

Introduced by Senator GlazerFebruary 17, 2023

An act to amend Section 28840 of, and to add Sections 28841.2, 28841.4, and 28841.6 to, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 827, as introduced, Glazer. San Francisco Bay Area Rapid Transit District: Office of the BART Inspector General.

Existing law establishes the San Francisco Bay Area Rapid Transit District (BART), governed by a board of directors, with specified powers and duties relative to the construction and operation of a rapid transit system. Existing law also establishes the independent Office of the BART Inspector General within BART and specifies the duties and responsibilities of the BART Inspector General including, among others, conducting, supervising, and coordinating audits and investigations relating to the district's programs and operations.

This bill would provide that the BART Inspector General is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program. The bill would provide the office with access and authority to examine all records, files, documents, accounts, reports, correspondence, or other property of the district and external entities that perform work for the district. The bill would provide that all books, papers, records, and correspondence of the office are public records subject to the California Public Records Act, but would prohibit the BART Inspector General from releasing certain types of records to the public, except under certain circumstances. The bill would also make it a crime to engage in specified activities with regard to an audit, evaluation, investigation, or review

conducted pursuant to these provisions, as specified. Because the bill would create a new crime, the bill would impose a state-mandated local program.

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 to that effect.

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 no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 28840 of the Public Utilities Code is
- 2 amended to read:
- 3 28840. (a) There is hereby created in the district an
- 4 independent Office of the BART Inspector General to ensure that
- 5 the district makes effective use of bridge toll revenue and other
- 6 revenue and operates efficiently, effectively, and in compliance
- 7 with applicable federal and state laws.
- 8 (b) (1) The board shall nominate three persons to the Governor
- 9 who shall appoint one of the three persons nominated by the board
- 10 to serve as the BART Inspector General for an initial four-year
- 11 term. The board shall have the option to renew the term at will.
- 12 The BART Inspector General shall be removed from office by the
- 13 board, subject to approval of the Governor, only if either of the
- 14 following occur:
- 15 (A) A two-thirds majority of the members of the board votes
- 16 for removal.
- 17 (B) The *BART* Inspector General violates a federal or state law
- 18 or regulation, a local ordinance, or a policy or practice of the
- 19 authority relative to ethical practices, including, but not limited
- 20 to, the acceptance of gifts or contributions.

(2) The reasons for removal of the *BART* Inspector General shall be stated in writing and shall include the basis for removal. The document stating the reasons for dismissal shall be deemed a public document and posted on the district's ~~Internet Web site.~~ *internet website.*

~~(e) Within one year of the operative date of this article, the board shall nominate three persons to serve as the first BART Inspector General to be appointed pursuant to subdivision (b).~~

(c) The BART Inspector General is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program, including, but not limited to, those activities described in subdivision (d) of Section 28841 and Section 28841.2.

SEC. 2. Section 28841.2 is added to the Public Utilities Code, to read:

28841.2. The Office of the BART Inspector General shall have access and authority to examine all records, files, documents, accounts, reports, correspondence, or other property of the district and external entities that perform work for the district. The Office of the BART Inspector General may enter any district office or facility and access, examine, and reproduce during regular business hours all records, files, documents, accounts, reports, vouchers, correspondence files, and all other records for any audit or investigation. Any officer or employee of the district or entity having these records or property in their possession, under their control, or otherwise having access to them, shall permit access to, and examination and reproduction thereof, upon the request of the BART Inspector General or the BART Inspector General's authorized representative.

SEC. 3. Section 28841.4 is added to the Public Utilities Code, to read:

28841.4. (a) The BART Inspector General may gain access to confidential records or property that are obtained in connection with any audit, evaluation, investigation, or review conducted pursuant to Section 28841.2 unless a law specifically refers to and precludes the BART Inspector General from accessing, examining, and reproducing any record or property pursuant to Section 28841.2. Information or documents obtained in connection with any audit, evaluation, investigation, or review conducted by the BART Inspector General are subject to any limitations on release

1 of the information or documents as may apply to an employee or
2 officer of the district or external entity subject to this article that
3 provided the information or documents. Providing confidential
4 information pursuant to this section, including, but not limited to,
5 confidential information that is subject to a privilege, shall not
6 constitute a waiver of that privilege.

7 (b) For purposes of this section, “confidential records or
8 property” means records or property that may lawfully be kept
9 confidential as a result of a statutory or common law privilege or
10 any other law.

11 (c) The Office of the BART Inspector General shall not destroy
12 any papers or memoranda used to support a completed audit sooner
13 than three years after the audit report is released to the public. All
14 books, papers, records, and correspondence of the office pertaining
15 to its work are public records subject to Division 10 (commencing
16 with Section 7920.000) of Title 1 of the Government Code and
17 shall be filed at any of the regularly maintained offices of the
18 BART Inspector General, except that none of the following items
19 or papers of which these items are a part shall be released to the
20 public by the BART Inspector General or the employees of the
21 BART Inspector General:

22 (1) Personal papers and correspondence of any person providing
23 assistance to the BART Inspector General when that person has
24 requested in writing that their papers and correspondence be kept
25 private and confidential. Those papers and correspondence shall
26 become public records if the written request is withdrawn, or upon
27 the order of the BART Inspector General.

28 (2) Papers, correspondence, memoranda, or any substantive
29 information pertaining to any audit not completed.

30 (3) Papers, correspondence, or memoranda pertaining to any
31 audit that has been completed, which papers, correspondence, or
32 memoranda are not used in support of any report resulting from
33 the audit.

34 (4) Any survey of public employees that the BART Inspector
35 General determines should be kept confidential to deter retaliation
36 if the public employees respond to the survey.

37 (5) Any record of an investigation, including, but not limited
38 to, all investigative files and work product, except that the BART
39 Inspector General, whenever the BART Inspector General
40 determines it necessary to serve the interests of the state, may issue

1 a public report of an investigation that has substantiated an
2 improper governmental activity, as defined in Section 8547.2 of
3 the Government Code, keeping confidential the identity of the
4 employee or employees involved. The BART Inspector General
5 may also release any findings or evidence supporting any findings
6 resulting from an investigation conducted pursuant to this article
7 whenever the BART Inspector General determines it necessary to
8 serve the interests of the state.

9 SEC. 4. Section 28841.6 is added to the Public Utilities Code,
10 to read:

11 28841.6. It is a misdemeanor, punishable by imprisonment in
12 a county jail not exceeding six months, or by a fine not exceeding
13 one thousand dollars (\$1,000), or by both that imprisonment and
14 fine, to do any of the following:

15 (a) Fail or refuse to permit the examination of, access to, or
16 reproduction of the records, files, documents, accounts, reports,
17 correspondence, cash drawers, or cash of their office by the BART
18 Inspector General or in any way interfere with such examination
19 conducted pursuant to this article.

20 (b) Interfere, intend to deceive or defraud, or obstruct the BART
21 Inspector General in the performance of an audit, evaluation,
22 investigation, or review pursuant to this article.

23 (c) Manipulate, correct, alter, or change records, documents,
24 accounts, reports, or correspondence before or during any audit,
25 evaluation, investigation, or review conducted pursuant to this
26 article.

27 (d) Distribute, reproduce, release, or fail to safeguard
28 confidential draft documents exchanged between the BART
29 Inspector General and the entity subject to the audit, evaluation,
30 investigation, or review conducted pursuant to this article before
31 the release of the final report and without the BART Inspector
32 General's express permission.

33 SEC. 5. The Legislature finds and declares that Section 3 of
34 this act, which adds Section 28841.4 to the Public Utilities Code,
35 imposes a limitation on the public's right of access to the meetings
36 of public bodies or the writings of public officials and agencies
37 within the meaning of Section 3 of Article I of the California
38 Constitution. Pursuant to that constitutional provision, the
39 Legislature makes the following findings to demonstrate the interest
40 protected by this limitation and the need for protecting that interest:

1 The need for the Office of the BART Inspector General to fully
2 examine and evaluate records, files, documents, accounts, reports,
3 correspondence, and all other property of the San Francisco Bay
4 Area Rapid Transit District and external entities that perform work
5 for the district outweighs the interest in public disclosure of
6 information obtained by the Office of the BART Inspector General
7 in connection with its activities.

8 SEC. 6. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.