

**Assembly Bill No. 716**

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Passed the Assembly September 2, 2011

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*Chief Clerk of the Assembly*

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Passed the Senate August 30, 2011

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 369i and 830.14 of the Penal Code, and to amend Sections 99171, 99172, and 102122 of, the Public Utilities Code, relating to transportation.

## LEGISLATIVE COUNSEL'S DIGEST

AB 716, Dickinson. Transit districts: prohibition orders: Sacramento Regional Transit District: Fresno Area Express: San Francisco Bay Area Rapid Transit District.

(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 railline 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 railline or rail-related or transit-related facility.

(2) Existing law authorizes a local or regional transit agency or a joint powers agency operating rail service to contract with designated persons to act as its agent in the enforcement of specified provisions relative to certain prohibited acts on or in public transportation systems or vehicles if the persons satisfy specified training requirements.

This bill would authorize the governing board of the Sacramento Regional Transit District to designate persons regularly employed by the district as inspectors or supervisors to enforce those provisions or any ordinance that is adopted by the district relative to prohibited acts on or in public transportation systems or vehicles, if the persons satisfy specified training requirements. The bill would make changes to cross-references in these provisions. The bill would also delete similar provisions that authorize the board to designate persons to enforce district ordinances and specified

state laws, but which do not require the persons to satisfy the training requirements described above.

(3) 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.

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, the Fresno Area Express, and, until January 1, 2015, the San Francisco Bay Area Rapid Transit District, 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 train or light rail station of the transit district.

(4) 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.

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

SECTION 1. Section 369i of the Penal Code is amended to read:

369i. (a) 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.

As used in this subdivision, "property of any railroad" means 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 is owned, leased, or possessed by a railroad.

(b) 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.

As used in this subdivision, "transit-related property" means any land, facilities, or vehicles owned, leased, or possessed by a county transportation commission, transportation authority, or transit district, as defined in Section 99170 of the Public Utilities Code, that are used to provide public transportation by rail or passenger bus or are directly related to that use.

(c) This section does 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.

SEC. 2. Section 830.14 of the Penal Code is amended to read:

830.14. (a) A local or regional transit agency or a joint powers agency operating rail service identified in an implementation program adopted pursuant to Article 10 (commencing with Section 130450) of Chapter 4 of Division 12 of the Public Utilities Code may authorize by contract designated persons as conductors performing fare inspection duties who are employed by a railroad corporation that operates public rail commuter transit services for that agency to act as its agent in the enforcement of subdivisions

(a) to (d), inclusive, of Section 640 relating to the operation of the rail service if they complete the training requirement specified in this section.

(b) The governing board of the Altamont Commuter Express Authority, a joint powers agency duly formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, by and between the Alameda Congestion Management Agency, the Santa Clara County Transit District, and the San Joaquin Regional Rail Commission, may contract with designated persons to act as its agents in the enforcement of subdivisions (a) to (d), inclusive, of Section 640 relating to the operation of a public transportation system if these persons complete the training requirement specified in this section.

(c) The governing board of the Peninsula Corridor Joint Powers Board, a joint powers agency duly formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, by and between the San Mateo County Transit District, the Santa Clara County Transit District, and the City and County of San Francisco, may appoint designated persons to act as its agents in the enforcement of subdivisions (a) to (d), inclusive, of Section 640 relating to the operation of a public transportation system if these persons complete the training requirement specified in this section.

(d) The governing board of Foothill Transit, a joint powers agency duly formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, by and between the Cities of Arcadia, Azusa, Baldwin Park, Bradbury, Claremont, Covina, Diamond Bar, Duarte, El Monte, Glendora, Industry, Irwindale, La Habra Heights, La Puente, La Verne, Monrovia, Pomona, San Dimas, South El Monte, Temple City, Walnut, West Covina, and the County of Los Angeles, may resolve to contract with designated persons to act as its agents in the enforcement of subdivisions (a) to (d), inclusive, of Section 640 relating to the operation of a public transportation system if these persons complete the training requirement specified in this section.

(e) The governing board of the Sacramento Regional Transit District, a transit district duly formed pursuant to Part 14 (commencing with Section 102000) of Division 10 of the Public Utilities Code, may designate persons regularly employed by the

district as inspectors or supervisors to enforce subdivisions (a) to (d), inclusive, of Section 640, relating to the operation of a public transportation system, and any ordinance adopted by the district pursuant to subdivision (a) of Section 102122 of the Public Utilities Code, if these persons complete the training requirement specified in this section.

(f) Persons authorized pursuant to this section to enforce subdivisions (a) to (d), inclusive, of Section 640 shall complete a specialized fare compliance course which shall be provided by the authorizing agency. This training course shall include, but not be limited to, the following topics:

- (1) An overview of barrier-free fare inspection concepts.
- (2) The scope and limitations of inspector authority.
- (3) Familiarization with the elements of the infractions enumerated in subdivisions (a) to (d), inclusive, of Section 640.
- (4) Techniques for conducting fare checks, including inspection procedures, demeanor, and contacting violators.
- (5) Citation issuance and court appearances.
- (6) Fare media recognition.
- (7) Handling argumentative violators and diffusing conflict.
- (8) The mechanics of law enforcement support and interacting with law enforcement for effective incident resolution.

(g) Persons described in this section are public officers, not peace officers, have no authority to carry firearms or any other weapon while performing the duties authorized in this section, and may not exercise the powers of arrest of a peace officer while performing the duties authorized in this section. These persons may be authorized by the agencies specified in this section to issue citations involving infractions relating to the operation of the rail service specified in this section.

(h) Nothing in this section shall affect the retirement or disability benefits provided to employees described in this section or be in violation of any collective bargaining agreement between a labor organization and a railroad corporation.

(i) Notwithstanding any other provision of this section, the primary responsibility of a conductor of a commuter passenger train shall be functions related to safe train operation.

SEC. 3. Section 99171 of the Public Utilities Code is amended to read:

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

(A) On at least three separate occasions within a period of 90 consecutive days, the person is cited for an infraction committed in or on a vehicle, bus stop, or train or light rail station of the transit district for any act that is a violation of paragraph (2) or (5) of subdivision (a) of Section 99170 of this code or paragraph (1), (2), (3), or (4) of subdivision (d) of Section 640 or Section 640.5 of the Penal Code.

(B) The person is arrested or convicted for a 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.

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

(2) A person subject to a prohibition order may not enter 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 a prohibition order shall not exceed the following, as applicable:

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

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

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

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

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

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

(A) In-person delivery.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For purposes of this section “transit district” means the Sacramento Regional Transit District or the Fresno Area Express. Until January 1, 2015, for purposes of this section, “transit district” also means the San Francisco Bay Area Rapid Transit District.

SEC. 4. Section 99172 of the Public Utilities Code is amended to read:

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

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

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

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

(b) The advisory committee shall be composed of at least five members appointed by the legislative body of the transit district. At least one of the members of the advisory committee shall have experience working with individuals with psychiatric, developmental, or other disabilities, at least one member shall be

a youth advocate, and at least one member shall have law enforcement experience.

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

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

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

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

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

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

(e) For purposes of this section “transit district” means the Sacramento Regional Transit District or the Fresno Area Express. Until January 1, 2015, for purposes of this section, “transit district” also means the San Francisco Bay Area Rapid Transit District.

SEC. 5. Section 102122 of the Public Utilities Code, as added by Section 4 of Chapter 528 of the Statutes of 2008, is amended to read:

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

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

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

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

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

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

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

(d) A district employee may enforce any ordinance that is adopted pursuant to this section as provided in subdivision (e) of Section 830.14 of the Penal Code.

(e) Nothing in this section shall affect any rights or immunities conferred pursuant to Section 836.5 of the Penal Code.

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



Approved \_\_\_\_\_, 2011

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*Governor*