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**SENATE COMMITTEE ON TRANSPORTATION**  
**Senator Lena Gonzalez, Chair**  
**2023 - 2024 Regular**

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**Bill No:** SB 827 **Hearing Date:** 1/9/2024  
**Author:** Glazer  
**Version:** 2/17/2023  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Randy Chinn

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

**DIGEST:** This bill revises the authority of the San Francisco Bay Area Rapid Transit District (BART) Inspector General (IG). Clarifies the IG's access to BART facilities, and the authority to examine records and other property, as specified. Creates a misdemeanor offense, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both that imprisonment and fine, for actions, as specified, obstructing the IG in the performance of an audit or investigation.

**ANALYSIS:**

*NOTE: This bill was heard on April 11, 2023 and failed passage 7-1. Reconsideration was granted. The bill is unchanged.*

*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.
- 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.
- 3) Requires the BART Board to nominate three people to the Governor and requires the Governor to appoint one of the three to serve as the IG for an initial four-year term, with an option to renew the term at will.
- 4) Authorizes the BART Board to remove the IG from office if either a 2/3rds majority of the members of the Board votes for removal or if the 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. Requires the reason for removal of the IG be stated in writing, include the basis for removal, and posted on BART's website.

- 5) Specifies the duties and responsibilities of the IG including, among others, conducting, supervising, and coordinating audits and investigations relating to the district's programs and operations.
- 6) Provides for the IG to receive \$1 million from an allocation of bridge toll revenue from the Bay Area Toll Authority (BATA), authorizes BATA to increase that amount, as specified.
- 7) Requires the Board to appoint a general manager who is responsible, subject to the direction and control of the Board, for the acquisition, construction, maintenance, and operation of the facilities of the district and also for the administration of the business affairs of the district.

*This bill:*

- 1) Stipulates that the IG is vested with the full authority to exercise all responsibility for mainlining a full scope, independent, and objective audit and investigation program, as specified.
- 2) Requires BART to give the IG 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.
- 3) Authorizes the IG to enter any BART office or facility and access, examine and reproduce during regular business hours all records, files, documents, accounts, reports, vouchers, correspondence files, and all other records for any audit or investigation.
- 4) 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 IG or the IG's authorized representative.
- 5) Authorizes the 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.

- 6) Requires that any information or documents obtained in connection with any audit, evaluation, investigation, or review conducted by the 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.
- 7) States that providing confidential information, including, but not limited to, confidential information that is subject to a privilege, does not constitute a waiver of that privilege.
- 8) Defines “confidential records or property” as records or property that may lawfully be kept confidential as a result of a statutory or common law privilege or any other law.
- 9) Prohibits the 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.
- 10) Stipulates that all books, papers, records, and correspondence of the IG pertaining to its work are public records, as specified, and shall be filed at any of the regularly maintained offices of the IG, except the following:
  - a) Personal papers and correspondence of any person providing assistance to the IG when that person has requested in writing that their papers and correspondence be kept private and confidential. Clarifies that those papers and correspondence will become public records if the written request is withdrawn, or upon the order of the 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 IG determines should be kept confidential to deter retaliation if the public employees respond to the survey.
  - e) Any record of an investigation, including, but not limited to, all investigative files and work product, except that the IG, whenever the 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, keeping confidential the identity of the employee or employees involved. Authorizes the IG to release any findings or evidence supporting any findings resulting from an investigation conducted pursuant to this article whenever the IG determines it necessary to serve the interests of the state.

- 11) Creates a misdemeanor offense, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both that imprisonment and fine, for any of the following:
  - a) Failing or refusing to permit the examination of, access to, or reproduction of the records, files, documents, accounts, reports, correspondence, cash drawers, or cash of their office by the IG or in any way interfere with such examination conducted pursuant to this article.
  - b) Interfering, intending to deceive or defraud, or obstructing the IG in the performance of an audit, evaluation, investigation, or review.
  - c) Manipulating, correcting, altering, or changing records, documents, accounts, reports, or correspondence before or during any audit, evaluation, investigation, or review conducted.
  - d) Distributing, reproducing, releasing, or failing to safeguard confidential draft documents exchanged between IG and the entity subject to the audit, evaluation, investigation, or review conducted before the release of the final report and without the IG's express permission.
- 12) Makes a finding to demonstrate the need to impose a limitation on the public's right of access to certain meetings and writings, stating that the need for the IG to fully examine and evaluate records, files, documents, accounts, reports, correspondence, and all other property of BART and external entities that perform work for BART outweighs the interest in public disclosure of information obtained by the IG in connection with its activities.

#### COMMENTS:

- 1) *Purpose of the bill.* 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 that she requires to do her job. An Alameda County Grand Jury found in June

2022 that 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 Caltrans 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 that was intended when SB 595 was enacted in 2017 and later ratified by the voters.”

- 2) *BART*. BART is a special district created by the State of California consisting 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.

Since the pandemic, BART and other transit operators in the state have experienced huge declines in ridership. In 2022, BART’s ridership was only 29% of 2019 levels, with the continuance of remote work being a major factor. Throughout the pandemic, California’s transit operators sustained service with help from federal COVID-19 relief packages, with BART receiving roughly \$1.6 billion. However, with federal funds running out, BART and others are looking to the state for financial assistance. Specifically, BART is predicting operating deficits of \$140 million by fiscal year 2024-2025 and up to \$290 million for fiscal year 2025-2026. The Legislature is currently discussing possible transit operating assistance as part of the state budget process.

- 3) *BART IG*. Senate Bill 595 (Beall, Chapter 650, Statutes of 2017), which authorized Regional Measure 3 (RM3), also created the BART IG. The measure, which raised toll rates on the Bay Area’s seven state-owned bridges, was approved by voters in 2018 in the City and County of San Francisco, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma Counties.

The 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 the 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.

- 4) *BART IG struggled to get up and running.* In June 2019, Governor Newsom appointed Harriet Richardson as the first BART IG. The Office of the IG Fiscal Year 2022 Annual Report says that since its inception, the office has received 133 complaints and 99 cases have been resolved. The most common allegations have been complaints alleging fraud, including theft of time and contracting fraud; unprofessional conduct, including conflict of interest and harassment; and compliance, mostly policy and procedure noncompliance.

Additionally, as detailed in the IG Fiscal Year 2021 Annual Report, as one of the first tasks of her office, the IG conducted a district-wide risk assessment to help develop an audit plan by understanding areas vulnerable to fraud, waste, or abuse, and identifying opportunities to improve efficiency and effectiveness in the use of resources.

However, Ms. Richardson detailed issues getting the office running, specifically the development and approval of a charter for the office to clarify roles and responsibilities. The charter was built on both the BART IG statute and additional requirements and authority given to other IGs in California and throughout the nation. The IG presented the charter to the BART Board of Directors in January 2021.

According to the Fiscal Year 2021 Annual Report, "the Board discussed our charter but continued it to a future meeting asking that we have discussions with labor unions before returning to the Board to adopt it. At the time, we understood the Board's request to be that we meet with union leaders to explain what our work entails and the standards that guide it, and for us to address the unions' concerns about how we would engage with represented employees who are under investigation. We were surprised, then, when the labor unions presented us with revisions to our charter, including major changes that would

alter the intent of the legislation that created our office and create independence impairments.”

Further, “we discussed the unions’ proposed revisions in detail and accepted changes they proposed that allowed us to stay within the confines of the law and our professional standards. However, accepting some of their revisions would mean that we would be noncompliant with the ethical principles and independence standard that the Government Code requires we follow, as well as our statutory mandates in the Public Utilities Code, and would remove the authority traditionally required of an OIG such that we cannot work independently. We, therefore, declined to accept some of the changes.” The charter was not adopted.

- 5) *Previous legislation to increase BART IG’s authority.* In 2022, SB 1488 (Glazer) was introduced to revise the duties and responsibilities of the IG based upon statutory powers and explicit authorities of other IG offices, including the California State Auditor, the California Department of Transportation (Caltrans) IG, and the Los Angeles Metropolitan Transportation Authority (LA Metro) IG.

Specifically, the bill would have given the IG authority to identify “abuse” in addition to waste and fraud, identify best practices in the delivery of programs, and engage in fraud prevention activities, including training employees to identify and report fraud. The bill would have clarified the IG’s access to BART facilities and employees, officers, contractors and the authority to examine records and other property. Additionally, this bill would have given the IG authority to issue subpoenas for witnesses, the production of records, files and documents; and the making of sworn statements.

Finally, as a follow up to any audit or investigation, SB 1488 would have required BART to respond to findings and recommendations made by the IG in no longer than 30 days.

BART and the affected labor representatives had concerns about the bill and worked with the author on amendments as it moved through the process. One of the main concerns was the ability for the IG to have access to and authority to meet with any employee or officer or contractor as necessary to complete an audit, investigation, or review. Currently, a represented BART employee has the right to be represented by their exclusive representative as an investigatory interview that the employee reasonably agrees might result in disciplinary action, commonly known as a “Weingarten right.”

BART and the affected labor representatives wanted to clarify that when the IG meets with any represented employee to complete an audit, investigation, or

review the IG would comply with “all the rights afforded to employees under current collective bargaining agreements.”

Labor representatives further clarified their concerns that the bill “substantially undermines existing collective bargaining agreements with respect to represented employees’ rights during an investigation, applicable notice requirements, and the union’s ability to effectively represent its members.”

Further, “we believe that for investigations which involve represented employees or bargaining unit work, the inspector general, must seek prior cooperation and assistance of the Union in the investigations to ensure our members’ rights are observed.”

It is unclear how this language may affect the IG’s ability to conduct work confidentially even if the employee is not the subject of an investigation but possibly a complainant or witness. However, in response to some of the concerns, amendments were taken to make clarifying changes to the authority of the IG, including explicitly stating that employees are afforded Weingarten rights.

SB 1488 was approved by Legislature, but was ultimately vetoed by Governor Newsom. In his veto message, the Governor stated, “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.”

- 6) *BART IG leaves post early.* In March 2023, four months before the end of her term, BART IG Harriet Richardson resigned from her post. In the Fiscal Year 2022 BART IG Annual Report, Ms. Richardson states, “Although the accomplishments are ones that my team and I take great pride in, we are discouraged by BART’s attempts to diminish our work. Words cannot fully express how demeaning it is to have our credibility challenged, and to face attempts to remove our ability to do our work in compliance with the professional standards that we hold in high regard.”
- 7) *Alameda County Grand Jury also concerned with treatment of the BART IG.* The Alameda County Grand Jury, which is tasked with investigating the operations of various officers, departments, and agencies in Alameda County, looked into the issues surrounding the BART IG. In its 2021-2022 Final



Report, the Grand Jury states, “The Grand Jury found that from the beginning, both BART’s board and management impeded the IG’s efforts to conduct independent oversight. In addition, board members and management supported union efforts to limit OIG access to their members, which stymied OIG independence and the confidentiality of investigations.”

BART responded to the Grand Jury report disagreeing with many of its findings, noting that management has been receptive and responsive to recommendations made by the IG. Specifically, BART cites accepting 40 of 47 recent recommendations during the IG’s audits and investigations, and that the BART Board has created an Audit Committee, which includes two public members and meets on a regular basis. BART also clarified that, “The Board and management are neutral to the conditions of engagement between the labor unions and the OIG.”

- 8) *SB 827 takes a more narrow approach to increasing BART IG authority.* As noted by the author, the changes included in the proposed bill are modeled after existing IG authorities, specifically, the existing authorities afforded by the Caltrans IG. The bill is a slimmed-down version of its predecessor, and mainly focuses on the IG’s authority to have access to facilities, records, and documents needed for the performance of the IG’s duties. Specifically, the bill clarifies the purpose of the IG by stating that the IG is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program. The bill also clarifies the IG’s access and authority to examine all records, files, documents, accounts, reports, correspondence, and other property of BART and external entities, and requires any BART employee or external entity to permit access.

Additionally, the bill details what types of information used by the IG would remain confidential. Finally, the bill creates a misdemeanor offense punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000 for obstructing the IG in the performance of an audit or investigation; failing or refusing to permit the IG’s access to records, files, and other relevant materials; manipulating or changing records, documents, and correspondence; or releasing or failing to safeguard confidential documents.

Unlike, SB 1488, the bill does not specifically expand the current duties and responsibilities of the IG, nor require the BART general manager to respond to the IG’s findings within a certain time period. Additionally, SB 827 does not give the IG explicit authority to meet with any employee or officer or contractor necessary to complete an audit or investigation, nor does it provide for subpoena authority.

Writing in support of the bill, the Bay Area Council states, “Since its conception, BART OIG experienced challenges when carrying out the duties and responsibilities of the position, which include conducting audits as well as fraud and waste investigations, identifying and recommending best practices in the delivery of capital projects, and making recommendations to improve the efficiency and effectiveness of BART programs and operations, among others. The recurring challenges faced by the former BART IG have been documented and distributed in verbal and written reports to the Legislature and BART Board of Directors.

“With BART struggling to recover its ridership and facing the daunting potential of reaching its “fiscal cliff” as early as January 2025, it is more important than ever that efficiencies are identified wherever possible and that every dollar is spent appropriately. Inherent in the process of maximizing efficiencies are strong, stable layers of accountability, and the BART IG position is no exception. Now is the time to ensure the full authority of the position of the BART IG.”

- 9) *Concerns remain.* Both BART and affected labor representatives remain concerned with expansions of authority for the BART IG called for in SB 827.

BART submitted comments to the author, writing with a “support if amended” position. Specifically, BART detailed their concerns about two issues.

**“Misdemeanor Penalty --** SB 827 would make it a misdemeanor, punishable by imprisonment in a county jail for up to six months and/or a fine up to \$1,000, to obstruct the OIG in the performance of an audit, evaluation, investigation, or review. While this language may be used as a deterrent and a means to enforce the compliance of BART employees and contractors, BART has concerns with a criminal penalty approach. For example, a misdemeanor may require an individual to seek outside legal counsel and appear in court for a trial, potentially resulting in a criminal record that could impact future employment or professional licensing. BART would like to work with you and the OIG on amendments to remove the proposed criminal charge and insert language granting the OIG subpoena authority.

**“Jurisdiction of Other Audit and Oversight Entities --** Last year, you agreed to amendments within SB 1488 that clearly define the scope of the OIG as to not conflict with other audit and oversight offices, such as BART’s Office of Civil Rights and the Office of the Independent Police Auditor. This language is not included within SB 827 and BART seeks to work with you and OIG on

similar amendments to address the original jurisdiction, undue influence, and the independence of these three separate entities.”

Writing in opposition to the bill, the Service Employees International Union (SEIU) California states, “The Office of the BART Inspector General was created by legislation and Regional Measure 3 in 2018 after agreement from all parties involved. SB 827 throws out that agreement and proposes changes to the original authorization without the support of labor or management at BART.

“We appreciate the author's efforts to narrow this bill from the vetoed SB 1488 (Glazer) from last year, but the changes do not go far enough. Although the provisions of SB 827 mirror existing authority under Caltrans law, BART operates under the authority of an elected Board of Directors responsible for much of what is proposed to be assigned to the OIG under this bill.

“BART and interested parties are in the process of amending their charter to include many of the best practices suggested by this legislation, but replacing the threat to employee exercise of rights with the possibility of criminal referral is not an improvement. The BART contract already subjects any employee who interferes with an investigation with discipline and potential dismissal. SEIU asks that any further legislation await the outcome of the charter amendment procedures. SB 827 interferes with and supersedes the collective bargaining rights of BART employees.”

#### 10) *Updates Since 2023 Hearing*

**Bigger Budget** -- In early 2023 both the IG and the Alameda County Grand Jury were concerned about inadequate funding. The IG’s Fiscal Year 2022 Annual Report notes, “After conducting a thorough analysis of our funding needs, we determined that we require an additional \$1.7 million to \$1.8 million in annual funding to achieve our objectives and ensure that we function as an independent office. With that information, we requested that the Bay Area Toll Authority (BATA) increase our budget to \$2.7 million and \$2.8 million in fiscal years 2023 and 2024, respectively.” This request has been granted beginning Fiscal Year 2024.

**New IG, Better Relations** -- In May 2023 Governor Newsom appointed a new Inspector General, Claudette Biemeret. In her Fiscal Year 2023 Annual Report she notes a number of achievements including closing 35 investigations and releasing 21 reports, including an audit of BART’s financial structure. This report did not raise concerns over the IG’s ability to carry out her

responsibilities nor was it critical of BART management, unlike the 2022 Annual Report.

**Charter Still Pending** -- As noted in comment 4 above, another concern is the lack of a charter for the IG. The charter, which has been pending since 2021, describes and clarifies the IG's roles and responsibilities. There are reports that the charter is finally close to approval by BART's board, but that could not be verified by the Committee.

**More Money, More Accountability** – Bay Area transit agencies are considering asking the public for additional funding to make up for lower fare revenue and higher expenses in the COVID aftermath. Recent polling indicates that the public is not inclined to support more funding without better service and greater accountability, which is supported by a robust and independent IG.

11) *Double referral*. SB 827 is double referred to the Senate Judiciary Committee.

#### **RELATED/PREVIOUS LEGISLATION:**

**SB 1488 (Glazer, 2022)** – Would have revised the duties and responsibilities of the BART IG and provided that the IG shall have the independence necessary to conduct all of its audits and investigations in conformity with specified standards. Clarified the IG's access to BART facilities and employees, officers, contractors and the authority to examine records and other property, as specified. *This bill was vetoed by Governor Newsom.*

**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. Also created the Independent Office of the BART IG within BART, with specified powers and responsibilities for audits and investigations. Also provided for the IG to receive \$1,000,000 from an allocation of bridge toll revenue, in the second and subsequent years of operation of the office, authorized an increase that amount.

**SB 87 (Committee on Budget and Fiscal Review, Chapter 32, Statues of 2019)** – The Transportation Budget Trailer bill added new powers and duties to the Caltrans Office of Audits and Investigations.

**SB 1 (Beall, Chapter 5, Statutes of 2017)** – Provided more the \$5 billion annually in new funding for transportation infrastructure. Also created the Independent Office of Audits and Investigations within Caltrans, with specified powers and duties.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before 5:00pm on Wednesday, January 3, 2024.)

**SUPPORT:**

Association of Local Government Auditors  
Bay Area Council  
Livable California  
Mission Street Neighbors

**SUPPORT IF AMENDED:**

Bay Area Transportation Working Group  
San Francisco Bay Area Rapid Transit District (BART)

**OPPOSITION:**

American Federation of State, County, and Municipal Employees (AFSCME)  
California Conference Board of The Amalgamated Transit Union  
Service Employees International Union (SEIU) California

**-- END --**