

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE SEPTEMBER 12, 2013

SENATE BILL

No. 423

Introduced by Senator Huff

(Coauthors: Senators Berryhill, Gaines, Knight, and Nielsen)

(Coauthor: Assembly Member Conway)

February 21, 2013

An act to amend Section 3616 of, and to add Section 3616.1 to, the Government Code, relating to the San Francisco Bay Area Rapid Transit District, and declaring the urgency thereof, to take effect immediately. 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

SB 423, as amended, Huff. ~~San Francisco Bay Area Rapid Transit District: Public transportation employees:~~ strikes: prohibition.

Existing law creates the San Francisco Bay Area Rapid Transit District and establishes provisions regulating the collective bargaining of the employees and the board of directors of that district. Existing law prescribes procedures specifically relating to the collective bargaining of transit districts, 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.

~~This bill would prohibit public sector transit employees of the San Francisco Bay Area Rapid Transit District from striking if a clause prohibiting striking is an element of a labor contract that an employee or employee organization has agreed to in an expired or previously written labor contract between the employees and the district.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

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

1 *SEC. 2. Section 3610 of the Government Code is amended to*
 2 *read:*

3 3610. The definitions set forth in this section shall govern the
 4 construction and meaning of the terms used in this chapter:

5 (a) “Local agency” means any city, county, special district, or
 6 other public entity in the state. It includes a charter city or a charter
 7 county.

8 (b) “Public transit transportation employee” means an employee
 9 of any transit transportation district of the state, an employee of
 10 the Golden Gate Bridge, Highway and Transportation District, and
 11 an employee state or of any local agency who is employed to work
 12 for transit service provided by that agency.

13 *SEC. 3. Section 3611 of the Government Code is amended to*
 14 *read:*

15 3611. Notwithstanding any other law, the following provisions
 16 shall govern disputes between exclusive bargaining representatives
 17 of public transit transportation employees and local agencies:

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

20 (b) Each party shall exchange contract proposals not less than
 21 90 days before the expiration of a contract, and shall be in formal
 22 collective bargaining not less than 60 days before that expiration.

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

25 (d) At the request of either party to a dispute, a conciliator from
 26 the California State Mediation and Conciliation Service shall be
 27 assigned to mediate the dispute and shall have access to all formal
 28 negotiations.

29 The provisions of this section shall not apply to any local agency
 30 subject to the provisions of Chapter 10 (commencing with Section
 31 3500) of Division 4.

32 *SEC. 4. Section 3612 of the Government Code is repealed.*

33 ~~3612. (a) Whenever in the opinion of the Governor, a~~
 34 ~~threatened or actual strike or lockout will, if permitted to occur or~~
 35 ~~continue, significantly disrupt public transportation services and~~
 36 ~~endanger the public’s health, safety, or welfare, and upon the~~
 37 ~~request of either party to the dispute, the Governor may appoint a~~
 38 ~~board to investigate the issues involved in the dispute and to make~~
 39 ~~a written report to him or her within seven days. The report shall~~
 40 ~~include a statement of the facts with respect to the dispute,~~

1 including the respective positions of the parties, but shall not
2 contain recommendations. The report shall be made available to
3 the public.

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

6 *SEC. 5. Section 3612 is added to the Government Code, to*
7 *read:*

8 *3612. Notwithstanding any other provision, a public*
9 *transportation employee or public transportation employee*
10 *organization shall not engage in, cause, instigate, encourage, or*
11 *condone a strike.*

12 *SEC. 6. Section 3613 of the Government Code is repealed.*

13 ~~3613. The board of investigation shall be composed of no more~~
14 ~~than five members, one of whom shall be designated by the~~
15 ~~Governor as chairperson. Members of the board shall receive one~~
16 ~~hundred dollars (\$100) for each day actually spent by them in the~~
17 ~~work of the board and shall receive their actual and necessary~~
18 ~~expenses incurred in the performance of their duties.~~

19 ~~The board may hold public hearings to ascertain the facts with~~
20 ~~respect to the causes and circumstances of the dispute. For the~~
21 ~~purpose of any hearing or investigation, the board may summon~~
22 ~~and subpoena witnesses, require the production of papers, books,~~
23 ~~accounts, reports, documents, records, and papers of any kind and~~
24 ~~description, to issue subpoenas, and to take all necessary means~~
25 ~~to compel the attendance of witnesses and procure testimony.~~

26 *SEC. 7. Section 3613 is added to the Government Code, to*
27 *read:*

28 *3613. (a) A public transportation employee who violates*
29 *Section 3612 or subdivision (c) is subject to removal or other*
30 *disciplinary action.*

31 *(b) A public transportation employee who is absent from work*
32 *without permission, or who abstains wholly or in part from the*
33 *full performance of his or her duties in his or her normal manner*
34 *without permission, on the date or dates when a strike occurs,*
35 *shall be presumed to have engaged in the strike on that date or*
36 *dates.*

37 *(c) A person who, on behalf of a public transportation employer,*
38 *exercises authority, supervision, or direction over a public*
39 *transportation employee shall not have the power to, and shall*

1 *not purport to, authorize, approve, condone, or consent to a strike*
2 *by a public transportation employee.*

3 *(d) If it appears that a violation of Section 3612 or subdivision*
4 *(c) may have occurred, within 60 days thereof the chief executive*
5 *officer of the employer shall, on the basis of any investigation or*
6 *affidavits as he or she may deem appropriate, determine whether*
7 *or not a violation has occurred and the date or dates of the*
8 *violation. If the chief executive officer determines that a violation*
9 *has occurred, he or she shall further determine, on the basis of*
10 *any further investigation and affidavits as he or she may deem*
11 *appropriate, the names of employees who committed the violation*
12 *and the date or dates thereof. The determination shall not be*
13 *deemed to be final until the completion of the procedures provided*
14 *for in this section.*

15 *(e) The chief executive officer shall notify each employee that*
16 *he or she has been determined, pursuant to subdivision (d), to have*
17 *committed a violation of Section 3612 or subdivision (c), the date*
18 *or dates of the violation, and of his or her right to object to the*
19 *determination pursuant to paragraph (h). The chief executive*
20 *officer shall also notify the chief financial officer of the names of*
21 *those employees and of the total number of days, or part thereof,*
22 *on which it has been determined that a violation occurred. Notice*
23 *to each employee shall be by personal service or by certified mail*
24 *to his or her last address filed with his or her employer.*

25 *(f) No compensation shall be paid by a public transportation*
26 *employer to a public transportation employee with respect to any*
27 *day or part thereof when the employee is engaged in a strike*
28 *against the employer. The chief financial officer of the employer*
29 *shall withhold that compensation upon receipt of the notice*
30 *provided by paragraph (e). Notwithstanding the failure to have*
31 *received the notice, no public transportation employee or officer*
32 *having knowledge that the employee has engaged in a strike shall*
33 *deliver or caused to be delivered to the employee any cash, check,*
34 *or payment that, in whole or in part, represents such compensation.*

35 *(g) No earlier than 30 days, nor later than 90 days, following*
36 *the date of a determination pursuant to subdivision (d), the chief*
37 *financial officer of the employer shall deduct from the*
38 *compensation of an employee found to have violated Section 3612*
39 *or subdivision (c) an amount equal to twice his or her daily rate*
40 *of pay for each day or part thereof that it was determined that he*

1 or she violated Section 3612 or subdivision (c). In computing the
2 deduction, credit shall be allowed for amounts already withheld
3 from the employee's compensation due to his or her absence from
4 work or other withholding of services. If the employee's annual
5 compensation is paid over a period of time that is less than 52
6 weeks, the period of time between the last day of the last payroll
7 period of the employment term in which the violation occurred
8 and the first day of the first payroll period of the next succeeding
9 employment term shall be disregarded and not counted in
10 computing the 30-to-90-day period.

11 (h) (1) A public transportation employee who has been
12 determined pursuant to subdivision (d) to have committed a
13 violation of Section 3612 or subdivision (c) may object to the
14 determination by filing with the chief executive officer of the public
15 transportation employer, within 20 days of the date on which notice
16 was served or mailed to him or her pursuant to paragraph (e), his
17 or her sworn affidavit under penalty of perjury, supported by
18 available documentary proof, containing a short and plain
19 statement of the facts upon which he or she relies to show that the
20 determination is incorrect.

21 (2) If the chief executive officer determines that the affidavit
22 and supporting proof establishes that the employee did not commit
23 the violation, he or she shall sustain the objection. If the chief
24 executive officer determines that the affidavit and supporting proof
25 fails to establish that the employee did not commit the violation,
26 he or she shall dismiss the objection and notify the employee.

27 (3) If the chief executive officer determines that the affidavit
28 and supporting proof raises a question of fact that, if resolved in
29 favor of the employee, would establish that the employee did not
30 commit the violation, he or she shall appoint an officer to conduct
31 a hearing at which the employee shall bear the burden of proof.
32 If the hearing officer determines, based upon a preponderance of
33 the evidence, that the employee did not commit the violation, the
34 chief executive officer shall notify the employee of that
35 determination. If the hearing officer determines that the employee
36 failed to establish that he or she did not commit the violation, the
37 chief executive officer shall notify the employee of that
38 determination.

39 (4) If the chief executive officer sustains the employee's
40 objection or the hearing officer determines that the employee did

1 *not violate this subdivision, the chief executive officer shall notify*
2 *the chief financial officer who shall thereupon cease all further*
3 *deductions from the employees's compensation and refund any*
4 *deductions previously made from the employee's compensation*
5 *pursuant subdivision (g).*

6 *SEC. 8. Section 3614 of the Government Code is repealed.*

7 ~~3614. Upon receiving a report from a board of investigation,~~
8 ~~the Governor may request the Attorney General to, and he or she~~
9 ~~shall, petition any court of competent jurisdiction to enjoin the~~
10 ~~strike or lockout or the continuing thereof, for a period of 60 days.~~
11 ~~The court shall issue an order enjoining the strike or lockout, or~~
12 ~~the continuation thereof, if the court finds that the threatened or~~
13 ~~actual strike or lockout, if permitted to occur or continue, will~~
14 ~~significantly disrupt public transportation services and endanger~~
15 ~~the public's health, safety, or welfare.~~

16 *SEC. 9. Section 3614 is added to the Government Code, to*
17 *read:*

18 *3614. (a) A public transportation employee organization that*
19 *is determined to have violated Section 3612 shall, in accordance*
20 *with the provisions of this section, forfeit the rights granted to*
21 *recognized employee organizations by Chapter 10 (commencing*
22 *with Section 3500) of Division 4 or Chapter 10.3 (commencing*
23 *with Section 3512) of Division 4.*

24 *(b) If circumstances indicate that an employee organization*
25 *may have violated Section 3612, the chief executive officer of the*
26 *public transportation employer shall notify the chief legal officer*
27 *of the public transportation employer and the Public Employment*
28 *Relations Board. The chief executive officer of the employer shall*
29 *provide the board and the chief legal officer of the public*
30 *transportation employer the facilities, assistance, and data to*
31 *enable those entities to carry out their duties under this section.*

32 *(c) The chief legal officer of the public transportation employer,*
33 *or the board on its own motion, shall initiate proceedings before*
34 *the board to determine whether the violation occurred. Proceedings*
35 *against a public transportation employee organization under this*
36 *section shall be commenced by serving the employee organization*
37 *with a written notice and a copy of the charges. If the proceedings*
38 *are initiated by the board, a copy of the notice and charges shall*
39 *also be served upon the public transportation employer. The*
40 *employee organization shall have eight days to answer the charges.*

1 *The board shall promptly hold a hearing at which the employer*
2 *and the employee organization shall be permitted to be represented*
3 *by counsel and to summon witnesses in their behalf. Compliance*
4 *with the technical rules of evidence shall not be required.*

5 *(d) In determining whether an employee organization has*
6 *violated Section 3612, the board shall consider whether the*
7 *employee organization called the strike or tried to prevent it, and*
8 *whether the employee organization made a good faith effort to end*
9 *the strike.*

10 *(e) (1) If the board determines that an employee organization*
11 *violated Section 3612, the board shall order forfeiture of the rights*
12 *granted to recognized employee organizations by Chapter 10*
13 *(commencing with Section 3500) of Division 4 or Chapter 10.3*
14 *(commencing with Section 3512) of Division 4 for a specified*
15 *period of time in its discretion determines, or for an indefinite*
16 *period of time, subject to restoration upon application to the board.*

17 *(2) In fixing the duration of the forfeiture, the board shall*
18 *consider all the relevant facts and circumstances, including, but*
19 *not limited to, the extent of any intentional violation of Section*
20 *3612; the impact of the strike on the public health, safety, and*
21 *welfare of the community; and the financial resources of the*
22 *employee organization. The board may also consider whether the*
23 *employee organization or the public transportation employer, or*
24 *a representative thereof, refused to submit to mediation and*
25 *fact-finding procedures and whether, if alleged by the employee*
26 *organization, the public transportation employer, or a*
27 *representative thereof, engaged in acts of extreme provocation so*
28 *as to detract from the responsibility of the employee organization*
29 *for the strike.*

30 *(3) Notice of an application for reinstatement of rights forfeited*
31 *pursuant to this subdivision shall be send to all interested parties*
32 *and supported by proof of good faith compliance with the*
33 *prohibitions of Section 3612 since the date of the violation. That*
34 *proof may include, but is not limited to, the successful negotiation*
35 *of a contract covering the employees in the unit affected by the*
36 *violation.*

37 *(f) After three years, an employee organization that forfeited*
38 *the rights granted to recognized employee organizations by*
39 *Chapter 10 (commencing with Section 3500) of Division 4 or*
40 *Chapter 10.3 (commencing with Section 3512) of Division 4*

1 pursuant to this section may have those rights reinstated by the
2 Legislature.

3 *SEC. 10. Section 3615 of the Government Code is repealed.*

4 ~~3615. If the charter or establishing legislation of the local~~
5 ~~agency establishes a time period for the negotiating or meeting~~
6 ~~and conferring process which is shorter than 60 days, the provisions~~
7 ~~of this chapter shall not be applicable to any disputes which may~~
8 ~~arise between the exclusive bargaining representative of public~~
9 ~~transit employees and the local agency.~~

10 *SEC. 11. Section 3615 is added to the Government Code, to*
11 *read:*

12 *3615. Within 60 days of the end of a strike, the chief executive*
13 *officer of the public transportation employer shall prepare a*
14 *written report, which shall be made public, that contains the*
15 *following information:*

16 *(a) The circumstances surrounding the commencement of the*
17 *strike.*

18 *(b) The efforts made to terminate the strike.*

19 *(c) The names of public transportation employees who the chief*
20 *executive officer of the public transportation employer has reason*
21 *to believe were responsible for causing, instigating, or encouraging*
22 *the strike.*

23 *(d) The sanctions imposed or proceedings pending against those*
24 *public transportation employees related to the varying degrees of*
25 *actual or suspected individual responsibility.*

26 *SEC. 12. Section 3616 of the Government Code is repealed.*

27 ~~3616. Except as expressly provided by subdivision (b) of~~
28 ~~Section 3612 and Section 3614, nothing in this chapter shall be~~
29 ~~construed to grant or deprive employees of a right to strike.~~

30 *SEC. 13. No reimbursement is required by this act pursuant*
31 *to Section 6 of Article XIII B of the California Constitution for*
32 *certain costs that may be incurred by a local agency or school*
33 *district because, in that regard, this act creates a new crime or*
34 *infraction, eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section 17556 of*
36 *the Government Code, or changes the definition of a crime within*
37 *the meaning of Section 6 of Article XIII B of the California*
38 *Constitution.*

39 *However, if the Commission on State Mandates determines that*
40 *this act contains other costs mandated by the state, reimbursement*

1 *to local agencies and school districts for those costs shall be made*
2 *pursuant to Part 7 (commencing with Section 17500) of Division*
3 *4 of Title 2 of the Government Code.*

4 SECTION 1. ~~Section 3616 of the Government Code is amended~~
5 ~~to read:~~

6 ~~3616. Except as expressly provided by subdivision (b) of~~
7 ~~Section 3612, and Sections 3614 and 3616.1, nothing in this chapter~~
8 ~~shall be construed to grant or deprive employees of a right to strike.~~

9 SEC. 2. ~~Section 3616.1 is added to the Government Code, to~~
10 ~~read:~~

11 ~~3616.1. (a) This section shall apply to employees of the San~~
12 ~~Francisco Bay Area Rapid Transit District as created in Section~~
13 ~~28600 of the Public Utilities Code.~~

14 ~~(b) Notwithstanding any other law, public sector transit~~
15 ~~employees described in subdivision (a) shall not strike if a clause~~
16 ~~prohibiting striking is an element of a labor contract that an~~
17 ~~employee or employee organization has agreed to in an expired~~
18 ~~or previously written labor contract between the employees and~~
19 ~~the district.~~

20 SEC. 3. ~~This act is an urgency statute necessary for the~~
21 ~~immediate preservation of the public peace, health, or safety within~~
22 ~~the meaning of Article IV of the Constitution and shall go into~~
23 ~~immediate effect. The facts constituting the necessity are:~~

24 ~~In order to facilitate the orderly administration of transportation~~
25 ~~of San Francisco Bay area citizens and visitors, to avoid the~~
26 ~~imminent threat to public health and safety, and to ensure that~~
27 ~~commuters are not stranded and that lost worker productivity is~~
28 ~~kept at a minimum, it is necessary that this act take effect~~
29 ~~immediately.~~