

H.R. 2 (DeFazio) Analysis and Recommendation

TITLE: Investing in a New Vision for the Environment and Surface Transportation in America Act

AUTHOR: Rep. Peter DeFazio (D-OR)

RECOMMENDATION: Support

BACKGROUND: In December 2015, Congress passed the Fixing America's Surface Transportation Act, or FAST Act, which authorized federal funding for transit, passenger rail, and highway programs through September 30, 2020. While the Senate Environment and Public Works Committee has approved the highway title of the Senate's transportation reauthorization proposal, other Congressional committees responsible for crafting a surface transportation reauthorization policy are proceeding at a slower pace and neither the House nor the Senate have begun to identify a way to pay for a major infrastructure bill.

PURPOSE: Introduced by House Transportation and Infrastructure (T&I) Chairman, Peter DeFazio, the Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act, would provide \$494 billion over five years for infrastructure investments in surface and rail transportation. The proposal does not include how the bill would be paid for, as the House Ways and Means Committee will take the lead on the revenue side.

For the Highways and Transit titles, Fiscal Year 2021 would be an extension of current policies under the FAST Act, though at increased funding levels in order to allow for continued recovery and relief from COVID-19. The bill would provide \$83 billion in 2021 specifically for COVID-19 recovery, including \$5.79 billion for transportation agency salaries, operating expenses, project completion, and a temporary 100% federal cost share and local share deferral.

Topline Funding Allocations: FAST Act vs. INVEST in America Act

	Total Funding	Transit Funding	Highway Funding	Rail Funding	Other (safety, misc.)
FAST Act	\$305 billion	\$61 billion	\$225 billion	\$10 billion	\$9 billion
INVEST ACT	\$494 billion	\$105 billion	\$319 billion	\$60 billion	\$10 billion

DISTRICT IMPACT: The INVEST in America Act is aligned with the Board's adopted goal of advocating for robust public transit funding within a federal surface transportation reauthorization bill. BART currently receives funding from various programs authorized by the FAST Act including Urbanized Area Formula and State of Good Repair, which would see increases from current funding levels. Discretionary programs, such as the Capital Investment Grant Program, in which BART is a project sponsor, would also see increases to funding year-over-year.

OTHER COMMENTS: None

KNOWN SUPPORT/OPPOSITION: The bill is supported by the American Public Transportation Association and over 130 organizations representing transit, highways, labor, municipalities, etc. Democrats on the T&I Committee did not consult with Republicans in the drafting of the INVEST in America Act. As a result, House Republicans introduced an alternative proposal as an amendment, known as the Surface Transportation Advanced through Reform, Technology, & Efficient Review Act, or STARTER Act. The STARTER Act would authorize FAST Act programs at current levels and provides that any increases in contract authority only go to highways and freight programs and excludes transit from any increases. The amendment will be voted on towards the end of the mark up and is expected to fail by a party-line vote.

STATUS: Introduced 6/11/20 and referred to the House Committee on Transportation and Infrastructure. Committee markup began on June 17 and close to 300 amendments were filed. Most amendments were withdrawn before discussion. The full House should vote on the bill the week of June 29.

Analysis completed on 6/18/20.

THE INVEST IN AMERICA ACT

FOR THE PEOPLE

SUMMARY OF THE “INVESTING IN A NEW VISION FOR THE ENVIRONMENT AND SURFACE TRANSPORTATION IN AMERICA” ACT

Provides \$494 billion over five years to make transformative infrastructure investments in surface and rail transportation. Provides \$411 billion over five years out of the Highway Trust Fund (HTF) for highway, transit, safety, and research programs, a 46 percent increase over current investment levels.

Provides \$319 billion for the Federal-aid highway program under the Federal Highway Administration, \$105 billion for transit programs under the Federal Transit Administration, \$4.6 billion for highway safety programs under the National Highway Traffic Safety Administration, \$5.3 billion for motor carrier safety programs under the Federal Motor Carrier Safety Administration, and \$60 billion for rail programs.

Division A – COVID-19 Response and Recovery

Provides \$83.1 billion in fiscal year (FY) 2021 to ensure States, cities, tribes, territories, and transit agencies can administer programs, advance projects, and preserve jobs in the aftermath of the COVID-19 crisis. Highway, transit, and safety funds are made available at 100 percent Federal share to eliminate the need for a match in FY21. In addition, \$22 billion of the total FY21 amount is available for additional eligibilities including State, local, transit agency, and tribal transportation agency salaries and operating expenses. Current Capital Investment Grant (CIG) projects are authorized to receive an increased Federal cost share to help ensure projects can move forward despite a decrease in local and State revenues designated to cover the local cost share of projects.

Division B – Surface Transportation Authorization

Title I – Federal-Aid Highways

FORMULA GRANTS

Fix It First

- Requires National Highway Performance Program (NHPP) funds to focus on state of good repair and operational improvements to existing facilities before building new highway capacity.

Bridge Investment

- Requires States to spend 20 percent of their NHPP and Surface Transportation Program (STP) any area dollars on bridge repair and rehabilitation projects, supporting approximately \$28 billion in fix-it-first bridge investments in FY 2022-2025. Increases the off-system bridge set-aside to over \$1 billion per year from approximately \$770 million in current law.

Climate

- Requires DOT to establish a new greenhouse gas (GHG) emissions performance measure.
- Includes a new apportioned program (\$8.35b for FY22-25) to support carbon pollution reduction. Gives States broad eligibility to invest in highway, transit, and rail projects, as well as support operating costs, and holds States accountable by measuring their annual progress. Provides benefits for States that make the most progress and requires low-performing States to invest 10 percent of their STP any area funds in additional projects to help reduce carbon pollution.

Resilience

- Creates a new apportioned program (\$6.25b for FY22-25) to fund resilience and emergency evacuation needs. Requires States and metropolitan planning organizations (MPOs) to develop an infrastructure vulnerability assessment to guide investments under the program. Makes resilience a core part of the Federal-aid highway program, with expanded eligibilities in other apportioned programs and Emergency Relief (ER).

CMAQ

- Modifies eligibility for operating assistance to include all State-supported passenger rail lines and allows operating assistance for longer than three years if the project demonstrates net air quality benefits.

Safety for All Road Users

- Requires States with the highest levels of pedestrian and bicyclist fatalities to set aside funds to address these safety needs. Requires the Federal Highway Administration (FHWA) to adopt context sensitive design principles to provide for complete streets in urban areas and ensure the safety of all road users.
- Boosts safety funding by approximately 30 percent over current investments and boosts Transportation Alternatives Program (TAP) investments by more than 60 percent over current law. Makes safety funds available to expend on safety improvements beyond infrastructure projects.
- Removes the ability for States to set regressive safety targets. Strengthens emphasis on high risk rural roads, while providing for more certainty and flexibility for States that trigger the special rule.
- Codifies and expands eligibilities for safe routes to schools.

Local Control

- Provides almost \$49 billion over five years in dedicated funding to address local transportation needs.
- Makes reforms to strengthen the State-local relationship, enhance coordination, improve the flow of funds to communities of all sizes, and increase transparency.

Freight

- Makes the freight formula program fully multimodal and expands environmental considerations in freight planning.
- Allows States to designate additional rural and urban freight corridors and provides more flexibility for States to expend funds across the National Highway Freight Network.

Tribes, Territories, and Federal Lands

- Significantly increases funding for tribes, territories, and Federal Land Management Agencies (FLMA):
 - **Tribes:** Provides \$750 million in formula funds per year, a nearly 70% increase over current levels.

- **Territories**: Provides \$100 million per year, a nearly 140% increase over current levels.
- **Puerto Rico**: Provides \$210 million per year, a 33% increase over current levels.
- **FLMAs**: Provides \$895 million in formula funds per year, a nearly 40% increase over current investments, and makes changes to the program to ensure FLMAs can obligate funds for projects on the first day of the fiscal year.

DISCRETIONARY GRANTS

- **Projects of National and Regional Significance.** Provides more than \$9 billion over the life of the bill for large highway, transit, and freight projects that cannot be funded through annual apportionments or other discretionary sources.
- **Community Transportation Investment Grants.** Provides \$600 million per year for local government applicants. Includes broad eligibility for highway and transit projects, with project evaluation done in a manner that will limit political decision-making.
- **Federal Lands and Tribal Major Projects Program.** Provides \$400 million per year and requires a 50/50 split of grant funds among tribes and Federal lands agencies. Provides more flexibility through a smaller project size, higher Federal share, and a broader set of funding eligibilities. Funds the program out of the HTF so funding is guaranteed.
- **Tribal High Priority Projects.** Provides \$50 million per year on a discretionary basis, for grants of a maximum size of \$5 million, for the highest priority project for tribes whose annual apportionment is insufficient. Provides emergency relief to tribes who can't access other ER funds. Funds the program out of the HTF so funding is guaranteed.
- **Electric Vehicle Charging and Hydrogen Fueling Infrastructure Grants.** Provides \$350 million per year for grants for electric vehicle charging and hydrogen fueling infrastructure. Focuses funding on designated Alternative Fuel Corridors and projects that demonstrate the most effective emissions reductions.
- **Community Climate Innovation Grants.** Provides \$250 million per year to non-State applicants for highway, transit, and rail projects, provided they reduce GHGs.
- **Metro Performance Program.** Provides a total of \$750 million over the life of the bill for funding allocations directly to MPOs to carry out projects selected by the MPO. The Secretary selects applicants to be accepted into the program based on their technical capacity to manage Federal funds.

SINGLE-YEAR GRANTS

- **Gridlock Reduction Grants.** Provides \$250 million, of which half is set aside for freight grants. Grants will be awarded for reducing urban congestion in large metro areas, with an emphasis on operational, technological, and mode shift strategies.
- **Rebuild Rural Grants.** Provides \$250 million for rural communities to address needs on and off the Federal-aid system. Focuses funding on safety, state of good repair, and access to jobs and services.
- **Active Transportation Connectivity Grants.** Provides \$250 million for pedestrian and bicycle networks and spines and related planning, including complete streets planning.
- **Commercial Motor Vehicle Parking Grants.** Provides \$250 million to construct and improve truck parking facilities.

ADDITIONAL PROVISIONS

Transportation System Performance and Access

- Establishes a new performance measure for transportation access that leverages modern data tools to improve the way States and MPOs assess the level of safe, reliable, and convenient access to jobs and services (including shopping, healthcare, childcare, education and workforce training, and financial institutions). Considers the level of access for various travel modes.

Increased Accountability

- Requires FHWA to develop a website that shows all active Federal-aid highway projects over \$5 million in the country. Establishes strong accountability and reporting measures for discretionary grants and other program authorities.

Tolling Reform

- Reestablishes the requirement that FHWA enter into a toll agreement before allowing tolling on a Federal-aid highway.
- Establishes additional guardrails around tolling to ensure that any adverse impacts both on and off the facility are evaluated and addressed. Authorizes congestion pricing with the additional guardrails.

Buy America

- Requires DOT to reevaluate standing nationwide waivers for manufactured products.

Workforce Development

- Creates a Task Force on Developing a 21st Century Surface Transportation Workforce to evaluate current and future workforce needs and develop recommendations.
- Establishes transparency and reporting requirements for the On the Job Training and Supportive Services program. Requires States to develop annual statewide workforce plans to identify and address workforce gaps and underrepresentation of women and minorities.

Title II – Public Transportation

Substantially increases transit funding out of the Highway Trust Fund over current investment levels. Funding for buses and zero emission buses see significant funding increases to make up for cuts to bus funding in the last two reauthorization cycles.

Frequency and Ridership

- Reframes the Federal transit program to boost frequency and ridership.
- Modifies the urban and bus formulas to incentivize frequent rail and bus service instead of low operating costs.
- Provides \$100 million in annual grants to tackle larger city street congestion that slows down buses through support of items like bus only lanes and priority signaling. The program is structured to require a partnership between transit agencies and local/State roadway agencies.
- Establishes new flexible Federal rules for Mobility on Demand that integrate new technologies with transit as the backbone. Retains basic requirements for safety, Buy America, and labor protections. Includes restrictions on single passenger trips and carbon and particulate emissions. Requires a negotiated rulemaking on data sharing between transit agencies, cities, and the private sector.
- Modifies rural formula grants to distribute a greater percentage of funds based on actual transit service provided.

- Provides additional funds to the STIC program for small transit agencies that run more service than comparable agencies.

Buy America and other Procurement Reforms

- Closes loopholes and adds incentives to boost domestic jobs while streamlining compliance and leveling the playing field, with a 5-year phase in period to allow the industry time to adjust.
- Closes loopholes that allow waived components and components exceeding 70 percent domestic content to receive credit for 100 percent domestic content.
- Incentivizes higher domestic content by providing a bonus of an additional 10 percent of domestic content for any component that exceeds 70 percent and providing a bonus of an additional 15 percent of domestic content for any component that exceeds 75 percent.
- Allows final assembly costs to count in the domestic content calculation to disincentivize minimizing final assembly in the United States.
- Creates a new 2.5 percent bonus for any electric bus that uses domestic battery cells.
- Requires FTA to conduct rolling stock certifications to remove the burden from transit agencies. This will enable rolling stock to be certified once, rather than every single contract, and removes variation in Buy America compliance. Requires annual DOT IG audits.

Bus Grant Reforms

- Increases bus funding by 150 percent to reverse the MAP-21 bus cuts.
- Narrows the competitive bus grants to focus on bus facilities and fleet expansions.
- Increases zero emission bus competitive grants fivefold.
- Creates a new state of good repair formula subgrant to push additional formula dollars to transit agencies with the oldest buses.

Supporting All Riders

- Doubles the set-aside of the low-income factor in the urban formula and uses a measure of deep poverty by census tract to target the poorest urban neighborhoods.
- Sets aside \$50 million a year for rural persistent poverty counties, defined as a county with a poverty rate above 20 percent since 1990.
- Establishes a reduced fare pilot project to enable transit agencies to experiment with reduced fares for low-income riders.

Supporting Frontline Workers

- Requires a new focus on operator assault in transit agency safety plans, including a joint management labor committee that must certify the safety plans.
- Requires transit agencies with poor safety metrics to direct up to 10 percent of Federal funds to safety for each poor metric.
- Creates a frontline workforce training center with \$12 million in dedicated funds.
- Prohibits Federal funds for autonomous transit vehicles that replace service and requires advanced worker notice and retraining plans for agencies deploying AVs beyond small demonstrations.

Transit-Supportive Communities

- Strengthens the link between housing density and transit ridership
- Creates the Office of Transit-Supportive Communities to coordinate Federal incentives to foster this link between Federal, State, and local planning policies.
- Doubles to \$20 million the Transit Oriented Development Planning Grants.

- Incentivizes affordable housing in the excess property disposition rules and the CIG rating process.

Streamlining Capital Investment Grants (CIG)

- Reforms Capital Investment Grants by streamlining the approval process, raising the cost share back to the traditional 80 percent, incentivizing lower cost share with an easier approval process, and providing transparency measures so applicants know where they stand in the process.

Title III – Highway Traffic Safety

State Highway Safety

- Provides \$1.9 billion over five years to States for traffic safety. Strengthens traffic safety requirements for States and increases transparency of States' performance in meeting annual safety goals and use of program funds.
- Requires States who have legalized marijuana to consider ways of increasing public awareness over the dangers of drugged driving and ways to reduce injuries and fatalities resulting from driving under the influence of marijuana.
- Creates a new discretionary grant program (\$35 million per year) for States to implement top-rated traffic safety law enforcement measures.

National Highway Safety

- Provides \$300 million over five years to nationwide high-visibility traffic safety enforcement campaigns.
- Doubles the number of national traffic safety enforcement campaigns from three to six each year.
- Creates new campaigns for distracted driving and violations of 'move over laws' which protect road-side first responders and law enforcement.

Priority Safety Programs

- Provides \$2 billion over five year for grants to improve traffic safety in critical areas. Makes targeted improvements to certain Section 405 grants which have been underutilized. Reforms will increase State participation while still maintaining strong safety standards for the following areas:
 - Impaired driving;
 - Distracted driving; and
 - Graduated driver's licensing laws.
- Creates a new grant program for training drivers and law enforcement on proper traffic stop procedure.

Title IV – Motor Carrier Safety

Motor Carrier Safety Grants

- Authorizes significantly higher funding levels for the Motor Carrier Safety Assistance Program, High Priority grants, and Commercial Driver's License Program Implementation grants to assist States in truck and bus safety oversight and enforcement activities, commercial driver licensing, and technology improvements to support those efforts.
- Extends the grant period of performance to ensure funds do not lapse and allows the Secretary to redistribute unobligated funds.

Compliance, Safety, Accountability

- Directs the Secretary to complete the revisions required by the FAST Act to its carrier oversight and intervention model, to prioritize reinstating the public display of safety data, and to finalize a safety fitness determination rule to rate the safety of carriers.

Commercial Motor Vehicles

- Directs the Secretary to complete a rulemaking to require Automatic Emergency Braking systems in newly-manufactured commercial motor vehicles.
- Directs the Secretary to strengthen rear underride guard standards in newly-manufactured trailers and semi-trailers, to further research and consider the feasibility, benefits, and costs associated with installing side underride guards, and creates an Advisory Committee on Underride Protection.

School Buses

- Requires the Secretary to conduct a comprehensive review of efforts to prevent illegal passing of school buses, issue recommendations, and create a public safety messaging campaign.
- Directs the Secretary to review the costs and benefits of requiring lap/shoulder belts in large school buses and consider requiring them in newly manufactured buses.
- Requires newly manufactured school buses to be equipped with automatic emergency braking and electronic stability control systems.
- Directs the Secretary to conduct research and testing of fire prevention and mitigation standards for large school buses and consider issuing updated standards if they are needed.

Driver Safety

- Requires the Secretary to report on delays with implementation of entry-level driver training.
- Applies commercial driver licensing requirements to vehicles carrying 9-15 passengers.
- Creates a Truck Leasing Task Force to examine lease and lease-purchase agreements commonly made available to truck drivers and the impacts of these captive leases on driver pay.
- Requires the Secretary to collect and use data on driver detention to determine the link between detention and safety outcomes.
- Requires the Secretary to evaluate the impacts of exemptions before finalizing changes to hours of service rules and establishes stronger reporting requirements for carriers utilizing exemptions.

Title V – Innovation

Technology and Innovation

- More than doubles funding for technology deployment to expand the implementation of innovations in the surface transportation system.
- Focuses on transformative technologies by increasing funding to the Intelligent Transportation Systems Program and expanding smart infrastructure investment in local communities.
- Creates a new grant program to fund green materials research at universities and focuses deployment programs on green construction materials and practices.
- Increases funding for the University Transportation Centers program.
- Establishes a multimodal freight transportation research program to find innovative ways to make freight movement greener, safer, and more efficient.
- Expands the Federal role in providing State and local governments with critical datasets and tools that will improve performance-based investments and access to jobs and essential services.

- Establishes a new Highly Automated Vehicle and Mobility Innovation Clearinghouse to study the societal impacts of automated vehicles and Mobility on Demand.
- Authorizes automated vehicle research on improving safety for all road users and expanding accessibility in an equitable manner.
- Authorizes new FTA research to enhance transit worker safety and expand Mobility on Demand.

Vehicle-Miles Traveled (VMT) Pilots

- Nearly doubles funding for VMT pilots across the country, encouraging States to begin implementing successful VMT programs.
- Establishes a national VMT pilot program, including both passenger and commercial vehicles in all 50 States, to invest in developing a sustainable funding mechanism for the surface transportation system.

Title VI – Multimodal Transportation

- Revises the National Multimodal Freight Policy, the National Strategic Freight Plan, and the requirements for State Freight Plans to include further consideration of environmental and equity impacts.
- Establishes a new deadline for the Secretary to designate a final National Multimodal Freight Network and requires the Secretary to report to Congress on the resources that will be used to meet this deadline.
- Establishes a joint task force between the Department of Transportation and the Internal Revenue Service to study the establishment and administration of a fee on multimodal freight surface transportation services.
- Authorizes pilot program to allow FHWA or FTA grantees, including States, local recipients, and subrecipients, to utilize local or other geographic labor hiring preferences, economic-based labor hiring preferences, and labor hiring preferences for veterans.

Title VII –Transportation Infrastructure Finance and Innovation Act

- Streamlines the program by raising the threshold above which projects are required to secure multiple credit rating agency opinions.
- Further clarifies that the proceeds of a secured loan under TIFIA shall be considered part of the non-Federal share of a project under title 23 or chapter 53 of title 49 if the loan is repayable from non-Federal funds.
- Allows territories to use funds made available under this section for the non-Federal match under the TIFIA program.
- Clarifies the criteria under which projects are eligible for the streamlined application process.
- Provides additional funding to allow the Department to waive fees for small projects.
- Modifies reporting requirements to include information on whether a TIFIA project is located in a metropolitan or micropolitan area.

Division C – Improving Hazardous Materials Safety Act of 2020

The Improving Hazardous Materials Safety Act protects the safety of individuals and communities by repealing the current prohibition on the Federal Aviation Administration from establishing lithium battery safety standards for aircraft, and requiring the Department of Transportation to conduct extensive safety evaluations before allowing railroads to transport liquefied natural gas by rail tank car.

Division D - The Transforming Rail by Accelerating Investment Nationwide (TRAIN) Act

The Transforming Rail by Accelerating Investment Nationwide (TRAIN) Act sets a path to truly transform rail transportation in the United States. In recent years, the demand for environmentally-responsible intercity and commuter passenger rail transportation has increased substantially. While the current COVID-19 pandemic has reduced ridership, we must invest now to meet passenger demand as our Nation recovers and new travel patterns emerge. The TRAIN Act increases FAST Act rail investment levels by more than five times, authorizing \$60 billion to address the state of good repair backlog in rail infrastructure, establish new intercity passenger rail routes, build on Amtrak's legacy, and expand the opportunities for commuter rail. The bill also improves railroad safety, studies the impacts of current industry practices, and sets higher safety standards across the railroad industry to better protect passengers, workers, and the public. Further, the TRAIN Act renews our commitment to the safe transportation of hazardous materials.

Transformative Investments

- Establishes a new *Passenger Rail Improvement, Modernization, and Expansion (PRIME)* grant program devoted entirely to passenger rail improvements and expansion. Authorized at \$19 billion over five years, it will fund capital projects that improve the state of good repair, optimize performance, and expand intercity rail passenger transportation.
- Reauthorizes the *Consolidated Rail Infrastructure and Safety Improvements (CRISI)* grant program, which funds passenger and freight rail projects, at \$7 billion over five years – an increase of \$5.8 billion over FAST Act levels. It also expands CRISI to new project eligibilities and allows commuter rail authorities to compete for funds.
- Authorizes \$150 million over five years to help pay credit risk premiums for certain borrowers under the *Railroad Rehabilitation and Improvement Financing (RRIF)* program and \$70 million to refund the credit risk premiums of certain past loans.

Together, these grant and loan programs will revitalize our rail network while maintaining strong Buy America and labor standards that maximize the benefits of these investments.

Reinvesting in Amtrak

As America's national passenger railroad, Amtrak has an important role in our country's transportation system. The TRAIN Act demonstrates support for Amtrak's legacy of serving not just the Northeast Corridor (NEC), but the entire network of long-distance and state-supported routes that comprise the National Network and serve as vital connections across the country. The bill authorizes \$29.3 billion over five years (\$13.1 billion for the NEC and \$16.2 billion for the National Network) – more than three times the FAST Act level of investment. These investments will help Amtrak tackle the state of good repair backlog, support the development of new state-supported routes, and strengthen the network to revitalize and grow service. The bill authorizes higher funding levels for fiscal years 2021 and 2022 to help Amtrak and its State partners recover from decreased ridership and revenues caused by the COVID-19 health crisis.

The TRAIN Act also gives States a voice in how Amtrak builds its future network and improves transparency and accountability while strengthening these partnerships. The TRAIN Act makes reforms to improve the quality and level of passenger service, equips Amtrak with the tools needed to secure access to the entire system, and helps ensure Amtrak's continued history of providing quality jobs and employing a skilled workforce.

Rail Safety

While we renew and grow the national rail network, the safety of passengers, communities where trains travel, and the railroad workforce must remain a top priority. The TRAIN Act makes numerous safety improvements and investments to raise the bar on safety. It establishes a new grade separation grant program at \$2.5 billion over five years. The bill also implements National Transportation Safety Board recommendations issued in response to the December 2017 Amtrak derailment near DuPont, Washington, addresses blocked crossings, and improves the Federal Railroad Administration waiver and accident investigation process. It further supports safe railroad operations by requiring that freight trains, with limited exceptions, must have a certified engineer and conductor, and sets high standards for railroad workers performing train or dispatching service in the United States.

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H.R. 7120 (Bass) and S. 3912 (Booker) Analysis and Recommendation

TITLE: George Floyd Justice in Policing Act of 2020

AUTHORS: Rep. Karen Bass (D-CA) and Sen. Cory Booker (D-NJ)

RECOMMENDATION: Support

BACKGROUND: On June 8, House and Senate Democrats, led by members of the Congressional Black Caucus, introduced the George Floyd Justice in Policing Act of 2020. The bill has been described by Democrats as a first-of-its-kind, comprehensive approach to hold police accountable, end racial profiling, change the culture of law enforcement, empower communities, and build trust between law enforcement and communities by addressing systemic racism and bias.

PURPOSE: The George Floyd Justice in Policing Act of 2020:

- Prohibits federal, state, and local law enforcement from racial, religious and discriminatory profiling, and mandates training on racial, religious, and discriminatory profiling.
- Bans chokeholds, carotid holds and no-knock warrants at the federal level and limits the transfer of military-grade equipment to state and local law enforcement.
- Mandates the use of dashboard cameras and body cameras for federal offices and requires state and local law enforcement to use existing federal funds to ensure the use of police body cameras.
- Establishes a National Police Misconduct Registry.
- Amends federal criminal statute from “willfulness” to a “recklessness” standard to successfully identify and prosecute police misconduct.
- Reforms qualified immunity so that individuals are not barred from recovering damages when police violate their constitutional rights.
- Establishes public safety innovation grants for community-based organizations to create local commissions and task forces to help communities to re-imagine and develop concrete, just and equitable public safety approaches.
- Creates law enforcement development and training programs to develop best practices and requires the creation of law enforcement accreditation standard recommendations based on President Obama’s Task force on 21st Century policing.
- Requires state and local law enforcement agencies to report use of force data, disaggregated by race, sex, disability, religion, age.
- Grants the Department of Justice Civil Rights Division subpoena power and creates a grant program for state attorneys general to develop authority to conduct independent investigations into problematic police departments.
- Establishes a Department of Justice task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.

DISTRICT IMPACT: BART has been actively focused on implementing progressive and equitable policing practices for more than a decade to strengthen credibility and trust within the diverse communities served by the District. Several of the reforms and policies proposed within the legislation align with the ongoing work of the BART Police Department, Office of the Independent Police Auditor, and the BART Police Citizen Review Board.

OTHER COMMENTS: None

KNOWN SUPPORT/OPPOSITION: The bill currently has 227 cosponsors in the House and 36 cosponsors in the Senate. The bill is supported by a broad coalition of civil rights organizations including:

Demand Progress, Lawyers' Committee For Civil Rights Under Law, Leadership Conference on Civil and Human Rights, National Action Network, National African American Clergy Network, National Association for the Advancement of Colored People (NAACP), NAACP Legal Defense and Educational Fund, Inc. (LDF), The National Coalition on Black Civic Participation (NCBCP), Black Millennial Convention, and the National Urban League.

On June 17, Senate Republicans released their proposal known as the Just and Unifying Solutions to Invigorate Communities Everywhere Act of 2020, or the JUSTICE Act. Work on the proposal was led by Senator Tim Scott (R-South Carolina) and includes incentives for police departments to ban chokeholds, more disclosure requirements about the use of force and no-knock warrants, and penalties for false reports. It also includes emergency grant programs for body cameras, makes lynching a federal hate crime and creates a commission on the social status of black men and boys.

STATUS: Introduced 6/08/20; Referred to the House Committee on the Judiciary, House Committee on Armed Services, and House Committee on Energy and Commerce. Senate version referred to the Judiciary Committee. The House Judiciary Committee passed the bill (24-14) along party-lines on June 17. The full House is expected to vote on the bill on June 25.

Analysis completed on 6/18/20.



FACT SHEET: JUSTICE IN POLICING ACT OF 2020

The Justice in Policing Act is the first-ever bold, comprehensive approach to hold police accountable, end racial profiling, change the culture of law enforcement, empower our communities, and build trust between law enforcement and our communities by addressing systemic racism and bias to help save lives. The Justice in Policing Act would: 1) establish a national standard for the operation of police departments; 2) mandate data collection on police encounters; 3) reprogram existing funds to invest in transformative community-based policing programs; and 4) streamline federal law to prosecute excessive force and establish independent prosecutors for police investigations.

The Justice in Policing Act of 2020 will:

Work to End Racial & Religious Profiling

- Prohibits federal, state, and local law enforcement from racial, religious and discriminatory profiling.
- Mandates training on racial, religious, and discriminatory profiling for all law enforcement.
- Requires law enforcement to collect data on all investigatory activities.

Save Lives by Banning Chokeholds & No-Knock Warrants

- Bans chokeholds and carotid holds at the federal level and conditions law enforcement funding for state and local governments banning chokeholds.
- Bans no-knock warrants in drug cases at the federal level and conditions law enforcement funding for state and local governments banning no-knock warrants at the local and state level.
- Requires that deadly force be used only as a last resort and requires officers to employ de-escalation techniques first. Changes the standard to evaluate whether law enforcement use of force was justified from whether the force was “reasonable” to whether the force was “necessary.” Condition grants on state and local law enforcement agencies’ establishing the same use of force standard.

Limit Military Equipment on American Streets & Requires Body Cameras

- Limits the transfer of military-grade equipment to state and local law enforcement.
- Requires federal uniformed police officers to wear body cameras and requires state and local law enforcement to use existing federal funds to ensure the use of police body cameras.
- Requires marked federal police vehicles to have dashboard cameras.

Hold Police Accountable in Court

- Makes it easier to prosecute offending officers by amending the federal criminal statute to prosecute police misconduct. The mens rea requirement in 18 U.S.C. Section 242 will be amended from “willfulness” to a “recklessness” standard.
- Enables individuals to recover damages in civil court when law enforcement officers violate their constitutional rights by eliminating qualified immunity for law enforcement.

Investigate Police Misconduct

- Improves the use of pattern and practice investigations at the federal level by granting the Department of Justice Civil Rights Division subpoena power and creates a grant program for state attorneys general to develop authority to conduct independent investigations into problematic police departments.

Empower Our Communities to Reimagine Public Safety in an Equitable and Just Way

- This bill reinvests in our communities by supporting critical community-based programs to change the culture of law enforcement and empower our communities to reimagine public safety in an equitable and just way.
- It establishes public safety innovation grants for community-based organizations to create local commissions and task forces to help communities to re-imagine and develop concrete, just and equitable public safety approaches. These local commissions would operate similar to President Obama’s Task Force on 21st Century Policing.

Change the Culture of Law Enforcement with Training to Build Integrity and Trust

- Requires the creation of law enforcement accreditation standard recommendations based on President Obama’s Taskforce on 21st Century policing.
- Creates law enforcement development and training programs to develop best practices.
- Studies the impact of laws or rules that allow a law enforcement officer to delay answers to questions posed by investigators of law enforcement misconduct.
- Enhances funding for pattern and practice discrimination investigations and programs managed by the DOJ Community Relations Service.
- Requires the Attorney General to collect data on investigatory actions and detentions by federal law enforcement agencies; the racial distribution of drug charges; the use of deadly force by and against law enforcement officers; as well as traffic and pedestrian stops and detentions.
- Establishes a DOJ task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.

Improve Transparency by Collecting Data on Police Misconduct and Use-of-Force

- Creates a nationwide police misconduct registry to prevent problematic officers who are fired or leave one agency, from moving to another jurisdiction without any accountability.
- Mandates state and local law enforcement agencies to report use of force data, disaggregated by race, sex, disability, religion, age.

Make Lynching a Federal Crime

- Makes it a federal crime to conspire to violate existing federal hate crimes laws.

ACA 5 (Weber) Analysis and Recommendation

TITLE: An amendment to the Constitution of the State relating to government preferences

AUTHORS: Weber (D-San Diego), Gipson (D-Carson), Santiago (D-Los Angeles), Gonzalez (D-San Diego)

SPONSORS: Opportunity for All Coalition, Equal Justice Society, Chinese for Affirmative Action, and others

RECOMMENDATION: Support

BACKGROUND: Proposition 209, the 1996 voter initiative, amended the California Constitution to add Section 31 of Article I, which prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. For these purposes, the California Constitution defines the "state" to include the state itself, any city, county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of, or within, the state.

PURPOSE: ACA 5 amends the California Constitution by repealing Section 31 of Article I relating to the prohibition against discrimination or preferential treatment. If passed by two-thirds of the Legislature, ACA 5 will be submitted to the voters in the November 2020 General Election for consideration and passage.

DISTRICT IMPACT: Currently, BART's Small Business Program (SB Program) and Non-Discrimination Program for Subcontracting (ND Program) apply to all non-federally funded contracting activity at the District. The ND Program is intended to prevent discrimination in the selection of subcontractors by prime contractors but does not have race or gender-conscious contract goals as a result of Proposition 209. Similarly, although the SB Program does provide for contract goals, such goals are required to be race and gender neutral due to Proposition 209.

ACA 5, itself, will not impact BART's federally funded equity program. If passed by voters, it would impact the District's non-federally funded equity programs as it would allow BART to utilize race and gender-conscious contract goals to ensure contracting equity.

OTHER COMMENTS: None

KNOWN SUPPORT/OPPOSITION: The bill sponsors note ACA 5 is endorsed by federal, state, and local government leaders and over 450 organizations including civil rights organizations, labor groups, business leaders, educational institutions, and community advocates. Opposition to ACA 5 listed within the analysis produced by the Senate Committee on Labor, Public Employment and Retirement on June 16 includes the Asian American Coalition for Education, Organization for Justice and Equality, Silicon Valley Chinese Association Foundation, Silicon Valley Community United, San Diego Asian Americans for Equality, and 173 individuals.

STATUS: Passed the Senate Labor, Public Employment and Retirement Committee (4-1) on June 17 and referred to the Senate Committee on Appropriations. Hearing scheduled for June 23.

Analysis completed on 6/18/20.

AMENDED IN ASSEMBLY MAY 4, 2020
AMENDED IN ASSEMBLY MARCH 9, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

Assembly Constitutional Amendment

No. 5

Introduced by Assembly Members ~~Weber and Gipson~~ *Weber, Gipson, Santiago, and Gonzalez*
(Coauthors: Assembly Members ~~Gonzalez, Burke, Cooper, Holden, Jones-Sawyer, —and— Kamlager~~ *Kamlager, McCarty, and Mark Stone*)
(Coauthor: Senator Mitchell)
(Coauthors: Senators Bradford, Mitchell and Hueso)

January 18, 2019

Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Section 31 of Article I thereof, relating to government preferences.

LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as amended, Weber. Government preferences.

The California Constitution, pursuant to provisions enacted by the initiative Proposition 209 in 1996, prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The California Constitution defines the state for these purposes to include the state, any city, county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of, or within, the state.

This measure would repeal these provisions. The measure would also make a statement of legislative findings in this regard.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 WHEREAS, Equal opportunity is deeply rooted in the American
2 ideals of fairness, justice, and equality. Programs to meet the goals
3 of equal opportunity seek to realize these basic values. Equal
4 opportunity not only helps individuals, but also helps communities
5 in need and benefits our larger society. California's equal
6 opportunity program was upended by the passage of Proposition
7 209 in 1996; and

8 WHEREAS, Proposition 209, entitled the California Civil Rights
9 Initiative, amended Article I of the California Constitution to
10 prohibit race- and gender-conscious remedies to rectify the
11 underutilization of women and people of color in public
12 employment, as well as public contracting and education; and

13 WHEREAS, Proposition 209 invalidated a series of laws that
14 had been enacted by the California Legislature over the 20 years
15 prior to it that required state agencies to eliminate traditional
16 patterns of segregation and exclusion in the workforce, to increase
17 the representation of women and minorities in the state service by
18 identifying jobs for which their employment was underrepresented
19 due to discrimination, and to develop action plans to remedy such
20 underrepresentation without effectuating quota systems; and

21 WHEREAS, Proposition 209 also overshadowed other landmark
22 civil rights and antidiscrimination laws. In 1959, after a 37-year
23 campaign by labor and civil rights groups, the Unruh Civil Rights
24 Act was passed, which was the forerunner of the Civil Rights Act
25 of 1964; and

26 WHEREAS, As a result of the passage of Proposition 209,
27 women and people of color continue to face discrimination and
28 disparity in opportunities to participate in numerous forms of
29 association and work that are crucial to the development of talents
30 and capabilities that enable people to contribute meaningfully to,
31 and benefit from, the collective possibilities of national life; and

32 WHEREAS, The State of California has provided employment
33 opportunities for people of color and women of all races. However,
34 lingering, and even increasing, disparity still exists, particularly
35 for *Asian Americans, Pacific Islanders, Black Americans, Latino*

1 Americans, *Native Americans*, and women, and should be rectified;
2 and

3 WHEREAS, Proposition 209 has impeded California's
4 continuing interest in supporting the equal participation of women
5 in the workforce and in public works projects, in addressing the
6 historical and present manifestations of gender bias, and in
7 promulgating policies to enforce antidiscrimination in the
8 workplace and on public projects; and

9 WHEREAS, In the wake of Proposition 209, California saw
10 stark workforce diversity reductions for people of color and women
11 in public contracting and in public education. Studies show that
12 more diverse workforces perform better financially and are
13 significantly more productive and focused; and

14 WHEREAS, Since the passage of Proposition 209, the state's
15 minority-owned and women-owned business enterprise programs
16 have been decimated. A 2016 study conservatively estimates that
17 the implementation of Proposition 209 cost women and people of
18 color over \$1,000,000,000 annually in lost contract awards. Most
19 procurement and subcontracting processes remain effectively
20 closed to these groups due to the changes brought on by Proposition
21 209; and

22 WHEREAS, Women are vastly underrepresented among firms
23 receiving public contracts and the dollars awarded to certified
24 women-owned business enterprises fell by roughly 40 percent,
25 compared to levels before Proposition 209. In addition, only
26 one-third of certified minority business enterprises in California's
27 transportation construction industry are still in operation today,
28 compared to 20 years ago; and

29 WHEREAS, Women, particularly women of color, continue to
30 face unequal pay for equal work. White women are paid 80 cents
31 to every dollar paid to white men doing the same work. Black
32 women are paid 60 cents for every dollar paid to white men doing
33 the same work and would theoretically have to work an extra seven
34 months every year to overcome that differential. This persistent
35 gender wage gap continues to harm women, their families, and
36 communities; and

37 WHEREAS, Despite a booming economy with almost full
38 employment, a persistent racial wealth gap remains rooted in
39 income inequality. Improving minority access to educational and

1 labor market opportunity reduces the wealth gap and strengthens
2 the economy; and

3 WHEREAS, Proposition 209 has had a devastating impact on
4 minority equal opportunity and access to California's publicly
5 funded institutions of higher education. This violates the spirit of
6 the California Master Plan for Higher Education by making it more
7 difficult for many students to obtain an affordable and accessible
8 high quality public education. While federal law allows schools
9 to use race as a factor when making admissions decisions,
10 California universities are prohibited by Proposition 209 from
11 engaging in targeted outreach and extra efforts to matriculate
12 high-performing minority students. This reduces the graduation
13 rates of students of color and, in turn, contributes to the diminution
14 of the "pipeline" of candidates of color for faculty positions; and

15 WHEREAS, Since the passage of Proposition 209, diversity
16 within public educational institutions has been stymied. Proposition
17 209 instigated a dramatic change in admissions policy at the
18 University of California, with underrepresented group enrollment
19 at the Berkeley and Los Angeles campuses of the University of
20 California immediately falling by more than 60 percent and
21 systemwide underrepresented group enrollment falling by at least
22 12 percent. Underrepresented group high school graduates faced
23 substantial long-term declines in educational and employment
24 outcomes as a result of these changes; and

25 WHEREAS, Among California high school graduates who apply
26 to the University of California, passage of Proposition 209 has led
27 to a decreased likelihood of earning a college degree within six
28 years, a decreased likelihood of ever earning a graduate degree,
29 and long-run declines in average wages and the likelihood of
30 earning high wages measured by California standards. The
31 University of California has never recovered the same level of
32 diversity that it had before the loss of affirmative action nearly 20
33 years ago, a level that, at the time, was widely considered to be
34 inadequate to meet the needs of the state and its young people
35 because it did not achieve parity with the state's ethnic
36 demographics; and

37 WHEREAS, The importance of diversity in educational settings
38 cannot be overstated. The Supreme Court of the United States
39 outlined the benefits that arise from diversity, as follows, "the
40 destruction of stereotypes, the promotion of cross-racial

1 understanding, the preparation of a student body for an increasingly
2 diverse workforce and society, and the cultivation of a set of leaders
3 with legitimacy in the eyes of the citizenry”; and

4 WHEREAS, Federal courts continue to reaffirm the value of
5 diversity in favor of race conscious admissions, as exemplified by
6 United States District Judge Allison D. Burroughs who stated,
7 “race conscious admissions programs that survive strict scrutiny
8 have an important place in society and help ensure that colleges
9 and universities can offer a diverse atmosphere that fosters learning,
10 improves scholarship, and encourages mutual respect and
11 understanding. Further, Judge Burroughs recognized that there are
12 no race-neutral alternatives that would allow a university to achieve
13 an adequately diverse student body while still perpetuating its
14 standards for academic and other forms of excellence; and

15 WHEREAS, It is the intent of the Legislature that California
16 remedy discrimination against, and underrepresentation of, certain
17 disadvantaged groups in a manner consistent with the United States
18 Constitution and allow gender, racial, and ethnic diversity to be
19 considered among the factors used to decide college admissions
20 and hiring and contracting by government institutions; and

21 WHEREAS, It is further the intent of the Legislature that
22 California transcend a legacy of unequal treatment of marginalized
23 groups and promote fairness and equal citizenship by affording
24 the members of marginalized groups a fair and full opportunity to
25 be integrated into state public institutions that advance upward
26 mobility, pay equity, and racial wealth gap reduction; now,
27 therefore, be it

28 *Resolved by the Assembly, the Senate concurring,* That the
29 Legislature of the State of California at its 2019–20 Regular
30 Session commencing on the third day of December 2018,
31 two-thirds of the membership of each house concurring, hereby
32 proposes to the people of the State of California, that the
33 Constitution of the State be amended as follows:

1 That Section 31 of Article I thereof is repealed.

2

3

4

REVISIONS:

5

Heading—Lines 2 and 3.

6

O

AB 3153 (R. Rivas) Analysis and Recommendation

TITLE: Parking and zoning: bicycle and car-share parking credits

AUTHOR: R. Rivas (D – Hollister)

SPONSOR: California Bicycle Coalition

RECOMMENDATION: Support

BACKGROUND: State law requires that certain types of vehicle parking spaces be made available for specific developments, but it does not establish a minimum number of vehicle or bicycle parking spaces that must be provided for residential buildings. In the absence of state requirements related to the number of vehicle parking spaces that must be provided, cities and counties may establish their own vehicle parking requirements.

PURPOSE: AB 3153 would allow a residential developer to reduce the total number of parking spaces they are required to provide if a project includes non-required long-term bicycle parking spaces, car-share spaces, or both. Specifically, a city or county must allow a developer to:

- Reduce the number of vehicle parking spaces required by one, but no more than two, for every four long-term bicycle parking spaces provided
- Reduce the number of vehicle parking spaces by two for every permanent car-share parking space they provided

The total reduction in parking spaces a developer can achieve under one or both of the vehicle parking reduction credits is:

- 15% for development projects within one-half mile of a major transit stop;
- 15% for affordable development projects eligible for a state density bonus; and,
- 30% for affordable development projects eligible for a state density bonus and within one-half mile of a major transit stop.

AB 3153 exempts a residential development that contain less than 20 vehicle parking spaces and does not prohibit a local jurisdiction from adopting more generous standards.

DISTRICT IMPACT: AB 3153 supports the goals of BART's Station Access Policy, which seeks to reduce drive alone rates and enhance multi-modal access to and from BART stations in partnership with communities and access providers. The proposed reductions in vehicle parking may also help decrease the cost of development and spur production, which would put more riders within walking distance of transit.

OTHER COMMENTS: None

KNOWN SUPPORT/OPPOSITION: Support (as of 5/8/20): California Bicycle Coalition (Sponsor), ActiveSGV, a Project of Community Partners, Bike East Bay, BikeVentura, California YIMBY, Gilroy San Ysidro Nueva Vida, Los Angeles County Bicycle Coalition, Marin County Bicycle Coalition, Sacramento Area Bicycle Advocates, San Diego County Bicycle Coalition, Silicon Valley Bicycle Coalition, Sonoma County Bicycle Coalition, South Bay YIMBY

Opposition: None on file.

STATUS: Passed the Assembly Floor (57-13) on June 8 and ordered to the Senate; Referred to Senate Rules Committee for policy committee assignment.

Analysis completed on 6/17/20.

AMENDED IN ASSEMBLY MAY 14, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 3153

Introduced by Assembly Member Robert Rivas

February 21, 2020

An act to add Chapter 4.3.5 (commencing with Section 65918.5) to Division 1 of Title 7 of the Government Code, relating to planning and zoning.

LEGISLATIVE COUNSEL'S DIGEST

AB 3153, as amended, Robert Rivas. Parking and zoning: *bicycle and car-share* parking credits.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

Existing law also permits variances to be granted from the parking requirements of a zoning ordinance under certain circumstances.

This bill would require a local ~~jurisdiction~~, *agency*, as defined, ~~notwithstanding any local ordinance, general plan element, specific plan, charter, or other local law, policy, resolution, or regulation, to provide, if requested, an eligible applicant of a residential development~~

~~with a parking credit that exempts the project from minimum parking requirements to allow an applicant for a housing development project to reduce the number of motor vehicle parking spaces that they would otherwise be required to provide based on the number of nonrequired long-term bicycle parking spaces or and car-sharing spaces provided subject to certain conditions, limitations, as specified. The bill would provide that a parking reduction allowed pursuant to these provisions does not reduce or increase the number of incentives or concessions to which the applicant is otherwise entitled under a specified provision of the Density Bonus Law.~~

The bill would include findings that this act addresses a matter of statewide concern and shall apply equally to all cities and counties in this state, including charter cities.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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. The Legislature finds and declares that this act~~
2 ~~addresses a matter of statewide concern and shall apply equally to~~
3 ~~all cities and counties in this state, including charter cities.~~

4 ~~SEC. 2.~~

5 ~~SECTION 1.~~ Chapter 4.3.5 (commencing with Section 65918.5)
6 is added to Division 1 of Title 7 of the Government Code, to read:

7

8 CHAPTER 4.3.5. BICYCLE AND CAR-SHARE PARKING ~~CREDIT~~
9 CREDITS

10

11 65918.5. For purposes of this chapter, the following definitions
12 apply:

13 (a) ~~“Development proponent” means an applicant who submits~~
14 ~~an application for a parking credit pursuant to this chapter.~~

1 (b) ~~Eligible applicant~~ means a development proponent who
2 receives a parking credit.

3 (e)

4 (a) ~~“Local jurisdiction” agency~~ means a city, including a
5 charter city, a county, or a city and county.

6 (d) ~~“Residential development” means a project with at least~~
7 ~~two-thirds of the square footage of the development designated~~
8 ~~for residential use.~~

9 (b) *“Housing development project” means a housing*
10 *development project, as defined by Section 65589.5, that is required*
11 *to include more than 20 motor vehicle parking spaces.*

12 (c) *“Long-term bicycle parking spaces” includes the following*
13 *if they are conveniently accessible by the residents of the*
14 *development:*

15 (1) *Covered, lockable enclosures with permanently anchored*
16 *racks for bicycles.*

17 (2) *Lockable bicycle rooms with permanently anchored racks.*

18 (3) *Lockable, permanently anchored bicycle lockers.*

19 (4) *Any long-term bicycle parking facility, as that term is defined*
20 *by the California Building Standards Commission.*

21 (d) *“Major transit stop” as used in this section has the same*
22 *meaning as the term is defined in Section 21064.3 of the Public*
23 *Resources Code.*

24 (e) *“Permanent car-sharing parking space” means an off-street*
25 *motor vehicle parking space that the developer has guaranteed*
26 *will be in service for no less than five years after the certificate of*
27 *occupancy is issued for the housing development project.*

28 65918.6. ~~Notwithstanding any local ordinance, general plan~~
29 ~~element, specific plan, charter, or other local law, policy,~~
30 ~~resolution, or regulation, a local jurisdiction shall, if requested,~~
31 ~~provide an eligible applicant of a residential development with a~~
32 ~~parking credit that shall exempt the project from minimum parking~~
33 ~~requirements as follows:~~

34 (a) ~~For every two nonrequired bicycle parking spaces that meet~~
35 ~~the long-term bicycle parking standards, the motor vehicle parking~~
36 ~~requirement shall be reduced by one space, up to a maximum of~~
37 ~~30 percent of the required parking spaces.~~

38 (b) ~~For every car-sharing parking space that is provided, the~~
39 ~~motor vehicle parking requirement shall be reduced by two spaces,~~
40 ~~up to a maximum of 30 percent of the required parking spaces.~~

1 For purposes of this subdivision, both of the following conditions
2 apply:

3 (1) ~~The car-sharing parking spaces shall be shown on the~~
4 ~~building plans.~~

5 (2) ~~A copy of the car-sharing agreement between the property~~
6 ~~owner and the car-sharing company shall be submitted with the~~
7 ~~building permit.~~

8 65918.6. (a) *A local agency shall allow an applicant for a*
9 *housing development project that provides long-term bicycle*
10 *parking spaces to reduce the number of motor vehicle parking*
11 *spaces they would otherwise be required to provide by at least*
12 *one, but not more than two, motor vehicle parking spaces for every*
13 *four long-term bicycle parking spaces provided at the development,*
14 *except as provided in subdivision (c).*

15 (b) *A local agency shall allow an applicant for a housing*
16 *development project to reduce the number of motor vehicle parking*
17 *spaces they would otherwise be required to provide by two motor*
18 *vehicle parking spaces for every permanent car-sharing parking*
19 *space provided at the development, except as provided in*
20 *subdivision (c).*

21 (c) (1) *The percent of the total number of required motor vehicle*
22 *spaces that a local agency is required to allow an applicant for a*
23 *housing development project to reduce pursuant to subdivisions*
24 *(a) and (b) shall not exceed the following:*

25 (A) *Fifteen percent for a housing development project that does*
26 *not qualify for a density bonus under Section 65915 and is located*
27 *with one-half mile of a major transit stop.*

28 (B) *Fifteen percent for a housing development project that*
29 *qualifies for a density bonus under Section 65915 and is not located*
30 *with one-half mile of a major transit stop.*

31 (C) *Thirty percent for a housing development project that*
32 *qualifies for a density bonus under Section 65915 and is located*
33 *within one-half mile of a major transit stop.*

34 (2) *This subdivision does not prohibit a local agency from*
35 *allowing an applicant for a housing development project to reduce*
36 *the total number of required motor vehicle parking spaces pursuant*
37 *to subdivisions (a) and (b) by more than the percentage specified*
38 *in paragraph (1).*

39 (d) *A parking reduction allowed pursuant to this section does*
40 *not reduce or increase the number of incentives or concessions to*

1 which the applicant is otherwise entitled pursuant to subdivision
2 (d) of Section 65915.

3 (e) (1) This section does not prohibit a local agency from
4 adopting standards that require a housing development project to
5 provide additional long-term bicycle parking spaces or car-share
6 parking spaces.

7 (2) A local agency that requires a housing development project
8 to provide a minimum number of bicycle parking spaces may
9 determine the number, if any, of long-term parking spaces it
10 requires that the housing development project may count toward
11 the reduction in the number of motor vehicle parking spaces that
12 the housing development project is allowed pursuant to subdivision
13 (a).

14 65918.7. The Legislature finds and declares that this chapter
15 addresses a matter of statewide concern rather than a municipal
16 affair as that term is used in Section 5 of Article XI of the
17 California Constitution. Therefore, this chapter applies to all cities,
18 including charter cities.

19 ~~SEC. 3.~~

20 SEC. 2. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.

SB 902 (Wiener) Analysis and Recommendation

TITLE: Planning and zoning: housing development: density

AUTHOR: Wiener (D-San Francisco)

SPONSOR: California YIMBY and Habitat for Humanity California

RECOMMENDATION: Support

BACKGROUND: On May 20, Senate President Pro Tempore Atkins announced a housing bill package intended to bolster production of mid-density and affordable housing by creating new affordable housing production incentives and opening commercial corridors to residential development. Additionally, the package includes bills aimed at streamlining the development process, through establishing new optional tools for local governments to expedite production and through expanding by-right housing approvals for mid-sized projects. SB 902 is one of five bills within the Senate Housing Production Package.

PURPOSE: SB 902 permits a local government to pass an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located on one of the following:

- a) a transit-rich area, defined as a parcel within one-half mile of a major transit stop or a parcel on a high-quality bus corridor with a fixed-route bus service that meets specified service interval times.
- b) a jobs-rich area, defined as an area identified by the state that is high opportunity and either jobs rich or would enable shorter commute distances.
- c) An urban infill site, defined as a site in which at least 75% of the perimeter adjoins parcels that are developed with urban uses and is zoned for residential use or residential mixed-use development with at least 2/3 of the square footage of the development designated for residential use.

SB 902 would require the Department of Housing and Community Development, in consultation with the Office of Planning and Research, to determine jobs-rich areas and publish a map of those areas every five years, commencing January 1, 2022. The local ordinance authorized by this bill is not considered a project for purposes under the California Environmental Quality Act.

DISTRICT IMPACT: SB 902 is complimentary to goals within BART's Transit Oriented Development Policy as it seeks to expedite housing production near transit-rich and job-rich areas. In the Bay Area, neighborhoods within proximity to BART, a high-quality bus corridor, or a regional job center could see an increase in new housing due to the bill's streamlined approvals for mid-density projects. Denser housing near BART may result in increased transit ridership and mode shifts as data shows that residents within a half-mile of BART are twice as likely to walk, bike or take transit for their commute trip and own fewer cars. Housing next to high-quality transit and job-rich areas also offers a sustainable way to reduce freeway congestion and greenhouse gas emissions related to vehicle trips.

OTHER COMMENTS: In 2019, the Board supported SB 50 by Senator Wiener that would have authorized developers to claim a new "equitable communities incentive" for a project in either a transit-rich or job-rich area and reduce local zoning standards when a development met specified requirements. SB 50 failed passage on the Senate Floor.

KNOWN SUPPORT/OPPOSITION: Support (as of 5/22/20): California YIMBY (Sponsor), Habitat for Humanity California (Sponsor), 350 Sacramento, All Home, Bay Area Council, California Apartment Association, California Building, Industry Association, California Community Builders, Chan Zuckerberg Initiative, East Bay for Everyone, Facebook, Inc., Hollywood YIMBY, House Sacramento, League of Women Voters of California, Livable Sunnyvale, Monterey Peninsula Renters United, New Pointe

Communities, Non-profit Housing Association of Northern California, North County YIMBY, Peninsula for Everyone, San Francisco Bay Area Planning and Urban Research Association, San Francisco Housing Action Coalition, Santa Cruz YIMBY, Silicon Valley At Home, SLO County YIMBY, South Bay YIMBY, TechEquity Collaborative, The Greenlining Institute, TMG Partners, Ventura County YIMBY, Westside Young Democrats, YIMBY Action, YIMBY Democrats of San Diego County, YIMBY Voice

Opposition: A Better Way Forward to House California, City of Dublin, City of Livermore City of Newport Beach, City of Pleasanton, City of San Ramon, Los Angeles County Division, League of California Cities, New Livable California Db a Livable California, Orange County Council of Governments, San Francisco Tenants Union, Sherman Oaks Homeowners Association, South Bay Cities Council of Governments, Town of Danville

STATUS: Passed the Senate Appropriations Committee (6-1) on June 18 and sent to the Senate Floor for consideration.

Analysis completed on 6/18/20.

AMENDED IN SENATE MAY 21, 2020
AMENDED IN SENATE MARCH 9, 2020

SENATE BILL

No. 902

Introduced by Senator Wiener
(Principal coauthor: Senator Atkins)

January 30, 2020

An act to add Section 65913.3 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 902, as amended, Wiener. Planning and zoning: ~~neighborhood multifamily project: use by right:~~ *housing development:* density.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

~~Existing law, until January 1, 2026, authorizes a development proponent to submit an application for a multifamily housing development that satisfies specified planning objective standards to be subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit.~~

This bill would provide that a neighborhood multifamily project is a use by right in zones where residential uses are permitted if the project is not located in a very high fire severity zone, does not demolish sound rental housing or housing that has been placed on a national or state historic register, follows specified local objective criteria, and meets specified density requirements. The bill would define use by right to mean that the local government's review of the housing development may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a project for purposes of the California Environmental Quality Act (CEQA).

This bill would additionally authorize a local government to pass an ordinance *ordinance, notwithstanding any local restrictions on adopting zoning ordinances*, to zone any parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill ~~site~~ *site, as those terms are defined*. In this regard, *the bill would require the Department of Housing and Community Development, in consultation with the Office of Planning and Research, to determine jobs-rich areas and publish a map of those areas every 5 years, commencing January 1, 2022, based on specified criteria*. The bill would specify that an ordinance adopted under these provisions is not a project for purposes of ~~CEQA~~ *the California Environmental Quality Act*.

CEQA requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

By requiring local planning officials to approve housing developments as a use by right under certain circumstances, this bill would expand the above-described exemption from CEQA for the ministerial approval of projects.

By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

This bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

~~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~~ no.

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

1 SECTION 1. Section 65913.3 is added to the Government
2 Code, to read:

3 65913.3. (a) ~~A neighborhood multifamily project shall be a~~
4 ~~use by right in zones where residential uses are permitted, if the~~
5 ~~proposed housing development satisfies all of the following~~
6 ~~requirements:~~

7 (1) ~~The project is not located in a very high fire hazard severity~~
8 ~~zone.~~

9 (2) ~~The project does not demolish sound rental housing or~~
10 ~~housing that has been placed on a national or state historic register.~~

11 (3) ~~The project follows all local objective criteria related to local~~
12 ~~impact fees, local height and setback limits, and local demolition~~
13 ~~standards.~~

14 (4) ~~The project meets, and does not exceed, one of the following~~
15 ~~densities:~~

16 (A) ~~Two residential units per parcel in unincorporated areas or~~
17 ~~in cities with a population of 10,000 or fewer people.~~

18 (B) ~~Three residential units per parcel in cities with a population~~
19 ~~between 10,000 and 50,000 people.~~

20 (C) ~~Four residential units per parcel in cities with a population~~
21 ~~of 50,000 or more people.~~

22 (b)

23 65913.3. (a) (1) A local government may pass an ordinance,
24 notwithstanding any local restrictions on adopting zoning
25 ordinances enacted by the jurisdiction, including restrictions

1 enacted by a local voter initiative, that limit the legislative body's
2 ability to adopt zoning ordinances, to zone any parcel for up to 10
3 units of residential density per parcel, at a height specified by the
4 local government in the ordinance, if the parcel is located in one
5 of the following:

6 (A) A transit-rich area.

7 (B) A jobs-rich area.

8 (C) An urban infill site.

9 (2) An ordinance adopted in accordance with this subdivision
10 shall not constitute a "project" for purposes of Division 13
11 (commencing with Section 21000) of the Public Resources Code.

12 (e)

13 (b) For purposes of this section:

14 (1) "High-quality bus corridor" means a corridor with fixed
15 route bus service that meets all of the following criteria:

16 (A) It has average service intervals of no more than 15 minutes
17 during the three peak hours between 6 a.m. to 10 a.m., inclusive,
18 and the three peak hours between 3 p.m. and 7 p.m., inclusive, on
19 Monday through Friday.

20 (B) It has average service intervals of no more than 20 minutes
21 during the hours of 6 a.m. to 10 a.m., inclusive, on Monday through
22 Friday.

23 (C) It has average intervals of no more than 30 minutes during
24 the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.

25 (2) (A) "Jobs-rich area" means an area identified by the
26 Department of Housing and Community Development in
27 consultation with the Office of Planning and Research that is high
28 opportunity and either is jobs rich or would enable shorter commute
29 distances based on whether, in a regional analysis, the tract meets
30 both of the following:

31 (i) The tract is high opportunity, meaning its characteristics are
32 associated with positive educational and economic outcomes for
33 households of all income levels residing in the tract.

34 (ii) The tract meets either of the following criteria:

35 (iii) New housing sited in the tract would enable residents to
36 live near more jobs than is typical for tracts in the region.

37 (iv) New housing sited in the tract would enable shorter
38 commute distances for residents, relative to existing commute
39 patterns and jobs-housing fit.

(B) The Department of Housing and Community Development shall, commencing on January 1, 2022, publish and update, every five years thereafter, a map of the state showing the areas identified by the department as “jobs-rich areas.”

(3) (A) “Sound rental housing” means any of the following:

(i) ~~Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.~~

(ii) ~~Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.~~

(iii) ~~(I) Housing occupied by tenants within the seven years preceding the date of the application, including housing that has been demolished or that tenants have vacated before the application for a development permit.~~

(H) For purposes of this clause, “tenant” means a person who does not own the property where they reside, including residential situations that are any of the following:

(ia) ~~Residential real property rented by the person under a long-term lease.~~

(ib) ~~A single-room occupancy unit.~~

(ic) ~~An accessory dwelling unit that is not subject to, or does not have a valid permit in accordance with, an ordinance adopted by a local agency pursuant to Section 65852.2.~~

(id) ~~A residential motel.~~

(ie) ~~A mobilehome park, as governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).~~

(if) ~~Any other type of residential property that is not owned by the person or a member of the person’s household, for which the person or a member of the person’s household provides payments on a regular schedule in exchange for the right to occupy the residential property.~~

(iv) ~~A parcel or parcels on which an owner of residential real property has exercised their rights under Chapter 12.75~~

1 ~~(commencing with Section 7060) of Division 7 of Title 1 to~~
2 ~~withdraw accommodations from rent or lease within 15 years~~
3 ~~before the date that the development proponent submits an~~
4 ~~application pursuant to a streamlined, ministerial approval process.~~

5 ~~(B) "Sound rental housing" shall not mean housing that the local~~
6 ~~agency has deemed uninhabitable due to fire, flood, earthquake,~~
7 ~~or other natural disaster.~~

8 ~~(4)~~

9 (3) "Transit-rich area" means a parcel within one-half mile of
10 a major transit stop, as defined in Section 21064.3 of the Public
11 Resources Code, or a parcel on a high-quality bus corridor.

12 ~~(5)~~

13 (4) "Urban infill site" means a site that satisfies all of the
14 following:

15 (A) A site that is a legal parcel or parcels located in a city if,
16 and only if, the city boundaries include some portion of either an
17 urbanized area or urban cluster, as designated by the United States
18 Census Bureau, or, for unincorporated areas, a legal parcel or
19 parcels wholly within the boundaries of an urbanized area or urban
20 cluster, as designated by the United States Census Bureau.

21 (B) A site in which at least 75 percent of the perimeter of the
22 site adjoins parcels that are developed with urban uses. For the
23 purposes of this section, parcels that are only separated by a street
24 or highway shall be considered to be adjoined.

25 (C) A site that is zoned for residential use or residential
26 mixed-use development, or has a general plan designation that
27 allows residential use or a mix of residential and nonresidential
28 uses, with at least two-thirds of the square footage of the
29 development designated for residential use.

30 ~~(6) (A) "Use by right" means that the local government's review~~
31 ~~of the housing development may not require a conditional use~~
32 ~~permit, planned unit development permit, or other discretionary~~
33 ~~local government review or approval that would constitute a~~
34 ~~"project" for purposes of Division 13 (commencing with Section~~
35 ~~21000) of the Public Resources Code. Any subdivision of the sites~~
36 ~~shall be subject to all laws, including, but not limited to, the local~~
37 ~~government ordinance implementing the Subdivision Map Act~~
38 ~~(Division 2 (commencing with Section 66410)).~~

39 ~~(B) A local ordinance may provide that "use by right" does not~~
40 ~~exempt the housing development from design review. However,~~

1 that design review shall not constitute a “project” for purposes of
2 Division 13 (commencing with Section 21000) of the Public
3 Resources Code.

4 (7) “Very high fire hazard severity zone” means a very high
5 fire hazard severity zone as determined by the Department of
6 Forestry and Fire Protection pursuant to Section 51178, or within
7 a high or very high fire hazard severity zone as indicated on maps
8 adopted by the Department of Forestry and Fire Protection pursuant
9 to Section 4202 of the Public Resources Code.

10 (d)

11 (c) The Legislature finds and declares that ensuring the adequate
12 production of affordable housing is a matter of statewide concern
13 and is not a municipal affair as that term is used in Section 5 of
14 Article XI of the California Constitution. Therefore, this section
15 applies to all cities, including charter cities.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.

SCA 1 (Allen and Wiener) Analysis and Recommendation

TITLE: An amendment to the Constitution of the State relating to public housing projects

AUTHOR(S): Allen (D-Los Angeles) and Wiener (D-San Francisco)

SPONSORS: City of Los Angeles, California Association of Realtors, California Rural Legal Assistance Foundation, California YIMBY, Housing California & Western Center on Law and Poverty

RECOMMENDATION: Support

BACKGROUND: Article 34 of the California Constitution was enacted in 1950 after a dispute surrounding a “low-rent housing” project in the City of Eureka. In the City of Eureka, some disagreed with the city’s ability to move forward on such a project without input from local voters. Article 34 requires a vote of the local electorate before public funding can be expended on a low-rent housing project. Following the enactment of the federal Housing Act of 1949, which banned racial discrimination in housing, there were efforts to restore the ability to segregate housing at the local level, which led to the proposal and adoption of Article 34 on the 1950 California ballot.

Today, not all low-and moderate-income housing is a “low-rent housing.” Statutory and case law permits development of many kinds of low-and moderate-income housing that will not be characterized as a “low-rent housing project,” and thus will not require Article 34 voter authorization.

PURPOSE: SCA 1 would place before California voters a proposal to repeal Article 34, thereby eliminating the required local vote before a municipality can move forward with a low-rent housing project. Since the original basis of Article 34 was to maintain segregation in housing, the proponents argue it is no longer warranted as a component of California’s Constitution.

DISTRICT IMPACT: If approved by voters, SCA 1 will generally ease the local municipal process for moving forward with low-rent housing developments. The measure is intended to remove another obstacle as California endeavors to address its housing crisis, which is especially acute in the Bay Area. Publicly owned affordable housing for low-income populations is critical to reducing homelessness and ensuring that housing is available to people of all income levels.

OTHER COMMENTS: None.

KNOWN SUPPORT/OPPOSITION: Support (as of 8/30/19): California Association of Realtors, California Coalition for Rural Housing, California YIMBY, City of Los Angeles, Southern California Association of Nonprofit Housing, Aids Healthcare Foundation, California Apartment Association, California Association of Housing Authorities, California Association of Local Housing Finance Agencies, California Coalition for Rural Housing, California Partnership, California State Association of Counties, City of Berkeley, City of Beverly Hills, City of Santa Monica, City of West Hollywood, East Bay for Everyone, Eden Housing, League of Women Voters of California, Rural County Representatives of California, San Francisco Housing Action Coalition, Silicon Valley at Home, Southern California Rental Housing Association

Opposition: None on file.

STATUS: Third reading on the Assembly Floor since September 2019.

Analysis completed on 6/16/20.

Introduced by Senators Allen and Wiener
(Coauthor: Senator Lara)

December 3, 2018

Senate Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Article XXXIV thereof, relating to public housing projects.

LEGISLATIVE COUNSEL'S DIGEST

SCA 1, as introduced, Allen. Public housing projects.

The California Constitution prohibits the development, construction, or acquisition of a low-rent housing project, as defined, in any manner by any state public body until a majority of the qualified electors of the city, town, or county in which the development, construction, or acquisition of the low-rent housing project is proposed approve the project by voting in favor at an election, as specified.

This measure would repeal these provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

- 1 *Resolved by the Senate, the Assembly concurring,* That the
- 2 Legislature of the State of California at its 2018–19 Regular
- 3 Session commencing on the third day of December 2018,
- 4 two-thirds of the membership of each house concurring, hereby
- 5 proposes to the people of the State of California, that the
- 6 Constitution of the State be amended as follows:
- 7 That Article XXXIV thereof is repealed.

O

AB 3269 (Chiu and Santiago) Analysis and Recommendation

TITLE: State and local agencies: homelessness plan

AUTHORS: Chiu (D-San Francisco) and Santiago (D-Los Angeles)

SPONSOR: Mayor Darrell Steinberg, City of Sacramento

RECOMMENDATION: Support and seek amendments

BACKGROUND: In 2016, the state created the Homeless Coordinating and Financing Council made up of all state departments and agencies that provide services to people experiencing homelessness or at risk of homelessness. In 2019, the Governor appointed a Council of Regional Homeless Advisors made up of local elected officials and leading organizations that work on homelessness in the state. In January of 2020, the Governor's Council issued several recommendations to reduce and prevent homelessness including one to create an enforceable, results-based accountability mandate to end homelessness.

PURPOSE: AB 3269, pending appropriation of funds by the Legislature, would require the Homeless Coordinating and Financing Council to conduct a statewide gap and needs analysis to determine available resources at the local and state level to address homelessness. Based on the 2019 point-in-time homeless count, the bill would require the Department of Housing and Community Development to set benchmarks for state and local agencies to develop a plan to reduce homelessness and meet benchmark goals. The bill also authorizes a newly created Housing and Homelessness Inspector General to audit state and local agencies for adherence to housing and homelessness plans and take action against a state or local government for failing to submit a plan or non-compliance.

DISTRICT IMPACT: AB 3269 is aligned with the Board's adopted state advocacy goal of supporting legislation that addresses homelessness through improved regional coordination and data-sharing. Early in the legislative session, staff and BART advocates were focused on securing state resources to assist in BART in addressing homelessness and related quality of life issues. While this bill does not include direct funding opportunities for BART, staff are requesting Board approval to seek amendments that would require state and local agencies incorporate homelessness data from transit agencies into the statewide gap and needs analysis.

OTHER COMMENTS: None

KNOWN SUPPORT/OPPOSITION: Support (as of 5/20/20): Mayor Darrell Steinberg, City of Sacramento (Sponsor), City of San Diego, Corporation for Supportive Housing, Housing California, Mayor Libby Schaaf, City of Oakland, National Association of Social Workers, California Chapter.

Opposition: None on file.

STATUS: Passed the Assembly (58-10) on June 10 and ordered to the Senate; Referred to Senate Rules Committee for policy committee assignment.

Analysis completed on 6/16/2020.

AMENDED IN ASSEMBLY JUNE 4, 2020

AMENDED IN ASSEMBLY MAY 22, 2020

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 3269

Introduced by Assembly Members Chiu and Santiago

February 21, 2020

An act to amend Sections 11552 and 12804 of the Government Code, and to add Sections 8257.1 and 8257.2 to, and to add Chapter 6.6 (commencing with Section 8258) to Division 8 of, the Welfare and Institutions Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

AB 3269, as amended, Chiu. State and local agencies: homelessness plan.

Existing law establishes in state government the Business, Consumer Services, and Housing Agency, comprised of the Department of Consumer Affairs, the Department of Housing and Community Development, the Department of Fair Employment and Housing, the Department of Business Oversight, the Department of Alcoholic Beverage Control, the Alcoholic Beverage Control Appeals Board, the California Horse Racing Board, and the Alfred E. Alquist Seismic Safety Commission.

Existing law requires the Governor to create the Homeless Coordinating and Financing Council (referred to as "the coordinating council") and to appoint up to 19 members of that council, as provided. Existing law specifies the duties of the coordinating council, including creating partnerships among state agencies and departments, local

government agencies, and specified federal agencies and private entities, for the purpose of arriving at specific strategies to end homelessness.

This bill, upon appropriation by the Legislature, *Legislature or upon receiving technical assistance offered by the federal Department of Housing and Urban Development, if available,* would require the coordinating council to conduct, or contract with an entity to conduct, a statewide needs and gaps analysis to, among other things, ~~summarize the current inventory of services for persons experiencing homelessness, as specified. identify state programs that provide housing or services to persons experiencing homelessness and create a financial model that will assess certain investment needs for the purpose of moving persons experiencing homelessness into permanent housing.~~ The bill would authorize local governments to collaborate with the coordinating council ~~council or other entity conducting the analysis upon an appropriation by the Legislature to cover costs of the collaboration or upon provision of technical assistance by the federal Department of Housing and Urban Development.~~ The bill would also require the *coordinating council or any other entity conducting the analysis* to seek input from the coordinating council's members on the direction of, design of data collection for, and items to be included in the statewide needs and gaps analysis. The bill would require the council to report on the analysis to specified committees in the Legislature by July 31, 2021. *The bill would require the coordinating council or other entity conducting the analysis to evaluate all available data, including, among other things, data from other state departments and agencies. The bill would require a state department or agency with a member on the coordinating council to assist in data collection for the analysis by responding to data requests within 180 days, as specified.*

This bill would ~~state the intent of the Legislature that each state and local agency aim to reduce homelessness within its jurisdiction by 90% by December 31, 2028.~~ *require each county to submit, no later than December 31, 2021, to the Department of Housing and Community Development a county-level plan for meeting specific annual benchmarks with city and homeless continuum of care participation, as specified. The bill would require the plan to include a gaps analysis pertaining to homelessness, as provided.* The bill would require the Department of Housing and Community Development to set a benchmark goal in reducing homelessness by January 1, 2028, for each state and local agency subject to these provisions, based upon the needs and gaps analysis ~~described above, provided by each county,~~ and annual

homelessness reduction benchmarks that progress toward the benchmark goal. The bill, on or before January 1, 2022, would require each state and local agency, as defined, to develop an actionable plan to achieve the benchmark goal set by the department. The bill would require the plan to include a description and the amount of all funding sources the state or local agency, and any incorporated jurisdiction and continuum of care, has earmarked or committed to addressing homelessness, mental illness, and substance abuse within its jurisdiction, the amount of additional funding needed, and specific actions that will be taken to reduce the number of individuals experiencing homelessness and meet the benchmark goal set by the department. The bill would require each state and local agency to submit an annual progress report to the department that details the progress and implementation of the adopted plan and any amendments proposed to the plan.

This bill would require the department to review submitted plans and provide feedback and recommended revisions. The bill would require a state or local agency to either adopt those recommended revisions, or adopt findings as to why the recommended revisions are not needed. The bill would require the department to monitor the implementation and progress of state and local agency plans. The bill would require the department to notify the state or local agency and the inspector general if the agency fails, within a reasonable time, to make progress in accordance with their plan.

This bill would establish the Office of the Housing and Homelessness Inspector General as an independent office within the Business, Consumer Services, and Housing Agency, under the supervision of the Housing and Homelessness Inspector General. The bill would require the Governor to appoint the Housing and Homelessness Inspector General, subject to confirmation by the Senate. The bill would, on and after January 1, 2022, authorize the inspector general to bring an action against a state or local agency that fails to adopt a plan or fails, within a reasonable time, to make progress in accordance with their adopted plan. The bill, if the court finds that the applicable state or local agency has not substantially complied, would authorize the Housing and Homelessness Inspector General to request the court to issue an order or judgment directing the state or local agency to substantially comply, as provided.

The bill would authorize the inspector general to impose a civil penalty on a state or local agency that is found to have deliberately and intentionally transported a homeless individual to a different jurisdiction

in order to reduce the number of homeless individuals within their jurisdiction, as specified.

By requiring local agencies to *submit a county-level plan for meeting specific annual benchmarks relating to homelessness and to develop and implement a homelessness plan, plan to achieve the benchmark goal developed by the Department of Housing and Community Development*, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

3 (a) As of January 2019, California has had an estimated 151,278
4 people experiencing homelessness on any given day, as reported
5 by Continuum of Care to the United States Department of Housing
6 and Urban Development. This is the highest number since 2007,
7 and represents a 17-percent increase since 2018.

8 (b) The vast majority of homeless Californians were unsheltered,
9 which is about 71 percent and the highest rate in the nation,
10 meaning that they were living in streets, parks, or other locations
11 not meant for human habitation. In 2018, among homeless veterans,
12 California had the nation's highest share that are unsheltered (67
13 percent), and among homeless youth, the share that are unsheltered
14 (80 percent) ranked second highest.

15 (c) As local communities work to house the unsheltered, more
16 people are falling into homelessness. Larger urban areas with high
17 numbers of people experiencing homelessness have reported that
18 more people are falling into homelessness than they are able to
19 house.

20 (d) In the City of Oakland, for every one person they are able
21 to house, two more are falling into homelessness.

1 (e) In the County of Los Angeles, despite housing 20,000
2 homeless people in 2018, for every 133 people housed, 150 fall
3 into homelessness per day.

4 (f) In the City and County of San Francisco, for every one person
5 they are able to house, three more fall into homelessness.

6 (g) A growing percentage of the state's homeless population
7 are seniors who are experiencing homelessness for the first time.
8 Seniors who are on fixed incomes and who are severely rent
9 burdened have no potential for additional income.

10 (h) Once seniors are homeless, their health quickly deteriorates
11 and they use emergency services at a higher rate and face high
12 mortality rates.

13 (i) Fifty percent of seniors who are homeless become homeless
14 after 50 years of age.

15 (j) African Americans are disproportionately found on
16 California's streets and roughly 30 percent of the state's unhoused
17 population is Black.

18 (k) While comprehensive statewide data is lacking, local surveys
19 indicate that people living on the streets are typically from the
20 surrounding neighborhood. For example, 70 percent of the people
21 experiencing homelessness in the City and County of San Francisco
22 were housed somewhere in the city where they lost housing, while
23 only 8 percent came from out-of-state. In addition, three-quarters
24 of the homeless population of the County of Los Angeles lived in
25 the region before becoming homeless.

26 (l) About 1,300,000 California renters are considered "extremely
27 low income," making less than twenty-five thousand dollars
28 (\$25,000) per year.

29 (m) In many parts of the state, many lower income residents
30 are severely cost burdened, paying over 50 percent of their income
31 toward housing costs. One small financial setback can push these
32 individuals and families into homelessness.

33 (n) The Legislature has made the following investments in
34 affordable housing and homelessness response:

35 (1) In 2016, the Legislature passed and the voters approved
36 Proposition 63, known as the Mental Health Services Act, which
37 generates two billion dollars (\$2,000,000,000) per year for mental
38 health services that can be used for people experiencing
39 homelessness.

(2) In 2017, Senate Bill 2 (Chapter 364 of the Statutes of 2017) established a recording fee for real estate documents that has generated three hundred fifty million dollars (\$350,000,000) per year since its creation. Beginning this year, 70 percent of funds from the recording fee go directly to counties to use to address affordable housing and homelessness.

(3) In 2017, the Legislature passed No Place Like Home to authorize the use of two billion dollars (\$2,000,000,000) in Proposition 63 revenues in bonds for supportive housing for chronically homeless individuals with mental illness.

(4) In 2018, the Legislature passed and the voters approved Proposition 1, which authorized three billion dollars (\$3,000,000,000) in general fund bonds to increase the supply of affordable housing around the state.

(5) Local governments have also passed general obligation bonds to fund affordable housing, supportive housing, and emergency shelters:

(A) In 2016, the voters of the City of Los Angeles passed Measure HHH, which authorizes 1.2 billion dollars (\$1,200,000,000) to fund the construction of 10,000 supportive housing units.

(B) In 2019, the City and County of San Francisco passed Proposition A, which authorized six hundred million dollars (\$600,000,000) to support the creation of affordable housing.

(C) In 2019, the City and County of San Francisco passed Proposition C, which authorizes a tax on gross receipts of business with incomes of fifty million dollars (\$50,000,000) or more to fund affordable housing, supportive housing, and legal assistance programs.

(6) The Legislature has also made policy changes to allow for siting and building emergency shelters, affordable housing, and supportive housing:

(A) In 2017, the Legislature passed Senate Bill 35 (Chapter 366 of the Statutes of 2017), which created a streamlined process for housing developments that include a percentage of affordable housing.

(B) In 2018, the Legislature passed Assembly Bill 2162 (Chapter 753 of the Statutes of 2018), which established a streamlined process for supportive housing developments.

1 (C) In 2018, the Legislature authorized five hundred million
2 dollars (\$500,000,000) for the Homeless Emergency Aid Program
3 to provide local governments with flexible block grant funds to
4 address their immediate homelessness challenges.

5 (D) In 2019, the Legislature passed Assembly Bill 101 (Chapter
6 159 of the Statutes of 2019), which streamlines navigation centers
7 that provide emergency shelter and services to people experiencing
8 homelessness.

9 (E) In 2019, the Legislature authorized six hundred fifty million
10 dollars (\$650,000,000) for the Homeless Housing, Assistance, and
11 Prevention Program one-time block grant that provides local
12 jurisdictions with funds to support regional coordination and
13 expand or develop local capacity to address their immediate
14 homelessness challenges.

15 (o) State and local government at all levels should be held
16 responsible for responding to homelessness and providing
17 permanent housing for the unsheltered. In order to ensure state
18 and local jurisdictions are making best use of existing resources,
19 and to determine the additional resources needed to substantially
20 reduce unsheltered homelessness in California, ~~a statewide gaps~~
21 ~~analysis must be conducted. The analysis should include a~~
22 ~~county-by-county assessment of existing resources, including the~~
23 ~~Mental Health Services Act, No Place Like Home, SB 2 (Chapter~~
24 ~~364 of the Statutes of 2017), substance abuse treatment, affordable~~
25 ~~housing, CalWORKS, federal resources, including the Community~~
26 ~~Development Block Grant, Emergency Shelter Grants, and funds~~
27 ~~awarded by the Department of Housing and Urban Development~~
28 ~~to continuums of care, and other resources that could be utilized~~
29 ~~to get people indoors. the state should work with local communities~~
30 ~~to determine the appropriate roles of each level of government.~~

31 (p) *To identify the types and levels of interventions the state*
32 *currently provides, and to arrive at strategies the state will pursue*
33 *to solve homelessness, the state must conduct a state gaps analysis.*
34 *The analysis should include an assessment of existing resources,*
35 *gaps in interventions needed to solve homelessness, and a financial*
36 *analysis of the costs of filling those gaps at a state level.*

37 ~~(p)~~

38 (q) There are few other areas of important public policy where
39 government efforts to achieve a compelling societal objective are
40 voluntary.

1 (q)

2 (r) The state required the state's utilities and public agencies to
3 meet a timetable for increasing their use of renewable energy, and
4 the state is achieving dramatic results.

5 (†)

6 (s) Government at all levels should be obligated to spend
7 existing resources in the most efficient and expeditious manner to
8 reduce homelessness.

9 SEC. 2. Section 11552 of the Government Code is amended
10 to read:

11 11552. (a) Effective January 1, 1988, an annual salary of
12 eighty-five thousand four hundred two dollars (\$85,402) shall be
13 paid to each of the following:

14 (1) Commissioner of Business Oversight.

15 (2) Director of Transportation.

16 (3) Real Estate Commissioner.

17 (4) Director of Social Services.

18 (5) Director of Water Resources.

19 (6) Director of General Services.

20 (7) Director of Motor Vehicles.

21 (8) Executive Officer of the Franchise Tax Board.

22 (9) Director of Employment Development.

23 (10) Director of Alcoholic Beverage Control.

24 (11) Director of Housing and Community Development.

25 (12) Director of Alcohol and Drug Programs.

26 (13) Director of Statewide Health Planning and Development.

27 (14) Director of the Department of Human Resources.

28 (15) Director of Health Care Services.

29 (16) Director of State Hospitals.

30 (17) Director of Developmental Services.

31 (18) State Public Defender.

32 (19) Director of the California State Lottery.

33 (20) Director of Fish and Wildlife.

34 (21) Director of Parks and Recreation.

35 (22) Director of Rehabilitation.

36 (23) Director of the Office of Administrative Law.

37 (24) Director of Consumer Affairs.

38 (25) Director of Forestry and Fire Protection.

39 (26) The Inspector General pursuant to Section 6125 of the
40 Penal Code.

- (27) Director of Child Support Services.
- (28) Director of Industrial Relations.
- (29) Director of Toxic Substances Control.
- (30) Director of Pesticide Regulation.
- (31) Director of Managed Health Care.
- (32) Director of Environmental Health Hazard Assessment.
- (33) Director of California Bay-Delta Authority.
- (34) Director of California Conservation Corps.
- (35) Director of Technology.
- (36) Director of Emergency Services.
- (37) Director of the Office of Energy Infrastructure Safety.
- (38) The Housing and Homelessness Inspector General.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 3. Section 12804 of the Government Code is amended to read:

12804. (a) There is in the state government the Business, Consumer Services, and Housing Agency.

(b) The Business, Consumer Services, and Housing Agency shall consist of the following: the Department of Consumer Affairs, the Department of Real Estate, the Department of Housing and Community Development, the Department of Fair Employment and Housing, the Department of Business Oversight, the Department of Alcoholic Beverage Control, the Alcoholic Beverage Control Appeals Board, the California Horse Racing Board, the Alfred E. Alquist Seismic Safety Commission, and the Office of the Housing and Homelessness Inspector General.

(c) This section shall become operative on July 1, 2018.

SEC. 4. Section 8257.1 is added to the Welfare and Institutions Code, to read:

8257.1. (a) Upon appropriation by the ~~Legislature~~, *Legislature, or upon receiving technical assistance offered by the federal Department of Housing and Urban Development, if available, the coordinating-council council, or an entity the council contracts with for this purpose*, shall do all of the following:

(a) ~~Conduct, or contract with an entity to conduct,~~

1 (1) Conduct a statewide needs and gaps analysis that will do
2 both *all* of the following:

3 (1) Summarize the current inventory of services for persons
4 experiencing homelessness by describing all of the following:

5 (A) The major funding streams supporting programs for people
6 in federal HUD homeless categories one, two, and four, which are
7 literal homelessness, imminently at-risk of homelessness, and
8 fleeing or attempting to flee domestic violence, respectively.

9 (B) The permanent and interim housing inventory, and the
10 supportive case management, mental health, and substance abuse
11 services slots, available to persons experiencing homelessness.

12 (C) The target populations served, their demographics, and the
13 incidence rates of federal HUD homeless subpopulations.

14 (D) Key indicators of statewide homeless system performance,
15 including estimates of inflow into homelessness, including
16 state-funded institutional settings that discharge people into
17 homelessness, exits to permanent housing, length of time homeless,
18 rate of returns to homelessness, and other federal HUD System
19 Performance Measures, disaggregated by race.

20 (2) Quantify the need for additional interventions, and the
21 associated costs for those interventions, to achieve a 90 percent
22 reduction in population-level homelessness by December 31, 2028.
23 This shall include a financial model that will assess needs for
24 investment in capital and for coverage of annual operating, rental
25 assistance, and services costs.

26 (A) Identify programs in the state that provide housing or
27 services to persons experiencing homelessness and describe all of
28 the following for each program to the extent that data is available:

29 (i) The amount of funding the program receives each year and
30 funding sources for the program.

31 (ii) The number of persons the program serves each year.

32 (iii) The types of housing and services provided to the persons
33 the program serves each year.

34 (iv) Limitations, if any, on the length of stay for housing
35 programs and length of provision of services for service programs.

36 (v) If applicable, reasons for the unavailability of data.

37 (B) Identify the total number and type of permanent housing
38 beds, units, or opportunities available to persons experiencing
39 homelessness statewide and in geographically diverse regions
40 across the state.

1 (C) Analyze the need for permanent housing opportunities,
2 including, but not limited to, supportive housing, rapid rehousing,
3 and affordable housing.

4 (D) Analyze the need for services to assist persons in exiting
5 homelessness and remaining housed.

6 (E) Identify the number of and types of interim interventions
7 available to persons experiencing homelessness in geographically
8 diverse regions across the state. The data shall also include, but
9 is not limited to, all of the following:

10 (i) The number of year-round shelter beds.

11 (ii) The average length of stay in or use of interim interventions,
12 to the extent data is available.

13 (iii) The exit rate from an interim intervention to permanent
14 housing, to the extent data is available.

15 (F) Analyze the need for additional interim interventions and
16 funding needed to create these interventions, taking into
17 consideration the ideal length of stay in or use of the intervention.

18 (G) Identify state-funded institutional settings that discharge
19 persons into homelessness, and the total number of persons
20 discharged into homelessness from each of those settings, to the
21 extent data is available. If data is unavailable, the entity conducting
22 the analysis may extrapolate from national, local, or statewide
23 estimates on the number or percentage of people discharged from
24 specific institutional settings into homelessness.

25 (H) Collect data on the numbers and demographics of persons
26 experiencing homelessness, including, but not limited to, the extent
27 data is available, race and gender demographics, in all of the
28 following circumstances:

29 (i) As a young adult.

30 (ii) As an unaccompanied minor.

31 (iii) As a single adult experiencing chronic homelessness and
32 nonchronic homelessness.

33 (iv) As an adult over 50 years of age.

34 (v) As a domestic violence survivor.

35 (vi) As a veteran.

36 (vii) As a person on parole or probation.

37 (viii) As a member of a family experiencing either chronic or
38 nonchronic patterns of homelessness.

39 (I) Collect data, to the extent data is available, on exits from
40 homelessness to housing, including, but not limited to, the number

1 of people moving into permanent housing and the type of housing
2 being accessed, the type of interventions people exiting
3 homelessness received, if any, and racial and gender
4 characteristics of people accessing each type of housing and
5 receiving each type of intervention.

6 (J) To the extent data is available, assess a sampling of data
7 provided by local jurisdictions regarding the number of people
8 experiencing homelessness who accessed interim interventions,
9 including, but not limited to, shelters, recuperative care, and motels
10 and hotels, in response to the COVID-19 pandemic, and the number
11 of people who were able to access permanent housing on or before
12 the expiration of interim assistance. The assessment shall include
13 the number and racial identification of people experiencing
14 homelessness who sheltered in place or were quarantined during
15 the COVID-19 pandemic and the number and racial identification
16 of people experiencing homelessness who were able to access
17 permanent housing on or before the expiration of temporary
18 assistance, as well as the type of housing accessed.

19 (K) Create a financial model that will assess needs for
20 investment in capital, in operating supports in project-based
21 housing, in rental assistance with private-market landlords, and
22 in services costs for purposes of moving persons experiencing
23 homelessness into permanent housing.

24 (2) (A) For purposes of collecting data to conduct the analysis
25 pursuant to paragraph (1), evaluate all available data, including,
26 but not limited to, data from agencies and departments other than
27 the council, statewide and local homeless point-in-time counts and
28 housing inventory counts, and available statewide information on
29 the number or rate of persons exiting state-funded institutional
30 settings into homelessness.

31 (B) To the extent specific data is unavailable for purposes of
32 subparagraph (A), the council may calculate estimates based on
33 national or local data. The council shall only use data that meets
34 either of the following requirements:

35 (i) The data is from an evaluation or study from a third-party
36 evaluator or researcher and is consistent with data from
37 evaluations or studies from other third-party evaluators or
38 researchers.

39 (ii) A federal agency cites and refers to the data as
40 evidence-based.

1 (3) *Seek input from the council's members on the direction of,*
2 *design of data collection for, and items to be included in the*
3 *analysis conducted pursuant to paragraph (1).*

4 (b) For purposes of collecting data pursuant to *paragraph (1)*
5 *of subdivision (a), and upon the appropriation that includes*
6 *coverage of costs, pursuant to subdivision (a) to fund costs or upon*
7 *the provision of technical assistance by the federal Department of*
8 *Housing and Urban Development, a local government may*
9 *collaborate with the coordinating council or the entity*
10 *conducting the statewide analysis to do both of the following:*

11 (1) If available, share existing data from local gaps or needs
12 analyses to inform statewide data.

13 (2) ~~Conduct a gaps and needs analysis~~ *Provide data for*
14 *conducting needs analyses* in a sampling of up to six geographically
15 diverse regions to inform statewide data. *The council or other*
16 *entity conducting the statewide analysis may extrapolate data from*
17 *these local data analyses to inform the statewide analysis.*

18 (c) (1) ~~For purposes of collecting data pursuant to subdivision~~
19 ~~(a), evaluate all relevant and available data, including, but not~~
20 ~~limited to, Homeless Management Information System (HMIS)~~
21 ~~data and reports, data from other agencies and departments,~~
22 ~~statewide and local homeless point-in-time counts and housing~~
23 ~~inventory counts, and available statewide information on the~~
24 ~~number or rate of persons exiting state-funded institutional settings~~
25 ~~into homelessness.~~

26 (2) ~~To the extent specific data is unavailable for purposes of~~
27 ~~paragraph (1), the council may calculate estimates based on~~
28 ~~national or local data. The council shall only use data that meets~~
29 ~~either of the following requirements:~~

30 (A) ~~The data is from an evaluation or study from a third-party~~
31 ~~evaluator or researcher and is consistent with data from evaluations~~
32 ~~or studies from other third-party evaluators or researchers.~~

33 (B) ~~A federal agency cites and refers to the data as~~
34 ~~evidence-based.~~

35 (d) ~~Seek input from the council's members on the direction of,~~
36 ~~design of data collection for, and items to be included in the~~
37 ~~analysis conducted pursuant to subdivision (a).~~

38 (e)

39 (c) ~~Report~~ *The council shall report* on the final needs and gaps
40 analysis by July 31, 2021, to the Assembly Committee on Housing

1 and Community Development, the Assembly Committee on
2 Budget, Senate Committee on Housing, and Senate Committee on
3 Budget and Fiscal Review. The report submitted pursuant to this
4 paragraph shall comply with Section 9795 of the Government
5 Code.

6 *(d) For purposes of this section, all of the following definitions*
7 *apply:*

8 *(1) "Chronic homelessness" has the same definition as that in*
9 *Section 578.3 of Title 24 of the Code of Federal Regulations, as*
10 *that section read on January 1, 2020.*

11 *(2) "Interim interventions" include, but are not limited to,*
12 *year-round shelter beds, recuperative care beds, and motel*
13 *vouchers.*

14 *(3) "State-funded institutional settings" include, but are not*
15 *limited to, justice, juvenile justice, child welfare, and health care*
16 *settings.*

17 *(4) "Young adult" means a person 18 to 24 years of age,*
18 *inclusive.*

19 SEC. 5. Section 8257.2 is added to the Welfare and Institutions
20 Code, to read:

21 8257.2. (a) Notwithstanding any other law, for purposes of
22 designing, collecting data for, and approving the needs and gaps
23 analysis described in Section 8257.1, a state department or agency
24 that has a member on the coordinating council shall, within 180
25 days of a request for data pertaining to that state department or
26 agency, provide to the council, or the entity conducting the
27 analysis, the requested data, including, but not limited to, the
28 number or rate of persons exiting state-funded institutional settings
29 into homelessness.

30 (b) The state department or agency shall remove any personally
31 identifying data provided pursuant to subdivision (a), if any.

32 (c) For purposes of this section, the following definitions apply:

33 (1) "Personally identifying information" has the same meaning
34 as that in Section 1798.79.8 of the Civil Code.

35 (2) "State-funded institutional settings" include, but are not
36 limited to, justice, juvenile justice, child welfare, and health care
37 settings.

38 SEC. 6. Chapter 6.6 (commencing with Section 8258) is added
39 to Division 8 of the Welfare and Institutions Code, to read:

CHAPTER 6.6. HOUSING AND HOMELESSNESS INSPECTOR
GENERAL

8258. For purposes of this chapter:

(a) "Department" means the Department of Housing and Community Development.

(b) "Inspector general" means the Housing and Homelessness Inspector General.

(c) "Local agency" means a county or city and county.

(d) "Office" means Office of the Housing and Homelessness Inspector General.

(e) "State department or agency" means state agency or department that administers a state program to address homelessness.

8258.1. (a) There is in state government the Office of the Housing and Homelessness Inspector General as an independent office within the Business, Consumer Services, and Housing agency. The office shall be under the supervision of the Housing and Homelessness Inspector General.

(b) The inspector general shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of the inspector general is subject to confirmation by the Senate.

(c) The inspector general shall receive an annual salary as set forth in Section 11552 of the Government Code.

(d) The inspector general shall have all of the following responsibilities:

(1) Oversee the implementation of this chapter.

(2) Monitor the implementation and progress of state and local agency plans adopted pursuant to Section 8258.3.

(3) Provide technical assistance to state and local agencies in complying with this chapter.

(4) Audit state and local agencies to determine compliance with adopted plans.

(5) Bring actions against a state or local agency to compel compliance with their respective adopted plans pursuant to Section 8258.3.

(6) Investigate complaints and issue civil penalties pursuant to Section 8258.5.

8258.2. (a) It is the intent of the Legislature that each state and local agency shall aim to reduce homelessness in their

1 jurisdiction by 90 percent by December 31, 2028, based on the
2 2019 homeless point-in-time count pursuant to Section 578.3 of
3 Title 24 of the Code of Federal Regulations.

4 (b) It is the intent of the Legislature that a state or local agency
5 is only accountable under this chapter for reducing homelessness
6 to the extent that it has available resources to address homelessness,
7 and that the state or local agency should not be required to expend
8 additional funds not contained in its actionable plan in order to
9 meet the benchmark goal set by the department.

10 (c) *No later than December 31, 2021, each county shall submit*
11 *to the department a county-level plan for meeting specific annual*
12 *benchmarks with city and homeless continuum of care*
13 *participation, approved by each participating jurisdiction's or*
14 *homeless continuum of care's governing body.*

15 (1) *The plan for meeting specific annual benchmarks shall*
16 *include both of the following:*

17 (A) *A gaps analysis that does both of the following:*

18 (i) *Assesses key indicators of statewide homeless system*
19 *performance, including estimates of inflow into homelessness,*
20 *including state-funded institutional settings that discharge people*
21 *into homelessness, exits to permanent housing, length of time of*
22 *homelessness, rate of returns to homelessness, and other federal*
23 *Department of Housing and Urban Development System*
24 *Performance Measures, disaggregated by race.*

25 (ii) *Quantifies the need for interim, affordable, rapid rehousing,*
26 *and supportive housing interventions, and the associated costs for*
27 *those interventions, to achieve a 90-percent reduction in*
28 *population-level homelessness by December 31, 2028. This shall*
29 *include a financial model that will assess needs for investment in*
30 *capital and for coverage of annual operating, rental assistance,*
31 *and services costs.*

32 (B) *An assessment of appropriate roles for the cities, the county,*
33 *and the homeless continuum of care to site housing and establish*
34 *zoning, to fund affordable and supportive housing, to fund rapid*
35 *rehousing, to fund interim interventions, to fund services, to*
36 *establish and run coordinated entry systems, to promote health*
37 *and services access, and to establish protocols to avoid discharges*
38 *from institutional systems into homelessness.*

39 (2) *A county may use an existing gaps analysis or plan to fulfill*
40 *the requirements of this subsection, if approved by each*

1 *participating jurisdiction's or homeless continuum of care's*
2 *governing body, and if entered into no earlier than three years*
3 *prior to submission to the department.*

4 8258.3. (a) (1) The department shall, based on the gap analysis
5 conducted pursuant to *subdivision (c)* of Section 8257.1, 8258.2,
6 set a benchmark goal to reduce homelessness for each state and
7 local agency. The benchmark goal shall establish a minimum
8 percentage reduction of homelessness goal within the state or local
9 agency's jurisdiction by December 31, 2028, based on the 2019
10 homeless point-in-time count pursuant to Section 578.3 of Title
11 24 of the Code of Federal Regulations.

12 (2) The department shall establish annual homelessness
13 reduction benchmarks for each state and local agency that require
14 progress toward the benchmark goal established pursuant to
15 paragraph (1).

16 (b) (1) On or before January 1, 2022, each state and local
17 agency shall develop an actionable plan to achieve the benchmark
18 goal set pursuant to subdivision (a).

19 (2) The plan shall include all of the following:

20 (A) A description and the amount of all funding sources that
21 the state or local agency, and any incorporated jurisdiction and
22 continuum of care within the local agency, has earmarked or
23 committed to addressing homelessness, mental illness, and
24 substance abuse within their jurisdiction.

25 (B) The estimated amount of additional funding needed to meet
26 the homelessness reduction goal described in subdivision (a).

27 (C) Timelines for the state or local agency to utilize the funding
28 identified in subparagraph (A).

29 (D) Specific actions that the state or local agency will take to
30 meet the goal established in subdivision (c), taking into account
31 funding limitations in subparagraph (B), by reducing the number
32 of individuals who are experiencing homelessness in the relevant
33 jurisdiction by moving individuals into permanent housing and
34 ensuring the adequate provision of related social services to achieve
35 and maintain that housing.

36 (E) Specific roles and responsibilities that each jurisdiction will
37 assume to meet the benchmark goal established in subdivision (a),
38 to ensure collaboration, leverage resources, and avoid the
39 duplication of services and efforts.

1 (F) A plan may identify innovation projects to test new policies
2 or programs that are designed to help the local agency meet its
3 benchmark goal by reducing costs, leveraging additional resources,
4 or increasing performance, such as by increasing housing exits,
5 reducing returns to homelessness, and reducing the length of time
6 experiencing homelessness.

7 (3) A local agency developing a plan pursuant to this
8 subdivision, and any incorporated jurisdiction implicated in the
9 plan pursuant to subparagraphs (A) and (E) of paragraph (2), shall
10 adopt the plan by resolution.

11 (4) On or before January 1, 2022, each state and local agency
12 subject to this section shall transmit the adopted plan to the
13 department.

14 (5) Each state and local agency shall submit an annual progress
15 report to the department that details the progress and
16 implementation of the adopted plan and any amendments proposed
17 to the plan. Amendments to a plan shall be reviewed by the
18 department pursuant to subdivision (c).

19 (c) (1) Upon receipt of a plan adopted pursuant to subdivision
20 (b), the department shall review the plan and provide feedback
21 and recommended revisions to the state or local agency.

22 (2) A state or local agency that receives recommended revisions
23 to their plan from the department shall either adopt the
24 recommended revisions, or adopt findings as to why the revisions
25 are not needed.

26 (d) (1) The department shall monitor the progress of each state
27 or local agency required to adopt and implement a plan pursuant
28 to subdivision (b). If the department determines that a state or local
29 agency has not adopted an actionable plan pursuant to subdivision
30 (b), or has failed within a reasonable time after adoption of a plan
31 to make progress in accordance with that plan, the department
32 shall notify the state or local agency and the inspector general that
33 the state or local agency is not in substantial compliance with
34 subdivision (b).

35 (2) If new resources are identified in a progress report submitted
36 pursuant to paragraph (5) of subdivision (b), the department may
37 revise a benchmark goal established pursuant to subdivision (a).

38 8258.4. (a) On or after January 1, 2022, the inspector general
39 may bring an action against a state or local agency to compel
40 compliance with Section 8258.3 pursuant to Section 1085 of the

1 Code of Civil Procedure. In determining whether to bring an action,
2 the inspector general shall consider population-level reductions in
3 homelessness, as measured by the homeless point-in-time count,
4 as the primary indicator of benchmark goal compliance, but may
5 also consider the state or local agency's demonstrated progress
6 towards HUD System Performance Measures.

7 (b) An action against a state agency pursuant to this section
8 shall be brought in the Superior Court of the County of Sacramento.
9 An action against a county pursuant to this section shall be brought
10 in the superior court for that county, and an action brought against
11 a city pursuant to this section shall be brought in the superior court
12 for the county in which the city is located.

13 (c) (1) If, in an action brought pursuant to this section, the court
14 finds that the applicable state or local agency has not substantially
15 complied with Section 8258.3, the inspector general may request
16 that the court issue an order or judgment directing the state or local
17 agency to substantially comply with this section by taking any of
18 the following actions:

19 (A) In the case of a state or local agency that has failed to adopt
20 an actionable plan within the time period specified in subdivision
21 (b) of Section 8258.3, adopt a plan in accordance with this section.

22 (B) Dedicate the resources identified in the plan, consistent with
23 applicable state or federal law, to reduce the number of individuals
24 who are experiencing homelessness within the jurisdiction of the
25 state or local agency.

26 (C) Coordinate with other state or local agencies to reduce the
27 number of individuals who are experiencing homelessness.

28 (D) Pool resources identified in the plan, consistent with
29 applicable state or federal law, with the resources of other
30 jurisdictions in order to address regional challenges to reducing
31 homelessness.

32 (E) Require jurisdictions within local agencies to rezone sites
33 to permit the construction of housing and emergency shelters.

34 (F) Order a jurisdiction to otherwise comply with the roles
35 identified in subdivision (b) of Section 8258.3.

36 (2) The remedies available to a court that finds that the
37 applicable state or local agency has not substantially complied
38 with Section 8258.3 shall be limited to those described in paragraph
39 (1).

1 (3) If the court issues an order or judgment pursuant to paragraph
2 (1), it shall retain jurisdiction for no more than 12 months to ensure
3 that its order or judgment is carried out.

4 (4) If the local agency has identified an innovation project in
5 their local plan pursuant to Section 8258.3, it shall be exempt from
6 any action described in paragraph (1) if that project fails to meet
7 goals as stated in the approved plan.

8 (5) An order or judgment of the court pursuant to paragraph (1)
9 may be reviewed in the manner prescribed in Title 13 (commencing
10 with Section 901) of Part 2 of the Code of Civil Procedure.
11 Notwithstanding any other law, an appeal pursuant to this
12 paragraph shall be heard on an expedited basis.

13 8258.5. (a) A state or local agency shall not deliberately and
14 intentionally transport a homeless individual to a different
15 jurisdiction in order to reduce the number of homeless individuals
16 within its jurisdiction.

17 (b) Any person may file a complaint with the inspector general
18 that a state or local agency violated subdivision (a).

19 (c) (1) The inspector general shall investigate a complaint
20 received pursuant to subdivision (a).

21 (2) After investigating a complaint, the inspector general shall
22 impose on any state or local jurisdiction that is found to have
23 violated subdivision (a) a civil penalty in an amount not to exceed
24 ten thousand dollars (\$10,000) per individual transported outside
25 of the jurisdiction.

26 SEC. 7. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.

AB 2850 (Low) Analysis and Recommendation

TITLE: Public transit employer-employee relations: San Francisco Bay Area Rapid Transit District

AUTHOR: Low (D - Campbell)

SPONSOR: California State Council of Service Employees International Union

RECOMMENDATION: No position – Letter to author

BACKGROUND: BART's enabling statute, the San Francisco Bay Area Rapid Transit District Act (California Public Utilities Code Section 28500 et seq.) was enacted in 1957. The District Act governs employer-employee relations and provides for representation, unit determination, collective bargaining, impasse resolution, and the obligation to bargain in good faith. At BART currently, labor relations issues such as claims of unfair labor practices, are filed in court.

In 1968, the Meyers-Milias-Brown Act (MMBA), which governs employer-employee relations within California local government entities was enacted. The MMBA empowers the California Public Employment Relations Board (PERB), a quasi-judicial administrative agency, to adjudicate employer-employee relations, resolve disputes, and enforce the rights and duties of public agency employers and employees under its purview. While some transit agencies are subject to the MMBA, the majority, including BART, are subject to labor provisions found in each district's enabling statute, joint powers agreements, or articles of incorporation and bylaws.

PURPOSE: AB 2850, as written, provides that all BART bargaining units be governed by the MMBA, and therefore, subject to PERB's exclusive jurisdiction and administration.

DISTRICT IMPACT: For more than 40 years, BART employer-employee relations have been governed by the District Act. With the MMBA, BART would be under a different statutory framework and subject to differing rules, procedures, and case law. Developing expertise in this area would require additional labor relations and legal resources. If passed, the estimated total costs for BART during the first year of implementation could be between \$500,000 - \$800,000. Beyond that, BART anticipates each dispute referred to PERB could cost the District \$28,000 to \$47,400 per case, depending on the use of in-house or outside counsel.

AB 2850 could also have the negative impact of delaying the implementation of essential projects and services needed to support BART operations and maintenance. Currently under the District Act, the parties are required to bargain in good faith on issues subject to bargaining such as wages and working conditions. Should the parties reach an impasse, the District can impose its last, best, and final offer then move forward with implementation while continuing to discuss concerns with the union.

Under the MMBA, the unions may, within 30 days from the impasse declaration, request fact-finding, circumventing the bargaining process with the BART Board. The fact-finding process could take 90 days or more. Each party would need to share in the administrative costs and there is no guarantee of a resolution because it is an advisory process. During the fact-finding process, the Board would have no authority to direct staff to implement new projects or services. This impediment could adversely impact capital projects, safety initiatives, and service improvements.

On May 19, Executive Management and Labor Relations staff discussed AB 2850 with BART's bargaining unit representatives and were informed that bill amendments were forthcoming. Draft amendments were provided to the District on May 28 and seek to narrow the scope of the bill. Staff continue to work with the bill sponsor on technical and clarifying amendments and are seeking Board approval to draft a letter to the

author regarding pending and future amendments. The author's office has indicated the bill will be amended in the Senate Labor, Public Employment and Retirement Committee in mid-July.

OTHER COMMENTS: Assembly Member Low introduced similar legislation, AB 3034, in the 2017-2018 session. AB 3034 would have changed BART's current employer-employee relations by placing only those employees represented by the American Federation of State, County and Municipal Employees, including supervisory, professional, and technical employees, under the MMBA and jurisdiction of PERB.

The Board opposed AB 3034 and it was ultimately vetoed by Governor Brown. In his veto message, the Governor stated "The Legislature has expanded the Public Employment Relations Board's jurisdiction, but the necessary funding for the increased workload has not kept pace. This has resulted in significant backlogs at the Board – both labor and employers have complained about this problem. This Administration has recently increased the Board's funding to help correct this problem. The Board's jurisdiction should not be expanded again until the Board's ability to handle its previously expanded caseload is established."

PERB continues to be challenged with a case processing backlog with an average case age of 174 days, causing continued concern for timely resolutions. The Administration has provided PERB additional funding to correct this problem, and AB 2850 could increase PERB's workload once again.

KNOWN SUPPORT/OPPOSITION:

Support: State Council of the Service Employees International Union (Sponsors)

Opposition: None on file.

STATUS: Passed the Assembly Floor (59-17) on 6/10/20 and ordered to the Senate; Referred to Senate Rules Committee for policy committee assignment.

Analysis completed on 6/18/20.

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Low

February 21, 2020

~~An act to amend Section 221 of the Labor Code, relating to employment.~~ *An act to amend Section 28850 of, to add Section 28856 to, and to repeal Section 28851 of, the Public Utilities Code, relating to public transit.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as amended, Low. ~~Wages.~~ *Public transit employer-employee relations: San Francisco Bay Area Rapid Transit District.*

The Meyers-Milias-Brown Act generally governs employer-employee relations between local public agencies and their employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of those agencies and their employees. Under the act, these employees have the right to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations, and recognized employee organizations have the right to represent their members on all matters of employer-employee relations, including disputes.

Existing law creates the San Francisco Bay Area Rapid Transit District with various powers and duties and establishes a board of directors as the legislative body of the district. Existing law requires the board, upon a majority of district employees in a unit appropriate for collective bargaining indicating a desire to be represented by a

labor organization, to bargain with the accredited representative of those employees. Existing law requires the board and employees to bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

This bill would instead require that the Meyers-Milius-Brown Act govern the district's employer-employee relations, as specified, and that these relations be subject to the exclusive jurisdiction of, and be administered by, the Public Employment Relations Board.

By increasing the duties of the district, the bill would create 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing law prohibits an employer from collecting or receiving any part of the wages paid to an employee.

This bill would make nonsubstantive changes to that provision.

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

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

1 SECTION 1. Section 28850 of the Public Utilities Code is
2 amended to read:
3 28850. (a) ~~If a majority of the employees employed by a~~
4 ~~district in a unit appropriate for collective bargaining indicate a~~
5 ~~desire to be represented by a labor organization, then the board,~~
6 ~~after determining pursuant to Section 28851 that the labor~~
7 ~~organization represents the employees in the appropriate unit, shall~~
8 ~~bargain with the accredited representative of those employees.~~
9 ~~Both parties shall bargain in good faith and make all reasonable~~
10 ~~efforts to reach agreement on the terms of a written contract~~
11 ~~governing wages, salaries, hours, working conditions, and~~
12 ~~grievance procedures.~~

1 ~~(1) If a dispute arises over the terms of a written contract~~
2 ~~governing wages, salaries, hours, or working conditions that is not~~
3 ~~resolved by negotiations conducted in good faith between the board~~
4 ~~and the representatives of the employees, then upon the agreement~~
5 ~~of both parties, the board and the representatives of the employees~~
6 ~~may submit the dispute to an arbitration board. The decision of a~~
7 ~~majority of the arbitration board shall be final.~~

8 ~~(2) (A) The arbitration board shall be composed of two~~
9 ~~representatives of the district, two representatives of the labor~~
10 ~~organization, and a fifth member to be agreed upon by the~~
11 ~~representatives of the district and the labor organization.~~

12 ~~(B) If the representatives of the district and the labor~~
13 ~~organization are unable to agree on the fifth member, then the~~
14 ~~names of five persons experienced in labor arbitration shall be~~
15 ~~obtained from the California State Mediation and Conciliation~~
16 ~~Service. The labor organization and the district shall, alternately,~~
17 ~~strike a name from the list supplied by the California State~~
18 ~~Mediation and Conciliation Service. The labor organization and~~
19 ~~the district shall determine by lot who shall first strike a name from~~
20 ~~the list. After the labor organization and the district have stricken~~
21 ~~four names, the name remaining shall be designated as the~~
22 ~~arbitrator.~~

23 ~~(C) The transit board and the labor organization shall each pay~~
24 ~~one-half of the cost of the impartial arbitrator.~~

25 ~~(b)~~

26 28850. (a) A contract or agreement shall not be made with
27 any labor organization, association, group, or individual that denies
28 membership on any basis listed in subdivision (a) of Section 12940
29 of the Government Code, as those bases are defined in Sections
30 12926 and 12926.1 of the Government Code. However, the
31 organization may preclude from membership any individual who
32 advocates the overthrow of the government by force or violence.

33 ~~(c)~~

34 (b) The district shall not discriminate with regard to employment
35 against any person on any basis listed in subdivision (a) of Section
36 12940 of the Government Code, as those bases are defined in
37 Sections 12926 and 12926.1 of the Government Code, except as
38 otherwise provided in Section 12940 of the Government Code.

39 SEC. 2. Section 28851 of the Public Utilities Code is repealed.

~~28851. If there is a question whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service shall promptly hold a public hearing and may, by decision, establish the boundaries of any collective bargaining unit and provide for an election to determine the question of representation. Provided, however, any certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within such collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later.~~

SEC. 3. Section 28856 is added to the Public Utilities Code, to read:

28856. (a) For employees, including, without limitation, supervisory, professional, and technical employees, of the district covered under this chapter, employer-employee relations shall be governed under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(b) Employer-employee relations governed under the Meyers-Milias-Brown Act pursuant to this section shall be subject to the exclusive jurisdiction of, and shall be administered by, the Public Employment Relations Board, established pursuant to Section 3541 of the Government Code.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 221 of the Labor Code is amended to read:~~

~~221. It shall be unlawful for any employer to collect or receive from an employee any part of wages previously paid by the employer to the employee.~~