

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 716

Introduced by Assembly Member Dickinson

February 17, 2011

An act to amend *Section 369i of the Penal Code*, and 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 amended, Dickinson. Transit districts: prohibition orders: Sacramento Regional Transit District: Fresno Area Express.

(1) Existing law makes a person guilty of a misdemeanor if the person enters or remains upon any rail transit related property, as defined, owned or operated by a county transportation commission or transportation authority without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the railine or rail-related facility.

This bill would instead make it a misdemeanor if a person enters or remains upon any transit related property, as defined, that is used to provide public transportation by rail or passenger bus, without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the railine or rail-related or transit-related facility.

Existing

(2) 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, *including, among other things, if a person has been cited on at least 3 separate occasions, within a period of 60 days, for specified infractions committed in or on a vehicle, bus stop, or light rail station of the transit district.* 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. *The bill would authorize the Sacramento Regional Transit District and the Fresno Area Express to issue a prohibition order to a person who has been cited on at least 3 separate occasions, within a period of 90 days, for specified infractions committed in or on a vehicle, bus stop, or light rail station of the transit district.*

▲

(3) A violation of a prohibition order is punishable as an infraction. By extending the operative period of a crime, *and by expanding the scope of existing crimes*, 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 369i of the Penal Code is amended to*
2 *read:*

3 369i. (a) Any person who enters or remains upon the property
4 of any railroad without the permission of the owner of the land,
5 the owner’s agent, or the person in lawful possession and whose
6 entry, presence, or conduct upon the property interferes with,
7 interrupts, or hinders, or which, if allowed to continue, would
8 interfere with, interrupt, or hinder the safe and efficient operation
9 of any locomotive, railway car, or train is guilty of a misdemeanor.

10 As used in this subdivision, “property of any railroad” means
11 any land owned, leased, or possessed by a railroad upon which is
12 placed a railroad track and the land immediately adjacent thereto,
13 to the distance of 20 feet on either side of the track, which is
14 owned, leased, or possessed by a railroad.

15 (b) Any person who enters or remains upon any ~~rail~~ transit
16 related property ~~owned or operated by a county transportation~~
17 ~~commission or transportation authority~~ without permission or
18 whose entry, presence, or conduct upon the property interferes
19 with, interrupts, or hinders the safe and efficient operation of the
20 railine or rail-related *or transit-related* facility is guilty of a
21 misdemeanor.

22 As used in this subdivision, ~~“rail transit~~ *“transit related property”*
23 means any land ~~or~~, facilities, *or vehicles* owned, leased, or
24 possessed by a county transportation commission ~~or~~, transportation
25 authority, *or transit district, as defined in Section 99170 of the*
26 *Public Utilities Code, that is used to provide public transportation*
27 *by rail or passenger bus or is related to that use.*

28 (c) This section does not prohibit picketing in the immediately
29 adjacent area of the property of any railroad or rail transit related
30 property or any lawful activity by which the public is informed of
31 the existence of an alleged labor dispute.

32 **SECTION 1.**

33 **SEC. 2.** *Section 99171 of the Public Utilities Code is amended*
34 *to read:*

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

3 (A) On at least three separate occasions within a period of ~~60~~
4 90 consecutive days, the person is cited for an infraction committed
5 in or on a vehicle, bus stop, or light rail station of the transit district
6 for any act that is a violation of paragraph (2) or (5) of subdivision
7 (a) of Section 99170 of this code or paragraph (6), (7), (8), or (9)
8 of subdivision (b) of Section 640 or Section 640.5 of the Penal
9 Code.

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

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

17 (2) A person subject to a prohibition order may not enter the
18 property, facilities, or vehicles of the transit district for a period
19 of time deemed appropriate by the transit district, provided that
20 the duration of a prohibition order shall not exceed the following,
21 as applicable:

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

26 (B) Thirty days if issued pursuant to an arrest pursuant to
27 subparagraph (B) of paragraph (1). Upon conviction of a
28 misdemeanor offense, the duration of the prohibition order for the
29 conviction, when added to the duration of the prohibition order
30 for the initial arrest, if any, may not exceed 180 days. Upon
31 conviction of a felony offense, the duration of the prohibition order
32 for the conviction, when added to the duration of the prohibition
33 order for the initial arrest, if any, may not exceed one year.

34 (3) No prohibition order issued under this subdivision shall be
35 effective unless the transit district first affords the person an
36 opportunity to contest the transit district's proposed action in
37 accordance with procedures adopted by the transit district for this
38 purpose. A transit district's procedures shall provide, at a minimum,
39 for the notice and other protections set forth in subdivisions (b)

1 and (c), and the transit district shall provide reasonable notification
2 to the public of the availability of those procedures.

3 (b) (1) A notice of a prohibition order issued under subdivision
4 (a) shall set forth a description of the conduct underlying the
5 violation or violations giving rise to the prohibition order, including
6 reference to the applicable statutory provision, ordinance, or transit
7 district rule violated, the date of the violation, the approximate
8 time of the violation, the location where the violation occurred,
9 the period of the proposed prohibition, and the scope of the
10 prohibition. The notice shall include a clear and conspicuous
11 statement indicating the procedure for contesting the prohibition
12 order. The notice of prohibition order shall be personally served
13 upon the violator. The notice of prohibition order, or a copy, shall
14 be considered a record kept in the ordinary course of business of
15 the transit district and shall be prima facie evidence of the facts
16 contained in the notice establishing a rebuttable presumption
17 affecting the burden of producing evidence. For purposes of this
18 paragraph, “clear and conspicuous” means in larger type than the
19 surrounding text, or in contrasting type, font, or color to the
20 surrounding text of the same size, or set off from the surrounding
21 text of the same size by symbols or other marks that call attention
22 to the language.

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

25 (A) In-person delivery.

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

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

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

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

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

1 (C) For any alternate method of service, as provided in the
2 writing specifying the alternate method.
3 (4) Proof of service of the notice shall be filed with the transit
4 district.
5 (5) If a person contests a notice of prohibition order, the transit
6 district shall proceed in accordance with subdivision (c). If the
7 notice of prohibition order is not contested within 10 calendar days
8 after delivery by personal service, the prohibition order shall be
9 deemed final and shall go into effect, without further action by the
10 transit district, for the period of time set forth in the order.
11 (6) All prohibition orders shall be subject to an automatic stay
12 and shall not take effect until the latest of the following:
13 (A) Eleven calendar days after delivery of the prohibition order
14 by personal service.
15 (B) If an initial review is timely requested under paragraph (1)
16 of subdivision (c), 11 calendar days after delivery by personal
17 service of the results of the review.
18 (C) If an administrative hearing is timely requested under
19 paragraph (3) of subdivision (c), the date the hearing officer's
20 decision is delivered by personal service.
21 (c) (1) For a period of 10 calendar days from the delivery of
22 the prohibition order by personal service, the person may request
23 an initial review of the prohibition order by the transit district. The
24 request may be made by telephone, in writing, or in person. There
25 shall be no charge for this review. In conducting its review and
26 reaching a determination, the transit district shall determine
27 whether the prohibition order meets the requirements of subdivision
28 (a) and, unless the person has been convicted of the offense or
29 offenses, whether the offense or offenses for which the person was
30 cited or arrested are proven by a preponderance of the evidence.
31 If, following the initial review, based on these findings, the transit
32 district determines that the prohibition order is not adequately
33 supported or that extenuating circumstances make dismissal of the
34 prohibition order appropriate in the interest of justice, the transit
35 district shall cancel the notice. If, following the initial review,
36 based on these findings, the transit district determines that the
37 prohibition order should be upheld in whole or in part, the transit
38 district shall issue a written statement to that effect, including any
39 modification to the period or scope of the prohibition order. The

1 transit district shall serve the results of the initial review to the
2 person contesting the notice by personal service.

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

16 (3) If the person is dissatisfied with the results of the initial
17 review, the person may request an administrative hearing of the
18 prohibition order no later than 10 calendar days after the results
19 of the initial review are delivered by personal service. The request
20 may be made by telephone, in writing, or in person. An
21 administrative hearing shall be held within 30 calendar days after
22 the receipt of a request for an administrative hearing. The person
23 requesting the hearing may request one continuance, not to exceed
24 seven calendar days.

25 (4) The administrative hearing process shall include all of the
26 following:

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

30 (B) The administrative hearing shall be conducted in accordance
31 with written procedures established by the transit district and
32 approved by the governing body or chief executive officer of the
33 transit district. The hearing shall provide an independent, objective,
34 fair, and impartial review of the prohibition order.

35 (C) The administrative review shall be conducted before a
36 hearing officer designated to conduct the review by the transit
37 district's governing body or chief executive officer. In addition to
38 any other requirements, a hearing officer shall demonstrate the
39 qualifications, training, and objectivity prescribed by the transit
40 agency's governing body or chief executive officer as are necessary

1 to fulfill and that are consistent with the duties and responsibilities
2 set forth in this subdivision. The hearing officer's continued
3 service, performance evaluation, compensation, and benefits, as
4 applicable, shall not be directly or indirectly linked to the number
5 of prohibition orders upheld by the hearing officer.

6 (D) The person who issued the notice of prohibition order shall
7 not be required to participate in an administrative hearing, unless
8 participation is requested by the person requesting the hearing.
9 The request for participation must be made at least five calendar
10 days prior to the date of the hearing and may be made by telephone,
11 in writing, or in person. The notice of prohibition order, in proper
12 form, shall be prima facie evidence of the violation or violations
13 pursuant to subdivision (a) establishing a rebuttable presumption
14 affecting the burden of producing evidence.

15 (E) In issuing a decision, the hearing officer shall determine
16 whether the prohibition order meets the requirements of subdivision
17 (a) and, unless the person has been convicted of the offense or
18 offenses, whether the offense or offenses for which the person was
19 cited or arrested are proven by a preponderance of the evidence.
20 Based upon these findings, the hearing officer may uphold the
21 prohibition order in whole, determine that the prohibition order is
22 not adequately supported, or cancel or modify the prohibition order
23 in the interest of justice. The hearing officer shall cancel a
24 prohibition order if he or she determines that the person did not
25 understand the nature and extent of his or her actions or did not
26 have the ability to control his or her actions. If the person is
27 dependent upon the transit system for trips of necessity, including,
28 but not limited to, travel to or from medical or legal appointments,
29 school or training classes, places of employment, or obtaining
30 food, clothing, and necessary household items, the transit district
31 shall modify a prohibition order to allow for those trips. A person
32 requesting a cancellation or modification in the interest of justice
33 shall have the burden of establishing the qualifying circumstances
34 by a preponderance of the evidence.

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

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

1 (d) A person issued a prohibition order under subdivision (a)
2 may, within 10 calendar days of the date the order goes into effect
3 under paragraph (6) of subdivision (b), request a refund for any
4 prepaid fare media rendered unusable in whole or in part by the
5 prohibition order, including, but not limited to, monthly passes. If
6 the fare media remain usable for one or more days outside the
7 period of the prohibition order, the refund shall be prorated based
8 on the number of days the fare media will be unusable. The
9 issuance of a refund may be made contingent on surrender of the
10 fare media.

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

13 ~~SEC. 2.~~

14 *SEC. 3.* Section 99172 of the Public Utilities Code is amended
15 to read:

16 99172. (a) Prior to exercising the authority given in subdivision
17 (a) of Section 99171 to issue prohibition orders, a transit district
18 shall do all of the following:

19 (1) Establish an advisory committee for the purpose of
20 evaluating the procedures for and issuance of prohibition orders
21 and recommending a course of training for personnel charged with
22 issuance and enforcement of prohibition orders.

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

26 (3) Provide reasonable notification to transit district riders that
27 persons who ~~engaged~~ engage in disorderly conduct may be subject
28 to a prohibition order barring the person from the transit district’s
29 property, facilities, or vehicles for a period of up to one year.
30 “Reasonable notification” may include, but is not limited to,
31 information on the transit district’s Internet Web site, in written
32 materials, at transit stations, and on citations issued by the transit
33 district of the types of conduct that may result in issuance of a
34 prohibition order.

35 (b) The advisory committee shall be composed of at least five
36 members appointed by the legislative body of the transit district.
37 At least one of the members of the advisory committee shall have
38 experience working with individuals with psychiatric,
39 developmental, or other disabilities and at least one member shall
40 be a youth advocate.

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

3 (1) Providing recommendations, in consultation with the county
4 mental health director within the service area of the transit district,
5 regarding the type and extent of training that should be undertaken
6 by individuals with responsibility for issuance and enforcement
7 of prohibition orders, with particular emphasis on training designed
8 to assist those individuals in identifying and interacting with
9 persons who are homeless or who have psychiatric, developmental,
10 or other disabilities.

11 (2) Identifying, in consultation with the county mental health
12 director within the service area of the transit district, services and
13 programs to which persons who are homeless or who have
14 psychiatric, developmental, or other disabilities may be referred
15 by transit district enforcement personnel prior to or in conjunction
16 with issuance of a prohibition order.

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

20 (4) Providing the governing board of the transit district and the
21 Legislature with an annual report summarizing the number of
22 prohibition orders that were issued by the transit district during
23 the preceding year, including, but not limited to, the types and
24 numbers of citations by category, and the number of exclusion
25 orders appealed, the appeals granted, the reasons granted, and other
26 relevant information directly related to those orders.

27 (d) The transit district may use an existing advisory committee
28 to fulfill the requirements of this section, provided that the
29 composition and purpose of the existing advisory committee meet
30 or are modified to meet the requirements of this section.

31 (e) *Any person violating a prohibition order issued pursuant to*
32 *subdivision (a) of Section 99171 is guilty of a misdemeanor as*
33 *provided under Section 369i of the Penal Code.*

34 (e)

35 (f) For purposes of this section “transit district” means the
36 Sacramento Regional Transit District or the Fresno Area Express.

37 ~~SEC. 3.~~

38 *SEC. 4.* Section 102122 of the Public Utilities Code, as
39 amended by Section 3 of Chapter 528 of the Statutes of 2008, is
40 amended to read:

1 102122. (a) The board of directors may adopt ordinances that
2 do any of the following:

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

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

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

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

15 (b) The board may provide that a violation of any ordinance
16 adopted pursuant to subdivision (a) is an infraction punishable by
17 a fine not exceeding seventy-five dollars (\$75), and that a violation
18 by a person after the second conviction is punishable by a fine not
19 to exceed two hundred fifty dollars (\$250) and by community
20 service for a total time not to exceed 48 hours over a period not to
21 exceed 30 days which do not conflict with the violator's hours of
22 school attendance or employment.

23 (c) The board may designate persons regularly employed by the
24 district as inspectors or supervisors whose duties shall include
25 enforcement of district ordinances adopted under subdivision (a),
26 Sections 640 and 640.5 of the Penal Code, and Section 22656 of
27 the Vehicle Code. The designated persons shall have the authority
28 to arrest and to issue citations for misdemeanors and infractions
29 as set forth in Sections 836.5 and 853.5 of the Penal Code, but
30 shall not have authority to make custodial arrests.

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

35 ~~SEC. 4.~~

36 *SEC. 5.* Section 102122 of the Public Utilities Code, as added
37 by Section 4 of Chapter 528 of the Statutes of 2008, is repealed.

38 ~~SEC. 5.~~

39 *SEC. 6.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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