

Date of Hearing: June 17, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

SB 827 (Glazer) – As Amended January 11, 2024

SENATE VOTE: 39-0

SUBJECT: San Francisco Bay Area Rapid Transit District: Office of the BART Inspector General

SUMMARY: Provides that the San Francisco Bay Area Rapid Transit District (BART) Inspector General (BART IG), is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program including access to BART facilities and the authority to examine all records and other property.

Specifically, **this bill:**

- 1) Provides that the BART IG has access and authority to examine all records, files, documents, accounts, reports, correspondence, or other property of BART and external entities that perform work for them:
 - a) Requires any officer or employee of BART or entity having these records or property in their possession, under their control, or otherwise having access to them, to permit access to, and examination and reproduction of, the records or property upon the request of the BART IG or the IG's authorized representative;
 - b) Authorizes the BART IG to gain access to confidential records or property that are obtained in connection with any audit, investigation, or review conducted, unless a law specifically refers to and precludes it;
 - c) Requires that any information or documents obtained in connection with any audit, evaluation, investigation, or review conducted by the BART IG are subject to any limitations on release of the information or documents as may apply to an employee or officer of BART or external entity that provided the information or documents.
 - d) Specifies that providing confidential information, including, but not limited to; and, confidential information that is subject to a privilege, does not constitute a waiver of that privilege.
- 2) Requires the BART IG to notify an employee of their right to be accompanied by a representative from their employing organization if they are the subject of an investigation or may be subject to discipline or other adverse consequences as the result of an investigation.
- 3) Prohibits the BART IG from destroying any papers or memoranda used to support a completed audit sooner than three years after the audit report is released to the public.
- 4) States that all books, papers, records, and correspondence of the office pertaining to its work are public records and subject to the California Public Records Act, except:
 - a) Personal papers and correspondence of any person providing assistance to the BART IG when that person has requested in writing that their papers and correspondence be kept

private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon the order of the BART IG;

- b) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed;
- c) Papers, correspondence, or memoranda pertaining to any audit that has been completed, which papers, correspondence, or memoranda are not used in support of any report resulting from the audit;
- d) Any survey of public employees that the BART IG determines should be kept confidential to deter retaliation if the public employees respond to the survey; and,
- e) Any record of an investigation, including, but not limited to, all investigative files and work product, except that the BART IG, whenever the BART IG determines it necessary to serve the interests of the state, may issue a public report of an investigation that has substantiated an improper governmental activity, as defined in Section 8547.2 of the Government Code, keeping confidential the identity of the employee or employees involved. The BART IG may also release any findings or evidence supporting any findings resulting from an investigation conducted pursuant to this article whenever the BART IG determines it necessary to serve the interests of the state.

EXISTING LAW:

- 1) Establishes the BART, governed by a board of directors (Board), with specified powers and duties relative to the construction and operation of a rapid transit system. (Public Utilities Code (PUC) 28500)
- 2) Creates an independent Office of the BART IG to ensure BART makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable laws. (PUC 28840)
 - a) Requires the Board to provide three nominations to the Governor and requires the Governor to appoint one of the three nominees to serve as the BART IG for an initial four-year term, with an option to renew the term at will;
 - b) Authorizes the Board to remove the BART IG from office if either a two-thirds majority of the members of the Board votes for their removal or if the BART IG violates federal or state law or regulation, a local ordinance, or any policy or practice related to ethical practices, including but not limited to, the acceptance of gifts or contributions; and,
 - c) Requires the reason for removal of the BART IG be stated in writing, include the basis for removal, and posted on BART's website.
- 3) Specifies the duties and responsibilities of the BART IG including, among others, conducting, supervising, and coordinating audits and investigations relating to the district's programs and operations. (PUC 28841)
- 4) Specifies that any investigatory file compiled by the BART IG is an investigatory file compiled by a local law enforcement agency subject to disclosure pursuant to the California Public Records Act. (PUC 28844)

FISCAL EFFECT: Unknown

COMMENTS: Independent inspector generals and auditors provide essential accountability and transparency over government programs and operations through objective analysis. Ensuring their independence is critical to their effectiveness and credibility. This bill seeks to strengthen the independence of the BART IG and provide the BART IG with the powers and authority necessary to effectively carry out the mission of the Office of the BART IG. The bill enacts various changes modeled after current laws governing existing inspector generals, such as the California State Auditor (Auditor), and nationally recognized best practices or standards for auditors and inspector generals, including the Government Auditing Standards published by the Comptroller General of the United States.

Background. BART is a special district that consists of Alameda County, Contra Costa County, and the City and County of San Francisco. BART connects San Francisco with cities in the East Bay and suburbs in northern San Mateo County operating on five lines, 131 miles of track with 50 stations in five counties. With an average pre-COVID-19 weekday daily ridership of about 405,000 passengers, BART is the fifth-busiest heavy rail rapid transit system in the nation.

SB 595 (Beall), Chapter 650, Statutes of 2017 authorized Regional Measure 3 (RM3) and created the BART IG. Voters approved the measure in 2018, which raised toll rates on the Bay Area's seven state-owned bridges located in the City and County of San Francisco; and Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma Counties.

The BART IG was established to ensure BART makes effective use of bridge toll and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws. Duties and responsibilities for the BART IG include, among others, conducting fraud and waste investigations, conducting audits, making recommendations to improve the efficiency and effectiveness of BART programs and operations, identifying opportunities to improve the data used to determine project resource allocations, and identifying and recommending best practices in the delivery of capital projects.

SB 595 also requires the Bay Area Toll Authority (BATA) to provide \$1 million annually from an allocation of RM3 revenue to fund the operations of the BART IG. It allows BATA to increase funding in the second and subsequent years of operation of the office, to the extent the BART IG requests and justifies the need for funds and such requests can be accommodated in BATA's budget.

New IG Powers and Authority. This bill provides the BART IG with the statutory authority and powers needed to be an independent inspector general. Many of the provisions of the bill are modeled after existing provisions of law related to other existing inspector generals and their authority and powers, such as the State Auditor, Inspector General of the Department of Transportation (CalTrans IG), Inspector General of the California Department of Corrections (CDCR IG), and Inspector General of the Los Angeles County Metropolitan Transportation Authority (LACMTA IG). Specifically, the bill provides that the BART IG shall have the independence necessary to conduct all of its audits and investigations in conformity with national standards and freedom from any impairments that may restrict the office's abilities.

This authority this bill grants is similar to the Auditor's authority under Section 8545.2 of the Government Code, which provides the Auditor broad access to records of a public entity being audited, and the CalTrans IG's authority under Section 14461 of the Government Code, which specifically authorizes access to examine all records and properties of the Department of

Transportation and external entities that receive transportation funds from the department, even if confidential or privileged. The CDCR IG has similar authority to the Auditor and the LACMTA IG has authority to unrestricted access to all MTA records and prompt access to officers, employees, or contractors as necessary. (Pen. Code § 6126.5; LACMTA Admin, Code § 2-20-010)

Weingarten rights. Currently, a represented BART employee has the right to be represented by their exclusive representative at an investigatory interview if the employee reasonably believes that it might result in disciplinary action. Under existing law this is commonly known as a “Weingarten right” as it is derived from a 1975 U.S. Supreme Court Case *NLRB v. J. Weingarten, Inc.* (420 U.S. 251.) that held a represented employee had certain rights in regards to representation in an investigatory interview. Amendments adopted in the Senate require the BART IG to notify an employee of their Weingarten rights.

According to the author, “Inspectors general are supposed to be independent watchdogs of the agency with which they serve. Unfortunately, BART’s Board of Directors and management has repeatedly refused to provide the Inspector General (IG) with the full power and authority the job requires. An Alameda County Grand Jury found in June 2022, BART obstructed the independent watchdog. “From the beginning,” the grand jury report found, BART’s management, Board of Directors and labor unions “sought to undermine Inspector General Harriet Richardson’s role by limiting access to information and employees.” This bill would designate powers and protections already enjoyed by the California Department of Transportation IG to the BART IG to ensure that the office has the adequate authority to provide its voter-mandated oversight. The changes proposed in this bill are modeled after existing language in the Government Code and include nationally recognized best practices for auditors and inspectors general. With these changes, the residents of the Bay Area – BART’s rider base and primary source of revenue – could be confident that the IG can exercise the independent oversight the Legislature and voters intended.”

Supporters of the bill state, “SB 827 seeks to align the duties and responsibilities of the BART OIG with similar public offices including the Los Angeles County Metropolitan Authority Office of the Inspector General, the State Auditor, and California Department of Transportation (Caltrans) Independent Office of Audits and Investigations. The bill provides the OIG with explicit access to all records, documents, accounts, reports, communication, or other property of BART or its third-party contractors, and further clarifies the office’s authority to conduct independent oversight of BART’s programs and operations.”

Opponents of the bill state, “SB 827 as this empowers OIG overreach by giving the Office the authority to interrogate employees or officers of the district involved in an audit, investigation, or review without a traceable guarantee that they have access to representation by their respective unions. While the amendments would require that the OIG notify the employee of their existing Weingarten rights to union representation during questioning if that member is the subject of an investigation or may be disciplined because of the investigation, this amendment remains inferior to the current agreement between workers represented by AFSCME and BART, which also requires notification to the union.”

Related and previous legislation: SB 1488 (Glazer of 2022) was vetoed by Governor Newsom stating “While I agree with the intent of the legislation and appreciate the author's collaboration with the BART Board on many of the bill's provisions, I understand there is one unresolved issue

regarding the notification of all represented employees of their right to representation. I encourage the author to work with the IG and the BART Board to resolve this remaining issue in either a charter or future legislation”.

SB 595 (Beall, Chapter, 650, Statutes of 2017) authorized a special election in the Bay Area, known as Regional Measure 3, to consider a proposed increase in the amount of the toll rate charged on the state-owned toll bridges in that area to be used for specified projects and programs, and also created the Independent Office of the BART IG within BART, with specified powers and responsibilities for audits and investigations.

REGISTERED SUPPORT / OPPOSITION:**Support**

Bay Area Council
Contra Costa Transportation Authority
Livable California
San Francisco Bay Area Rapid Transit District (support if amended)

Opposition

American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO

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