

13 MAR 21 PM 3:12

**CITY OF OAKLAND**  
**BILL ANALYSIS**



**Date:** March 21, 2013

**Bill Number:** SB 140

**Bill Author:** Senators Mark Leno and Darrell Steinberg

**DEPARTMENT INFORMATION**

**Contact:** Oliver Luby

**Department:** Office of Dan Kalb, Councilmember, District 1

**Telephone:** 510-238-7013 **Fax:** 510-238-69130 **email:** oluby@oaklandnet.com

**RECOMMENDED POSITION:** Support

**Summary of the Bill:** SB 140 will allow the Department of Justice to use \$24 million in existing Department resources from the Dealer Record of Sale Account (DRoS) to provide for greater investigative capacity of the Armed Prohibited Persons System (APPS) which has identified over 39,000 handguns and assault weapons in the hands of more than 20,000 prohibited persons, including those with felony convictions. SB 140 will facilitate aggressive enforcement and elimination of the APPS backlog which presents a substantial risk to public safety. The bill also requires DOJ to report to the Legislature on their ongoing efforts to reduce the APPS backlog including:

- The degree to which the backlog has been reduced or eliminated
- The number of weapons confiscated through APPS enforcement efforts
- The number of agents hired by DOJ to conduct APPS enforcement
- The number of individuals cleared off of the APPS list annually
- The number of individuals added to the APPS list annually
- Breakdown of the composition of APPS prohibitors for listed persons
- Number of contacts made during APPS enforcement efforts
- Information regarding collaboration with local law enforcement

**Positive Factors for Oakland:** DOJ provides local law enforcement with access to the list of prohibited persons and has trained more than 1,300 officers in the use of APPS. Although the Department of Justice (DOJ) and local law enforcement have

the authority to confiscate weapons held by prohibited persons, neither DOJ nor the locals currently have the resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of the newly prohibited. Passage of this bill will provide local jurisdictions with the benefit of enhanced APPS enforcement.

**Negative Factors for Oakland: None**

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

**Critical** (top priority for City lobbyist, city position required ASAP)

**Very Important** (priority for City lobbyist, city position necessary)

**Somewhat Important** (City position desirable if time and resources are available)

**Minimal or**  **None** (do not review with City Council, position not required)

**Known support:** (Verified 3/6/13)

Kamala D. Harris, Attorney General

AFSCME

Brady Campaign to Prevent Gun Violence

California Statewide Law Enforcement Association

Chief Probation Officers of California

City of Los Angeles

Coalition Against Gun Violence

County of Los Angeles

Violence Prevention Coalition

Women Against Gun Violence

**Known Opposition:** (Verified 3/6/13)

California Association of Firearms Retailers

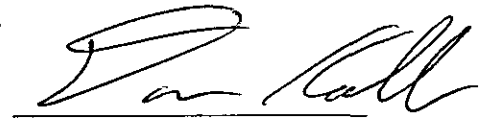
California Rifle and Pistol Association SB 140 Page 4

CONTINUED

California Sportsman's Lobby, Inc.  
Crossroads of the West Gun Shows  
National Rifle Association of America  
National Shooting Sports Foundation  
Outdoor Sportsmen's Coalition

**Attached: bill text and Senate Rules committee analysis.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dan Kalb", written over a horizontal line.

Councilmember Dan Kalb

AMENDED IN SENATE MARCH 4, 2013 MAR 21 PM 3:13

SENATE BILL

No. 140

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Introduced by Senators Leno and Steinberg  
(Principal coauthors: Senators *Anderson, Cannella, Hancock, and Jackson*)  
(Coauthors: Senators *Beall, Block, Calderon, Corbett, Correa, De León, DeSaulnier, Hill, Lieu, Liu, Monning, Pavley, Roth, Rubio, Wolk, and Wright, and Yee*)  
(Coauthors: Assembly Members *Ammiano and Blumenfield*)

January 29, 2013

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An act to ~~amend the Budget Act of 2012 by amending Item 0820-001-0460 of Section 2.00 of that act, relating to the state budget~~ *add Section 30015 to the Penal Code, relating to firearms, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 140, as amended, Leno. ~~Budget Act of 2012: firearms. Firearms: prohibited persons.~~

~~The Budget Act of 2012 made appropriations for the support of state government for the 2012-13 fiscal year.~~

~~This bill would amend the Budget Act of 2012 by revising an item of appropriation for the Department of Justice relating to the Armed Prohibitive Persons System (APPS).~~

*Existing law establishes the Dealers' Record of Sale Special Account in the General Fund with moneys in the account available upon appropriation by the Legislature. Existing law requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File, sometimes referred to as the Armed*

*Prohibited Persons System, to cross-reference persons who have ownership or possession of a firearm with those who are prohibited from owning or possessing a firearm.*

*This bill would appropriate \$24,000,000 from the Dealers' Record of Sale Special Account to the Department of Justice to address the backlog in the Armed Prohibited Persons System, thereby making an appropriation. The bill would require the department to report to the Joint Legislative Budget Committee regarding ways the backlog in the Armed Prohibited Persons System has been reduced or eliminated, as specified. The bill would make related findings and declarations.*

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

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

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) California is the first and only state in the nation to establish  
4 an automated system for tracking handgun and assault weapon  
5 owners who might fall into a prohibited status.

6 (b) The online database, which is currently known as the Armed  
7 Prohibited Persons System (APPS), cross-references all handgun  
8 and assault weapon owners across the state against criminal history  
9 records to determine persons who have been, or will become,  
10 prohibited from possessing a firearm subsequent to the legal  
11 acquisition or registration of a firearm or assault weapon.

12 (c) Each day, the list of armed prohibited persons in California  
13 grows by about 15 to 20 people. There are currently more than  
14 19,000 armed prohibited persons in California. Collectively, these  
15 individuals are believed to be in possession of over 34,000  
16 handguns and 1,590 assault weapons.

17 (d) Neither the Department of Justice nor local law enforcement  
18 has sufficient resources to confiscate the enormous backlog of  
19 weapons, nor can they keep up with the daily influx of newly  
20 prohibited persons.

21 (e) It is the intent of the Legislature in enacting this measure to  
22 allow the Department of Justice to utilize additional Dealers'  
23 Record of Sale Special Account funds for the limited purpose of

1 addressing the current APPS backlog and the illegal possession of  
2 these firearms, which presents a substantial danger to public safety.

3 ~~SEC. 2. Item 0820-001-0460 of Section 2.00 of the Budget~~  
4 ~~Act of 2012 is amended to read:~~

5  
6 ~~0820-001-0460 For support of Department of Justice, for~~  
7 ~~payment to Item 0820-001-0001, payable from the Dealers'~~  
8 ~~Record of Sale Special Account.....~~ \_\_\_\_\_

9 Provisions:

10 1. ~~Dealers' Record of Sale fees collected pursuant to the~~  
11 ~~state law for the registration of assault weapons shall~~  
12 ~~not exceed \$20 per registrant.~~

13 2. ~~The Attorney General may augment the amount appro-~~  
14 ~~priated in the Dealers' Record of Sale Special Account~~  
15 ~~up to an aggregate of 10 percent above the amount~~  
16 ~~approved in this act for the Division of Law Enforcement,~~  
17 ~~Bureau of Firearms for unanticipated workload~~  
18 ~~associated with this fund. The Attorney General shall~~  
19 ~~notify the chairpersons of the budget committees of~~  
20 ~~both houses of the Legislature, the Joint Legislative~~  
21 ~~Budget Committee, and the Department of Finance~~  
22 ~~within 15 days after the augmentation is made as to~~  
23 ~~the amount and justification of the augmentation.~~

24 3. ~~Of the amount appropriated in this item, the sum of~~  
25 ~~\$\_\_\_\_\_ may be used to address the backlog in the~~  
26 ~~Armed Prohibited Persons System (APPS). No later~~  
27 ~~than \_\_\_\_\_, the department shall report to the Joint~~  
28 ~~Legislative Budget Committee the degree to which~~  
29 ~~the backlog has been reduced or eliminated and the~~  
30 ~~number of weapons confiscated through this effort.~~

31  
32 *SEC. 2. Section 30015 is added to the Penal Code, to read:*

33 *30015. (a) The sum of twenty-four million dollars*  
34 *(\$24,000,000) is hereby appropriated from the Dealers' Record*  
35 *of Sale Special Account in the General Fund to the Department*  
36 *of Justice to address the backlog in the Armed Prohibited Persons*  
37 *System (APPS) and the illegal possession of firearms by those*  
38 *prohibited persons.*

39 *(b) No later than March 1, 2015, and no later than March 1*  
40 *each year thereafter, the department shall report to the Joint*

1 *Legislative Budget Committee all of the following for the*  
2 *immediately preceding calendar year:*

3 *(1) The degree to which the backlog in the APPS has been*  
4 *reduced or eliminated.*

5 *(2) The number of agents hired for enforcement of the APPS.*

6 *(3) The number of people cleared from the APPS.*

7 *(4) The number of people added to the APPS.*

8 *(5) The number of people in the APPS before and after the*  
9 *relevant reporting period, including a breakdown of why each*  
10 *person in the APPS is prohibited from possessing a firearm.*

11 *(6) The number of firearms recovered due to enforcement of*  
12 *the APPS.*

13 *(7) The number of contacts made during the APPS enforcement*  
14 *efforts.*

15 *(8) Information regarding task forces or collaboration with*  
16 *local law enforcement on reducing the APPS backlog.*

17 *(c) (1) The requirement for submitting a report imposed under*  
18 *subdivision (b) is inoperative on March 1, 2019, pursuant to*  
19 *Section 10231.5 of the Government Code.*

20 *(2) A report to be submitted pursuant to subdivision (b) shall*  
21 *be submitted in compliance with Section 9795 of the Government*  
22 *Code.*

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

27 *In order to address the current Armed Prohibited Persons System*  
28 *(APPS) backlog and the illegal possession of firearms, which*  
29 *presents an immediate danger to public safety, it is necessary for*  
30 *this act to take effect immediately.*

SENATE RULES COMMITTEE  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

SB 140

13 MAR 21 PM 3: 13

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THIRD READING

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Bill No: SB 140  
Author: Leno (D) and Steinberg (D), et al.  
Amended: 3/4/13  
Vote: 27 - Urgency

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SENATE BUDGET & FISCAL REVIEW COMMITTEE: 14-0, 3/4/13  
AYES: Leno, Emmerson, Anderson, Beall, Berryhill, Block, DeSaulnier,  
Hancock, Hill, Jackson, Monning, Roth, Wright, Wyland  
NO VOTE RECORDED: Nielsen, Price

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SUBJECT: Budget Act of 2012: firearms

SOURCE: Author

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DIGEST: This bill appropriates \$24 million from the Dealers Record of Sale (DROS) Special Account to the Department of Justice (DOJ) for costs associated with regulatory and enforcement of illegal possession of firearms by prohibited persons.

ANALYSIS: Existing law authorizes the DOJ to utilize the DROS fee, which is imposed upon every transfer or sale of a firearm in California for firearms related regulatory activities, including enforcement activities related to possession.

This bill:

1. Appropriates \$24 million from the DROS Special Account to the DOJ for costs associated with regulatory and enforcement of illegal possession of firearms by prohibited persons.

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2. Requires the DOJ report to the Joint Legislative Budget Committee no later than March 1, 2015 and no later than March 1, each year thereafter, all of the following:
  - The degree to which the backlog of weapons has been reduced or eliminated.
  - The number of weapons confiscated through Armed Prohibited Persons System (APPS) enforcement efforts.
  - The number of agents hired by the DOJ to conduct APPS enforcement.
  - The number of individuals cleared off of the APPS list annually through March 1, 2015 and March 1, 2019.
  - The number of individuals added to the APPS list annually.
  - Breakdown of why each person on the APPS is prohibited from possessing a firearm.
  - Number of contacts made during the APPS enforcement efforts.
  - Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog.
  - The reason for the individual to have been included on the APPS list.
3. Sunsets the above reporting requirements on March 1, 2019.
4. Makes a series of declarations and findings, including:
  - “California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status. The online database, which is currently known as the Armed Prohibited Persons System (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.”
  - “The list of armed prohibited persons in California grows by about 15 to 20 people per day. There are currently more than 19,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. Neither the Department of Justice nor local law enforcement has sufficient

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resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.”

Prior legislation. SB 819 (Leno), Chapter 743, Statutes of 2011, provided that the DOJ may use dealer record of sale funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession as well as the sale, purchase, loan, or transfer of firearms, as specified.

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

According to the Senate Budget and Fiscal Review Committee:

This bill appropriates \$24 million from the DROS special account to the DOJ for firearms-related regulatory and enforcement activities.

The funding in this bill is intended to supplement, not supplant, the \$22.9 million from the DROS Special Account included in the 2013-14 Budget Act to be utilized by the DOJ.

This bill does not specify a period that the appropriation shall be available for encumbrance. In accordance with Government Code Section 16340, this appropriation is available for three years after the date upon which it first became available for encumbrance.

**SUPPORT:** (Verified 3/6/13)

Kamala D. Harris, Attorney General  
AFSCME  
Brady Campaign to Prevent Gun Violence  
California Statewide Law Enforcement Association  
Chief Probation Officers of California  
City of Los Angeles  
Coalition Against Gun Violence  
County of Los Angeles  
Violence Prevention Coalition  
Women Against Gun Violence

**OPPOSITION:** (Verified 3/6/13)

California Association of Firearms Retailers  
California Rifle and Pistol Association

CONTINUED

California Sportsman's Lobby, Inc.  
Crossroads of the West Gun Shows  
National Rifle Association of America  
National Shooting Sports Foundation  
Outdoor Sportsmen's Coalition of California  
Safari Club International

**ARGUMENTS IN SUPPORT:** According to the DOJ:

Because of a lack of resources, there are currently more than 20,000 armed prohibited persons statewide, including dangerous felons, violent misdemeanor offenders and individuals who have been adjudicated mentally ill. These individuals are believed to hold up to 39,140 handguns and 1,679 assault weapons. Every year there are an additional 3,000 prohibited person added to the list. Despite their best efforts, local and state law enforcement agencies do not have the funding or resources to keep up with this influx.

For the vision of APPS to be fully realized, more resources are necessary—SB 140 provides those resources. Specifically, SB 140 will appropriate 24 million dollars in surplus special fund money (Dealer Record of Sales Account) to DOJ, for the specific purpose of hiring more staff to go out and take firearms away from people who cannot legally have them. To this end, SB 140 will help make communities safer by providing funding to take the preventative step of removing firearms from known, dangerous individuals.

**ARGUMENTS IN OPPOSITION:** The National Shooting Sports Foundation, Inc. (NSSF) writes:

While NSSF supports the objective of removing firearms from possession of those on the Armed Prohibited Persons List, we strongly oppose the use of the Dealers Record of Sale (DROS) funds for this purpose.

It is clear that there should be more focus on keeping firearms and other weapons out of the hands of the mentally ill, including those with severe emotional problems, persons taking mind altering prescription dmgs, and criminals who are already prohibited by law from possessing them.

The Department of Justice has stated that it estimates there are about 19,000 people on the California Armed Prohibited Persons list that illegally possess a total 40,000 firearms. It has further estimated that it would take about \$25

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million, 50 new agents, and about 3 years to disarm the people now on the prohibited persons list.

There does, in fact, need to be substantive ongoing improvements in how the prohibited persons list is administered by the Department if it is to be an effective tool in keeping firearms out of the hands of those prohibited from possessing them.

In addition, the criminal justice alignment (AB 109) has increased the potential for violence, including that involving the use or possession of a firearm, by allowing the early release of violent persons back into society and by allowing the downgrading of penalties for many firearms offenses for which a person can be incarcerated [Penal Code Section 1170(h)]. This may cause the prohibited persons list backlog to expand even further.

Although dealing with these issues is important, it should not be funded by the DROS fees paid by lawful buyers of firearms for the purpose of funding their own firearms eligibility background checks.

The behavior of criminals and others that has resulted in them being placed on the prohibited persons list, and the new prohibited list problems created by those released early from incarceration, or not charged with a serious crime because of AB 109, should not be made the financial responsibility of lawful payers of DROS fees.

It would be inappropriate to fund SB 140 by using DROS fees. Financing the administration of the Armed Prohibited Persons list is not the purpose of DROS fees.

The fact that the amount of the DROS fees charged to firearms buyers has been excessive resulting in a surplus does not provide justification to use the money for SB 140 or other non-DROS purposes. The Department should have reduced the fee or refunded the fee surplus long ago.

Given the foregoing, a different source of funding should be found for SB 140. If a source other than DROS fees is used, NSSF could support the bill.

JG:k 3/7/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

13 MAR 21 PM 3:12

Approved as to Form and Legality

City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

### INTRODUCED BY COUNCILMEMBER KALB

**RESOLUTION IN SUPPORT OF SENATE BILL 140, WHICH WOULD ALLOW THE STATE DEPARTMENT OF JUSTICE TO USE \$24 MILLION FROM THE DEALER RECORD OF SALE ACCOUNT TO INCREASE THE INVESTIGATIVE CAPACITY OF THE ARMED PROHIBITED PERSONS SYSTEM (APPS)**

**WHEREAS**, the citizens of Oakland continue to be harmed by an atrocious level of gun violence; and

**WHEREAS**, the California Department of Justice's **Armed Prohibited Persons System (APPS)** has identified thousands of guns in the possession of more than 20,000 prohibited persons, such as convicted felons; and

**WHEREAS**, neither local law enforcement nor DOJ have the resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited weapons; and

**WHEREAS**, Senators Mark Leno and Darrell Steinberg have authored and introduced Senate Bill 140 (SB 140), which would allow the State Department of Justice to use \$24 million in existing Department resources from the Dealer Record of Sale Account to increase the investigative capacity of the **Armed Prohibited Persons System (APPS)** operated by DOJ; now, therefore, be it

**RESOLVED:** That the Oakland City Council hereby endorses SB 140; and be it

**FURTHER RESOLVED:** That the City Council hereby requests the City Administrator to direct City's legislative lobbyist to advocate for the above position in the California State Legislature; and be it

**FURTHER RESOLVED:** That a copy of this Resolution be provided to the Governor, Assembly Speaker John Pérez, Senate President pro Tem Darrell Steinberg, Assembly Public Safety Committee Chair Tom Ammiano, Senate Public Safety Chair Loni Hancock, and State Senator Mark Leno.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF,  
AND PRESIDENT KERNIGHAN

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

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LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California