AB 917 (Bloom)

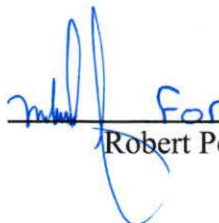
Vehicles: video imaging of parking violations

NO STAFF RECOMMENDATION

SB 2 (Bradford)

Peace officers: certification: civil rights

If you have any questions, please contact Rodd Lee, Assistant General Manager of External Affairs, at (510) 464-6235.



Robert Powers

Attachments

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

DRAFT MOTION:

1) The Board of Directors supports AB 557, AB 886, and AB 917.

AB 557 Analysis and Recommendation

TITLE: Hate crimes: hotline.

AUTHORS: Muratsuchi (D-Torrance), Chiu (D-San Francisco), Bonta (D-Oakland), Quirk (D-Hayward), Min (D-Irvine)

SPONSORS: N/A

RECOMMENDATION: Support

BACKGROUND: AB 557 is being introduced in response to the spike in hate crimes particularly against Asian Americans and Pacific Islanders (AAPIs) during the COVID-19 pandemic. According to a recent report published by Stop AAPI Hate, over 2,800 hate incidents have been reported across the country since the COVID-19 pandemic began including instances of verbal harassment, shunning, physical assault, and civil rights violations. Moreover, the U.S. Department of Justice estimates over half of all hate crimes are never reported. According to the bill authors, a toll-free hate crimes hotline, along with an online reporting system, will allow victims and witnesses to report a hate incident against any group in a safe, anonymous manner, particularly those who may face language or cultural barriers or are undocumented.

PURPOSE: AB 557 would require the California Attorney General to establish a toll-free hotline to report hate crimes and connect victims with local law enforcement agencies, as well as other local resources as appropriate. The hotline must be accessible to people with disabilities and non-English speakers. AB 557 would require the hotline to operate Monday through Friday, from 9am to 5pm, except for federal and state holidays. During hours of non-operation, the Attorney General would be required to provide a recorded message directing callers to call 9-1-1 or their local police non-emergency dispatch number. This bill would require this information, as well as an online reporting form for hate crimes and hate incidents, be posted to the Attorney General's website.

DISTRICT IMPACT: On June 22, 2017, the BART Board of Directors adopted a Safe Transit Policy declaring the District's commitment to a safe, secure, inviting, equitable, inclusive transit system for the community and affirming its dedication to the values of dignity, respect, and inclusivity regardless of ethnic or national origin, gender, gender identity, race, religious affiliation, sexual orientation or immigration status. Recent attacks against the AAPI community have prompted BART's Police Department to publicly condemn such violence, bigotry, and xenophobic acts and on April 8, 2021, the BART Board of Directors will also consider a resolution condemning violence against the AAPI community.

OTHER COMMENTS: Following reports of an increase in hate crimes nationwide, similar hotlines have been established in other states and in parts of California, including by the District Attorneys' Offices of the City and County of San Francisco and the County of Alameda.

KNOWN SUPPORT/OPPOSITION: None on file.

STATUS: Amended on 3/35/21 and referred to the Assembly Committee on Public Safety.

AMENDED IN ASSEMBLY MARCH 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 557

Introduced by Assembly Member Members Muratsuchi and Chiu
(Coauthors: Assembly Members Bonta and Quirk)
(Coauthor: Senator Min)

February 11, 2021

~~An act to amend Section 422.92 of the Penal Code, relating to hate crimes.~~ *An act to add Section 422.94 to the Penal Code, relating to hate crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 557, as amended, Muratsuchi. ~~Hate crimes.~~ *crimes: hotline.*

Existing law defines "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation.

This bill would require the Attorney General to establish, maintain, and publicize a toll-free public hotline telephone number for the reporting of hate crimes, and for the dissemination of information about the characteristics of hate crimes, protected classes, civil remedies, and reporting options, as specified. The bill would require the Attorney General to post, maintain, and publicize a reporting form for hate crimes and hate incidents on their internet website that can be completed and submitted online. The bill would require the Attorney General's internet website to provide the public with specified information.

~~Existing law defines a "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and~~

sexual orientation. Existing law requires every state and local law enforcement agency to make available a brochure on hate crimes, as specified.

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *According to recent data from the Southern Poverty Law*
4 *Center, there are more than 72 hate groups currently operating*
5 *in California, which is the highest number in the country.*

6 (b) *Recent data from the Department of Justice shows that over*
7 *1000 hate crimes were reported in 2018. The data also shows that*
8 *in 2018, hate crimes involving bias against someone who is Jewish*
9 *increased by 21.2 percent and hate crimes involving bias against*
10 *someone who is Latino increased by 18.3 percent. Additionally,*
11 *this data shows that hate crimes with a sexual orientation bias*
12 *accounted for nearly 22.3 percent of hate crimes reported in 2018,*
13 *and have been the second most common type of hate crime over*
14 *the past 10 years.*

15 (c) *Anti-Asian rhetoric surrounding the COVID-19 pandemic*
16 *has led to a spike in verbal and physical assaults against Asian*
17 *Americans beginning in 2020. According to Stop AAPI Hate, over*
18 *2,800 anti-Asian hate incidents have occurred nationwide since*
19 *February 2020 with over 1,200 of those occurring in California.*

20 (d) *In many communities, people lack sufficient trust in local*
21 *authorities to report hate crimes or hate incidents. A statewide*
22 *hotline and online form would create important safe spaces to*
23 *report a hate crime or incident.*

24 (e) *Following reports of an increase in hate crimes nationwide,*
25 *similar hotlines have been established recently in other states and*
26 *in parts of California, including by the district attorneys' offices*
27 *of the City and County of San Francisco and the County of*
28 *Alameda.*

29 SEC. 2. *Section 422.94 is added to the Penal Code, immediately*
30 *following Section 422.93, to read:*

1 422.94. (a) (1) *The Attorney General shall establish, maintain,*
2 *and publicize a toll-free public hotline telephone number for the*
3 *following purposes:*

4 (A) *Reporting hate crimes and connecting with local law*
5 *enforcement agencies.*

6 (B) (i) *Connecting people who have experienced or witnessed*
7 *a hate crime or hate incident to other appropriate local resources.*

8 (ii) *The Attorney General may establish a list of*
9 *community-based organizations from which to provide referrals*
10 *pursuant to this subparagraph.*

11 (C) *Disseminating information about the characteristics of hate*
12 *crimes and hate incidents, classes of individuals protected under*
13 *Chapter 1 (commencing with Section 422.55), civil remedies that*
14 *may be available for victims of hate crimes, and reporting options.*

15 (2) *The hotline shall be accessible to people with disabilities*
16 *and people who do not speak English.*

17 (3) *The hotline shall operate Monday to Friday, inclusive, from*
18 *9 a.m. to 5 p.m., except for federal holidays and state holidays, as*
19 *defined in Section 19853 of the Government Code, or as otherwise*
20 *posted on the Attorney General's internet website. The hotline,*
21 *when not in operation, shall provide a recorded message directing*
22 *callers to dial 9-1-1 in case of an emergency or otherwise to call*
23 *their local police nonemergency dispatch number. This information*
24 *shall also be posted on the Attorney General's internet website.*

25 (4) *Callers to the website shall be advised that the filing of a*
26 *false report is a violation of Section 148.5 of the Penal Code,*
27 *punishable as a misdemeanor. This information shall also be posted*
28 *on the Attorney General's internet website.*

29 (b) *The Attorney General shall post, maintain, and publicize a*
30 *reporting form for hate crimes and hate incidents on their internet*
31 *website that can be completed and submitted online.*

32 (c) *The Attorney General's internet website shall provide the*
33 *public with the same resources and information described in*
34 *paragraph (1) of subdivision (a).*

35 SECTION 1. ~~Section 422.92 of the Penal Code is amended to~~
36 ~~read:~~

37 ~~422.92. (a) Every state and local law enforcement agency in~~
38 ~~the state shall make available a brochure on hate crimes to victims~~
39 ~~of these crimes and the public.~~

1 ~~(b) The Department of Fair Employment and Housing shall~~
2 ~~provide existing brochures, making revisions as needed, to local~~
3 ~~law enforcement agencies upon request for reproduction and~~
4 ~~distribution to victims of hate crimes and other interested parties.~~
5 ~~In carrying out these responsibilities, the department shall consult~~
6 ~~the Fair Employment and Housing Council, the Department of~~
7 ~~Justice, and the California Victim Compensation Board.~~

O

AB 886 Analysis and Recommendation

TITLE: Victims of crimes

AUTHOR: Bonta (D-Oakland)

SPONSORS: Asian Americans Advancing Justice – California

RECOMMENDATION: Support

BACKGROUND: AB 886 is a gut & amend by the author to address the recent surge in acts of hate violence against the Asian American and Pacific Islander (AAPI) community in California and nationwide. The bill was amended on March 22, 2021.

PURPOSE: AB 886 would create new state grants to support restorative justice and mental health programs and expand the eligibility for victims of hate violence to access victim compensation funds. Specifically, AB 886 does the following:

- Removes provisions within existing law that deny compensation if a victim fails to cooperate reasonably with a law enforcement agency or because the victim did not file a police report.
- Creates, subject to an appropriation of funds by the Legislature, the Community-Based Restorative Justice Grant Program within the Department of Justice. The program will award competitive grants to community-based organizations that work with those convicted of hate crime offenses and their victims. The program will require the grantee to forge a partnership with the local district attorney or prosecutors office if selected.
- Creates, subject to an appropriation of funds by the Legislatures, the Community-Based Mental Health Services for Victims of Hate Crimes Grant Program, to be administered by the California Health & Humas Services Agency. The program will fund community-based organizations that support hate crime victims through counseling and treatment for trauma, post-traumatic stress, and other related services for victims of, or other persons affected by, hate crimes and related hostilities.

DISTRICT IMPACT: On June 22, 2017, the BART Board of Directors adopted a Safe Transit Policy declaring the District's commitment to a safe, secure, inviting, equitable, inclusive transit system for the community and affirming its dedication to the values of dignity, respect, and inclusivity regardless of ethnic or national origin, gender, gender identity, race, religious affiliation, sexual orientation or immigration status. Recent attacks against the AAPI community have prompted BART's Police Department to publicly condemn such violence, bigotry, and xenophobic acts and on April 8, 2021, the BART Board of Directors will also consider a resolution condemning violence against the AAPI community.

OTHER COMMENTS: On February 23, 2021, Governor Newsom signed into law AB 85 to provide the UCLA Asian American Studies Center and the Stop AAPI Hate coalition with \$1.4 million in state funding to support community programs and ongoing research to address the impact of COVID-19 on AAPI communities, including new research and analysis into hate incidents. On March 26, 2021, Governor Newsome also signed onto a bipartisan letter with 26 governors condemning the rising violence against the AAPI community.

KNOWN SUPPORT/OPPOSITION: Support: AACI, AAPI Women Lead, APIENC, Arab Resource & Organizing Center (AROC), Asian Law Alliance, Bay Rising, CAIR-CA, Center for Empowering Refugees and Immigrants, Chinese Culture Center of San Francisco, East Bay Asian Local Development Corporation, Family Bridges, Filipino Advocates for Justice, Hip Hop For Change Inc., Japanese American Citizens League – Berkeley, Florin, Marysville, Placer County, Sacramento Chapters and Northern California Western Nevada Pacific District JACL, Korean American Community Foundation of San Francisco, Korean American Family Services (KFAM), Korean Community Center of the East Bay, Oakland Asian

Cultural Center, Project by Project, San Francisco, San Francisco Committee for Human Rights in the Philippines, South Bay Youth Changemakers, and Southeast Asian Development Center.

Opposition: None on file.

STATUS: Amended on 3/22/21 and referred to the Assembly Public Safety Committee.

AMENDED IN ASSEMBLY MARCH 22, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 886

Introduced by Assembly Member Bonta

February 17, 2021

An act to amend ~~Section 13103 of the Penal Code~~, Sections 13954 and 13956 of the Government Code, to add Title 12.1 (commencing with Section 14220) to Part 4 of the Penal Code, and to add Part 7 (commencing with Section 5955) to Division 5 of the Welfare and Institutions Code, relating to ~~public records~~, victims of crimes, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 886, as amended, Bonta. ~~Public records~~. *Victims of crimes.*

(1) Existing law authorizes victims of crime to be awarded compensation by the California Victim Compensation Board for the pecuniary losses they suffer as a direct result of criminal acts. The awarding of compensation is subject to application procedures, eligibility requirements, and specified limits on the amount of compensation.

Existing law establishes the Restitution Fund and continuously appropriates moneys in the fund to the board for the purposes of indemnification of victims of crime.

Existing law allows the board to deny an application for compensation if the victim fails to reasonably cooperate with law enforcement officials, as specified, except as exempted.

This bill would eliminate the requirement that a victim cooperate with law enforcement to be eligible for compensation.

By expanding the authorization for the use of moneys in the continuously appropriated Restitution Fund, this bill would make an appropriation.

(2) Existing law defines a "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation.

Existing law creates various preconviction diversion programs for persons charged with crimes. Existing law states that restorative justice is a principal policy goal of the state in sentencing for hate crimes.

This bill would, subject to an appropriation of funds by the Legislature, create a grant program within the Department of Justice to provide grants to community-based organizations, as defined, for the implementation and operation of restorative justice programs, as defined, that are focused on hate crime offenses.

This bill would also, subject to an appropriation of funds by the Legislature, create a grant program within the California Health and Human Services Agency to provide grants to community-based organizations, as defined, for the implementation of mental health services, as described, focused on the victims of, and other persons affected by, hate crimes and related hostilities.

~~Existing law provides specified requirements to ensure uniform recording, reporting, storage, analysis, and dissemination of criminal offender record information by criminal justice agencies in the state. Existing law authorizes a criminal justice agency to destroy the original records maintained pursuant to those provisions if the records have been reproduced onto another storage medium, as specified. Existing law requires that if a record has been reproduced onto optical disk, that the original record be retained for at least one year, as specified, before destruction.~~

~~This bill would instead require that if a record has been reproduced onto optical disk, that the original record be retained for at least 16 months, as specified, before destruction.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13954 of the Government Code is
- 2 amended to read:

1 13954. (a) The board shall verify with hospitals, physicians,
2 law enforcement officials, or other interested parties involved, the
3 treatment of the victim or derivative victim, circumstances of the
4 crime, amounts paid or received by or for the victim or derivative
5 victim, and any other pertinent information deemed necessary by
6 the board. Verification information shall be returned to the board
7 within 10 business days after a request for verification has been
8 made by the board. Verification information shall be provided at
9 no cost to the applicant, the board, or victim centers. When
10 requesting verification information, the board shall certify that a
11 signed authorization by the applicant is retained in the applicant's
12 file and that this certification constitutes actual authorization for
13 the release of information, notwithstanding any other provision of
14 law. If requested by a physician or mental health provider, the
15 board shall provide a copy of the signed authorization for the
16 release of information.

17 (b) (1) The applicant shall cooperate with the staff of the board
18 or the victim center in the verification of the information contained
19 in the application. Failure to cooperate shall be reported to the
20 board, which, in its discretion, may reject the application solely
21 on this ground.

22 (2) An applicant may be found to have failed to cooperate with
23 the board if any of the following occur:

24 (A) The applicant has information, or there is information that
25 ~~he or she~~ *the applicant* may reasonably obtain, that is needed to
26 process the application or supplemental claim, and the applicant
27 failed to provide the information after being requested to do so by
28 the board. The board shall take the applicant's economic,
29 psychosocial, and postcrime traumatic circumstances into
30 consideration, and shall not unreasonably reject an application
31 solely for failure to provide information.

32 (B) The applicant provided, or caused another to provide, false
33 information regarding the application or supplemental claim.

34 (C) The applicant refused to apply for other benefits potentially
35 ~~available to him or her~~ from other sources besides the board
36 including, but not limited to, worker's compensation, state
37 disability insurance, social security benefits, and unemployment
38 insurance.

39 (D) The applicant threatened violence or bodily harm to a
40 member of the board or staff.

1 (c) The board may contract with victim centers to provide
2 verification of applications processed by the centers pursuant to
3 conditions stated in subdivision (a). The board and its staff shall
4 cooperate with the Office of Criminal Justice Planning and victim
5 centers in conducting training sessions for center personnel and
6 shall cooperate in the development of standardized verification
7 procedures to be used by the victim centers in the state. The board
8 and its staff shall cooperate with victim centers in disseminating
9 standardized board policies and findings as they relate to the
10 centers.

11 (d) (1) Notwithstanding Section 827 of the Welfare and
12 Institutions Code or any other provision of law, every law
13 enforcement and social service agency in the state shall provide
14 to the board or to victim centers that have contracts with the board
15 pursuant to subdivision (c), upon request, a complete copy of the
16 law enforcement report and any supplemental reports involving
17 the crime or incident giving rise to a claim, a copy of a petition
18 filed in a juvenile court proceeding, reports of the probation officer,
19 and any other document made available to the probation officer
20 or to the judge, referee, or other hearing officer, for the specific
21 purpose of determining the eligibility of a claim filed pursuant to
22 this chapter.

23 (2) The board and victim centers receiving records pursuant to
24 this subdivision may not disclose a document that personally
25 identifies a minor to anyone other than the minor who is so
26 identified, ~~his or her~~ *the minor's* custodial parent or guardian, the
27 attorneys for those parties, and any other persons that may be
28 designated by court order. Any information received pursuant to
29 this section shall be received in confidence for the limited purpose
30 for which it was provided and may not be further disseminated. A
31 violation of this subdivision is a misdemeanor punishable by a fine
32 not to exceed five hundred dollars (\$500).

33 (3) The law enforcement agency supplying information pursuant
34 to this section may withhold the names of witnesses or informants
35 from the board, if the release of those names would be detrimental
36 to the parties or to an investigation in progress.

37 (e) Notwithstanding any other provision of law, every state
38 agency, upon receipt of a copy of a release signed in accordance
39 with the Information Practices Act of 1977 (Chapter 1
40 (commencing with Section 1798) of Title 1.8 of Part 4 of Division

1 3 of the Civil Code) by the applicant or other authorized
2 representative, shall provide to the board or victim center the
3 information necessary to complete the verification of an application
4 filed pursuant to this chapter.

5 (f) The Department of Justice shall furnish, upon application of
6 the board, all information necessary to verify the eligibility of any
7 applicant for benefits pursuant to subdivision ~~(e)~~ (b) of Section
8 13956, to recover any restitution fine or order obligations that are
9 owed to the Restitution Fund or to any victim of crime, or to
10 evaluate the status of any criminal disposition.

11 (g) A privilege is not waived under Section 912 of the Evidence
12 Code by an applicant consenting to disclosure of an otherwise
13 privileged communication if that disclosure is deemed necessary
14 by the board for verification of the application.

15 (h) Any verification conducted pursuant to this section shall be
16 subject to the time limits specified in Section 13958.

17 (i) Any county social worker acting as the applicant for a child
18 victim or elder abuse victim shall not be required to provide
19 personal identification, including, but not limited to, the applicant's
20 date of birth or social security number. County social workers
21 acting in this capacity shall not be required to sign a promise of
22 repayment to the board.

23 *SEC. 2. Section 13956 of the Government Code is amended to*
24 *read:*

25 13956. Notwithstanding Section 13955, a person shall not be
26 eligible for compensation under the following conditions:

27 (a) An application may be denied, in whole or in part, if the
28 board finds that denial is appropriate because of the nature of the
29 victim's or other applicant's involvement in the events leading to
30 the crime, or the involvement of the person whose injury or death
31 gives rise to the application.

32 (1) Factors that may be considered in determining whether the
33 victim or derivative victim was involved in the events leading to
34 the qualifying crime include, but are not limited to:

35 (A) The victim or derivative victim initiated the qualifying
36 crime, or provoked or aggravated the suspect into initiating the
37 qualifying crime.

38 (B) The qualifying crime was a reasonably foreseeable
39 consequence of the conduct of the victim or derivative victim.

(C) The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to ~~him or her~~ *their* being victimized. However, committing a crime shall not be considered involvement if the victim's injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or for a crime of unlawful sexual intercourse with a minor in violation of subdivision (d) of Section 261.5 of, the Penal Code.

(2) If the victim is determined to have been involved in the events leading to the qualifying crime, factors that may be considered to mitigate or overcome involvement include, but are not limited to:

(A) The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement.

(B) A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

(C) The board shall consider the victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the application should be denied pursuant to this section. The application of a derivative victim of domestic violence under 18 years of age or derivative victim of trafficking under 18 years of age shall not be denied on the basis of the denial of the victim's application under this subdivision.

~~(b) (1) An application shall be denied if the board finds that the victim or, if compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors. A victim of domestic violence shall not be determined~~

1 to have failed to cooperate based on his or her conduct with law
2 enforcement at the scene of the crime. Lack of cooperation shall
3 also not be found solely because a victim of sexual assault,
4 domestic violence, or human trafficking delayed reporting the
5 qualifying crime.

6 (2) An application for a claim based on domestic violence shall
7 not be denied solely because a police report was not made by the
8 victim. The board shall adopt guidelines that allow the board to
9 consider and approve applications for assistance based on domestic
10 violence relying upon evidence other than a police report to
11 establish that a domestic violence crime has occurred. Factors
12 evidencing that a domestic violence crime has occurred may
13 include, but are not limited to, medical records documenting
14 injuries consistent with allegations of domestic violence, mental
15 health records, or that the victim has obtained a permanent
16 restraining order.

17 (3) An application for a claim based on a sexual assault shall
18 not be denied solely because a police report was not made by the
19 victim. The board shall adopt guidelines that allow it to consider
20 and approve applications for assistance based on a sexual assault
21 relying upon evidence other than a police report to establish that
22 a sexual assault crime has occurred. Factors evidencing that a
23 sexual assault crime has occurred may include, but are not limited
24 to, medical records documenting injuries consistent with allegations
25 of sexual assault, mental health records, or that the victim received
26 a sexual assault examination.

27 (4) An application for a claim based on human trafficking as
28 defined in Section 236.1 of the Penal Code shall not be denied
29 solely because no police report was made by the victim. The board
30 shall adopt guidelines that allow the board to consider and approve
31 applications for assistance based on human trafficking relying
32 upon evidence other than a police report to establish that a human
33 trafficking crime as defined in Section 236.1 of the Penal Code
34 has occurred. That evidence may include any reliable corroborating
35 information approved by the board, including, but not limited to,
36 the following:

37 (A) A Law Enforcement Agency Endorsement issued pursuant
38 to Section 236.2 of the Penal Code.

1 ~~(B) A human trafficking caseworker, as identified in Section~~
2 ~~1038.2 of the Evidence Code, has attested by affidavit that the~~
3 ~~individual was a victim of human trafficking.~~

4 ~~(5) (A) An application for a claim by a military personnel victim~~
5 ~~based on a sexual assault by another military personnel shall not~~
6 ~~be denied solely because it was not reported to a superior officer~~
7 ~~or law enforcement at the time of the crime.~~

8 ~~(B) Factors that the board shall consider for purposes of~~
9 ~~determining if a claim qualifies for compensation include, but are~~
10 ~~not limited to, the evidence of the following:~~

11 ~~(i) Restricted or unrestricted reports to a military victim~~
12 ~~advocate, sexual assault response coordinator, chaplain, attorney,~~
13 ~~or other military personnel.~~

14 ~~(ii) Medical or physical evidence consistent with sexual assault.~~

15 ~~(iii) A written or oral report from military law enforcement or~~
16 ~~a civilian law enforcement agency concluding that a sexual assault~~
17 ~~crime was committed against the victim.~~

18 ~~(iv) A letter or other written statement from a sexual assault~~
19 ~~counselor, as defined in Section 1035.2 of the Evidence Code,~~
20 ~~licensed therapist, or mental health counselor, stating that the~~
21 ~~victim is seeking services related to the allegation of sexual assault.~~

22 ~~(v) A credible witness to whom the victim disclosed the details~~
23 ~~that a sexual assault crime occurred.~~

24 ~~(vi) A restraining order from a military or civilian court against~~
25 ~~the perpetrator of the sexual assault.~~

26 ~~(vii) Other behavior by the victim consistent with sexual assault.~~

27 ~~(C) For purposes of this subdivision, the sexual assault at issue~~
28 ~~shall have occurred during military service, including deployment.~~

29 ~~(D) For purposes of this subdivision, the sexual assault may~~
30 ~~have been committed off base.~~

31 ~~(E) For purposes of this subdivision, a "perpetrator" means an~~
32 ~~individual who is any of the following at the time of the sexual~~
33 ~~assault:~~

34 ~~(i) An active duty military personnel from the United States~~
35 ~~Army, Navy, Marine Corps, Air Force, or Coast Guard.~~

36 ~~(ii) A civilian employee of any military branch specified in~~
37 ~~clause (i), military base, or military deployment.~~

38 ~~(iii) A contractor or agent of a private military or private security~~
39 ~~company.~~

40 ~~(iv) A member of the California National Guard.~~

(F) For purposes of this subdivision, “sexual assault” means an offense included in Section 261, 262, 264.1, 286, 287, formerly 288a, or Section 289 of the Penal Code, as of the date the act that added this paragraph was enacted.

(e)

(b) (1) Notwithstanding Section 13955, no person who is convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may be granted compensation until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, or has been discharged from postrelease community supervision or mandatory supervision, if any, for that violent crime. In no case shall compensation be granted to an applicant pursuant to this chapter during any period of time the applicant is held in a correctional institution, or while an applicant is required to register as a sex offender pursuant to Section 290 of the Penal Code.

(2) A person who has been convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may apply for compensation pursuant to this chapter at any time, but the award of that compensation may not be considered until the applicant meets the requirements for compensation set forth in paragraph (1).

SEC. 3. Title 12.1 (commencing with Section 14220) is added to Part 4 of the Penal Code, to read:

**TITLE 12.1. COMMUNITY-BASED RESTORATIVE JUSTICE
GRANT PROGRAM**

14220. A program to provide grant assistance to community-based organizations to create or maintain restorative justice programs in collaboration with the prosecutor in their local jurisdiction is hereby created, to be administered by the Department of Justice.

14220.1. As used in this title, terms are defined as follows:

(a) “Community-based organization” means a nonprofit nongovernmental organization with a physical presence in the jurisdiction in which it is applying for a grant under this title.

(b) “Department” means the Department of Justice.

(c) “Hate crime” has the same meaning as in Section 422.55.

1 (d) "Prosecutor" means the district attorney, city attorney, or
2 other entity responsible for the prosecution of criminal offenses
3 on behalf of a local jurisdiction.

4 (e) "Restorative justice" means a preconviction alternative to
5 criminal prosecution, entered into with the voluntary consent of
6 the victim, the offender, and the prosecutor, in which a
7 community-based organization facilitates mediation between the
8 parties that aims to compensate the victim for the harm suffered,
9 rehabilitate the offender through understanding the impacts of
10 their offense, break down barriers of fear and mistrust that exist
11 between communities because of cultural differences and language
12 barriers, and build bridges based on common interests and goals.

13 14220.2. Grants made pursuant to this title shall be made to
14 community-based organizations and used to fund the
15 implementation and operation of restorative justice programs that
16 focus on offenders who have committed hate crime offenses and
17 their victims.

18 14220.3. An applicant for a grant shall submit a proposal, in
19 a form prescribed by the department.

20 14220.4. Grants shall be made on a competitive basis to those
21 applicants who, as determined by the department, based upon
22 application materials, have demonstrated a need for restorative
23 justice programs in the communities they serve, have the knowledge
24 and ability to effectively implement and operate a restorative
25 justice program as described in Section 14220.2, and have secured
26 a commitment from the local district attorney or prosecutor to
27 work with the applicant if they are selected for a grant.

28 14220.5. Each grantee shall report to the department, in a
29 form and at intervals prescribed by the department, a summary of
30 activities supported by the grant and related data.

31 14220.6. The implementation of this title is contingent upon
32 an appropriation by the Legislature in the annual Budget Act or
33 another statute for purposes of this title.

34 SEC. 4. Part 7 (commencing with Section 5955) is added to
35 Division 5 of the Welfare and Institutions Code, to read:

1
2 *PART 7. COMMUNITY-BASED MENTAL HEALTH SERVICES*
3 *FOR VICTIMS OF HATE CRIMES GRANT PROGRAM*
4

5 5955. *A program to provide grant assistance to*
6 *community-based organizations to provide mental health services*
7 *for victims of hate crimes is hereby created to be administered by*
8 *the California Health and Human Services Agency.*

9 5956. *As used in this title, terms are defined as follows:*

10 (a) *"Agency" means the California Health and Human Services*
11 *Agency.*

12 (b) *"Community-based organization" means a nonprofit*
13 *nongovernmental organization with a physical presence in the*
14 *jurisdiction in which it is applying for a grant under this title.*

15 (c) *"Hate crime" has the same meaning as in Section 422.55.*

16 (d) *"Mental health services" means counseling and treatment*
17 *for trauma, post-traumatic stress, and other related services for*
18 *victims of, or other persons affected by, hate crimes and related*
19 *hostilities.*

20 5957. *Grants made pursuant to this title shall be made to*
21 *community-based organizations and used to fund the*
22 *implementation and operation of programs providing mental health*
23 *services geared towards and located within underserved*
24 *communities.*

25 5958. *An applicant for a grant shall submit a proposal, in a*
26 *form prescribed by the agency.*

27 5959. *Grants shall be made on a competitive basis to those*
28 *applicants who, as determined by the agency, based upon*
29 *application materials, have demonstrated a need for mental health*
30 *service for victims of hate crimes and others affected by hate crimes*
31 *in the communities they serve, have the knowledge and ability to*
32 *effectively provide those services, including relevant language*
33 *skills and cultural competencies, and are appropriately licensed.*

34 5960. *Each grantee shall report to the agency, in a form and*
35 *at intervals prescribed by the agency, a summary of activities*
36 *supported by the grant and related data.*

37 5961. *The implementation of this part is contingent upon an*
38 *appropriation by the Legislature in the annual Budget Act or*
39 *another statute for purposes of this part.*

1 SECTION 1. ~~Section 13103 of the Penal Code is amended to~~
2 ~~read:~~

3 ~~13103. Notwithstanding any other provisions of law relating~~
4 ~~to retention of public records, any criminal justice agency may~~
5 ~~cause the original records filed pursuant to this chapter to be~~
6 ~~destroyed if all of the following requirements are met:~~

7 ~~(a) The records have been reproduced onto microfilm or optical~~
8 ~~disk, or by any other techniques which do not permit additions,~~
9 ~~deletions, or changes to the original document.~~

10 ~~(b) If the records have been reproduced onto optical disk, at~~
11 ~~least 16 months have elapsed since the date of registration of the~~
12 ~~records.~~

13 ~~(c) The nonerasable storage medium used meets the minimum~~
14 ~~standards recommended by the National Institute of Standards and~~
15 ~~Technology for permanent record purposes.~~

16 ~~(d) Adequate provisions are made to ensure that the nonerasable~~
17 ~~storage medium reflects additions or corrections to the records.~~

18 ~~(e) A copy of the nonerasable storage medium is maintained in~~
19 ~~a manner which permits it to be used for all purposes served by~~
20 ~~the original record.~~

21 ~~(f) A copy of the nonerasable storage medium has been stored~~
22 ~~at a separate physical location in a place and manner which will~~
23 ~~reasonably assure its preservation indefinitely against loss or~~
24 ~~destruction.~~

AB 917 Analysis and Recommendation

TITLE: Vehicles: video imaging of parking violations

AUTHOR: Bloom (D-Los Angeles)

SPONSORS: California Transit Association, Alameda-Contra Costa Transit District (AC Transit), Los Angeles County Metropolitan Transportation Authority

RECOMMENDATION: Support

BACKGROUND: In California, two transit operators currently have statutory authority to use camera technology to enforce parking violations in transit-only lanes – the San Francisco Municipal Transportation Agency (since 2007) and AC Transit (since 2015). This authority was originally sought by each agency to improve service reliability, enhance rider safety and accessibility, and address the enforcement of vehicles illegally stopped in transit-only lanes. According to the bill sponsors, illegal parking at bus stops and in transit-only lanes by personal cars, moving vans, delivery trucks and private rideshare services has increased dramatically, making it difficult for operators to maneuver around heavily congested lanes and creating unsafe conditions for boarding and drop-offs.

PURPOSE: AB 917 would expand current state law to authorize a public transit operator to install forward-facing cameras to capture images of vehicles parked illegally in transit-only lanes, transit stops, and stations. Citations shall be issued only for violations captured during the posted hours of operation for a transit-only traffic lane or during the scheduled operating hours at transit stops and stations. Captured video and images of a parking violations shall be sent to the appropriate local parking entity, or contracted enforcement agency, for review and, if warranted, a parking citation will be issued via mail to the registered vehicle owner. The parking citations do not negatively impact a driver's record, carry the same fine as a "traditional" parking ticket, and can be appealed. Images that do not contain evidence of a parking infraction must be destroyed within 15 days. Images of confirmed parking infractions may be retained for up to six months then destroyed. Existing law also sets a 30 day noticing requirement for any newly enacted program.

DISTRICT IMPACT: In 2015, BART supported SB 1051 (Hancock), which granted AC Transit the statutory authority to enforce parking violations in transit-only lanes through the use of forward-facing cameras on district-owned buses. Blocked transit-only lanes and bus stops can pose significant safety risks for passengers when boarding or exiting a bus. This includes transit riders making multi-modal trips on BART and bus, persons with disabilities, seniors, families, and any individual forced to negotiate the gap that is created between a bus and the curb when a vehicle is parked illegally. As public transit agencies across the state work to address declining ridership, AB 917 would also provide operators with a cost-effective means of improving travel times, gaining riders, and ensuring safer streets for transit users.

OTHER COMMENTS: None

KNOWN SUPPORT/OPPOSITION: California Transit Association (co-sponsor), Alameda-Contra Costa Transit District (co-sponsor), Los Angeles County Metropolitan Transportation Authority (co-sponsor)

Opposition: None on file

STATUS: Introduced on 2/17/21; Scheduled hearing on 4/5/21 in the Assembly Committee on Transportation, dual referred to Assembly Committee on Privacy & Consumer Protection.

ASSEMBLY BILL

No. 917

Introduced by Assembly Member Bloom

February 17, 2021

An act to amend Sections 40240 and 40241 of, and to repeal Section 40240.5 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 917, as introduced, Bloom. Vehicles: video imaging of parking violations.

Existing law authorizes the City and County of San Francisco (San Francisco) and, until January 1, 2022, the Alameda-Contra Transit District, to enforce parking violations in specified transit-only traffic lanes through the use of video imaging and to install automated forward facing parking control devices on city-owned public transit vehicles for the purpose of video imaging parking violations occurring in transit-only traffic lanes, as specified. Existing law requires a designated employee, who is qualified by San Francisco, or a contracted law enforcement agency for the Alameda-Contra Costa Transit District, who is qualified by the city and county or the district to issue parking citations, to review video image recordings for the purpose of determining whether a parking violation occurred in a transit-only traffic lane and to issue a notice of violation to the registered owner of a vehicle within 15 calendar days, as specified. Existing laws makes these video image records confidential, and provides that these records are available only to public agencies to enforce parking violations. Existing law provides that if the Alameda-Contra Costa Transit District implements an automated enforcement system as described above, the district is required to submit

a report to specified committees of the Legislature by no later than January 1, 2021.

This bill would extend the authorization described above to any public transit operator in the state indefinitely. The bill would expand the authorization to enforce parking violations to include violations occurring at transit stops and stations. The bill would repeal the obsolete reporting requirement of the Alameda-Contra Costa Transit District.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings regarding the need to make certain video image records confidential.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 40240 of the Vehicle Code is amended
2 to read:
3 40240. (a) ~~Subject to subdivision (g), the City and County of~~
4 ~~San Francisco and the Alameda-Contra Costa Transit District A~~
5 *public transit operator, as defined in Section 99210 of the Public*
6 *Utilities Code, may install automated forward facing parking*
7 *control devices on city-owned or district-owned public transit*
8 *vehicles, as defined by Section 99211 of the Public Utilities Code,*
9 *for the purpose of video imaging of parking violations occurring*
10 *in transit-only traffic lanes: lanes and at transit stops and stations.*
11 Citations shall be issued only for violations captured during the
12 posted hours of operation for a transit-only traffic lane: *lane or*
13 *during the scheduled operating hours at transit stops and stations.*
14 The devices shall be angled and focused so as to capture video
15 images of parking violations and not unnecessarily capture
16 identifying images of other drivers, vehicles, and pedestrians. The
17 devices shall record the date and time of the violation at the same
18 time as the video images are captured. *Transit agencies may share*
19 *the relevant data, video, and images of parking violations collected*
20 *by automated forward facing parking control devices with the*

1 *local parking enforcement entity and local agency in the*
2 *jurisdiction where the violation occurred.*

3 (b) Prior to issuing notices of parking violations pursuant to
4 subdivision (a) of Section 40241, ~~the City and County of San~~
5 ~~Francisco and the Alameda-Contra Costa Transit District a public~~
6 ~~transit operator, in partnership with a city or local enforcement~~
7 ~~authority,~~ shall commence a program to issue only warning notices
8 for 30 ~~days~~. ~~The City and County of San Francisco and the~~
9 ~~Alameda-Contra Costa Transit District days and~~ shall also make
10 a public announcement of the program at least 30 days prior to
11 commencement of issuing notices of parking violations.

12 (c) A designated employee ~~of the City and County of San~~
13 ~~Francisco, a city or county,~~ or a contracted law enforcement agency
14 ~~for the Alameda-Contra Costa Transit District, a special transit~~
15 ~~district,~~ who is qualified by ~~the city and county a city, county,~~ or
16 the district to issue parking citations, shall review video image
17 recordings for the purpose of determining whether a parking
18 violation occurred in a transit-only traffic lane: ~~lane or at a transit~~
19 ~~stop or station.~~ A violation of a statute, regulation, or ordinance
20 governing vehicle parking under this code, under a federal or state
21 statute or regulation, or under an ordinance enacted by ~~the City~~
22 ~~and County of San Francisco or the Alameda-Contra Costa Transit~~
23 ~~District a city, county, or special transit district~~ occurring in a
24 transit-only traffic lane ~~or at a transit stop or station~~ observed by
25 the designated employee in the recordings is subject to a civil
26 penalty.

27 (d) The registered owner shall be permitted to review the video
28 image evidence of the alleged violation during normal business
29 hours at no cost.

30 (e) (1) Except as it may be included in court records described
31 in Section 68152 of the Government Code, or as provided in
32 paragraph (2), the video image evidence may be retained for up
33 to six months from the date the information was first obtained, or
34 60 days after final disposition of the citation, whichever date is
35 later, after which time the information shall be destroyed.

36 (2) Notwithstanding Section 26202.6 of the Government Code,
37 video image evidence from forward facing automated enforcement
38 devices that does not contain evidence of a parking violation
39 occurring in a transit-only traffic lane ~~or at a transit stop or station~~

1 shall be destroyed within 15 days after the information was first
2 obtained.

3 (f) Notwithstanding Section 6253 of the Government Code, or
4 any other law, the video image records are confidential. Public
5 agencies shall use and allow access to these records only for the
6 purposes authorized by this article.

7 ~~(g) The authority for the Alameda-Contra Costa Transit District~~
8 ~~to implement an automated enforcement system to enforce parking~~
9 ~~violations occurring in transit-only traffic lanes exists only until~~
10 ~~January 1, 2022.~~

11 (h)

12 (g) The following definitions shall apply for purposes of this
13 article:

14 (1) "Local agency" means ~~the City and County of San Francisco~~
15 ~~and the Alameda-Contra Costa Transit District.~~ *a public transit*
16 *operator as defined in Section 99210 of the Public Utilities Code*
17 *or a local city or county parking enforcement authority.*

18 (2) "Transit-only traffic lane" means any designated transit-only
19 lane on which use is restricted to mass transit vehicles, or other
20 designated vehicles including taxis and vanpools, during posted
21 times.

22 SEC. 2. Section 40240.5 of the Vehicle Code is repealed.

23 ~~40240.5. (a) If the Alameda-Contra Costa Transit District~~
24 ~~implements an automated enforcement system to enforce parking~~
25 ~~violations occurring in transit-only traffic lanes pursuant to this~~
26 ~~article, the district shall provide to the transportation, privacy, and~~
27 ~~judiciary committees of the Legislature an evaluation report of the~~
28 ~~enforcement system's effectiveness, impact on privacy, cost to~~
29 ~~implement, and generation of revenue, no later than January 1,~~
30 ~~2021.~~

31 ~~(b) (1) A report submitted pursuant to this section shall be~~
32 ~~submitted notwithstanding Section 10231.5 of the Government~~
33 ~~Code.~~

34 ~~(2) A report submitted pursuant to this section shall be submitted~~
35 ~~in compliance with Section 9795 of the Government Code.~~

36 SEC. 3. Section 40241 of the Vehicle Code is amended to read:

37 40241. (a) A designated employee of the local agency,
38 including a contracted law enforcement ~~agency for the~~
39 ~~Alameda-Contra Costa Transit District,~~ *agency,* shall issue a notice
40 of parking violation to the registered owner of a vehicle within 15

1 calendar days of the date of the violation. The notice of parking
2 violation shall set forth the violation of a statute, regulation, or
3 ordinance governing vehicle parking under this code, under a
4 federal or state statute or regulation, or under an ordinance enacted
5 by the City and County of San Francisco or the Alameda-Contra
6 Costa Transit District *the local agency* occurring in a transit-only
7 traffic lane *or at a transit stop or station*, a statement indicating
8 that payment is required within 21 calendar days from the date of
9 citation issuance, and the procedure for the registered owner, lessee,
10 or rentee to deposit the parking penalty or contest the citation
11 pursuant to Section 40215. The notice of parking violation shall
12 also set forth the date, time, and location of the violation, the
13 vehicle license number, registration expiration date, if visible, the
14 color of the vehicle, and, if possible, the make of the vehicle. The
15 notice of parking violation, or copy of the notice, shall be
16 considered a record kept in the ordinary course of business of the
17 City and County of San Francisco or the Alameda-Contra Costa
18 Transit District *the local agency* and shall be prima facie evidence
19 of the facts contained in the notice. ~~The City and County of San~~
20 ~~Francisco or the Alameda-Contra Costa Transit District~~ *The local*
21 *agency* shall send information regarding the process for requesting
22 review of the video image evidence along with the notice of
23 parking violation.

24 (b) The notice of parking violation shall be served by depositing
25 the notice in the United States mail to the registered owner's last
26 known address listed with the Department of Motor Vehicles.
27 Proof of mailing demonstrating that the notice of parking violation
28 was mailed to that address shall be maintained by the local agency.
29 If the registered owner, by appearance or by mail, makes payment
30 to the processing agency or contests the violation within either 21
31 calendar days from the date of mailing of the citation, or 14
32 calendar days after the mailing of the notice of delinquent parking
33 violation, the parking penalty shall consist solely of the amount
34 of the original penalty.

35 (c) If, within 21 days after the notice of parking violation is
36 issued, the local agency determines that, in the interest of justice,
37 the notice of parking violation should be canceled, the local agency
38 shall cancel the notice of parking violation pursuant to subdivision
39 (a) of Section 40215. The reason for the cancellation shall be set
40 forth in writing.

1 (d) Following an initial review by the local agency, and an
2 administrative hearing, pursuant to Section 40215, a contestant
3 may seek court review by filing an appeal pursuant to Section
4 40230.

5 ~~(e) The City and County of San Francisco or the contracted law~~
6 ~~enforcement agency for the Alameda-Contra Costa Transit District~~
7 ~~may contract~~ *A local agency or a contracted law enforcement*
8 *agency, may contract* with a private vendor for the processing of
9 notices of parking violations and notices of delinquent violations.
10 ~~The City and County of San Francisco and the Alameda-Contra~~
11 ~~Costa Transit District~~ *The local agency* shall maintain overall
12 control and supervision of the program.

13 SEC. 4. The Legislature finds and declares that Section 1 of
14 this act, which amends Section 40240 of the Vehicle Code, imposes
15 a limitation on the public's right of access to the meetings of public
16 bodies or the writings of public officials and agencies within the
17 meaning of Section 3 of Article I of the California Constitution.
18 Pursuant to that constitutional provision, the Legislature makes
19 the following findings to demonstrate the interest protected by this
20 limitation and the need for protecting that interest:

21 In order to protect the individual privacy rights of those
22 individuals depicted in video camera footage relating to parking
23 violations, it is necessary that this act limit the public's right of
24 access to the images captured by an automated parking control
25 device installed on public transit vehicles owned by a county, city
26 and county, or transit district.

SB 2 Analysis and Recommendation

TITLE: Peace officers: certification: civil rights

AUTHORS: Bradford (D-Gardena), Atkins (D-San Diego), Wiener (D-San Francisco), Durazo (D-Los Angeles), C. Garcia (D-Bell Gardens), McCarty (D-Sacramento), Quirk (D-Hayward), Holden (D-Los Angeles)

SPONSORS: American Civil Liberties Union of California, Alliance for Boys and Men of Color, Anti Police-Terror Project, Black Lives Matter Los Angeles, California Families United 4 Justice, Communities United for Restorative Youth Justice, PolicyLink, STOP Coalition, Youth Justice Coalition

RECOMMENDATION: None

BACKGROUND: The Tom Bane Civil Rights Act (the Bane Act) authorizes a civil cause of action against a person who, whether or not acting under color of law, uses threats, intimidation, or coercion to interfere with the ability of another person in the exercise and enjoyment of any rights guaranteed under the U.S. or California constitutions, or any right guaranteed under federal or state statute. A civil action may be brought by the Attorney General or public prosecutor, or it may be brought by the person whose rights were violated.

Under existing law, the Commission on Peace Officer Standards and Training (POST) develops standards and training requirements, identifies factors that disqualify a person from becoming a peace officer in the first instance, and issues different levels of certification to peace officers. POST may cancel a certification that was issued in error or was a result of fraud or misrepresentation; however, it is currently prohibited from cancelling a properly issued certification. California is one of only four states in the nation, along with Hawaii, New Jersey, and Rhode Island, that does not have a process to decertify law enforcement officers who have committed serious misconduct.

PURPOSE: SB 2 seeks to increase peace officer accountability and provide a means of decertifying police officers who engage in serious misconduct.

The Bane Act: SB 2 makes three changes to the Bane Act in order to: 1) clarify that threats, intimidation, and coercion may constitute an inherent interference with a right for purposes of the Act, without a showing of specific intent to interfere with those rights in addition to the threats, intimidation, or coercion; 2) declare that the immunity usually enjoyed by public entities and public employees under certain provisions of existing law does not apply to actions brought under the Act; and 3) allow a family member to bring an action on behalf of a person who died as a result of a violation of the Act.

Peace Officer Standards Accountability Division (the division): SB 2 would create a new Peace Officer Standards Accountability Division within POST with the primary responsibilities of reviewing potential grounds for decertification of peace officers, conducting investigations into serious misconduct, presenting findings and recommendations to POST and a newly created advisory board, and bringing forward proceedings seeking the revocation of certification of peace officers as directed. The division would be required to notify an officer subject to decertification of their findings and allow the officer to request review.

SB 2 requires revocation of peace officer certification if an investigation determines that the peace officer has 1) become ineligible to hold office as a police officer under the existing disqualification provisions or 2) been terminated for cause from employment as a peace officer or has otherwise engaged in any enumerated acts of "serious misconduct." Serious misconduct may include but is not limited to acts of dishonesty relating to reporting, investigation, or prosecution of a crime; abuses of power; physical abuse; sexual assault; demonstrating bias against a protected status; participation in a law enforcement gang or rogue on-duty behavior that violates the law or principles of professional policing; or failing to cooperate with an investigation into potential police misconduct.

POST may initiate proceedings to revoke an officer's certification for conduct which occurred before January 1, 2022, under specified instances. POST may also consider an officer's prior conduct and service record in determining whether revocation is appropriate for serious misconduct.

Peace Officer Standards Accountability Advisory Board (the board): SB 2 would create a new Peace Officer Standards Accountability Advisory Board, with the purpose of making recommendations on the decertification of peace officers to POST. The advisory board would consist of nine members:

- One member shall be a peace officer or former peace officer with substantial experience at a command rank, appointed by the Governor.
- One member shall be a peace officer or former peace officer with substantial experience at a management rank in internal investigations or disciplinary proceedings of peace officers, appointed by the Governor.
- Two members shall be members of the public, who have substantial experience working at nonprofit or academic institutions on issues related to police misconduct. One of these members shall be appointed by the Governor and one by the Speaker of the Assembly.
- Two members shall be members of the public, who have substantial experience working at community-based organizations on issues related to police misconduct. One of these members shall be appointed by the Governor and one by the Senate Rules Committee.
- Two members shall be members of the public, who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
- One member shall be an attorney, with substantial professional experience involving oversight of peace officers, appointed by the Governor.

At each public hearing, the board shall review the findings of investigations and make a recommendation on what action should be taken on the certification of the peace officer involved. The board shall only recommend revocation if the factual basis for revocation is established by clear and convincing evidence. POST shall review all recommendations and adopt the board's recommendations unless it is without a reasonable basis.

POST Standards and Certification: SB 2 would grant POST the authority to suspend, revoke, or cancel any certificate issued to a peace officer. Beginning January 1, 2022, POST would be required to issue or deny certification, which includes a basic certificate or proof of eligibility, to peace officers in accordance with specified criteria. A basic certificate or proof of eligibility would need to be renewed every 2 years and would require POST to assess a fee for the initial issuance, renewal, and annual certification. The advisory board shall report annually on activities of POST, the division, and the board, relating to the certification program.

Other Key Provisions

- All records related to the revocation of a peace officer's certification shall be public record and retained for 30 years.
- Any peace officer may voluntarily surrender their certification permanently. Voluntary permanent surrender of certification shall have the same effect as revocation. Voluntary permanent surrender is not the same as placement of a valid certification into inactive status during a period in which a person is not actively employed as a peace officer. A permanently surrendered certification cannot be reactivated.

DISTRICT IMPACT: As an agency employing peace officers, BART would be required to employ only individuals with a current, valid certification or pending certification. BART would be required to report to POST a peace officer's employment, appointment, or separation from employment, any complaint, charge,

allegation, or investigation into the conduct of a peace officer that could render the officer subject to revocation, findings by civil oversight entities, and civil judgments that could affect the officer's certification. In cases of separation from employment or appointment, BART would also be required to execute an affidavit-of-separation form adopted by POST describing the reason for separation. More generally, BART has actively focused on implementing progressive and equitable policing practices for more than a decade and has established a citizen oversight model that is among the strongest in the country. The BART Board has also adopted a state advocacy goal of supporting administrative and legislative efforts that seek to advance racial justice and equity and create a culture of police accountability and responsibility.

OTHER COMMENTS: SB 2 is a re-introduction of SB 731 by Senator Bradford from the 2019-2020 legislative session. SB 731 was not presented to the Board for a position; however, Director Robert Raburn did submit an individual letter of support for the bill. SB 731 failed passage on the Assembly Floor. It was not brought up for a vote due to legislative deadlines imposed by the California State Constitution.

Staff have prepared the following analysis at the request of the Chair of the Planning, Public Affairs, Access, and Legislation Committee. Staff have no recommendation on SB 2. The BART Police Officer's Association and the BART Police Managers' Association have indicated opposition to SB 2, citing reasons related to the removal of qualified immunity for actions brought under the Bane Act, the time frame in which POST may initiate and conduct investigations, requirements placed on employing agencies, the composition of the nine-member advisory board, peace officer records on decertification being made public, and the requirement that peace officers be recertified every two years.

KNOWN SUPPORT/OPPOSITION: This list is illustrative of organizations that might support or oppose SB 2 as it closely mirrors SB 731 when it was heard in the Assembly Judiciary Committee last session. Since the bill was amended on March 11 from previous intent language, many organizations have yet to submit official position letters.

Support: Alameda County Public Defender's Office, Alliance for Boys and Men of Color, Alliance San Diego, American Civil Liberties Union of Northern California, American Civil Liberties Union of Southern California, American Civil Liberties Union of San Diego and Imperial Counties, Asian Americans Advancing Justice – California, Asian Law Alliance, Asian Solidarity Collective, Bend the Arc: Jewish Action, Brothers, Sons, Selves Coalition, California Attorneys for Criminal Justice, California Conference Board of the Amalgamated Transit Union, California Department of Insurance, California Employment Lawyers Association, California Faculty Association, California Immigrant Policy Center, California Pan - Ethnic Health Network, California Public Defenders Association, California- Stop Terrorism and Oppression by Police (STOP) Coalition, Californians for Safety and Justice, City of Alameda, City of Concord, City of Oakland, Communities United for Restorative Youth Justice (CURYJ), Community Advocates for Just and Moral Governance, Concerned Citizens for Justice, Consumer Attorneys of California, Consumer Watchdog, Drug Policy Alliance, East Bay for Everyone, Ella Baker Center for Human Rights, Empowering Pacific Islander Communities (EPIC), Equal Rights Advocates, Giffords, Having Our Say Coalition, Hillcrest Indivisible, Indivisible South Bay LA, Indivisible Stanislaus, Innercity Struggle, League of Women Voters of California, Los Angeles Black Worker Center, Mexican American, Bar Association of Los Angeles County, Mid-city Community Advocacy Network, National Association of Social Workers, California Chapter, National Juvenile Justice Network, National Lawyers Guild Los Angeles, National Police Accountability Project, Orange County Equality Coalition, Pacifica Social Justice, Professional & Technical Engineers, Local 21, IFPTE/AFL-CIO, Recording Industry Association of America, Sacramento Area Chapter of ACLU, San Diego LGBT Pride, Southeast Asia Resource Action Center, Stonewall Democratic Club, SURJ Marin, The Resistance Northridge-indivisible, Think Dignity, Tides Advocacy, UDW/AFSCME Local 3930, Voices for Progress Education Fund, We the People - San Diego, Women For: Orange County, YALLA Indivisible, Youth Alive!, Youth Justice Coalition

Opposition: Association for Los Angeles Deputy Sheriffs, Association of Orange County Deputy Sheriff's, California Association of Highway Patrolmen, California Association of Joint Powers Authorities, California Fraternal Order of Police, California Police Chiefs Association, California State Sheriffs' Association, California Statewide Law Enforcement Association, Long Beach Police Officers Association, Los Angeles County Sheriff's Department, Peace Officers Research Association of California (PORAC), Riverside Sheriff's Association, Sacramento County Deputy Sheriffs Association, San Bernardino County Safety Employees' Benefit Association

STATUS: Introduced on 12/7/20 and amended on 3/11/21. Scheduled for hearing in the Senate Public Safety Committee on 4/13/21.

AMENDED IN SENATE MARCH 11, 2021

SENATE BILL

No. 2

Introduced by Senators Bradford and Atkins

(Principal coauthor: Senator Wiener)

*(Principal coauthors: Assembly Members Cristina Garcia, McCarty,
and Quirk)*

(Coauthor: Senator Durazo)

(Coauthor: Assembly Member Holden)

December 7, 2020

~~An act relating to public employment.~~ *An act to amend Section 52.1 of the Civil Code, to amend Section 1029 of the Government Code, and to amend Sections 832.7, 13503, 13506, 13510, 13510.1, and 13512 of, to amend the heading of Article 2 (commencing with Section 13510) of Chapter 1 of Title 4 of Part 4 of, and to add Sections 13509.5, 13509.6, 13510.15, 13510.8, 13510.85, and 13510.9 to, the Penal Code, relating to public employment, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as amended, Bradford. Peace officers: certification: civil rights.

(1) Under existing law, the Tom Bane Civil Rights Act, if a person or persons, whether or not acting under color of law, interferes or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney, is authorized to bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the exercise or

enjoyment of the right or rights secured. Existing law also authorizes an action brought by the Attorney General, or any district attorney or city attorney, to seek a civil penalty of \$25,000.

This bill would provide that a threat, intimidation, or coercion under the act may be inherent in any interference with a civil right and would describe intentional acts for these purposes as an act in which the person acted with general intent or a conscious objective to engage in particular conduct.

The bill would eliminate certain immunity provisions for peace officers and custodial officers, or public entities employing peace officers or custodial officers sued under the act. The bill would also authorize specified persons to bring an action under the act for the death of a person.

(2) Existing law defines persons who are peace officers and the entities authorized to appoint them. Existing law requires certain minimum training requirements for peace officers including the completion of a basic training course, as specified. Existing law prescribes certain minimum standards for a person to be appointed as a peace officer, including moral character and physical and mental condition, and certain disqualifying factors for a person to be employed as a peace officer, including a felony conviction.

This bill would disqualify a person from being employed as a peace officer if that person has been convicted of, or has been adjudicated in an administrative, military, or civil judicial process as having committed, a violation of certain specified crimes against public justice, including the falsification of records, bribery, or perjury. The bill would also disqualify any person who has been certified as a peace officer by the Commission on Peace Officer Standards and Training and has surrendered that certification or had that certification revoked by the commission, or has been denied certification. The bill would disqualify any person previously employed in law enforcement in any state or United States territory or by the federal government, whose name is listed in the national decertification index or who engaged in serious misconduct that would have resulted in their certification being revoked in this state. The bill would require a law enforcement agency employing certain peace officers to employ only individuals with a current, valid certification or pending certification.

(3) Existing law establishes the Commission on Peace Officer Standards and Training to set minimum standards for the recruitment and training of peace officers and to develop training courses and

curriculum. Existing law authorizes the commission to establish a professional certificate program that awards basic, intermediate, advanced, supervisory, management, and executive certificates on the basis of a combination of training, education, experience, and other prerequisites, for the purpose of fostering the professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers. Existing law authorizes the commission to cancel a certificate that was awarded in error or obtained through misrepresentation or fraud, but otherwise prohibits the commission from canceling a certificate that has properly been issued.

This bill would grant the commission the power to investigate and determine the fitness of any person to serve as a peace officer in the state. The bill would direct the commission to issue or deny certification, which includes a basic certificate or proof of eligibility, to a peace officer in accordance with specified criteria. The bill would require the commission to issue a proof of eligibility or basic certificate, as specified, to certain persons employed as a peace officer on January 1, 2022, who do not otherwise possess a certificate. The bill would require a proof of eligibility or basic certificate to be renewed at least every 2 years and would require the commission to assess a fee for the application and renewal of the certificate or proof of eligibility, as well as an annual certification fee. The bill would require the fees to be deposited into the Peace Officer Certification Fund, created by the bill, and would continuously appropriate those funds to the commission for the administration of the certification program, as specified, thereby making an appropriation. The bill would declare certificates or proof of eligibility awarded by the commission to be property of the commission and would authorize the commission to revoke a proof of eligibility or certificate on specified grounds, including the use of excessive force, sexual assault, making a false arrest, or participating in a law enforcement gang, as defined.

The bill would create the Peace Officer Standards Accountability Division within the commission to investigate and prosecute proceedings to take action against a peace officer's certification. The bill would require the division to review and investigate grounds for decertification and make findings as to whether grounds for action against an officer's certification exist. The bill would require the division to notify the officer subject to decertification of their findings and allow the officer to request review. The bill would also create the Peace Officer Standards

Accountability Advisory Board with 9 members to be appointed as specified. The bill would require the board to hold public meetings to review the findings after an investigation made by the division and to make a recommendation to the commission. The bill would require the commission to adopt the recommendation of the board if supported by clear and convincing evidence and, if action is to be taken against an officer's certification, return the determination to the division to commence formal proceedings consistent with the Administrative Procedures Act. The bill would require the commission to notify the employing agency and the district attorney of the county in which the officer is employed of this determination, as specified.

The bill would make all records related to the revocation of a peace officer's certification public and would require that records of an investigation be retained for 30 years.

The bill would require an agency employing peace officers to report to the commission the employment, appointment, or separation from employment of a peace officer, any complaint, charge, allegation, or investigation into the conduct of a peace officer that could render the officer subject to revocation, findings by civil oversight entities, and civil judgements that could affect the officer's certification.

In case of a separation from employment or appointment, the bill would require each agency to execute an affidavit-of-separation form adopted by the commission describing the reason for separation. The bill would require the affidavit to be signed under penalty of perjury. By creating a new crime, this bill would impose a state-mandated local program.

The bill would require the board to report annually on the activities of the division, board, and commission, relating to the certification program, including the number of applications for certification, the events reported, the number of investigations conducted, and the number of certificates surrendered or revoked.

By imposing new requirements on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Tom Bane Civil Rights Act, authorizes a civil action to be brought against a person who, whether or not acting under color of law, interferes with the exercise of another's constitutional and legal rights. Existing law establishes the Commission on Peace Officer Standards and Training to set minimum standards for the recruitment and training of peace officers and to develop training courses and curriculum. Existing law authorizes the commission to establish a professional certificate program that awards certificates on the basis of a combination of training, education, experience, and other prerequisites, for the purpose of fostering the professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers. Existing law authorizes the commission to cancel a certificate that was awarded in error or obtained through misrepresentation or fraud, but otherwise prohibits the commission from canceling a certificate that has properly been issued.~~

~~This bill would state the intent of the Legislature to enact legislation amending the Tom Bane Civil Rights Act and to provide a decertification process for peace officers.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *This act shall be known as the Kenneth Ross Jr.*
- 2 *Police Decertification Act of 2021.*
- 3 SEC. 2. *The Legislature finds and declares all of the following:*
- 4 (a) *As the Legislature and courts of this state have repeatedly*
- 5 *recognized, police officers, sheriffs' deputies, and other peace*
- 6 *officers hold extraordinary powers to detain, to search, to arrest,*
- 7 *and to use force, including deadly force. The state has a*
- 8 *correspondingly strong interest in ensuring that peace officers do*
- 9 *not abuse their authority, including by ensuring that individual*
- 10 *peace officers who abuse their authority are held accountable.*
- 11 (b) *California is one of the last few states that does not have a*
- 12 *process for revoking peace officer certificates as a result of*
- 13 *misconduct. Nationwide, 45 states have the authority to decertify*

1 *peace officers. Four states do not have decertification authority:*
2 *California, Hawaii, New Jersey, and Rhode Island.*

3 *(c) In 2017, 172 Californians were killed by the police, and our*
4 *state's police departments have some of the highest rates of killings*
5 *in the nation. Of the unarmed people California police killed, three*
6 *out of four were people of color. Black and Latino families and*
7 *communities of color are disproportionately vulnerable to police*
8 *violence, creating generations of individual and community trauma.*

9 *(d) More than 200 professions and trades, including doctors,*
10 *lawyers, and contractors are licensed or certified by the State of*
11 *California, in order to maintain professional standards and to*
12 *protect the public. Law enforcement officers are entrusted with*
13 *extraordinary powers including the power to carry a firearm, to*
14 *stop and search, to arrest, and to use force. They must be held to*
15 *the highest standards of accountability, and the state should ensure*
16 *that officers who abuse their authority by committing serious or*
17 *repeated misconduct, or otherwise demonstrate a lack of fitness*
18 *to serve as peace officers, are removed from the streets.*

19 *(e) To ensure public trust that the system for decertification will*
20 *hold peace officers accountable for misconduct and that*
21 *California's standards for law enforcement reflect community*
22 *values, it is the intent of the Legislature that the entities charged*
23 *with investigating and rendering decisions on decertification shall*
24 *be under independent civilian control and maintain independence*
25 *from law enforcement.*

26 *(f) Civil courts provide a vital avenue for individuals harmed*
27 *by violations of the law by peace officers to find redress and*
28 *accountability. But the judicially created doctrine of qualified*
29 *immunity in federal courts, and broad interpretations of California*
30 *law immunities and restrictive views on the cause of action under*
31 *the Tom Bane Civil Rights Act, too often lead to officers escaping*
32 *accountability in civil courts, even when they have broken the law*
33 *or violated the rights of members of the public. The civil court*
34 *process should ensure that peace officers are treated fairly, but*
35 *that they can be held accountable for violations of the law that*
36 *harm others, especially the use of excessive force.*

37 *SEC. 3. Section 52.1 of the Civil Code is amended to read:*

38 *52.1. (a) This section shall be known, and may be cited, as the*
39 *Tom Bane Civil Rights Act.*

1 (b) (1) If a person or persons, whether or not acting under color
2 of law, interferes by threat, intimidation, or coercion, or attempts
3 to interfere by threat, intimidation, or coercion, with the exercise
4 or enjoyment by any individual or individuals of rights secured by
5 the Constitution or laws of the United States, or of the rights
6 secured by the Constitution or laws of this state, the Attorney
7 General, or any district attorney or city attorney may bring a civil
8 action for injunctive and other appropriate equitable relief in the
9 name of the people of the State of California, in order to protect
10 the peaceable exercise or enjoyment of the right or rights secured.
11 An action brought by the Attorney General, any district attorney,
12 or any city attorney may also seek a civil penalty of twenty-five
13 thousand dollars (\$25,000). If this civil penalty is requested, it
14 shall be assessed individually against each person who is
15 determined to have violated this section and the penalty shall be
16 awarded to each individual whose rights under this section are
17 determined to have been violated.

18 (2) *The threat, intimidation, or coercion required under this*
19 *section need not be separate or independent from, and may be*
20 *inherent in, any interference or attempted interference with a right.*
21 *A person bringing suit under this section need not prove that a*
22 *person being sued under this section had specific intent to interfere*
23 *or attempt to interfere with a right secured by the Constitution or*
24 *law. For any person, public entity, or private entity sued under*
25 *this section, intentional conduct to interfere or attempt to interfere*
26 *with a constitutional right or right granted by law or deliberate*
27 *indifference or reckless disregard for a constitutional right or*
28 *right granted by law that interferes or attempts to interfere with*
29 *that right, is sufficient to prove a violation of this section by threat,*
30 *intimidation, or coercion. For purposes of this section, a person*
31 *acts "intentionally" when the person acts with general intent or*
32 *a conscious objective to engage in particular conduct.*

33 (c) (1) Any individual whose exercise or enjoyment of rights
34 secured by the Constitution or laws of the United States, or of
35 rights secured by the Constitution or laws of this state, has been
36 interfered with, or attempted to be interfered with, as described in
37 subdivision (a); (b), may institute and prosecute in ~~his or her~~ *their*
38 own name and on ~~his or her~~ *their* own behalf a civil action for
39 damages, including, but not limited to, damages under Section 52,
40 injunctive relief, and other appropriate equitable relief to protect

1 the peaceable exercise or enjoyment of the right or rights secured,
2 including appropriate equitable and declaratory relief to eliminate
3 a pattern or practice of conduct as described in subdivision-(a)-
4 (b).

5 (2) *A cause of action under this section for the death of a person*
6 *may be asserted by any person described in Section 377.60 of the*
7 *Code of Civil Procedure.*

8 (d) An action brought pursuant to subdivision-(a) (b) or-(b) (c)
9 may be filed either in the superior court for the county in which
10 the conduct complained of occurred or in the superior court for
11 the county in which a person whose conduct complained of resides
12 or has ~~his or her~~ *their* place of business. An action brought by the
13 Attorney General pursuant to subdivision-(a) (b) also may be filed
14 in the superior court for any county wherein the Attorney General
15 has an office, and in that case, the jurisdiction of the court shall
16 extend throughout the state.

17 (e) If a court issues a temporary restraining order or a
18 preliminary or permanent injunction in an action brought pursuant
19 to subdivision-(a) (b) or-(b), (c), ordering a defendant to refrain
20 from conduct or activities, the order issued shall include the
21 following statement: VIOLATION OF THIS ORDER IS A CRIME
22 PUNISHABLE UNDER SECTION 422.77 OF THE PENAL
23 CODE.

24 (f) The court shall order the plaintiff or the attorney for the
25 plaintiff to deliver, or the clerk of the court to mail, two copies of
26 any order, extension, modification, or termination thereof granted
27 pursuant to this section, by the close of the business day on which
28 the order, extension, modification, or termination was granted, to
29 each local law enforcement agency having jurisdiction over the
30 residence of the plaintiff and any other locations where the court
31 determines that acts of violence against the plaintiff are likely to
32 occur. Those local law enforcement agencies shall be designated
33 by the plaintiff or the attorney for the plaintiff. Each appropriate
34 law enforcement agency receiving any order, extension, or
35 modification of any order issued pursuant to this section shall serve
36 forthwith one copy thereof upon the defendant. Each appropriate
37 law enforcement agency shall provide to any law enforcement
38 officer responding to the scene of reported violence, information
39 as to the existence of, terms, and current status of, any order issued
40 pursuant to this section.

1 (g) A court shall not have jurisdiction to issue an order or
2 injunction under this section, if that order or injunction would be
3 prohibited under Section 527.3 of the Code of Civil Procedure.

4 (h) An action brought pursuant to this section is independent of
5 any other action, remedy, or procedure that may be available to
6 an aggrieved individual under any other provision of law,
7 including, but not limited to, an action, remedy, or procedure
8 brought pursuant to Section 51.7.

9 (i) In addition to any damages, injunction, or other equitable
10 relief awarded in an action brought pursuant to subdivision ~~(b)~~;
11 ~~(c)~~, the court may award the petitioner or plaintiff reasonable
12 attorney's fees.

13 (j) A violation of an order described in subdivision ~~(d)~~ ~~(e)~~ may
14 be punished either by prosecution under Section 422.77 of the
15 Penal Code, or by a proceeding for contempt brought pursuant to
16 Title 5 (commencing with Section 1209) of Part 3 of the Code of
17 Civil Procedure. However, in any proceeding pursuant to the Code
18 of Civil Procedure, if it is determined that the person proceeded
19 against is guilty of the contempt charged, in addition to any other
20 relief, a fine may be imposed not exceeding one thousand dollars
21 (\$1,000), or the person may be ordered imprisoned in a county jail
22 not exceeding six months, or the court may order both the
23 imprisonment and fine.

24 (k) Speech alone is not sufficient to support an action brought
25 pursuant to subdivision ~~(a)~~ ~~(b)~~ or ~~(b)~~ ~~(c)~~, except upon a showing
26 that the speech itself threatens violence against a specific person
27 or group of persons; and the person or group of persons against
28 whom the threat is directed reasonably fears that, because of the
29 speech, violence will be committed against them or their property
30 and that the person threatening violence had the apparent ability
31 to carry out the threat.

32 (l) No order issued in any proceeding brought pursuant to
33 subdivision ~~(a)~~ ~~(b)~~ or ~~(b)~~ ~~(c)~~ shall restrict the content of any
34 person's speech. An order restricting the time, place, or manner
35 of any person's speech shall do so only to the extent reasonably
36 necessary to protect the peaceable exercise or enjoyment of
37 constitutional or statutory rights, consistent with the constitutional
38 rights of the person sought to be enjoined.

1 (m) The rights, penalties, remedies, forums, and procedures of
2 this section shall not be waived by contract except as provided in
3 Section 51.7.

4 (n) *The state immunity provisions provided in Sections 821.6,*
5 *844.6, and 845.6 of the Government Code shall not apply to any*
6 *cause of action brought against any peace officer or custodial*
7 *officer, or directly against a public entity that employs a peace*
8 *officer or custodial officer, under this section.*

9 (o) *Sections 825, 825.2, 825.4, and 825.6 of the Government*
10 *Code, providing for indemnification of an employee or former*
11 *employee of a public entity, shall apply to any cause of action*
12 *brought under this section against an employee or former employee*
13 *of a public entity.*

14 SEC. 4. *Section 1029 of the Government Code is amended to*
15 *read:*

16 1029. (a) Except as provided in subdivision (b), (c), (d), or
17 (d), (e), each of the following persons is disqualified from holding
18 office as a peace officer or being employed as a peace officer of
19 the state, county, city, city and county or other political subdivision,
20 whether with or without compensation, and is disqualified from
21 any office or employment by the state, county, city, city and county
22 or other political subdivision, whether with or without
23 compensation, which confers upon the holder or employee the
24 powers and duties of a peace officer:

25 (1) Any person who has been convicted of a felony.

26 (2) Any person who has been convicted of any offense in any
27 other jurisdiction which would have been a felony if committed
28 in this state.

29 (3) *Any person who has been discharged from the military for*
30 *committing an offense, as adjudicated by a military tribunal, which*
31 *would have been a felony if committed in this state.*

32 ~~(3)~~

33 (4) Any person who, after January 1, 2004, has been convicted
34 of a crime based upon a verdict or finding of guilt of a felony by
35 the trier of fact, or upon the entry of a plea of guilty or nolo
36 contendere to a felony. This paragraph ~~shall apply~~ *applies*
37 regardless of whether, pursuant to subdivision (b) of Section 17
38 of the Penal Code, the court declares the offense to be a
39 misdemeanor or the offense becomes a misdemeanor by operation
40 of law.

1 (4)

2 (5) Any person who has been charged with a felony and
3 adjudged by a superior court to be mentally incompetent under
4 Chapter 6 (commencing with Section 1367) of Title 10 of Part 2
5 of the Penal Code.

6 (5)

7 (6) Any person who has been found not guilty by reason of
8 insanity of any felony.

9 (6)

10 (7) Any person who has been determined to be a mentally
11 disordered sex offender pursuant to Article 1 (commencing with
12 Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare
13 and Institutions Code.

14 (7)

15 (8) Any person adjudged addicted or in danger of becoming
16 addicted to narcotics, convicted, and committed to a state institution
17 as provided in Section 3051 of the Welfare and Institutions Code.

18 (9) *Any person who has been convicted of, or adjudicated*
19 *through an administrative, military, or civil judicial process,*
20 *including a hearing that meets the requirements of the*
21 *administrative adjudication provisions of the Administrative*
22 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*
23 *Part 1 of Division 3 of Title 2 of the Government Code), as having*
24 *committed, any act that is a violation of Section 115, 115.3, 116,*
25 *116.5, or 117 of, or of any offense described in Chapter 1*
26 *(commencing with Section 92), Chapter 5 (commencing with*
27 *Section 118), Chapter 6 (commencing with Section 132), or*
28 *Chapter 7 (commencing with Section 142) of Title 7 of Part 1 of*
29 *the Penal Code, including any act committed in another jurisdiction*
30 *that would have been a violation of any of those sections if*
31 *committed in this state.*

32 (10) *Any person who has been issued the certification described*
33 *in Section 13510.1 of the Penal Code, and has had that certification*
34 *revoked by the Commission on Peace Officer Standards and*
35 *Training, has voluntarily surrendered that certification pursuant*
36 *to subdivision (f) of Section 13510.8, or having met the minimum*
37 *requirement for issuance of certification, has been denied issuance*
38 *of certification.*

39 (11) *Any person previously employed in law enforcement in any*
40 *state or United States territory or by the federal government, whose*

1 *name is listed in the National Decertification Index of the*
2 *International Association of Directors of Law Enforcement*
3 *Standards and Training or whose certification as a law*
4 *enforcement officer in that jurisdiction was revoked for misconduct,*
5 *or who, while employed as a law enforcement officer, engaged in*
6 *serious misconduct that would have resulted in their certification*
7 *being revoked by the commission if employed as a peace officer*
8 *in this state.*

9 (b) (1) A plea of guilty to a felony pursuant to a deferred entry
10 of judgment program as set forth in Sections 1000 to 1000.4,
11 inclusive, of the Penal Code shall not alone disqualify a person
12 from being a peace officer unless a judgment of guilty is entered
13 pursuant to Section 1000.3 of the Penal Code.

14 (2) A person who pleads guilty or nolo contendere to, or who
15 is found guilty by a trier of fact of, an alternate felony-misdemeanor
16 drug possession offense and successfully completes a program of
17 probation pursuant to Section 1210.1 of the Penal Code shall not
18 be disqualified from being a peace officer solely on the basis of
19 the plea or finding if the court deems the offense to be a
20 misdemeanor or reduces the offense to a misdemeanor.

21 (c) Any person who has been convicted of a felony, other than
22 a felony punishable by death, in this state or any other state, or
23 who has been convicted of any offense in any other state which
24 would have been a felony, other than a felony punishable by death,
25 if committed in this state, and who demonstrates the ability to
26 assist persons in programs of rehabilitation may hold office and
27 be employed as a parole officer of the Department of Corrections
28 *and Rehabilitation* or the ~~Department of the Youth Authority,~~
29 *Division of Juvenile Justice*, or as a probation officer in a county
30 probation department, if ~~he or she~~ *the person* has been granted a
31 full and unconditional pardon for the felony or offense of which
32 ~~he or she was~~ *they were* convicted. Notwithstanding any other
33 provision of law, the Department of Corrections *and Rehabilitation*
34 or the ~~Department of the Youth Authority,~~ *Division of Juvenile*
35 *Justice*, or a county probation department, may refuse to employ
36 that person regardless of ~~his or her~~ *their* qualifications.

37 (d) ~~Nothing in this section shall be construed to~~ *This section*
38 *does not* limit or curtail the power or authority of any board of
39 police commissioners, chief of police, sheriff, mayor, or other
40 appointing authority to appoint, employ, or deputize any person

1 as a peace officer in time of disaster caused by flood, fire,
2 pestilence or similar public calamity, or to exercise any power
3 conferred by law to summon assistance in making arrests or
4 preventing the commission of any criminal offense.

5 ~~(e) Nothing in this section shall be construed to~~ *This section*
6 *does not* prohibit any person from holding office or being employed
7 as a superintendent, supervisor, or employee having custodial
8 responsibilities in an institution operated by a probation
9 department, if at the time of the person's hire a prior conviction
10 of a felony was known to the person's employer, and the class of
11 office for which the person was hired was not declared by law to
12 be a class prohibited to persons convicted of a felony, but as a
13 result of a change in classification, as provided by law, the new
14 classification would prohibit employment of a person convicted
15 of a felony.

16 *SEC. 5. Section 832.7 of the Penal Code is amended to read:*

17 832.7. (a) Except as provided in subdivision (b), the personnel
18 records of peace officers and custodial officers and records
19 maintained by any state or local agency pursuant to Section 832.5,
20 or information obtained from these records, are confidential and
21 shall not be disclosed in any criminal or civil proceeding except
22 by discovery pursuant to Sections 1043 and 1046 of the Evidence
23 Code. This section shall not apply to investigations or proceedings
24 concerning the conduct of peace officers or custodial officers, or
25 an agency or department that employs those officers, conducted
26 by a grand jury, a district attorney's office, ~~or the Attorney~~
27 ~~General's office.~~ *office, or the Commission on Peace Officer*
28 *Standards and Training.*

29 (b) (1) Notwithstanding subdivision (a), subdivision (f) of
30 Section 6254 of the Government Code, or any other law, the
31 following peace officer or custodial officer personnel records and
32 records maintained by any state or local agency shall not be
33 confidential and shall be made available for public inspection
34 pursuant to the California Public Records Act (Chapter 3.5
35 (commencing with Section 6250) of Division 7 of Title 1 of the
36 Government Code):

37 (A) A record relating to the report, investigation, or findings of
38 any of the following:

39 (i) An incident involving the discharge of a firearm at a person
40 by a peace officer or custodial officer.

1 (ii) An incident in which the use of force by a peace officer or
2 custodial officer against a person resulted in death, or in great
3 bodily injury.

4 (B) (i) Any record relating to an incident in which a sustained
5 finding was made by any law enforcement agency or oversight
6 agency that a peace officer or custodial officer engaged in sexual
7 assault involving a member of the public.

8 (ii) As used in this subparagraph, "sexual assault" means the
9 commission or attempted initiation of a sexual act with a member
10 of the public by means of force, threat, coercion, extortion, offer
11 of leniency or other official favor, or under the color of authority.
12 For purposes of this definition, the propositioning for or
13 commission of any sexual act while on duty is considered a sexual
14 assault.

15 (iii) As used in this subparagraph, "member of the public" means
16 any person not employed by the officer's employing agency and
17 includes any participant in a cadet, explorer, or other youth program
18 affiliated with the agency.

19 (C) Any record relating to an incident in which a sustained
20 finding was made by any law enforcement agency or oversight
21 agency of dishonesty by a peace officer or custodial officer directly
22 relating to the reporting, investigation, or prosecution of a crime,
23 or directly relating to the reporting of, or investigation of
24 misconduct by, another peace officer or custodial officer, including,
25 but not limited to, any sustained finding of perjury, false
26 statements, filing false reports, destruction, falsifying, or concealing
27 of evidence.

28 (2) Records that shall be released pursuant to this subdivision
29 include all investigative reports; photographic, audio, and video
30 evidence; transcripts or recordings of interviews; autopsy reports;
31 all materials compiled and presented for review to the district
32 attorney or to any person or body charged with determining
33 whether to file criminal charges against an officer in connection
34 with an incident, or whether the officer's action was consistent
35 with law and agency policy for purposes of discipline or
36 administrative action, or what discipline to impose or corrective
37 action to take; documents setting forth findings or recommended
38 findings; and copies of disciplinary records relating to the incident,
39 including any letters of intent to impose discipline, any documents
40 reflecting modifications of discipline due to the Skelly or grievance

1 process, and letters indicating final imposition of discipline or
2 other documentation reflecting implementation of corrective action.

3 (3) A record from a separate and prior investigation or
4 assessment of a separate incident shall not be released unless it is
5 independently subject to disclosure pursuant to this subdivision.

6 (4) If an investigation or incident involves multiple officers,
7 information about allegations of misconduct by, or the analysis or
8 disposition of an investigation of, an officer shall not be released
9 pursuant to subparagraph (B) or (C) of paragraph (1), unless it
10 relates to a sustained finding against that officer. However, factual
11 information about that action of an officer during an incident, or
12 the statements of an officer about an incident, shall be released if
13 they are relevant to a sustained finding against another officer that
14 is subject to release pursuant to subparagraph (B) or (C) of
15 paragraph (1).

16 (5) An agency shall redact a record disclosed pursuant to this
17 section only for any of the following purposes:

18 (A) To remove personal data or information, such as a home
19 address, telephone number, or identities of family members, other
20 than the names and work-related information of peace and custodial
21 officers.

22 (B) To preserve the anonymity of complainants and witnesses.

23 (C) To protect confidential medical, financial, or other
24 information of which disclosure is specifically prohibited by federal
25 law or would cause an unwarranted invasion of personal privacy
26 that clearly outweighs the strong public interest in records about
27 misconduct and serious use of force by peace officers and custodial
28 officers.

29 (D) Where there is a specific, articulable, and particularized
30 reason to believe that disclosure of the record would pose a
31 significant danger to the physical safety of the peace officer,
32 custodial officer, or another person.

33 (6) Notwithstanding paragraph (5), an agency may redact a
34 record disclosed pursuant to this section, including personal
35 identifying information, where, on the facts of the particular case,
36 the public interest served by not disclosing the information clearly
37 outweighs the public interest served by disclosure of the
38 information.

39 (7) An agency may withhold a record of an incident described
40 in subparagraph (A) of paragraph (1) that is the subject of an active

1 criminal or administrative investigation, in accordance with any
2 of the following:

3 (A) (i) During an active criminal investigation, disclosure may
4 be delayed for up to 60 days from the date the use of force occurred
5 or until the district attorney determines whether to file criminal
6 charges related to the use of force, whichever occurs sooner. If an
7 agency delays disclosure pursuant to this clause, the agency shall
8 provide, in writing, the specific basis for the agency's
9 determination that the interest in delaying disclosure clearly
10 outweighs the public interest in disclosure. This writing shall
11 include the estimated date for disclosure of the withheld
12 information.

13 (ii) After 60 days from the use of force, the agency may continue
14 to delay the disclosure of records or information if the disclosure
15 could reasonably be expected to interfere with a criminal
16 enforcement proceeding against an officer who used the force. If
17 an agency delays disclosure pursuant to this clause, the agency
18 shall, at 180-day intervals as necessary, provide, in writing, the
19 specific basis for the agency's determination that disclosure could
20 reasonably be expected to interfere with a criminal enforcement
21 proceeding. The writing shall include the estimated date for the
22 disclosure of the withheld information. Information withheld by
23 the agency shall be disclosed when the specific basis for
24 withholding is resolved, when the investigation or proceeding is
25 no longer active, or by no later than 18 months after the date of
26 the incident, whichever occurs sooner.

27 (iii) After 60 days from the use of force, the agency may
28 continue to delay the disclosure of records or information if the
29 disclosure could reasonably be expected to interfere with a criminal
30 enforcement proceeding against someone other than the officer
31 who used the force. If an agency delays disclosure under this
32 clause, the agency shall, at 180-day intervals, provide, in writing,
33 the specific basis why disclosure could reasonably be expected to
34 interfere with a criminal enforcement proceeding, and shall provide
35 an estimated date for the disclosure of the withheld information.
36 Information withheld by the agency shall be disclosed when the
37 specific basis for withholding is resolved, when the investigation
38 or proceeding is no longer active, or by no later than 18 months
39 after the date of the incident, whichever occurs sooner, unless
40 extraordinary circumstances warrant continued delay due to the

1 ongoing criminal investigation or proceeding. In that case, the
2 agency must show by clear and convincing evidence that the
3 interest in preventing prejudice to the active and ongoing criminal
4 investigation or proceeding outweighs the public interest in prompt
5 disclosure of records about use of serious force by peace officers
6 and custodial officers. The agency shall release all information
7 subject to disclosure that does not cause substantial prejudice,
8 including any documents that have otherwise become available.

9 (iv) In an action to compel disclosure brought pursuant to
10 Section 6258 of the Government Code, an agency may justify
11 delay by filing an application to seal the basis for withholding, in
12 accordance with Rule 2.550 of the California Rules of Court, or
13 any successor rule thereto, if disclosure of the written basis itself
14 would impact a privilege or compromise a pending investigation.

15 (B) If criminal charges are filed related to the incident in which
16 force was used, the agency may delay the disclosure of records or
17 information until a verdict on those charges is returned at trial or,
18 if a plea of guilty or no contest is entered, the time to withdraw
19 the plea pursuant to Section 1018.

20 (C) During an administrative investigation into an incident
21 described in subparagraph (A) of paragraph (1), the agency may
22 delay the disclosure of records or information until the investigating
23 agency determines whether the use of force violated a law or
24 agency policy, but no longer than 180 days after the date of the
25 employing agency's discovery of the use of force, or allegation of
26 use of force, by a person authorized to initiate an investigation, or
27 30 days after the close of any criminal investigation related to the
28 peace officer or custodial officer's use of force, whichever is later.

29 (8) A record of a civilian complaint, or the investigations,
30 findings, or dispositions of that complaint, shall not be released
31 pursuant to this section if the complaint is frivolous, as defined in
32 Section 128.5 of the Code of Civil Procedure, or if the complaint
33 is unfounded.

34 (c) Notwithstanding subdivisions (a) and (b), a department or
35 agency shall release to the complaining party a copy of ~~his or her~~
36 *the party's* own statements at the time the complaint is filed.

37 (d) Notwithstanding subdivisions (a) and (b), a department or
38 agency that employs peace or custodial officers may disseminate
39 data regarding the number, type, or disposition of complaints
40 (sustained, not sustained, exonerated, or unfounded) made against

1 its officers if that information is in a form which does not identify
2 the individuals involved.

3 (e) Notwithstanding subdivisions (a) and (b), a department or
4 agency that employs peace or custodial officers may release factual
5 information concerning a disciplinary investigation if the officer
6 who is the subject of the disciplinary investigation, or the officer's
7 agent or representative, publicly makes a statement ~~he or she knows~~
8 *that they know* to be false concerning the investigation or the
9 imposition of disciplinary action. Information may not be disclosed
10 by the peace or custodial officer's employer unless the false
11 statement was published by an established medium of
12 communication, such as television, radio, or a newspaper.
13 Disclosure of factual information by the employing agency
14 pursuant to this subdivision is limited to facts contained in the
15 officer's personnel file concerning the disciplinary investigation
16 or imposition of disciplinary action that specifically refute the false
17 statements made public by the peace or custodial officer or ~~his or~~
18 *her* ~~their~~ agent or representative.

19 (f) (1) The department or agency shall provide written
20 notification to the complaining party of the disposition of the
21 complaint within 30 days of the disposition.

22 (2) The notification described in this subdivision shall not be
23 conclusive or binding or admissible as evidence in any separate
24 or subsequent action or proceeding brought before an arbitrator,
25 court, or judge of this state or the United States.

26 (g) This section does not affect the discovery or disclosure of
27 information contained in a peace or custodial officer's personnel
28 file pursuant to Section 1043 of the Evidence Code.

29 (h) This section does not supersede or affect the criminal
30 discovery process outlined in Chapter 10 (commencing with
31 Section 1054) of Title 6 of Part 2, or the admissibility of personnel
32 records pursuant to subdivision (a), which codifies the court
33 decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

34 (i) Nothing in this chapter is intended to limit the public's right
35 of access as provided for in *Long Beach Police Officers*
36 *Association v. City of Long Beach* (2014) 59 Cal.4th 59.

37 *SEC. 6. Section 13503 of the Penal Code is amended to read:*

38 13503. In carrying out its duties and responsibilities, the
39 commission shall have all of the following powers:

40 (a) To meet at those times and places as it may deem proper.

1 (b) To employ an executive secretary and, pursuant to civil
2 service, those clerical and technical assistants as may be necessary.

3 (c) To contract with other agencies, public or private, or persons
4 as it deems necessary, for the rendition and affording of those
5 services, facilities, studies, and reports to the commission as will
6 best assist it to carry out its duties and responsibilities.

7 (d) To cooperate with and to secure the cooperation of county,
8 city, city and county, and other local law enforcement agencies in
9 investigating any matter within the scope of its duties and
10 responsibilities, and in performing its other functions.

11 (e) To develop and implement programs to increase the
12 effectiveness of law enforcement and when those programs involve
13 training and education courses to cooperate with and secure the
14 cooperation of state-level officers, agencies, and bodies having
15 jurisdiction over systems of public higher education in continuing
16 the development of college-level training and education programs.

17 (f) *To investigate and determine the fitness of any person to*
18 *serve as a peace officer in the state of California.*

19 (f)

20 (g) To cooperate with and secure the cooperation of every
21 department, agency, or instrumentality in the state government.

22 (h) *To audit any law enforcement agency that employs peace*
23 *officers described in subdivision (a) of Section 13510.1, without*
24 *cause and at any time.*

25 (g)

26 (i) To do any and all things necessary or convenient to enable
27 it fully and adequately to perform its duties and to exercise the
28 power granted to it.

29 ~~(h) The commission shall not have the authority to adopt or~~
30 ~~carry out a regulation that authorizes the withdrawal or revocation~~
31 ~~of a certificate previously issued to a peace officer pursuant to this~~
32 ~~chapter.~~

33 ~~(i) Except as specifically provided by law, the commission shall~~
34 ~~not have the authority to cancel a certificate previously issued to~~
35 ~~a peace officer pursuant to this chapter.~~

36 *SEC. 7. Section 13506 of the Penal Code is amended to read:*

37 13506. The commission may adopt those regulations as are
38 necessary to carry out the purposes of this chapter. ~~The commission~~
39 ~~shall not have the authority to adopt or carry out a regulation that~~
40 ~~authorizes the withdrawal or revocation of a certificate previously~~

1 ~~issued to a peace officer pursuant to this chapter. Except as~~
2 ~~specifically provided by law, the commission shall not have the~~
3 ~~authority to adopt regulations providing for the cancellation of a~~
4 ~~certificate.~~

5 *SEC. 8. Section 13509.5 is added to the Penal Code, to read:*

6 *13509.5. (a) There is within the commission a Peace Officer*
7 *Standards Accountability Division, hereafter referred to in this*
8 *chapter as the division.*

9 *(b) The primary responsibilities of the division shall be to review*
10 *potential grounds for decertification of peace officers, conduct*
11 *investigations into serious misconduct that may provide grounds*
12 *for decertification, present findings and recommendations to the*
13 *board and commission, and bring proceedings seeking the*
14 *revocation of certification of peace officers as directed by the*
15 *board and commission pursuant to this chapter.*

16 *(c) The Governor and the commission shall ensure the division*
17 *is staffed with a sufficient number of experienced and able*
18 *employees that are capable of handling the most complex and*
19 *varied types of decertification investigations, prosecutions, and*
20 *administrative proceedings against peace officers.*

21 *(d) The commission shall establish procedures for accepting*
22 *complaints from members of the public regarding peace officers*
23 *or law enforcement agencies that may be investigated by the*
24 *division or referred to the peace officers' employing agency or the*
25 *Department of Justice.*

26 *SEC. 9. Section 13509.6 is added to the Penal Code, to read:*

27 *13509.6. (a) No later than January 1, 2023, the Governor*
28 *shall establish the Peace Officer Standards Accountability Advisory*
29 *Board, hereafter referred to in this chapter as the board.*

30 *(b) The purpose of the board shall be to make recommendations*
31 *on the decertification of peace officers to the commission.*

32 *(c) The protection of the public shall be the highest priority for*
33 *the board as it upholds the standards for peace officers in*
34 *California. Whenever the protection of the public is inconsistent*
35 *with other interests sought to be promoted, the protection of the*
36 *public shall be paramount.*

37 *(d) The board shall consist of nine members, as follows:*

38 *(1) One member shall be a peace officer or former peace officer*
39 *with substantial experience at a command rank, appointed by the*
40 *Governor.*

1 (2) One member shall be a peace officer or former peace officer
2 with substantial experience at a management rank in internal
3 investigations or disciplinary proceedings of peace officers,
4 appointed by the Governor.

5 (3) Two members shall be members of the public, who shall not
6 be former peace officers, who have substantial experience working
7 at nonprofit or academic institutions on issues related to police
8 misconduct. One of these members shall be appointed by the
9 Governor and one by the Speaker of the Assembly.

10 (4) Two members shall be members of the public, who shall not
11 be former peace officers, who have substantial experience working
12 at community-based organizations on issues related to police
13 misconduct. One of these members shall be appointed by the
14 Governor and one by the Senate Rules Committee.

15 (5) Two members shall be members of the public, who shall not
16 be former peace officers, who have been subject to wrongful use
17 of force likely to cause death or serious bodily injury by a peace
18 officer, or who are surviving family members of a person killed
19 by the wrongful use of deadly force by a peace officer, appointed
20 by the Governor.

21 (6) One member shall be an attorney, who shall not be a former
22 peace officer, with substantial professional experience involving
23 oversight of peace officers, appointed by the Governor.

24 (e) Except as otherwise provided in subdivision (f), each member
25 shall be appointed for a term of three years and shall hold office
26 until the appointment of the member's successor or until one year
27 has elapsed since the expiration of the term for which the member
28 was appointed, whichever occurs first. Vacancies occurring shall
29 be filled by appointment for the unexpired term of a person with
30 the same qualification for appointment as the person being
31 replaced. No person shall serve more than two terms consecutively.
32 The Governor shall remove from the board any peace officer
33 member whose certification as a peace officer has been revoked.
34 The Governor may, after hearing, remove any member of the board
35 for neglect of duty or other just cause.

36 (f) Of the members initially appointed to the board, three shall
37 be appointed for a term of one year, three for a term of two years,
38 and three for a term of three years. Successor appointments shall
39 be made pursuant to subdivision (e).

(g) Each member of the board shall receive a per diem of three hundred fifty dollars (\$350) for each day actually spent in the discharge of official duties, including reasonable time spent in preparation for public hearings, and shall be reimbursed for travel and other expenses necessarily incurred in the performance of official duties. Upon request of a member based on financial necessity, the commission shall arrange and make direct payment for travel or other necessities rather than providing reimbursement.

SEC. 10. The heading of Article 2 (commencing with Section 13510) of Chapter 1 of Title 4 of Part 4 of the Penal Code is amended to read:

~~Article 2. Field Services and Standards for Recruitment and Training Services, Standards, and Certification~~

SEC. 11. Section 13510 of the Penal Code is amended to read:

13510. (a) (1) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing and upholding minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

The

(2) The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals, peace officer members of a county

coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, and housing authority police departments.

~~These~~

(3) *These* rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards that are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). Those rules shall

1 be adopted and amended pursuant to Chapter 3.5 (commencing
2 with Section 11340) of Part 1 of Division 3 of Title 2 of the
3 Government Code. As used in this section, "primary responsibility"
4 refers to the performance of law enforcement dispatching duties
5 for a minimum of 50 percent of the time worked within a pay
6 period.

7 (d) ~~Nothing in this section shall~~ *This section does not prohibit*
8 a local agency from establishing selection and training standards
9 that exceed the minimum standards established by the commission.

10 *SEC. 12. Section 13510.1 of the Penal Code is amended to*
11 *read:*

12 13510.1. (a) The commission shall establish a certification
13 program for peace officers ~~specified in Sections 13510 and 13522~~
14 ~~and for the California Highway Patrol. Certificates of the~~
15 ~~commission established described in Section 830.1, 830.2 with the~~
16 ~~exception of those described in subdivision (d) of that section,~~
17 ~~830.3, 830.32, or 830.33, or any other peace officer employed by~~
18 ~~an agency that participates in the Peace Officer Standards and~~
19 ~~Training (POST) program. A certificate or proof of eligibility~~
20 ~~issued pursuant to this section shall be considered professional~~
21 ~~certificates. the property of the commission.~~

22 (b) Basic, intermediate, advanced, supervisory, management,
23 and executive certificates shall be established for the purpose of
24 fostering professionalization, education, and experience necessary
25 to adequately accomplish the general police service duties
26 performed by peace officer members of city police departments,
27 county sheriffs' departments, districts, university and state
28 university and college departments, or by the California Highway
29 Patrol.

30 (c) (1) Certificates shall be awarded on the basis of a
31 combination of training, education, experience, and other
32 prerequisites, as determined by the commission.

33 (2) In determining whether an applicant for certification has the
34 requisite education, the commission shall recognize as acceptable
35 college education only the following:

36 (A) Education provided by a community college, college, or
37 university which has been accredited by the department of
38 education of the state in which the community college, college, or
39 university is located or by a recognized national or regional
40 accrediting body.

1 (B) Until January 1, 1998, educational courses or degrees
2 provided by a nonaccredited but state-approved college that offers
3 programs exclusively in criminal justice.

4 (d) Persons who are determined by the commission to be eligible
5 peace officers may make application for the certificates, provided
6 they are employed by an agency which participates in the Peace
7 Officer Standards and Training (POST) program. *POST program.*
8 *Any person described in subdivision (a) who is not eligible for a*
9 *certificate shall make application for proof of eligibility.*

10 (e) *The commission shall assign each person who applies for*
11 *or receives certification a unique identifier that shall be used to*
12 *track certification status from application for certification through*
13 *that person's career as a peace officer.*

14 (e)
15 (f) ~~The commission shall have the authority to cancel any~~
16 ~~certificate that has been obtained through misrepresentation or~~
17 ~~fraud or that was issued as the result of an administrative error on~~
18 ~~the part of the commission or the employing agency; suspend,~~
19 ~~revoke, or cancel any certification pursuant to this chapter.~~

20 (g) *An agency that employs peace officers described in*
21 *subdivision (a) shall employ as a peace officer only individuals*
22 *with current, valid certification pursuant to this section, except*
23 *that an agency may provisionally employ a person for up to 24*
24 *months, pending certification by the commission, provided that*
25 *the person has applied for certification and has not previously*
26 *been certified or denied certification.*

27 (h) (1) *Notwithstanding subdivision (d), the commission shall*
28 *issue a basic certificate or proof of eligibility to any peace officer*
29 *described in subdivision (a) who, on January 1, 2022, is eligible*
30 *for a basic certificate or proof of eligibility but has not applied*
31 *for a certification.*

32 (2) *Commencing on January 1, 2022, any peace officer*
33 *described in subdivision (a) who does not possess a basic*
34 *certificate and who is not yet or will not be eligible for a basic*
35 *certificate, shall apply to the commission for proof of eligibility.*

36 (i) *As used in this chapter, "certification" means a valid and*
37 *unexpired basic certificate or proof of eligibility issued by the*
38 *commission pursuant to this section.*

39 SEC. 13. *Section 13510.15 is added to the Penal Code,*
40 *immediately following Section 13510.1, to read:*

1 13510.15. (a) Every basic certificate issued before January
2 1, 2022, shall be deemed to expire on January 1, 2023. Every basic
3 certificate or proof of eligibility issued on or after January 1, 2022,
4 shall be valid for no more than two years, as determined by the
5 commission.

6 (b) The commission shall assess the following fees related to
7 the issuance and renewal of a basic certificate or proof of
8 eligibility:

9 (1) A fee not to exceed three hundred dollars (\$300) for the
10 initial issuance of a basic certificate or proof of eligibility.

11 (2) A fee not to exceed fifty dollars (\$50) for the renewal of an
12 expiring basic certificate or proof of eligibility.

13 (3) An annual certification fee not to exceed two hundred fifty
14 dollars (\$250), per year, for costs incident to the administration
15 of the certification program, investigations of officer misconduct,
16 and adjudication of certification revocations.

17 (4) Any other fees determined necessary by the commission for
18 the processing of other transactions related to the certification
19 program, including, but not limited to, the replacement of a lost
20 or destroyed certificate or proof of eligibility, the placement of
21 certification on inactive status, or reactivation of an inactive
22 certification.

23 (c) The amount of the fees shall be set and may be adjusted by
24 the commission, but shall not exceed the reasonable regulatory
25 cost to the commission of administering the certification program.

26 (d) Moneys collected pursuant to this section shall be deposited
27 into the Peace Officer Certification Fund, which is hereby created
28 as a special fund in the State Treasury. Notwithstanding Section
29 13340 of the Government Code, moneys in the Peace Officer
30 Certification Fund are continuously appropriated to the
31 commission for the purpose of administering the certification
32 program.

33 SEC. 14. Section 13510.8 is added to the Penal Code, to read:

34 13510.8. (a) A certified peace officer shall have their
35 certification revoked, and an applicant shall have their application
36 for certification denied, upon a determination pursuant to
37 subdivision (d) that the peace officer or applicant has done any
38 of the following:

39 (1) The person is or has become ineligible to hold office as a
40 peace officer pursuant to Section 1029 of the Government Code.

1 (2) *The person has been terminated for cause from employment*
2 *as a peace officer for, or has, while employed as a peace officer,*
3 *otherwise engaged in, any serious misconduct as described in*
4 *subdivision (b).*

5 (b) *By January 1, 2023, the commission shall adopt by*
6 *regulation a definition of “serious misconduct” that shall serve*
7 *as the criteria to be considered for ineligibility for, or revocation*
8 *of, certification. This definition shall, without limitation, include*
9 *all of the following:*

10 (1) *Acts of dishonesty relating to the reporting, investigation,*
11 *or prosecution of a crime, or relating to the reporting of, or*
12 *investigation of misconduct by, a peace officer or custodial officer,*
13 *including, but not limited to, false statements, filing false reports,*
14 *tampering with, falsifying, destroying, or concealing evidence,*
15 *perjury, and tampering with data recorded by a body-worn camera*
16 *or other recording device for purposes of concealing misconduct.*

17 (2) *Acts of abuse of power, including, but not limited to,*
18 *intimidating witnesses, knowingly obtaining a false confession,*
19 *and knowingly making a false arrest.*

20 (3) *Acts of physical abuse, including, but not limited to, the*
21 *unauthorized use of force.*

22 (4) *Sexual assault, as described in subdivision (b) of Section*
23 *832.7.*

24 (5) *Acts demonstrating bias on the basis of race, national origin,*
25 *religion, gender identity or expression, housing status, sexual*
26 *orientation, mental or physical disability, or other protected status*
27 *in violation of law or department policy or inconsistent with a*
28 *peace officer’s obligation to carry out their duties in a fair and*
29 *unbiased manner.*

30 (6) *Acts that violate the law and are sufficiently egregious or*
31 *repeated as to be inconsistent with an officer’s obligation to uphold*
32 *the law or respect the rights of members of the public, as*
33 *determined by the commission.*

34 (7) *Participation in a law enforcement gang or other*
35 *organization that engages in a pattern of rogue on-duty behavior*
36 *that violates the law or fundamental principles of professional*
37 *policing, including, but not limited to, unlawful detention, use of*
38 *excessive force, falsifying police reports, fabricating evidence,*
39 *targeting persons for enforcement based solely on protected*
40 *characteristics of those persons, theft, use of alcohol or drugs on*

1 duty, protection of other members from disciplinary actions, and
2 retaliation against other officers who threaten or interfere with
3 the activities of the group.

4 (8) Failure to cooperate with an investigation into potential
5 police misconduct, including an investigation conducted pursuant
6 to this chapter.

7 (c) (1) Beginning no later than January 1, 2023, the division
8 shall promptly review and investigate any grounds for
9 decertification described in subdivision (a) received from an
10 agency.

11 (2) In addition to the requirement to investigate incidents
12 specified in paragraph (1), the commission or board, in their
13 discretion, may direct the division to investigate, and the division
14 in its discretion may investigate without the request of the
15 commission or board, any potential grounds for revocation of
16 certification of an officer.

17 (3) The division, in carrying out any investigation initiated
18 pursuant to this section or any other duty shall have all of the
19 powers of investigation granted pursuant to Article 2 (commencing
20 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
21 2 of the Government Code.

22 (4) Notwithstanding any other law, the investigation shall be
23 completed within three years after the receipt of the completed
24 report of the disciplinary or internal affairs investigation from the
25 employing agency pursuant to Section 13510.9, however, no time
26 limit shall apply if a report of the conduct was not made to the
27 commission. An investigation shall be considered completed upon
28 a notice of intent to deny or revoke certification issued pursuant
29 to subdivision (e). The time limit shall be tolled during the appeal
30 of a termination or other disciplinary action through an
31 administrative or judicial proceeding or during any criminal
32 prosecution of the officer. The commission shall consider the
33 officer's prior conduct and service record, and any instances of
34 misconduct, including any incidents occurring beyond the time
35 limitation for investigation in evaluating whether to revoke
36 certification for the incident under investigation.

37 (5) An action by an agency or decision resulting from an appeal
38 of an agency's action does not preclude action by the commission
39 to investigate, suspend, or revoke an officer's certification pursuant
40 to this section.

1 (d) Upon arrest or indictment of an officer for any crime
2 described in Section 1029 of the Government Code, or discharge
3 from any law enforcement agency for grounds set forth in
4 subdivision (a), or separation from employment of an officer during
5 a pending investigation into allegations of serious misconduct, the
6 executive director shall order the immediate suspension of any
7 certificate held by that officer upon the determination by the
8 executive director that the suspension is in the best interest of the
9 health, safety, or welfare of the public. The order of suspension
10 shall be made in writing and shall specify the basis for the
11 executive director's determination. Following the issuance of a
12 suspension order, proceedings of the commission in the exercise
13 of its authority to discipline any officer shall be promptly scheduled
14 as provided for in this section. The suspension shall continue in
15 effect until issuance of the final decision on revocation pursuant
16 to this section or until the order is withdrawn by the executive
17 director.

18 (e) Records of an investigation of any person by the commission
19 shall be retained for 30 years following the date that the
20 investigation is deemed concluded by the commission. The
21 commission may destroy records prior to the expiration of the
22 30-year retention period if the subject is deceased and no action
23 upon the complaint was taken by the commission beyond the
24 commission's initial intake of such complaint.

25 (f) Any peace officer may voluntarily surrender their
26 certification permanently. Voluntary permanent surrender of
27 certification pursuant to this subdivision shall have the same effect
28 as revocation. Voluntary permanent surrender is not the same as
29 placement of a valid certification into inactive status during a
30 period in which a person is not actively employed as a peace
31 officer. A permanently surrendered certification cannot be
32 reactivated.

33 (g) (1) The commission may initiate proceedings to revoke an
34 officer's certification for conduct which occurred before January
35 1, 2022, only for either of the following:

36 (A) Serious misconduct pursuant to paragraphs (1) or (4) of
37 subdivision (b), or pursuant to paragraph (3) of subdivision (b)
38 for the use of deadly force that results in death or serious bodily
39 injury.

1 (B) If the employing agency makes a final determination
2 regarding its investigation of the misconduct after January 1, 2022.

3 (2) Nothing in this subdivision prevents the commission from
4 considering the officer's prior conduct and service record in
5 determining whether revocation is appropriate for serious
6 misconduct.

7 SEC. 15. Section 13510.85 is added to the Penal Code,
8 immediately following Section 13510.8, to read:

9 13510.85. (a) (1) When, upon the completion of an
10 investigation conducted pursuant to subdivision (c) of Section
11 13510.8, the division finds reasonable grounds for revocation of
12 a peace officer's certification, it shall promptly notify the officer
13 involved, in writing, of its determination and reasons therefore,
14 and shall provide the officer with a detailed explanation of the
15 decertification procedure and the officer's rights to contest and
16 appeal.

17 (2) Upon notification, the officer may, within 30 days, file a
18 request for a review of the determination by the board and
19 commission. If the officer does not file a request for review within
20 30 days, the officer's certification shall be revoked without further
21 proceedings. If the officer files a timely review, the board shall
22 schedule the case for hearing.

23 (3) The board shall meet as required to conduct public hearings,
24 but no fewer than four times per year. The location of the board's
25 meetings shall be varied across the state to facilitate attendance
26 by involved officers and members of the public in the locality where
27 the cases arise.

28 (4) At each public hearing, the board shall review the findings
29 of investigations presented by the division pursuant to paragraph
30 (1) and shall make a recommendation on what action should be
31 taken on the certification of the peace officer involved. The board
32 shall only recommend revocation if the factual basis for revocation
33 is established by clear and convincing evidence.

34 (5) The commission shall review all recommendations made by
35 the board and shall adopt the board's recommendation unless it
36 is without a reasonable basis. In any case in which the commission
37 reaches a different determination than the board's
38 recommendation, it shall set forth its analysis and reasons for
39 reaching a different determination in writing.



▶ State Legislation for Consideration

April 8, 2021

State Legislation for Consideration

SUPPORT

AB 557 (Muratsuchi & Chiu) – Hate crimes: hotline

AB 886 (Bonta) – Victims of crimes

AB 917 (Bloom) – Vehicles: video imaging of parking violations

NO STAFF RECOMMENDATION

SB 2 (Bradford) – Peace officers: certification: civil rights

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

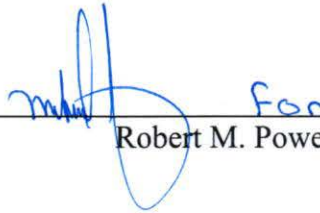
DATE: April 2, 2021

FROM: General Manager

SUBJECT: Sustainability Action Plan Update

At the April 8, 2021 Board meeting, staff will provide an update on the Sustainability Action Plan for information.

If you have any questions, please contact Val Menotti, Chief Planning and Development Officer, at (510) 287-4794.



Robert M. Powers

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



▶ Sustainability Action Plan Update

Sustainability and Energy Division

April 8, 2021

Agenda

- Sustainability at BART
- Overview of Sustainability Action Plan
- Sustainability Progress and Updates
 - Environmental Performance
 - Operations and System Resilience
 - Community Experience
- Clean Power Procurement Update
- 2021 Sustainability Key Initiatives
- Challenges and Opportunities

Sustainability at BART

- Transportation accounts for 40% of greenhouse gas (GHG) emissions in CA, and of those, 70% are produced by passenger vehicles¹.
- By providing over 409,000 passenger trips per weekday², BART supports a shift from driving alone to transit and thereby contributes significantly to the reduction of GHG emissions from Transportation in the Bay Area.
- In addition, BART is committed to integrating sustainability into its daily operations and future transit investments.

¹2020 CA Air Resources Board (CARB) *California Emissions Trends Report: 2000 – 2018*

²Data for CY 2019

Sustainability at BART

- [Strategic Plan](#) (Adopted by Board, 2015) includes “Advance Sustainability” as one of the strategies.
- [Sustainability Policy](#) (Adopted by Board, April 2017) Vision: “BART is committed to advancing regional sustainability ...” through high level goals set out according to the American Public Transportation Association (APTA) sustainability categories.
- [Sustainability Action Plan](#) (Dec 2017): The Plan includes specific types of projects that BART has/is/will implement to pursue and achieve the APTA sustainability categories goals and BART specific targets.
- Progress Reports published annually ([CY2018](#), [CY2019](#)).

Sustainability Action Plan Overview

TARGETS

- Time Horizon: 2015 (baseline year) to 2025
- Types of targets:
 - Commitment – based on commitment to high scoring actions, implementation is constrained by potential funding limitations
 - Aspiration – assumes full plan implementation and fewer budget constraints



ACTIONS

- The Plan is broken down into **55** Actions covering the seven Sustainability Categories that align with APTA Sustainability Indicators
- **20** Priority Actions are highlighted as near-term focus areas
- Different BART departments lead in the implementation of Actions in their area of control



Performance Metrics and Targets

From 2019 Sustainability Progress Report

	Units	2015 Baseline	2016	2017	2018	2019	Target 2025	
 RESOURCE CONSERVATION: ENERGY & GHG EMISSIONS								
Total energy use	Megajoules (MJ) / vehicle revenue mile (VRM)	21.19	19.93	20.52	20.89	21.13	Committed 19.52	Aspirational 19.19
Total greenhouse gas (GHG) emissions	Metric tons of carbon dioxide equivalent (MT CO2e) / thousand VRM	1.92	1.65	0.24	0.26	0.30	Committed 0.31	Aspirational 0.24
 RESOURCE CONSERVATION: WATER								
Total potable water use	Gallons / VRM	0.61	0.59	0.81	0.91	0.79	Committed 0.42	Aspirational 0.37

Priority Actions

From Sustainability Action Plan, Accepted 2017

ENVIRONMENTAL PERFORMANCE PRIORITY ACTIONS

Resource Conservation – Energy and Greenhouse Gas Emissions

RCE 1	Increase Capacity to Support Regional Greenhouse Gas Goals
RCE 2	Adopt a Strategic Energy Plan
RCE 3	Make Renewable Energy Purchases
RCE 4	Invest in On-site Energy Generation
RCE 7	Invest in District Lighting Retrofits
RCE 8	Onboard new Energy Efficient Train Cars

Resource Conservation – Water

RCW 1	Regularly Audit Water Use and Correct Issues
RCW 3	Upgrade Water Fixtures

Emissions and Pollution Control

EP 1	Support Solid Waste Reduction
EP 4	Improve Recycling at All District Shops and Yards
EP 9	Clean and Reuse Water

OPERATIONS & SYSTEM RESILIENCE PRIORITY ACTIONS

Materials and Construction Operations Optimization

MC 2	Update the BART Facilities Standards (BFS) for Construction Activities
MC 6	Develop Sustainability Design Guidance

Extreme Weather Adaptation and Resilience

EWA 1	Coordinate with Regional Agencies in Climate Adaptation Planning and Implementation
EWA 2	Conduct Hazard Mitigation Planning

Smart Land Use and Livable Neighborhoods

SLU 1	Improve Station Character and Community Fit
SLU 2	Continue to Lead the Region in Transit-Oriented Development
SLU 3	Connect to Community – Station Access

Patron Experience

PE 1	Create Cleaner Station Environments
PE 2	Create Safer Station Environments

COMMUNITY EXPERIENCE PRIORITY ACTIONS

Environmental Performance

Selected Key Achievements. See Annual Reports for more information.



2018



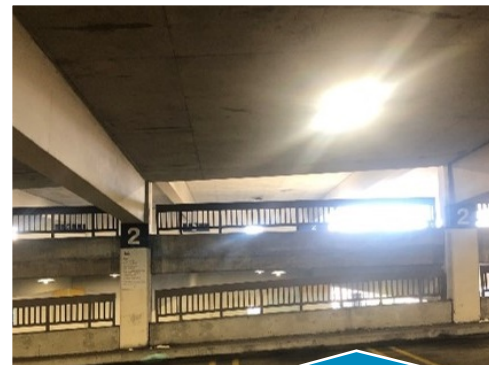
LEED Silver Certified Warm Springs Station opened.

2019



Low Impact Development completed at Lafayette.

2020



Commenced energy-efficient LED lighting retrofits for garages.



Switched from fossil diesel to renewable diesel for eBART and non-revenue heavy equipment.



Energy-efficient LED lighting retrofits completed at 5 parking lots.



Electric Vehicle Charging Pilot, started in 2017, met objectives.

Operations and System Resilience

Selected Key Achievements. See Annual Reports for more information.



2018



Fleet of the Future Train cars, with lifecycle sustainability features, introduced.

2019



Completed critical seismic retrofits at Coliseum and Fruitvale Stations.

2020



Berryessa/North San Jose and Milpitas Stations, with sustainability measures, opened.



Initiated Sea-Level-Rise and Flood Resiliency Study.



Commenced decommissioning of legacy fleet.



Implemented Clipper-Only fares.

Community Experience

Selected Key Achievements. See Annual Reports for more information.



2018



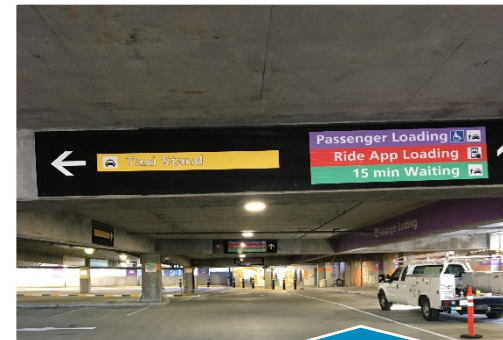
Initiated multi-modal transfer improvements at 5 stations.

2019



5 Transit-Oriented Development (TOD) projects completed.

2020



New passenger loading zones at Millbrae and El Cerrito Del Norte.



Completed Downtown Berkeley and Transit Area improvement.



Added 258 bike parking spaces and 59 Bay Wheels docks.



Daily fee and carpool payments via BART mobile app.

BART Clean Power Procurement

Background & Status Update

Profile of BART's Power Procurement



Electric Supply

- Since 1995, BART has procured the majority of its electric supply from wholesale resources rather than taking bundled retail service from PG&E
- With authorities granted under statute, BART has assembled a portfolio of power purchase agreements (PPAs) to serve the District's electric load requirements
- Beginning in 2017, BART has participated directly in CAISO wholesale electric markets, with 24/7/365 scheduling support from NCPA



Electric Delivery

- BART relies on PG&E for delivery of electricity from BART's contracted sources of supply to its various points of interface with PG&E's electric system
- Transmission fees, including BART's portion of the Transmission Access Charge, are paid to the CAISO for allocation to Transmission Owners and other end uses
- Distribution charges and other Special Facilities fees are paid directly to PG&E



Electric Consumption

- Historically, BART consumes approximately 400,000 MWh of electricity each year making it one of Northern California's largest end users
- Approximately 80% of BART's electricity usage is attributed to its 34.5 kV traction power system; therefore, annual load requirements correlate directly with the District's service plan
- BART's daily load profile generally reflects its transit schedule, with load peaking during the morning and evening commutes, and other special events

Wholesale Electricity Portfolio Policy

In 2017, BART’s Board of Directors adopted ambitious clean energy commitments on behalf of the District under BART’s Wholesale Electricity Portfolio Policy (WEPP).

Objective	Performance Measures
Reliable	▪ Procure uninterrupted electric supply to support dependable transit service for the public
Affordable	▪ Maintain long-term cost advantage over retail electric service to promote affordable BART fares and encourage ridership
Stable	▪ Manage wholesale electric portfolio in a manner that supports price stability and predictability of energy budget-setting
Clean	▪ Meet or exceed California’s energy policy goals established under the Renewable Portfolio Standard (RPS)



Clean Energy Commitments

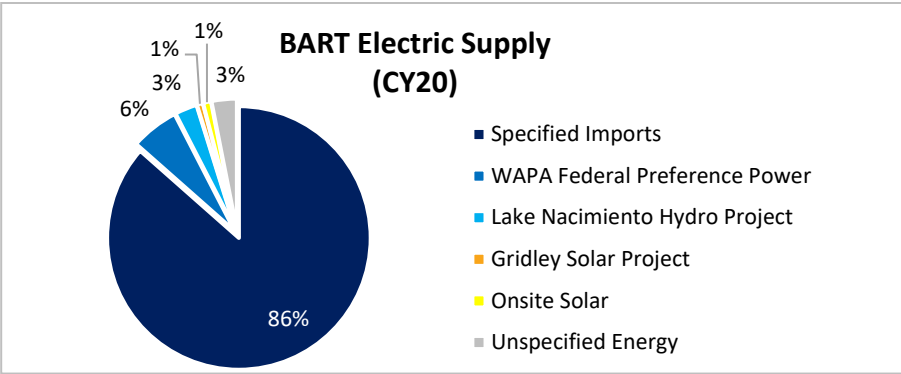
BART Commitments <i>(adopted 2017)</i>	California Commitments <i>(adopted 2018 under S.B. 100)</i>
2025: 50% RPS-eligible renewables	2025: 50% RPS-eligible renewables
2035: 100% GHG-free electric supply	2030: 60% RPS-eligible renewables
2045: 100% RPS-eligible renewables	2045: 100% GHG-free electric supply

Notes

- Detailed definitions of renewable eligibility requirements can be found in the Renewable Portfolio Standard Eligibility Guidebook (“RPS Guidebook”) published by the California Energy Commission. Notably, under this definition of “eligible renewables” hydroelectric facilities >30MW are not considered renewable for the purposes of compliance with California’s RPS Program.

BART's Electric Supply Portfolio

In 2020, BART sourced over ≥95% of its electric supply from GHG-free sources, including ≥10% designated as “eligible renewables” under California state law.



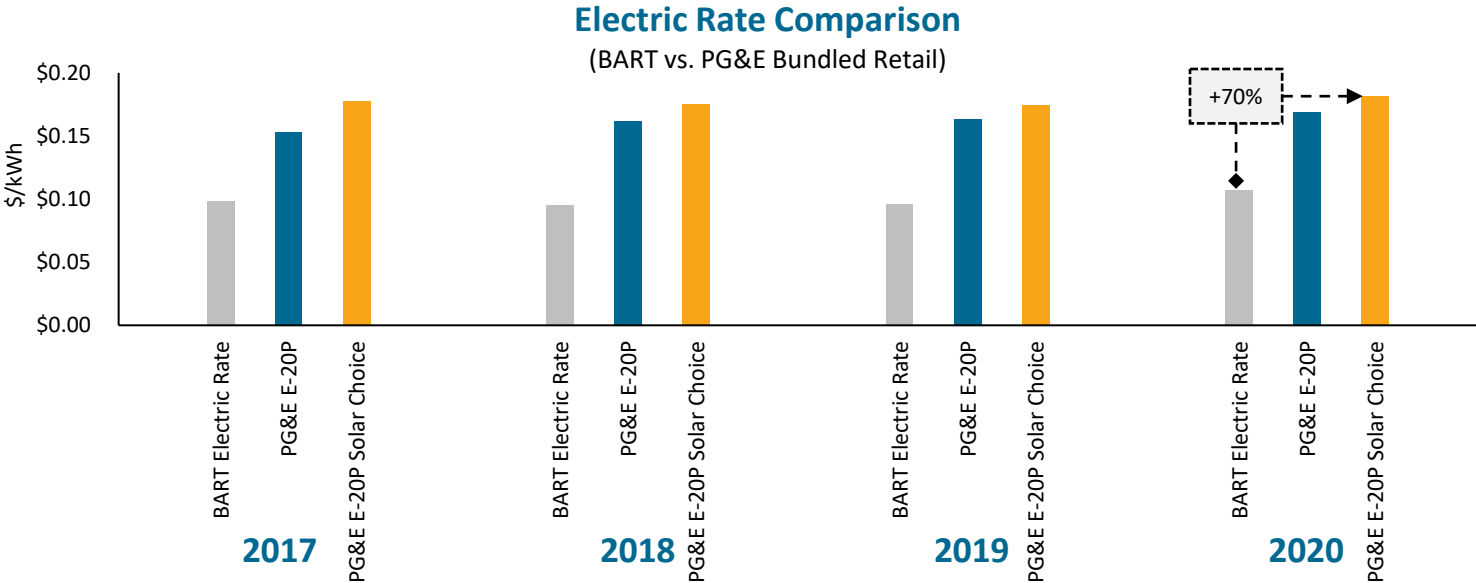
Electric Supply Source	Technology	Energy Type	Annual Contribution*	Contract Term	Location
Specified Imports	Large Hydroelectric & ACS Power	GHG-free	87%	6 mo. & 1 yr. (Exp. 12/2020, 8/2021)	Pacific NW
WAPA Federal Preference Power (12 Units, 2,117 MW)	Large Hydroelectric	GHG-free & Partially Renewable	6%	20 years (Exp. 12/2024)	Northern/Central California
Lake Nacimiento Hydro Project (4.4 MW)	Small Hydroelectric	GHG-free & Renewable	3%	20 years (Exp. 12/2033)	San Luis Obispo County
Gridley Solar Project (2.5 MW)	Wholesale Solar PV	GHG-free & Renewable	1%	25 years (Exp. 3/2038)	Butte County
Onsite Solar (5 Units, 3.2 MW)	Behind-the-Meter Solar PV	GHG-free & Partially Renewable	1%	20 years (Exp. 2029-37)	<ul style="list-style-type: none"> Antioch Maintenance Facility Lafayette Passenger Station Warm Springs Passenger Station Hayward Yard Richmond Yard
Unspecified Energy	Unspecified Market Energy	Grid Avg. Carbon Intensity	3%	N/A	CAISO Market

Notes

- Preliminary accounting subject to further adjustment(s) pending receipt of settlement quality data and subsequent verification by an independent third-party auditor.
- WAPA: Western Area Power Administration, a power market entity within the U.S. Department of Energy
- ACS Power: Asset-Controlled Supplier Power is a specific type of electric power entity approved and registered by CARB under the Mandatory Reporting Regulation (MRR).

Portfolio Performance

	Metric	Fiscal vs. Calendar	2017	2018	2019	2020
Non-labor Power Cost (\$)		FY	\$37.9M	\$39.0M	\$39.2M	\$40.6M
BART System Load (MWh)		FY	385,972	411,109	407,915	380,155
Car-Miles (#)		FY	77.3M	78.6M	79.6M	71.9M
Emission Factor (lbs CO2e/MWh)		CY	54.1	61.6	75.5	≤70*
GHG-free (%)		CY	95%	94%	92%	≥95%*
Renewable (%)		CY	6%	3%	5%	≥10%*



Notes

- Preliminary accounting subject to further adjustment(s) pending receipt of settlement quality data and subsequent verification by an independent third-party auditor.
- PG&E electric rates sourced from PG&E’s Annual Joint Rate Comparison, produced by PG&E at the direction of the California Public Utilities Commission (CPUC)

Power Content Label

BART’s first Power Content Label produced for 2019 under California Energy Commission’s Power Source Disclosure program certified its power supply as over 92% GHG-free.

Power Content Label (PCL)

- The PCL is an annual report certified by the California Energy Commission (CEC) under its Power Source Disclosure program
- The PCL utilizes a standardized methodology established by the CEC designed to promote an accurate comparison of electric supply portfolios
- PCLs are audited by an independent third-party to verify input data and accounting
- PCLs provide a comparison of BART’s supply sources against California’s grid average power mix in a given reporting year



2019 POWER CONTENT LABEL		
San Francisco Bay Area Rapid Transit District (BART)		
BART Electric Supply Portfolio		
ENERGY RESOURCES	Power Mix	2019 CA Power Mix
Eligible Renewable ¹	5.1%	31.7%
Biomass & Biowaste	0.0%	2.4%
Geothermal	0.0%	4.8%
Eligible Hydroelectric	3.3%	2.0%
Solar	1.8%	12.3%
Wind	0.0%	10.2%
Coal	0.0%	3.0%
Large Hydroelectric	86.3%	14.6%
Natural Gas	0.0%	34.2%
Nuclear	0.8%	9.0%
Other	0.0%	0.2%
Unspecified sources of power ²	7.9%	7.3%
TOTAL	100%	100%
Percentage of Retail Sales Covered by Retired Unbundled RECs ³	0.0%	
¹ The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.		
² Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.		
³ Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.		
For specific information about this electricity product, contact:	BART 510-917-9990	
For general information about the Power Content Label, please visit:	http://www.energy.ca.gov/pcl/	
For additional questions, please contact the California Energy Commission at:	Toll-free in California: 844-454-2906 Outside California: 916-653-0237	

Notes

- BART is not a retail provider and is not authorized under state law to serve retail load. As a result, any and all references to “retail sales” associated with BART’s Power Content Label should be interpreted as “total system load” until the Power Source Disclosure program rules are formally updated to accommodate BART’s participation.

Status of BART’s Renewable PPAs

BART’s (2) renewable PPAs approved by the Board in 2017 are expected online in 2021 and are collectively projected to serve upwards of 60% of the District’s annual electric requirements.

	Sky River Wind	Slate Solar
Total Project Capacity (MW)	30 MW	50.5 MW
Annual Expected Output (MWh)	105,681 MWh	142,038 MWh
Location	Kern County, CA	Kings County, CA
Projected Commercial Online Date	Sept. 2021	Oct. 2021
Products	Energy, Capacity, RECs	Energy, Capacity, RECs
Contract Term	20 years	20 years
Current Status	<ul style="list-style-type: none">Construction financing securedPermitting completeConstruction underwayCAISO onboarding in progress	<ul style="list-style-type: none">Construction financing securedPermitting completeConstruction underwayCAISO onboarding in progress



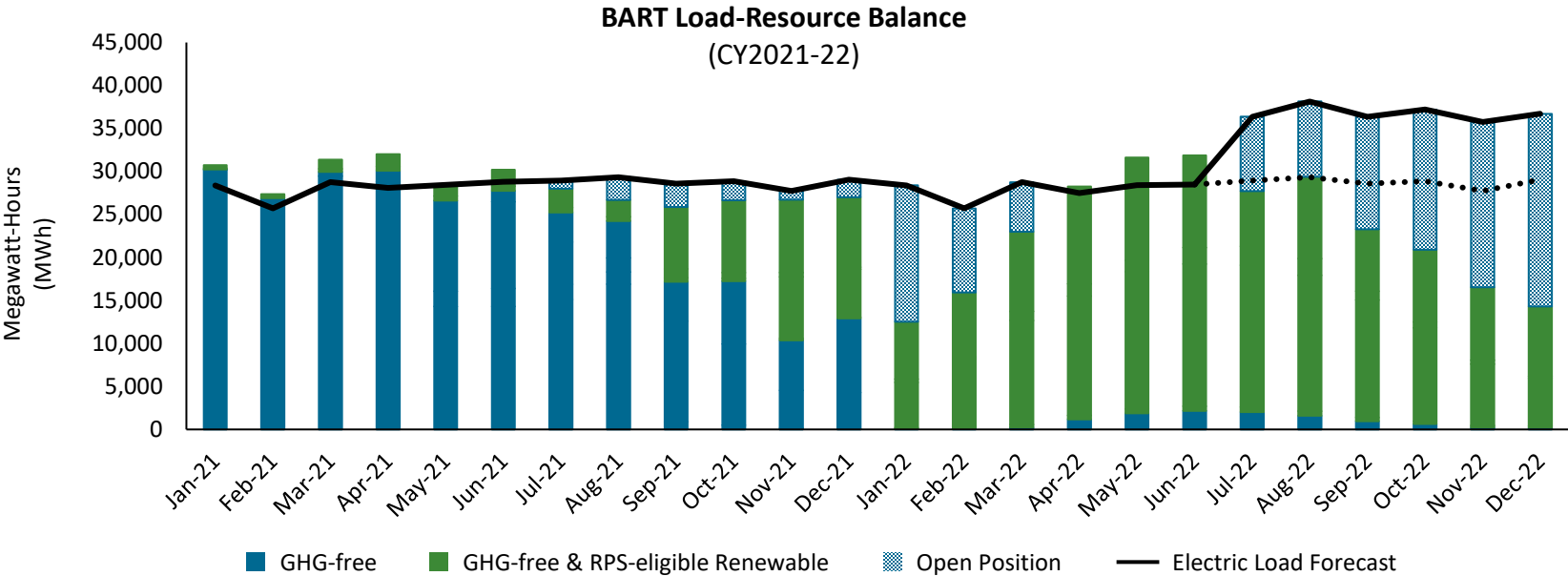
NextEra’s North Sky River Wind, located adjacent to its Sky River Wind project, which is currently under redevelopment.



Recurrent Energy’s Mustang Solar project, located adjacent to its Slate Solar project, which is currently under development.

Load-Resource Balance

BART is currently hedged with fixed-price energy at $\geq 90\%$ through CY21 with procurement planning for CY22 and beyond actively underway.



Planning Considerations

- Load uncertainty (*e.g., FY22-23 service schedules*)
- Commercial operation of Slate Solar & Sky River Wind
- Regional hydro conditions (*e.g., annual precipitation*)
- Evaluation of So. Feather PPA (*targeting deliveries by 1/1/2022*)
- Seasonality of generation resources (*e.g., solar, hydro*)

2021 Sustainability Key Initiatives

Electric Vehicle (EV) Charging

Prioritized in 2020 as GHG Emissions Reduction Action Item

Warm Springs (42 EV parking spaces) – Pilot met objectives

- Exceeded Bay Area Air Quality Management District's required minimum usage of 378 MWh over 3 years.
- Renewed ChargePoint O&M and monitoring agreement.
- Implemented Low Carbon Fuel Standards (LCFS) reporting requirements.

EV Policy Development

- Drafting EV Charging Policy (passenger stations only) for board discussion in Spring/Summer 2021.
- Tracking federal/state funding opportunities to inform Implementation Plan to scale EV charging.

Other EV applications

- Created working group with bus operators to add inductive electric bus charging at BART stations in compliance with CA Air Resources Board's Innovative Clean Transit (ICT) regulation.
- Analyze fleet replacement schedule to enable purchase/lease of EVs, pending funding for charging infrastructure, as part of BART's non-revenue fleet (NRVE).



District Lighting Retrofits

Prioritized as Energy Conservation Action Item in Sustainability Action Plan

Lighting Retrofit in 14 District Parking Garages

- Replacing existing light fixtures to light emitting diode (LED) technology and installing wireless lighting controls.
- Savings in energy and maintenance costs over 20 years.
- Leverages PG&E's On-Bill Financing (OBF) which ensures availability of Sustainability capital funds for other sustainability projects.
- Construction underway with 3 garages (Hayward, Millbrae, and Daly City) expected to be substantially completed in April 2021.
- Expected project completion in Q1 CY2022.

Stations

- Study lighting standards for different station types and stations zones per Station Experience Design Guidelines and Powell Station Guidelines.
- Develop an energy savings and implementation plan.



Optimize Water Consumption

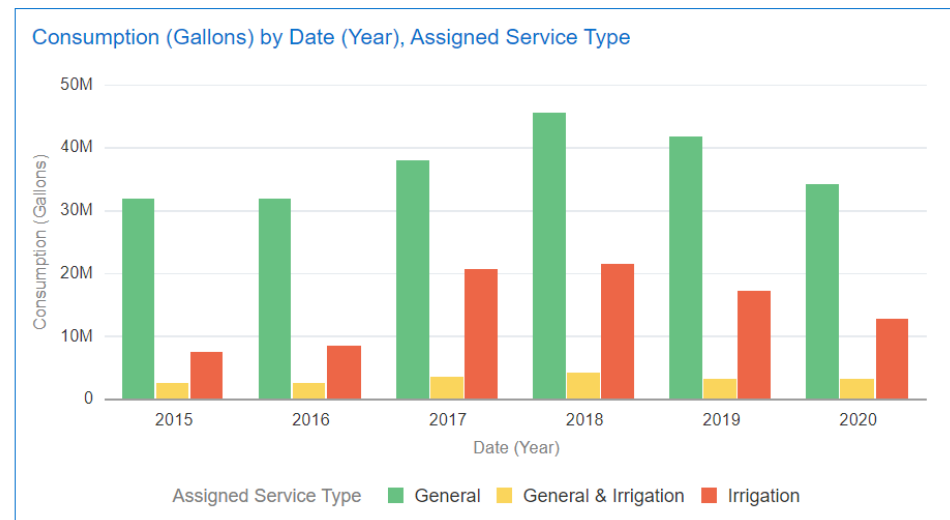
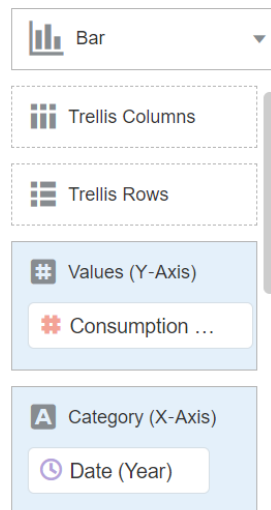
Prioritized as Water Conservation Action Item in Sustainability Action Plan

Water reduction

- Collaborating with landscape architect to optimize irrigation across the district and at Warm Springs wetland mitigation site.
- Created cross-departmental team to address consumption at shops & yards and develop standard operating procedures.

Data and Analytics

- Developed interactive dashboards using BART Analytics Cloud to analyze water use and devise new projects.
- Compiled information about water meters to aid leak detection and maintenance.



Risks and Challenges

- Garage LED lighting project delivery coordination based on ridership recovery and parking demand
- Reduced vehicle revenue miles negatively skews annual metric performance when compared to targets
- Load uncertainty (*e.g., FY22-23 service schedules*)
- Hydro conditions (*e.g., annual precipitation, reservoir storage*)
- PG&E Public Safety Power Shutoff (PSPS) due to high wildfire risk
- Increase in transmission and distribution delivery rates due to system-hardening upgrades
- Intermittency and seasonality of new renewable PPAs

Opportunities

- Leadership in Energy and Environmental Design (LEED) Gold Certification for BHQ
- Climate Action Plan for Transportation Infrastructure (CAPTI) funding
- Execution of WAPA successor PPA
- Evaluation of South Feather PPA and other new energy resources (*e.g., flexible, dispatchable, firm*)
- Federal Infrastructure Package
- State energy-related grant funding (*e.g., resiliency, clean energy incentives, emerging technologies*) and large-scale EV infrastructure funding opportunities
- Non-revenue vehicle fleet electrification

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

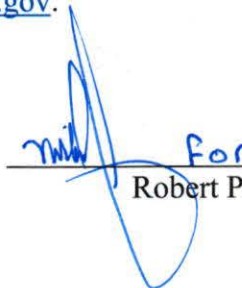
DATE: April 2, 2021

FROM: General Manager

SUBJECT: Resolution Condemning Violence Against the Asian American Pacific Islander (AAPI) Community

At the request of Director Li, attached is a resolution condemning the rise in violence against the the Asian American Pacific Islander (AAPI) community. The resolution will be presented for consideration at the Board of Directors meeting on April 8, 2021.

If you have any questions, please contact Maceo Wiggins, Director of the Office of Civil Rights, at (510) 464-7194 or mwiggin@bart.gov.

 For

Robert Powers

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

**BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**Resolution of the Board of Directors of the
San Francisco Bay Area Rapid Transit
District Condemning Violence Against the
Asian American Pacific Islander (AAPI)
Community**

Resolution No.: _____

WHEREAS, the San Francisco Bay Area region made up of Alameda, Contra Costa, San Mateo, Santa Clara and San Francisco counties represents the BART Service Area; and

WHEREAS, the San Francisco Bay Area Rapid Transit District provides transportation and mobility services to residents and visitors to the San Francisco Bay Area and the BART Service Area; and

WHEREAS, on June 17, 2017, the Board of Directors of the San Francisco Bay Area Rapid Transit District adopted the District's Safe Transit Policy which ensures an inviting, equitable, and safe community for everyone who use our system or works for the District and reaffirmed our commitment to stand together with the people of the Bay Area in opposing hate, violence, and acts of intolerance committed against our riding community and employees; and

WHEREAS, the BART Service Area is one of the most diverse regions in the United States, where the AAPI community represents 33% of the population of the BART Service Area, 25% of our workforce and 32% of our pre-pandemic ridership; and

WHEREAS, our country has a history of government and institutionalized discrimination and racism towards the AAPI community and other people of color including, but not limited to, the 1882 Chinese Exclusion Act, the Internment of Japanese Americans during World War Two and more recently, attempts to blame the COVID-19 pandemic on the AAPI community; and

WHEREAS, the group Stop AAPI Hate has compiled data which indicates that between March 2020 and February 2021, nearly 3,800 incidents of discriminatory acts, hate speech and violence against the AAPI community have occurred; and

WHEREAS, the San Francisco Bay Area Rapid Transit District specifically cites the murder of six (6) members of the AAPI community in the March 16, 2021 mass shooting in Atlanta, Georgia, the recent attacks on members of the AAPI community occurring in the BART Service Area and the nationwide increase of anti-AAPI hate speech; and

WHEREAS the San Francisco Bay Area Rapid Transit District values the lives of all members of our community; and

WHEREAS all moral and upstanding members of our society have a duty to confront and condemn racism and discrimination in all its forms including, but not limited to, hate speech, negative stereotypes and attacks against members of our AAPI communities, other communities of color and the LGBTQ community; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District condemns, in the strongest possible terms, the recent and unacceptable attacks on members of the AAPI community and the rise in anti-AAPI hate speech, which are contrary to the goal of a diverse, inclusive society that respects and values all its members; and

BE IT FURTHER RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District recognizes that systemic and institutionalized racism impacts all communities of color in our society and we condemn it in all its forms including the “model minority” myth and other racist stereotypes that negatively impact our communities of color; and

BE IT FURTHER RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District stands with members of our communities experiencing violence, discrimination, and racism of any kind including, but not limited to, the AAPI community, all people of color and the LGBTQ community; and

BE IT FURTHER RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District calls upon all other public agencies, community leaders and elected officials to condemn attacks against the AAPI community, the rise of anti-AAPI hate speech, systemic and institutional racism and discrimination of any kind as unacceptable and abhorrent; and

BE IT FURTHER RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District reaffirms its ongoing commitment to ensure that members of our community with limited English proficiency continue to have equitable access to our system and its amenities in all areas of our service including, but not limited to our progressive policing activities, outreach and community engagement.

PASSED AND ADOPTED this ____ day of _____ by the following vote:

AYES:

NOES:

ABSENT:

PRESIDENT

ATTEST:

DISTRICT SECRETARY

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: April 2, 2021

FROM: District Secretary

SUBJECT: Resolution in Support of the 2020 Revised California High-Speed Rail Authority Business Plan as Part of an Integrated Zero-Emission Public Transit System

At the request of Directors Li and Saltzman, attached is a proposed resolution supporting the 2020 Revised California High-Speed Rail Authority Business Plan. BART affirms commitment to California High-Speed Rail as part of a highly integrated statewide and regional transportation system that provides convenient, seamless, and affordable transit for customers.

If you have any questions or concerns, please contact me.

Thank you.



Jacqueline R. Edwards

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

**BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**In the Matter of Support of the 2020 Revised California
High-Speed Rail Authority Business Plan as Part of an
Integrated Zero-Emission Public Transit System**

Resolution No. _____

WHEREAS the voters of California approved Proposition 1A in 2008 with a \$9.95B down-payment on the cost to build high-speed rail from downtown San Francisco to Los Angeles with trains traveling up to 220 mph making the trip in less than three hours and

WHEREAS \$950M of those funds have been put to use, as directed in Proposition 1A, to enhance connectivity with local systems, including BART

WHEREAS \$4.2B of the original bond funds remain; and

WHEREAS California high-speed rail is at a critical juncture with over 119 miles in construction in the Central Valley, over 50 structures built or under construction, over 5,500 jobs created and environmental clearance moving forward across the state;

WHEREAS for too long, the Central Valley has been locked out from the San Francisco and Los Angeles economic engines and suffers from the worst unemployment in the state and building California high-speed rail will connect the Central Valley to the economic opportunities in California's major metropolitan regions;

WHEREAS the Central Valley suffers from some of the worst air quality, not just in the state, but in the country and zero-emission California high-speed rail offers the single largest source of greenhouse gas emission reduction as it replaces short-trip air flights and longer car trips, reducing ill health effects including childhood asthma;

WHEREAS, in the flat, straight Central Valley California high-speed rail can test and operate trains at the 220 mph necessary to reduce travel times and allow for the "proof of concept" that will get the next segments to Los Angeles and San Francisco built;

WHEREAS California high-speed rail will play a critical role to increase public transit as the backbone of an interconnected statewide rail and transit system that includes connections to BART in San Jose, Millbrae, and (with a short walk) San Francisco.

WHEREAS The California Air Resources Board reported in 2018 that no California regions, including the Bay Area, are on track to meet their greenhouse gas reduction targets, with increasing Vehicle Miles Travelled (VMT) and declines in transit ridership cited as a primary factors;

NOW, THEREFORE, BE IT RESOLVED BY The San Francisco Bay Area Rapid Transit District AS FOLLOWS:

BART supports the California High-Speed Rail Authority's 2020 Revised Draft Business Plan and affirms commitment to California high-speed rail as part of a highly integrated statewide and regional transportation system that provides convenient, seamless, and affordable transit for customers.

The BART Board of Directors urges the California Legislature to appropriate the remaining \$4.2B in Proposition 1A bond funds as part of the 2021-2022 Budget to support creating the first operating segment of the first high-speed rail system in the United States as part of California's integrated, zero-emission public transit system.