

ASSEMBLY BILL

No. 1536

Introduced by Assembly Member Olsen
(Coauthors: Assembly Members Bigelow, Conway, Mansoor,
Melendez, Morrell, Patterson, Wagner, Waldron, and Wilk)
(Coauthor: Senator Huff)

January 21, 2014

An act to amend Sections 3610 and 3611 of, to amend the heading of Chapter 3 (commencing with Section 3610) of Division 4.5 of Title 1 of, to repeal Section 3616 of, and to repeal and add Sections 3612, 3613, 3614, and 3615 of, the Government Code, relating to public transportation employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1536, as introduced, Olsen. Public transportation employees: strikes: prohibition.

Existing law prescribes procedures governing disputes between exclusive bargaining representatives of public transportation employees and local agencies, and authorizes the Governor, when it appears a strike will significantly disrupt transportation services and endanger public health, safety, and welfare, to appoint a board to investigate issues in connection with these labor negotiations and make a report. Existing law prohibits a strike during the period of investigation and permits the Governor, upon receiving a report from a board of investigation, to request the Attorney General to petition a court to enjoin the strike, as specified.

This bill would repeal those provisions that authorize the Governor to appoint a board to investigate when it appears a strike will significantly disrupt transportation services, prohibit a strike during the

period of investigation, and that authorize the Governor to request the Attorney General to petition a court to enjoin the strike. The bill would instead prohibit a state or local public transportation employee or public transportation employee organization from engaging in, causing, instigating, encouraging, or condoning a strike. The bill would also provide that a person who, on behalf of a public transportation employer, exercises authority, supervision, or direction over a public transportation employee shall not have the power to, and shall not purport to, authorize, approve, condone, or consent to a strike by a public transportation employee.

The bill would establish a process for a public transportation employee to object to a determination by the chief executive officer of the public transportation employer that he or she violated these provisions by filing a sworn affidavit under penalty of perjury, thus expanding the definition of a crime. The bill would require the chief executive officer, if he or she determines that the objection raises a question of fact that if resolved in favor of the employee would establish that the employee did not commit the violation, to appoint an officer to conduct a hearing on the matter at which the employee would bear the burden of proving by a preponderance of the evidence that he or she did not commit the violation, as specified. The bill would require the Public Employment Relations Board to hold a hearing to determine whether an employee organization violated these provisions, and would require the employer and the employee organization to be permitted to be represented by counsel.

The bill would provide that a public transportation employee who violates these provisions is subject to removal or other disciplinary action, and would authorize the chief financial officer of the employer to deduct from the compensation of a public transportation employee found to have violated these provisions an amount equal to twice his or her daily rate of pay for each day or part thereof that it was determined that he or she violated these provisions. The bill would also require the board, if it determines that an employee organization violated these provisions, to order forfeiture of specified rights granted by state law to recognized employee organizations.

The bill would also require the chief executive officer of the employer, within 60 days of the end of a strike, to prepare a written report, to be made public, that contains specified information regarding the circumstances surrounding the strike, the names of those public transit employees who the chief executive officer has reason to believe were

responsible for causing, instigating, or encouraging the strike, and the sanctions imposed or proceedings pending against those employees.

Because the bill would expand the definition of a crime and require local officers to perform additional duties, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. The heading of Chapter 3 (commencing with
2 Section 3610) of Division 4.5 of Title 1 of the Government Code
3 is amended to read:

4
5 CHAPTER 3. ~~PROHIBITION OF PUBLIC TRANSPORTATION LABOR~~
6 ~~DISPUTES EMPLOYEE STRIKES~~
7

8 SEC. 2. Section 3610 of the Government Code is amended to
9 read:

10 3610. The definitions set forth in this section shall govern the
11 construction and meaning of the terms used in this chapter:

12 (a) "Local agency" means any city, county, special district, or
13 other public entity in the state. It includes a charter city or a charter
14 county.

15 (b) "Public transit transportation employee" means an employee
16 of any transit transportation district of the state, an employee of
17 the Golden Gate Bridge, Highway and Transportation District, and
18 an employee state or of any local agency who is employed to work
19 for transit service provided by that agency.

20 SEC. 3. Section 3611 of the Government Code is amended to
21 read:

1 3611. Notwithstanding any other law, the following provisions
 2 shall govern disputes between exclusive bargaining representatives
 3 of public ~~transit~~ *transportation* employees and local agencies:

4 (a) The disputes shall not be subject to any fact-finding
 5 procedure otherwise provided by law.

6 (b) Each party shall exchange contract proposals not less than
 7 90 days before the expiration of a contract, and shall be in formal
 8 collective bargaining not less than 60 days before that expiration.

9 (c) Each party shall supply to the other party all reasonable data
 10 as requested by the other party.

11 (d) At the request of either party to a dispute, a conciliator from
 12 the California State Mediation and Conciliation Service shall be
 13 assigned to mediate the dispute and shall have access to all formal
 14 negotiations.

15 The provisions of this section shall not apply to any local agency
 16 subject to the provisions of Chapter 10 (commencing with Section
 17 3500) of Division 4.

18 SEC. 4. Section 3612 of the Government Code is repealed.

19 ~~3612. (a) Whenever in the opinion of the Governor, a~~
 20 ~~threatened or actual strike or lockout will, if permitted to occur or~~
 21 ~~continue, significantly disrupt public transportation services and~~
 22 ~~endanger the public's health, safety, or welfare, and upon the~~
 23 ~~request of either party to the dispute, the Governor may appoint a~~
 24 ~~board to investigate the issues involved in the dispute and to make~~
 25 ~~a written report to him or her within seven days. The report shall~~
 26 ~~include a statement of the facts with respect to the dispute,~~
 27 ~~including the respective positions of the parties, but shall not~~
 28 ~~contain recommendations. The report shall be made available to~~
 29 ~~the public.~~

30 ~~(b) Any strike or lockout during the period of investigation of~~
 31 ~~the board appointed pursuant to this section is prohibited.~~

32 SEC. 5. Section 3612 is added to the Government Code, to
 33 read:

34 3612. Notwithstanding any other provision, a public
 35 transportation employee or public transportation employee
 36 organization shall not engage in, cause, instigate, encourage, or
 37 condone a strike.

38 SEC. 6. Section 3613 of the Government Code is repealed.

39 ~~3613. The board of investigation shall be composed of no more~~
 40 ~~than five members, one of whom shall be designated by the~~

1 ~~Governor as chairperson. Members of the board shall receive one~~
2 ~~hundred dollars (\$100) for each day actually spent by them in the~~
3 ~~work of the board and shall receive their actual and necessary~~
4 ~~expenses incurred in the performance of their duties.~~

5 ~~The board may hold public hearings to ascertain the facts with~~
6 ~~respect to the causes and circumstances of the dispute. For the~~
7 ~~purpose of any hearing or investigation, the board may summon~~
8 ~~and subpoena witnesses, require the production of papers, books,~~
9 ~~accounts, reports, documents, records, and papers of any kind and~~
10 ~~description, to issue subpoenas, and to take all necessary means~~
11 ~~to compel the attendance of witnesses and procure testimony.~~

12 SEC. 7. Section 3613 is added to the Government Code, to
13 read:

14 3613. (a) A public transportation employee who violates
15 Section 3612 or subdivision (c) is subject to removal or other
16 disciplinary action.

17 (b) A public transportation employee who is absent from work
18 without permission, or who abstains wholly or in part from the
19 full performance of his or her duties in his or her normal manner
20 without permission, on the date or dates when a strike occurs, shall
21 be presumed to have engaged in the strike on that date or dates.

22 (c) A person who, on behalf of a public transportation employer,
23 exercises authority, supervision, or direction over a public
24 transportation employee shall not have the power to, and shall not
25 purport to, authorize, approve, condone, or consent to a strike by
26 a public transportation employee.

27 (d) If it appears that a violation of Section 3612 or subdivision
28 (c) may have occurred, within 60 days thereof the chief executive
29 officer of the employer shall, on the basis of any investigation or
30 affidavits as he or she may deem appropriate, determine whether
31 or not a violation has occurred and the date or dates of the violation.
32 If the chief executive officer determines that a violation has
33 occurred, he or she shall further determine, on the basis of any
34 further investigation and affidavits as he or she may deem
35 appropriate, the names of employees who committed the violation
36 and the date or dates thereof. The determination shall not be
37 deemed to be final until the completion of the procedures provided
38 for in this section.

39 (e) The chief executive officer shall notify each employee that
40 he or she has been determined, pursuant to subdivision (d), to have

1 committed a violation of Section 3612 or subdivision (c), the date
2 or dates of the violation, and of his or her right to object to the
3 determination pursuant to subdivision (h). The chief executive
4 officer shall also notify the chief financial officer of the names of
5 those employees and of the total number of days, or part thereof,
6 on which it has been determined that a violation occurred. Notice
7 to each employee shall be by personal service or by certified mail
8 to his or her last address filed with his or her employer.

9 (f) No compensation shall be paid by a public transportation
10 employer to a public transportation employee with respect to any
11 day or part thereof when the employee is engaged in a strike against
12 the employer. The chief financial officer of the employer shall
13 withhold that compensation upon receipt of the notice provided
14 by subdivision (e). Notwithstanding the failure to have received
15 the notice, no public transportation employee or officer having
16 knowledge that the employee has engaged in a strike shall deliver
17 or caused to be delivered to the employee any cash, check, or
18 payment that, in whole or in part, represents such compensation.

19 (g) No earlier than 30 days, nor later than 90 days, following
20 the date of a determination pursuant to subdivision (d), the chief
21 financial officer of the employer shall deduct from the
22 compensation of an employee found to have violated Section 3612
23 or subdivision (c) an amount equal to twice his or her daily rate
24 of pay for each day or part thereof that it was determined that he
25 or she violated Section 3612 or subdivision (c). In computing the
26 deduction, credit shall be allowed for amounts already withheld
27 from the employee's compensation due to his or her absence from
28 work or other withholding of services. If the employee's annual
29 compensation is paid over a period of time that is less than 52
30 weeks, the period of time between the last day of the last payroll
31 period of the employment term in which the violation occurred
32 and the first day of the first payroll period of the next succeeding
33 employment term shall be disregarded and not counted in
34 computing the 30-to-90-day period.

35 (h) (1) A public transportation employee who has been
36 determined pursuant to subdivision (d) to have committed a
37 violation of Section 3612 or subdivision (c) may object to the
38 determination by filing with the chief executive officer of the
39 public transportation employer, within 20 days of the date on which
40 notice was served or mailed to him or her pursuant to subdivision

1 (e), his or her sworn affidavit under penalty of perjury, supported
2 by available documentary proof, containing a short and plain
3 statement of the facts upon which he or she relies to show that the
4 determination is incorrect.

5 (2) If the chief executive officer determines that the affidavit
6 and supporting proof establishes that the employee did not commit
7 the violation, he or she shall sustain the objection. If the chief
8 executive officer determines that the affidavit and supporting proof
9 fails to establish that the employee did not commit the violation,
10 he or she shall dismiss the objection and notify the employee.

11 (3) If the chief executive officer determines that the affidavit
12 and supporting proof raises a question of fact that, if resolved in
13 favor of the employee, would establish that the employee did not
14 commit the violation, he or she shall appoint an officer to conduct
15 a hearing at which the employee shall bear the burden of proof. If
16 the hearing officer determines, based upon a preponderance of the
17 evidence, that the employee did not commit the violation, the chief
18 executive officer shall notify the employee of that determination.
19 If the hearing officer determines that the employee failed to
20 establish that he or she did not commit the violation, the chief
21 executive officer shall notify the employee of that determination.

22 (4) If the chief executive officer sustains the employee's
23 objection or the hearing officer determines that the employee did
24 not violate this subdivision, the chief executive officer shall notify
25 the chief financial officer who shall thereupon cease all further
26 deductions from the employees's compensation and refund any
27 deductions previously made from the employee's compensation
28 pursuant subdivision (g).

29 SEC. 8. Section 3614 of the Government Code is repealed.

30 ~~3614. Upon receiving a report from a board of investigation,~~
31 ~~the Governor may request the Attorney General to, and he or she~~
32 ~~shall, petition any court of competent jurisdiction to enjoin the~~
33 ~~strike or lockout or the continuing thereof, for a period of 60 days.~~
34 ~~The court shall issue an order enjoining the strike or lockout, or~~
35 ~~the continuation thereof, if the court finds that the threatened or~~
36 ~~actual strike or lockout, if permitted to occur or continue, will~~
37 ~~significantly disrupt public transportation services and endanger~~
38 ~~the public's health, safety, or welfare.~~

39 SEC. 9. Section 3614 is added to the Government Code, to
40 read:

1 3614. (a) A public transportation employee organization that
2 is determined to have violated Section 3612 shall, in accordance
3 with the provisions of this section, forfeit the rights granted to
4 recognized employee organizations by Chapter 10 (commencing
5 with Section 3500) of Division 4 or Chapter 10.3 (commencing
6 with Section 3512) of Division 4.

7 (b) If circumstances indicate that an employee organization may
8 have violated Section 3612, the chief executive officer of the public
9 transportation employer shall notify the chief legal officer of the
10 public transportation employer and the Public Employment
11 Relations Board. The chief executive officer of the employer shall
12 provide the board and the chief legal officer of the public
13 transportation employer the facilities, assistance, and data to enable
14 those entities to carry out their duties under this section.

15 (c) The chief legal officer of the public transportation employer,
16 or the board on its own motion, shall initiate proceedings before
17 the board to determine whether the violation occurred. Proceedings
18 against a public transportation employee organization under this
19 section shall be commenced by serving the employee organization
20 with a written notice and a copy of the charges. If the proceedings
21 are initiated by the board, a copy of the notice and charges shall
22 also be served upon the public transportation employer. The
23 employee organization shall have eight days to answer the charges.
24 The board shall promptly hold a hearing at which the employer
25 and the employee organization shall be permitted to be represented
26 by counsel and to summon witnesses in their behalf. Compliance
27 with the technical rules of evidence shall not be required.

28 (d) In determining whether an employee organization has
29 violated Section 3612, the board shall consider whether the
30 employee organization called the strike or tried to prevent it, and
31 whether the employee organization made a good faith effort to end
32 the strike.

33 (e) (1) If the board determines that an employee organization
34 violated Section 3612, the board shall order forfeiture of the rights
35 granted to recognized employee organizations by Chapter 10
36 (commencing with Section 3500) of Division 4 or Chapter 10.3
37 (commencing with Section 3512) of Division 4 for a specified
38 period of time in its discretion determines, or for an indefinite
39 period of time, subject to restoration upon application to the board.

1 (2) In fixing the duration of the forfeiture, the board shall
2 consider all the relevant facts and circumstances, including, but
3 not limited to, the extent of any intentional violation of Section
4 3612; the impact of the strike on the public health, safety, and
5 welfare of the community; and the financial resources of the
6 employee organization. The board may also consider whether the
7 employee organization or the public transportation employer, or
8 a representative thereof, refused to submit to mediation and
9 fact-finding procedures and whether, if alleged by the employee
10 organization, the public transportation employer, or a representative
11 thereof, engaged in acts of extreme provocation so as to detract
12 from the responsibility of the employee organization for the strike.

13 (3) Notice of an application for reinstatement of rights forfeited
14 pursuant to this subdivision shall be send to all interested parties
15 and supported by proof of good faith compliance with the
16 prohibitions of Section 3612 since the date of the violation. That
17 proof may include, but is not limited to, the successful negotiation
18 of a contract covering the employees in the unit affected by the
19 violation.

20 (f) After three years, an employee organization that forfeited
21 the rights granted to recognized employee organizations by Chapter
22 10 (commencing with Section 3500) of Division 4 or Chapter 10.3
23 (commencing with Section 3512) of Division 4 pursuant to this
24 section may have those rights reinstated by the Legislature.

25 SEC. 10. Section 3615 of the Government Code is repealed.

26 ~~3615. If the charter or establishing legislation of the local
27 agency establishes a time period for the negotiating or meeting
28 and conferring process which is shorter than 60 days, the provisions
29 of this chapter shall not be applicable to any disputes which may
30 arise between the exclusive bargaining representative of public
31 transit employees and the local agency.~~

32 SEC. 11. Section 3615 is added to the Government Code, to
33 read:

34 3615. Within 60 days of the end of a strike, the chief executive
35 officer of the public transportation employer shall prepare a written
36 report, which shall be made public, that contains the following
37 information:

38 (a) The circumstances surrounding the commencement of the
39 strike.

40 (b) The efforts made to terminate the strike.

1 (c) The names of public transportation employees who the chief
2 executive officer of the public transportation employer has reason
3 to believe were responsible for causing, instigating, or encouraging
4 the strike.

5 (d) The sanctions imposed or proceedings pending against those
6 public transportation employees related to the varying degrees of
7 actual or suspected individual responsibility.

8 SEC. 12. Section 3616 of the Government Code is repealed.

9 ~~3616. Except as expressly provided by subdivision (b) of~~
10 ~~Section 3612 and Section 3614, nothing in this chapter shall be~~
11 ~~construed to grant or deprive employees of a right to strike.~~

12 SEC. 13. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution for certain
14 costs that may be incurred by a local agency or school district
15 because, in that regard, this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty for a crime
17 or infraction, within the meaning of Section 17556 of the
18 Government Code, or changes the definition of a crime within the
19 meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 However, if the Commission on State Mandates determines that
22 this act contains other costs mandated by the state, reimbursement
23 to local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.