
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1337 **Hearing Date:** June 15, 2021
Author: Lee
Version: April 7, 2021
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Transportation: transit district policing responsibilities*

HISTORY

Source: San Francisco Bay Area Rapid Transit District (BART)

Prior Legislation: AB 730 (Quirk), Ch. 46, Stats. of 2017
AB 468 (Santiago), Ch. 192, Stats. of 2017
SB 1154 (Hancock), Ch. 559, Stats. of 2014
AB 716 (Dickinson), Ch. 534, Stats. of 2011
SB 1562 (Steinberg), Ch. 528, Stats. of 2008

Support: BART

Opposition: None known

Assembly Floor Vote: 62 - 0

PURPOSE

The purpose of this legislation is to extend the authority of transit district entities to issue prohibition orders to include property, facilities, and vehicles upon which it owes policing responsibilities to, and expands the law to make entering or remaining on those properties without permission a misdemeanor.

Existing law provides that any person who enters or remains upon the property of any railroad without the permission of the owner of the land, the owner's agent, or the person in lawful possession and whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders, or which, if allowed to continue, would interfere with, interrupt, or hinder the safe and efficient operation of any locomotive, railway car, or train is guilty of a misdemeanor. (Pen. Code, § 369i, subd. (a).)

Existing law defines "property of any railroad" as any land owned, leased, or possessed by a railroad upon which is placed a railroad track and the land immediately adjacent thereto, to the distance of 20 feet on either side of the track, which that is owned, leased, or possessed by a railroad. (Pen. Code, § 369i, subd. (a).)

Existing law provides that any person who enters or remains upon any transit-related property without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the transit-related facility is guilty of a misdemeanor. (Pen. Code, § 369i, subd. (b).)

Existing law defines “transit-related property” as any land, facilities, or vehicles owned, leased, or possessed by a county transportation commission, transportation authority, or transit district, as specified, that are used to provide public transportation by rail or passenger bus or are directly related to that use. (Pen. Code, § 369i, subd. (b).)

Existing law specifies that these provisions do not prohibit picketing in the immediately adjacent area of the property of any railroad or transit-related property or any lawful activity by which the public is informed of the existence of an alleged labor dispute. (Pen. Code, § 369i, subd. (c).)

Existing law authorizes Sacramento Regional Transit District (SacRT), the Fresno Area Express, Los Angeles County Metropolitan Transportation Authority (Metro), or the San Francisco Bay Area Rapid Transit District (BART) to issue a prohibition order to any person who, on at least three separate occasions within a period of 90 consecutive days, is cited for an infraction committed in or on a vehicle, bus stop, or light rail station of the transit district for any of the following acts:

- 1) Interfering with the operator or operation of a transit vehicle, or impeding the safe boarding or alighting of passengers;
- 2) Committing any act or engaging in any behavior that may, with reasonable foreseeability, cause harm or injury to any person or property;
- 3) Willfully disturbing others on or in a transit facility or vehicle by engaging in boisterous or unruly behavior;
- 4) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle;
- 5) Urinating or defecating in a transit facility or vehicle, except in a lavatory;
- 6) Willfully blocking the free movement of another person in a transit facility or vehicle; or,
- 7) Defacing with graffiti the interior or exterior of the facilities or vehicles of a public transportation system. (Pub. Util. Code, § 99171, subd. (a)(1)(A).)

Existing law authorizes a prohibition order to be issued to a person arrested or convicted for any misdemeanor or felony committed in or on a vehicle, bus stop, or light rail station of the transit district, for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance. (Pub. Util. Code § 99171, subd. (a)(1)(B).)

Existing law authorizes a prohibition order to be issued to a person convicted of loitering with the intent to commit specified drug offenses or loitering with intent to commit prostitution. (Pub. Util. Code § 99171, subd. (a)(1)(C).)

Existing law prohibits a person subject to a prohibition order from entering the property, facilities, or vehicles of the transit district for a period of time deemed appropriate by the transit district, provided that the duration of the prohibition order does not exceed the following specified time limits:

- 1) 30 days for a first order, 90 days for a second order within one year, and 180 days for a third order within one year related to infractions; or,

- 2) 30 days if issued pursuant to an arrest for a misdemeanor or felony offense. Upon conviction for the offense, the order may be extended to a total of 180 days for a misdemeanor and one year for a felony. (Pub. Util. Code § 99171, subd. (a)(2)).

Existing law specifies prohibition processes, notification procedures, and hearing and appeal procedures. (Pub. Util. Code § 99171, subds. (a)(3), (b) & (c).)

Existing law requires the transit district to establish an advisory committee and to ensure that personnel charged with issuance and enforcement of prohibition orders receive training as emphasized and as recommended by the advisory committee. Tasks the advisory committee with responsibilities, as specified. Authorizes existing advisory committees to be used if appropriate. (Pub. Util. Code, § 99172.)

Existing law defines “transit district” to mean the Sacramento Regional Transit District, the Los Angeles County Metropolitan Transportation Authority, the Fresno Area Express, or the San Francisco Bay Area Rapid Transit District. (Pub. Util. Code, § 99171, subd. (e).)

Existing law establishes categories of peace officers with varying powers and authority to make arrests and carry firearms. (Pen. Code, § 830.33.)

Existing law provides that a member of the San Francisco Bay Area Rapid Transit District Police Department is a peace officer whose authority extends to any place in the state for the purpose of enforcing the law in or about the properties owned, operated, and administered by the San Francisco Bay Area Rapid Transit District, when performing necessary duties with respect to patrons, employees, and properties of the district, or when making an arrest if there is immediate danger to a person or property or of an escape of the perpetrator of an offense. (Pen. Code, § 830.33.)

Existing law makes it an infraction for a person to do any of the following with respect to the property, facilities, or vehicles of a transit district;

- 1) Operate, interfere with, enter into, or climb on or in the property, facilities, or vehicles of the transit district without permission;
- 2) Interfere with the operator or operation of a transit vehicle, or impede the safe boarding or alighting of passengers;
- 3) Extend any portion of the body through a window opening of a transit vehicle in a manner that may cause harm or injury;
- 4) Throw an object from a transit vehicle;
- 5) Commit an act or engage in a behavior that may, with reasonable foreseeability, cause harm or injury to any person or property;
- 6) Violate a notice, prohibition, instruction, or direction on a sign that is intended to provide for the safety and security of transit passengers, or the safe and secure operation of the transit system;
- 7) Knowingly give false information to a district employee, or contracted security officer, engaged in the enforcement of a district ordinance or a state law, or otherwise obstruct the issuance of a citation for the violation of a district ordinance or a state law, or,
- 8) Violate any of the conditions established by a transit district ordinance under which a passenger may board a transit vehicle with a bicycle and where that bicycle may be stowed on the transit vehicle. (Pub. Util. Code, § 99170.)

This bill provides that a person who enters or remains on any property, facilities, or vehicles on which the applicable transit entity owes policing responsibilities to a local government pursuant to an operations and maintenance agreement or similar interagency agreement without permission, or whose entry, presence, or conduct on that property interferes with, interrupts, or hinders the safe and efficient operation of the transit-related facility, is guilty of a misdemeanor. Extends the transit entity's authority to issue prohibitions and the scope of the prohibition orders to include these properties.

This bill authorizes a transit district's ordinance to be enforced outside of the transit district's jurisdiction only where the local jurisdiction has adopted the ordinance by reference as authorized by the local jurisdictions' governing body.

COMMENTS

1. Need for This Bill

AB 1337 extends existing BART authority to issue prohibition orders to locations where BART has an operating agreement, but does not own the property. Current law does not fully account for the unique operations agreement between BART and the Santa Clara Valley Transportation Authority (VTA). The existing authority, conferred by AB 730/Ch. 46, Statutes of 2017, applies to BART-owned property only. AB 1337 will make BART's prohibition order authority consistent throughout the system regardless of ownership of the property upon which BART operates.

Several California transit systems have been granted authority by the Legislature to issue prohibitions orders. BART opened the first phase of the San José extension in the summer of 2020. The two new stations, Milpitas and Berryessa/North San José, are operated by BART, but owned by VTA.

2. Transit District Policing and Santa Clara County

California has developed new jurisdictional rules to apply to regional transit authorities as applied to who may issue prohibition orders and where they may be issued. California's approach has been measured in that it has significantly limited the scope of conduct for which a person may be prohibited. However, there are a number of issues related to the structure of regional transit districts and who engages in their policing practices. Currently, the transit districts within the authority of California's legal framework are SacRT, the Fresno Area Express, the Metro, and BART. (Pub. Util. Code, § 99171, subd. (e).) This authority applies to property, facilities, or vehicles of a transit district. (Pub. Util. Code, § 99171.)

In the San Francisco Bay Area, BART has expanded beyond the three-county Bay Area Rapid District into Santa Clara County. In doing so, BART has contracted and entered into policing agreements with the Santa Clara Valley Transportation Authority (VTA). State law has not been updated to reflect these agreements. This bill is intended to make clear that the BART Police have the express authority to issue prohibition orders at the Milpitas and Berryessa/North San Jose stations in Santa Clara County.

3. BART and Prohibition Orders

According to BART's annual report, as required by statute (Pub. Util. Code, § 99172), the number of prohibition orders issued in 2019 was 371 compared to 376 in 2018. Battery and threats to BART patrons continued to be a noticeable problem in 2019, accounting for 28 percent of prohibition orders issued. To address this, BART is implementing high visibility foot patrols and commanders for specific zones. The report notes a need or continued outreach efforts involving mental health and homelessness. To address this, BART has Crisis Intervention Training (CIT) officers and police personnel to offer services at the scene by referring individuals in crisis to appropriate resources through local city or county organizations. In 2019, less than 3% (actual - 2.96%) of individuals issued prohibition orders violated the order. In 2018, seven persons violated the prohibition order for a total of 12 arrests.

4. Argument in Support

Currently, BART has the authority to issue prohibition orders on BART-owned property only. AB 1337 will extend that authority to areas where BART has an operating agreement but does not own the land, specifically for the new BART extension in Santa Clara County. The new stations opened for service in the summer of 2020.

In 2011, AB 716/Ch. 534 authorized BART and several other transit agencies to implement pilot programs to issue prohibition orders to riders, which can ban a rider from District property for up to 90 days. The rider may only be banned if they have been: 1) cited by BART police on three separate occasions during a 90-day period; or 2) arrested for a crime committed on District property, or 3) convicted of loitering with the intent to commit a drug crime or prostitution. In 2017, AB 730/Ch. 46 was enacted that made the BART prohibition authority permanent.

For the Santa Clara County extension, BART has an operating agreement in perpetuity with the Valley Transportation Authority and does not own the land. AB 1337 will only extend the current authority to the trains, platforms and ticketing areas of the new Milpitas and Berryessa/North San Jose stations.

We believe this is a measure that ensures consistent application of BART policies throughout the entirety of the system. We respectfully request an AYE vote when AB 1337 is heard before the committee.

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