

**ASSEMBLY BILL**

**No. 716**

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**Introduced by Assembly Member Dickinson**

February 17, 2011

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An act to amend Sections 99171 and 99172 of, and to amend and repeal Section 102122 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 716, as introduced, Dickinson. Transit districts: prohibition orders: Sacramento Regional Transit District: Fresno Area Express.

Existing law prohibits certain acts by a person with respect to the property, facilities, or vehicles of a transit district. A violation is an infraction punishable by a fine not exceeding \$75 on a first offense, or a fine not exceeding \$250 or by community service on a subsequent offense.

Existing law, until January 1, 2012, authorizes the Sacramento Regional Transit District and the Fresno Area Express to issue a prohibition order to any person cited for committing one or more of certain prohibited acts in specified transit facilities. Existing law prohibits a person subject to a prohibition order from entering the property, facilities, or vehicles of the transit district for specified periods of time up to one year. Existing law establishes notice requirements in that regard and provides for initial and administrative review of the order.

Existing law provides for creation of the Sacramento Regional Transit District, with specified powers and duties relative to operation of public transit services in its service area. Existing law authorizes the board of the district to designate persons regularly employed by the district as

inspectors or supervisors with specified authority to enforce district ordinances and specified state laws, and sets forth the procedures to be followed in that regard. Existing law, until January 1, 2012, expands the authority of the persons designated by the board to incorporate additional procedures relating to arrest and issuance of citations.

This bill would remove the January 1, 2012, repeal date for these provisions and would make these provisions operative indefinitely.

A violation of a prohibition order is punishable as an infraction. By extending the operative period of a crime, the 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 no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 99171 of the Public Utilities Code is  
2 amended to read:

3 99171. (a) (1) A transit district may issue a prohibition order  
4 to any person to whom either of the following applies:

5 (A) On at least three separate occasions within a period of 60  
6 consecutive days, the person is cited for an infraction committed  
7 in or on a vehicle, bus stop, or light rail station of the transit district  
8 for any act that is a violation of paragraph (2) or (5) of subdivision  
9 (a) of Section 99170 of this code or paragraph (6), (7), (8), or (9)  
10 of subdivision (b) of Section 640 or Section 640.5 of the Penal  
11 Code.

12 (B) The person is arrested or convicted for a misdemeanor or  
13 felony committed in or on a vehicle, bus stop, or light rail station  
14 of the transit district for acts involving violence, threats of violence,  
15 lewd or lascivious behavior, or possession for sale or sale of a  
16 controlled substance.

17 (C) The person is convicted of a violation of Section 11532 of  
18 the Health and Safety Code or Section 653.22 of the Penal Code.

19 (2) A person subject to a prohibition order may not enter the  
20 property, facilities, or vehicles of the transit district for a period

1 of time deemed appropriate by the transit district, provided that  
2 the duration of a prohibition order shall not exceed the following,  
3 as applicable:

4 (A) Thirty days if issued pursuant to subparagraph (A) of  
5 paragraph (1), provided that a second prohibition order within one  
6 year may not exceed 90 days, and a third or subsequent prohibition  
7 order within one year may not exceed 180 days.

8 (B) Thirty days if issued pursuant to an arrest pursuant to  
9 subparagraph (B) of paragraph (1). Upon conviction of a  
10 misdemeanor offense, the duration of the prohibition order for the  
11 conviction, when added to the duration of the prohibition order  
12 for the initial arrest, if any, may not exceed 180 days. Upon  
13 conviction of a felony offense, the duration of the prohibition order  
14 for the conviction, when added to the duration of the prohibition  
15 order for the initial arrest, if any, may not exceed one year.

16 (3) No prohibition order issued under this subdivision shall be  
17 effective unless the transit district first affords the person an  
18 opportunity to contest the transit district's proposed action in  
19 accordance with procedures adopted by the transit district for this  
20 purpose. A transit district's procedures shall provide, at a minimum,  
21 for the notice and other protections set forth in subdivisions (b)  
22 and (c), and the transit district shall provide reasonable notification  
23 to the public of the availability of those procedures.

24 (b) (1) A notice of a prohibition order issued under subdivision  
25 (a) shall set forth a description of the conduct underlying the  
26 violation or violations giving rise to the prohibition order, including  
27 reference to the applicable statutory provision, ordinance, or transit  
28 district rule violated, the date of the violation, the approximate  
29 time of the violation, the location where the violation occurred,  
30 the period of the proposed prohibition, and the scope of the  
31 prohibition. The notice shall include a clear and conspicuous  
32 statement indicating the procedure for contesting the prohibition  
33 order. The notice of prohibition order shall be personally served  
34 upon the violator. The notice of prohibition order, or a copy, shall  
35 be considered a record kept in the ordinary course of business of  
36 the transit district and shall be prima facie evidence of the facts  
37 contained in the notice establishing a rebuttable presumption  
38 affecting the burden of producing evidence. For purposes of this  
39 paragraph, "clear and conspicuous" means in larger type than the  
40 surrounding text, or in contrasting type, font, or color to the

1 surrounding text of the same size, or set off from the surrounding  
2 text of the same size by symbols or other marks that call attention  
3 to the language.

4 (2) For purposes of this section, “personal service” means any  
5 of the following:

6 (A) In-person delivery.

7 (B) Delivery by any form of mail providing for delivery  
8 confirmation, postage prepaid, to at least one address provided by  
9 the person being served, including, but not limited to, the address  
10 set forth in any citation or in court records.

11 (C) Any alternate method approved in writing by the transit  
12 district and the person being served.

13 (3) If a person served with a notice of prohibition order is not  
14 able, or refuses, to provide a mailing address, the notice of  
15 prohibition order shall set forth the procedure for obtaining any  
16 letters, notices, or orders related to the prohibition order from the  
17 administrative offices of the transit district. For purposes of this  
18 section, delivery shall be deemed to have been made on the  
19 following date, as applicable:

20 (A) On the date of delivery, if delivered in person.

21 (B) On the date of confirmed delivery, for any delivery by mail.

22 (C) For any alternate method of service, as provided in the  
23 writing specifying the alternate method.

24 (4) Proof of service of the notice shall be filed with the transit  
25 district.

26 (5) If a person contests a notice of prohibition order, the transit  
27 district shall proceed in accordance with subdivision (c). If the  
28 notice of prohibition order is not contested within 10 calendar days  
29 after delivery by personal service, the prohibition order shall be  
30 deemed final and shall go into effect, without further action by the  
31 transit district, for the period of time set forth in the order.

32 (6) All prohibition orders shall be subject to an automatic stay  
33 and shall not take effect until the latest of the following:

34 (A) Eleven calendar days after delivery of the prohibition order  
35 by personal service.

36 (B) If an initial review is timely requested under paragraph (1)  
37 of subdivision (c), 11 calendar days after delivery by personal  
38 service of the results of the review.

1 (C) If an administrative hearing is timely requested under  
2 paragraph (3) of subdivision (c), the date the hearing officer's  
3 decision is delivered by personal service.

4 (c) (1) For a period of 10 calendar days from the delivery of  
5 the prohibition order by personal service, the person may request  
6 an initial review of the prohibition order by the transit district. The  
7 request may be made by telephone, in writing, or in person. There  
8 shall be no charge for this review. In conducting its review and  
9 reaching a determination, the transit district shall determine  
10 whether the prohibition order meets the requirements of subdivision  
11 (a) and, unless the person has been convicted of the offense or  
12 offenses, whether the offense or offenses for which the person was  
13 cited or arrested are proven by a preponderance of the evidence.  
14 If, following the initial review, based on these findings, the transit  
15 district determines that the prohibition order is not adequately  
16 supported or that extenuating circumstances make dismissal of the  
17 prohibition order appropriate in the interest of justice, the transit  
18 district shall cancel the notice. If, following the initial review,  
19 based on these findings, the transit district determines that the  
20 prohibition order should be upheld in whole or in part, the transit  
21 district shall issue a written statement to that effect, including any  
22 modification to the period or scope of the prohibition order. The  
23 transit district shall serve the results of the initial review to the  
24 person contesting the notice by personal service.

25 (2) The transit district may modify or cancel a prohibition order  
26 in the interest of justice. The transit district shall cancel a  
27 prohibition order if it determines that the person did not understand  
28 the nature and extent of his or her actions or did not have the ability  
29 to control his or her actions. If the person is dependent upon the  
30 transit system for trips of necessity, including, but not limited to,  
31 travel to or from medical or legal appointments, school or training  
32 classes, places of employment, or obtaining food, clothing, and  
33 necessary household items, the transit district shall modify a  
34 prohibition order to allow for those trips. A person requesting a  
35 cancellation or modification in the interest of justice shall have  
36 the burden of establishing the qualifying circumstances by a  
37 preponderance of the evidence.

38 (3) If the person is dissatisfied with the results of the initial  
39 review, the person may request an administrative hearing of the  
40 prohibition order no later than 10 calendar days after the results

1 of the initial review are delivered by personal service. The request  
2 may be made by telephone, in writing, or in person. An  
3 administrative hearing shall be held within 30 calendar days after  
4 the receipt of a request for an administrative hearing. The person  
5 requesting the hearing may request one continuance, not to exceed  
6 seven calendar days.

7 (4) The administrative hearing process shall include all of the  
8 following:

9 (A) The person requesting the hearing shall have the choice of  
10 a hearing by mail or in person. An in-person hearing shall be  
11 conducted within the jurisdiction of the transit district.

12 (B) The administrative hearing shall be conducted in accordance  
13 with written procedures established by the transit district and  
14 approved by the governing body or chief executive officer of the  
15 transit district. The hearing shall provide an independent, objective,  
16 fair, and impartial review of the prohibition order.

17 (C) The administrative review shall be conducted before a  
18 hearing officer designated to conduct the review by the transit  
19 district's governing body or chief executive officer. In addition to  
20 any other requirements, a hearing officer shall demonstrate the  
21 qualifications, training, and objectivity prescribed by the transit  
22 agency's governing body or chief executive officer as are necessary  
23 to fulfill and that are consistent with the duties and responsibilities  
24 set forth in this subdivision. The hearing officer's continued  
25 service, performance evaluation, compensation, and benefits, as  
26 applicable, shall not be directly or indirectly linked to the number  
27 of prohibition orders upheld by the hearing officer.

28 (D) The person who issued the notice of prohibition order shall  
29 not be required to participate in an administrative hearing, unless  
30 participation is requested by the person requesting the hearing.  
31 The request for participation must be made at least five calendar  
32 days prior to the date of the hearing and may be made by telephone,  
33 in writing, or in person. The notice of prohibition order, in proper  
34 form, shall be prima facie evidence of the violation or violations  
35 pursuant to subdivision (a) establishing a rebuttable presumption  
36 affecting the burden of producing evidence.

37 (E) In issuing a decision, the hearing officer shall determine  
38 whether the prohibition order meets the requirements of subdivision  
39 (a) and, unless the person has been convicted of the offense or  
40 offenses, whether the offense or offenses for which the person was

1 cited or arrested are proven by a preponderance of the evidence.  
2 Based upon these findings, the hearing officer may uphold the  
3 prohibition order in whole, determine that the prohibition order is  
4 not adequately supported, or cancel or modify the prohibition order  
5 in the interest of justice. The hearing officer shall cancel a  
6 prohibition order if he or she determines that the person did not  
7 understand the nature and extent of his or her actions or did not  
8 have the ability to control his or her actions. If the person is  
9 dependent upon the transit system for trips of necessity, including,  
10 but not limited to, travel to or from medical or legal appointments,  
11 school or training classes, places of employment, or obtaining  
12 food, clothing, and necessary household items, the transit district  
13 shall modify a prohibition order to allow for those trips. A person  
14 requesting a cancellation or modification in the interest of justice  
15 shall have the burden of establishing the qualifying circumstances  
16 by a preponderance of the evidence.

17 (F) The hearing officer's decision following the administrative  
18 hearing shall be delivered by personal service.

19 (G) A person aggrieved by the final decision of the hearing  
20 officer may seek judicial review of the decision within 90 days of  
21 the date of delivery of the decision by personal service, as provided  
22 by Section 1094.6 of the Code of Civil Procedure.

23 (d) A person issued a prohibition order under subdivision (a)  
24 may, within 10 calendar days of the date the order goes into effect  
25 under paragraph (6) of subdivision (b), request a refund for any  
26 prepaid fare media rendered unusable in whole or in part by the  
27 prohibition order, including, but not limited to, monthly passes. If  
28 the fare media remain usable for one or more days outside the  
29 period of the prohibition order, the refund shall be prorated based  
30 on the number of days the fare media will be unusable. The  
31 issuance of a refund may be made contingent on surrender of the  
32 fare media.

33 (e) For purposes of this section "transit district" means the  
34 Sacramento Regional Transit District or the Fresno Area Express.

35 ~~(f) This section shall remain in effect only until January 1, 2012,~~  
36 ~~and as of that date is repealed, unless a later enacted statute, that~~  
37 ~~is enacted before January 1, 2012, deletes or extends that date.~~

38 SEC. 2. Section 99172 of the Public Utilities Code is amended  
39 to read:

1 99172. (a) Prior to exercising the authority given in subdivision  
2 (a) of Section 99171 to issue prohibition orders, a transit district  
3 shall do all of the following:

4 (1) Establish an advisory committee for the purpose of  
5 evaluating the procedures for and issuance of prohibition orders  
6 and recommending a course of training for personnel charged with  
7 issuance and enforcement of prohibition orders.

8 (2) Ensure that personnel to be charged with issuance and  
9 enforcement of prohibition orders have received training as  
10 recommended by the advisory committee.

11 (3) Provide reasonable notification to transit district riders that  
12 persons who engaged in disorderly conduct may be subject to a  
13 prohibition order barring the person from the transit district's  
14 property, facilities, or vehicles for a period of up to one year.  
15 "Reasonable notification" may include, but is not limited to,  
16 information on the transit district's Internet Web site, in written  
17 materials, at transit stations and on citations issued by the transit  
18 district of the types of conduct that may result in issuance of a  
19 prohibition order.

20 (b) The advisory committee shall be composed of at least five  
21 members appointed by the legislative body of the transit district.  
22 At least one of the members of the advisory committee shall have  
23 experience working with individuals with psychiatric,  
24 developmental, or other disabilities and at least one member shall  
25 be a youth advocate.

26 (c) The advisory committee shall be tasked, at a minimum, with  
27 all of the following:

28 (1) Providing recommendations, in consultation with the county  
29 mental health director within the service area of the transit district,  
30 regarding the type and extent of training that should be undertaken  
31 by individuals with responsibility for issuance and enforcement  
32 of prohibition orders, with particular emphasis on training designed  
33 to assist those individuals in identifying and interacting with  
34 persons who are homeless or who have psychiatric, developmental,  
35 or other disabilities.

36 (2) Identifying, in consultation with the county mental health  
37 director within the service area of the transit district, services and  
38 programs to which persons who are homeless or who have  
39 psychiatric, developmental, or other disabilities may be referred

1 by transit district enforcement personnel prior to or in conjunction  
2 with issuance of a prohibition order.

3 (3) Monitoring the issuance of prohibition orders to assist the  
4 transit district in ensuring compliance with Section 51 of the Civil  
5 Code.

6 (4) Providing the governing board of the transit district and the  
7 Legislature with an annual report summarizing the number of  
8 prohibition orders that were issued by the transit district during  
9 the preceding year, including, but not limited to, the types and  
10 numbers of citations by category, and the number of exclusion  
11 orders appealed, the appeals granted, the reasons granted, and other  
12 relevant information directly related to those orders.

13 (d) The transit district may use an existing advisory committee  
14 to fulfill the requirements of this section, provided that the  
15 composition and purpose of the existing advisory committee meet  
16 or are modified to meet the requirements of this section.

17 (e) For purposes of this section “transit district” means the  
18 Sacramento Regional Transit District or the Fresno Area Express.

19 ~~(f) This section shall remain in effect only until January 1, 2012,~~  
20 ~~and as of that date is repealed, unless a later enacted statute, that~~  
21 ~~is enacted before January 1, 2012, deletes or extends that date.~~

22 SEC. 3. Section 102122 of the Public Utilities Code, as  
23 amended by Section 3 of Chapter 528 of the Statutes of 2008, is  
24 amended to read:

25 102122. (a) The board of directors may adopt ordinances that  
26 do any of the following:

27 (1) Prohibit persons from knowingly giving false identification  
28 to a district employee engaged in the enforcement of district  
29 ordinances or state laws, or otherwise obstructing the issuance of  
30 a citation for violation of district ordinances or state law.

31 (2) Prohibit unauthorized operation of, interference with, entry  
32 into, climbing upon, attaching to, or loitering on or in transit  
33 facilities or other transit property.

34 (3) Prohibit the removal, displacement, injury, destruction, or  
35 obstruction of any part of any track, switch, turnout, bridge, culvert,  
36 or any other district structure or fixture.

37 (4) Specify conditions under which a passenger may board a  
38 district vehicle with a bicycle and where the bicycle may be stowed.

39 (b) The board may provide that a violation of any ordinance  
40 adopted pursuant to subdivision (a) is an infraction punishable by

1 a fine not exceeding seventy-five dollars (\$75), and that a violation  
2 by a person after the second conviction is punishable by a fine not  
3 to exceed two hundred fifty dollars (\$250) and by community  
4 service for a total time not to exceed 48 hours over a period not to  
5 exceed 30 days which do not conflict with the violator's hours of  
6 school attendance or employment.

7 (c) The board may designate persons regularly employed by the  
8 district as inspectors or supervisors whose duties shall include  
9 enforcement of district ordinances adopted under subdivision (a),  
10 Sections 640 and 640.5 of the Penal Code, and Section 22656 of  
11 the Vehicle Code. The designated persons shall have the authority  
12 to arrest and to issue citations for misdemeanors and infractions  
13 as set forth in Sections 836.5 and 853.5 of the Penal Code, but  
14 shall not have authority to make custodial arrests.

15 (d) This section does not prohibit any person from engaging in  
16 activities that are protected under the laws of the United States or  
17 of California, including, but not limited to, picketing,  
18 demonstrating, or distributing handbills.

19 ~~(e) This section shall remain in effect only until January 1, 2012,~~  
20 ~~and as of that date is repealed, unless a later enacted statute, that~~  
21 ~~is enacted before January 1, 2012, deletes or extends that date.~~

22 SEC. 4. Section 102122 of the Public Utilities Code, as added  
23 by Section 4 of Chapter 528 of the Statutes of 2008, is repealed.

24 ~~102122. (a) The board of directors may adopt ordinances that~~  
25 ~~do any of the following:~~

26 ~~(1) Prohibit persons from knowingly giving false identification~~  
27 ~~to a district employee engaged in the enforcement of district~~  
28 ~~ordinances or state law, or otherwise obstructing the issuance of~~  
29 ~~a citation for violation of district ordinances or state law.~~

30 ~~(2) Prohibit unauthorized operation of, interference with, entry~~  
31 ~~into, climbing upon, attaching to, or loitering on or in, transit~~  
32 ~~facilities or other transit property.~~

33 ~~(3) Prohibit the removal, displacement, injury, destruction, or~~  
34 ~~obstruction of any part of any track, switch, turnout, bridge, culvert,~~  
35 ~~or any other district structure or fixture.~~

36 ~~(4) Specify conditions under which a passenger may board a~~  
37 ~~district vehicle with a bicycle and where the bicycle may be stowed.~~

38 ~~(b) The board may provide that a violation of any ordinance~~  
39 ~~adopted pursuant to subdivision (a) is an infraction punishable by~~  
40 ~~a fine not exceeding seventy-five dollars (\$75), and that a violation~~

1 by a person after the second conviction is punishable by a fine not  
2 to exceed two hundred fifty dollars (\$250) and by community  
3 service for a total time not to exceed 48 hours over a period not to  
4 exceed 30 days which do not conflict with the violator's hours of  
5 school attendance or employment.

6 ~~(e) The board may designate persons regularly employed by the~~  
7 ~~district as inspectors or supervisors whose duties shall include~~  
8 ~~enforcement of district ordinances adopted under subdivision (a);~~  
9 ~~Sections 640 and 640.5 of the Penal Code, and Section 22656 of~~  
10 ~~the Vehicle Code. The designated persons shall have the authority~~  
11 ~~set forth in Section 836.5 of the Penal Code.~~

12 ~~(d) This section does not prohibit any person from engaging in~~  
13 ~~activities that are protected under the laws of the United States or~~  
14 ~~of California, including, but not limited to, picketing,~~  
15 ~~demonstrating, or distributing handbills.~~

16 ~~(e) This section shall become operative on January 1, 2012.~~

17 SEC. 5. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.