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CITY OF OAKLAND
CITY COUNCIL

LEGISLATIVE ANALYST REPORT

To: Council President Brunner and members of the City Council
From: Clara Garzon, Legislative Analyst
Date: March 17, 2009

**Re: BILL ANALYSIS AND RESOLUTION IN SUPPORT OF
ASSEMBLY BILL 312 (ASSEMBLY MEMBER
AMMIANO/SENATOR YEE) REQUIRING THE BAY AREA
RAPID TRANSIT (BART) DISTRICT TO CREATE AN OFFICE
OF CITIZEN COMPLAINTS FOR THE BART POLICE
DEPARTMENT**

SUMMARY

At the request of Councilmember Desley Brooks, attached for the Council's review and approval is an analysis of AB312 introduced by Assembly Member Ammiano and principal coauthor Senator Yee; as well as, a resolution in support of the bill.

REQUESTED ACTION BY THE CITY COUNCIL

Adopt a resolution in support of AB 312 (Ammiano/Yee).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Clara Garzon', with a long horizontal line extending to the right.

Clara Garzon
Legislative Analyst

CITY OF OAKLAND

BILL ANALYSIS



Date: March 17, 2009

Bill Number: AB 312

Bill Author(s): Assembly Member Ammiano

(Principal coauthor: Senator Yee)

DEPARTMENT INFORMATION

Contact: Clara Garzon

Department: Legislative Analyst –City Council

Telephone: 238-3971 **FAX #** 238-6910 **E-mail:** cgarzon@oaklandnet.com

RECOMMENDED POSITION - SUPPORT

Summary of the Bill:

This bill would require the Bay Area Rapid Transit (BART) District board to create an Office of Citizen Complaints to investigate complaints and allegations of police misconduct by the BART police department. The bill would also provide for the nomination of a Citizen Complaints Office Director by the district attorneys of the Counties of Alameda, Contra Costa, and San Francisco, subject to confirmation by the board.

Positive Factors for Oakland:

Creation of the Office of Citizen Complaints would provide concerned Oakland residents the opportunity to bring forth complaints of BART police misconduct with the certainty and confidence that such complaints will not be overlooked; but rather be recorded, investigated, and thoroughly reviewed. AB312 states that the Office of Citizen Complaints shall *“prepare, in accordance with rules of the office, monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the police department that could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while ensuring effective police services.”*

Negative Factors for Oakland:

None known at this time.

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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:

None known at this time.

Known Opposition:

None known at this time.

Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,



Clara Garzon
Legislative Analyst, LEC
City Council

Item: _____
City Council
March 17, 2009

ASSEMBLY BILL

No. 312

Introduced by Assembly Member Ammiano
(Principal coauthor: Senator Yee)

February 17, 2009

An act to add Section 28767.7 to the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 312, as introduced, Ammiano. San Francisco Bay Area Rapid Transit District: Office of Citizen Complaints.

Existing law creates the San Francisco Bay Area Rapid Transit District (BART), governed by an elected board of directors, with various duties and responsibilities relative to operation of a rail transit system. Existing law authorizes the district to maintain a police department.

This bill would require the BART board to create an Office of Citizen Complaints to investigate complaints and allegations of police misconduct by the BART police department. The bill would provide for the nomination of the director of that office by the district attorneys of the Counties of Alameda, Contra Costa, and San Francisco, subject to confirmation by the board.

The bill would require the staff of the office to consist of no fewer than one line investigator for every 150 sworn members of the police department. The bill would require the office to investigate complaints of police misconduct or allegations that a member of the police department has not properly performed a duty and would require the office to recommend disciplinary action to the chief of police. The bill would authorize the director of the office to file charges with the board against members of the police department under specified circumstances.

The bill would require the office to prepare monthly summaries of the complaints received and quarterly recommendations concerning policies or practices of the police department that could be changed, along with a quarterly report to the board. The bill would require all departments, officers, and employees of the district to promptly produce all records required by the office and to otherwise cooperate with the office, except as specified. The bill would require the district to implement these and other related provisions utilizing existing funds available to the district.

Because the bill would impose new responsibilities on the district, it 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 28767.7 is added to the Public Utilities
2 Code, to read:
3 28767.7. (a) The president of the board shall appoint a person
4 nominated by the district attorneys from the Counties of Alameda,
5 Contra Costa, and San Francisco as the Director of the Office of
6 Citizen Complaints, subject to confirmation by the board. The
7 director shall serve at the pleasure of the board. If the board fails
8 to act on the appointment within 30 days, the appointment shall
9 be deemed approved. If the office is vacant, until the president of
10 the board makes an appointment and that appointment is confirmed
11 by the board, the district attorneys from the Counties of Alameda,
12 Contra Costa, and San Francisco shall collectively appoint an
13 interim director who shall serve at the pleasure of the board. The
14 director shall never have been a member of the police department
15 of the district or another employee of the police department.
16 (b) The board shall organize, reorganize, and manage the Office
17 of Citizen Complaints. The Office of Citizen Complaints shall
18 include investigators and hearing officers. The staff of the Office

1 of Citizen Complaints shall consist of no fewer than one line
2 investigator for every 150 sworn members of the police department.
3 Whenever the ratio of investigators to police officers specified by
4 this subdivision is not met for more than 30 consecutive days, the
5 director may hire temporary investigators to meet those staffing
6 requirements. No full-time or part-time employee of the Office of
7 Citizen Complaints shall have previously served as a uniformed
8 member of the police department. The Director of the Office of
9 Citizen Complaints may appoint part-time hearing officers.

10 (c) Complaints of police misconduct or allegations that a
11 member of the police department has not properly performed a
12 duty shall be promptly, fairly, and impartially investigated by staff
13 of the Office of Citizen Complaints. The Office of Citizen
14 Complaints shall investigate all complaints of police misconduct
15 or allegations that a member of the police department has not
16 properly performed a duty, except those complaints which on their
17 face clearly indicate that the acts complained of were proper, and
18 except those complaints lodged by members of the police
19 department. The Office of Citizen Complaints shall use its best
20 efforts to conclude investigations of those complaints and, if
21 sustained, transmit the sustained complaint to the police department
22 within nine months of receipt thereof by the Office of Citizen
23 Complaints. If the Office of Citizen Complaints is unable to
24 conclude its investigation within the nine-month period, the
25 Director of the Office of Citizen Complaints, within the nine-month
26 period, shall inform the chief of the police department of the
27 reasons therefor and transmit information and evidence from the
28 investigation to facilitate the chief's timely consideration of the
29 matter. The Office of Citizen Complaints shall recommend
30 disciplinary action to the chief of police on those complaints that
31 are sustained. The Director of the Office of Citizen Complaints,
32 after meeting and conferring with the chief of police or his or her
33 designee, may verify and file charges with the board against
34 members of the police department arising out of sustained
35 complaints, provided that the director may not verify and file those
36 charges for a period of 60 days following the transmittal of the
37 sustained complaint to the police department, unless the director
38 issues a written determination that the limitations period within
39 which the member or members may be disciplined may expire
40 within that 60-day period and either (1) the chief of police fails or

1 refuses to file charges with the board arising out of the sustained
2 complaint, (2) the chief of police or his or her designee fails or
3 refuses to meet and confer with the director on the matter, or (3)
4 other exigent circumstances necessitate that the director verify and
5 file charges to preserve the ability of the board to impose
6 punishment. The Director of the Office of Citizen Complaints shall
7 schedule a hearing before a hearing officer when a hearing is
8 requested by the complainant or a member of the department and
9 when, in accordance with rules of the office, the hearing will
10 facilitate the factfinding process.

11 (d) Nothing in this section shall prohibit the chief of police or
12 a commanding officer from investigating the conduct of a member
13 of the department under his or her command, or taking disciplinary
14 or corrective action when it is warranted.

15 (e) The Office of Citizen Complaints shall prepare, in
16 accordance with rules of the office, monthly summaries of the
17 complaints received and shall prepare recommendations quarterly
18 concerning policies or practices of the police department that could
19 be changed or amended to avoid unnecessary tension with the
20 public or a definable segment of the public while ensuring effective
21 police services. The Office of Citizen Complaints shall prepare a
22 report for the board each quarter. This report shall include, but not
23 be limited to, the number and type of complaints filed, the outcome
24 of the complaints, and a review of the disciplinary action taken.

25 (f) In carrying out its objectives, the Office of Citizen
26 Complaints shall receive prompt and full cooperation and assistance
27 from all departments, officers, and employees of the district, which
28 shall promptly produce all records requested by the Office of
29 Citizen Complaints, except for records the disclosure of which to
30 the Office of Citizen Complaints is prohibited by law. The director
31 may also request, and the chief of police shall require, the
32 testimony or attendance of any member of the police department
33 to carry out the responsibilities of the Office of Citizen Complaints.

34 (g) The district shall implement this section utilizing existing
35 funds available to the district.

36 SEC. 2. If the Commission on State Mandates determines that
37 this act contains costs mandated by the state, reimbursement to
38 local agencies and school districts for those costs shall be made

DRAFT

Approved as to Form and Legality

FILED
OFFICE OF THE CITY CLERK
OAKLAND

City Attorney's Office

2009 MAR -5 PM 6:18

OAKLAND CITY COUNCIL

RESOLUTION No.

C.M.S.

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 312 (ASSEMBLY MEMBER AMMIANO/SENATOR YEE) REQUIRING THE BAY AREA RAPID TRANSIT (BART) DISTRICT TO CREATE AN OFFICE OF CITIZEN COMPLAINTS FOR THE BART POLICE DEPARTMENT

WHEREAS, AB 312, as introduced by Assembly Member Ammiano and coauthor Senator Yee, would require the Bay Area Rapid Transit (BART) District board to create an Office of Citizen Complaints to investigate complaints and allegations of police misconduct by the BART police department; and

WHEREAS, this bill would also provide for the nomination of a Citizen Complaints Office Director by the district attorneys of the Counties of Alameda, Contra Costa, and San Francisco, subject to confirmation by the board; and

WHEREAS, AB 312 would require the staff of the Citizen Complaints Office to investigate complaints of police misconduct or allegations that a member of the police department has not properly performed a duty and would require the office to recommend disciplinary action to the chief of police; and

WHEREAS, the bill would authorize the director of the office to file charges with the board against members of the police department under specified circumstances; and

WHEREAS, creation of the Office of Citizen Complaints would provide concerned Oakland residents the opportunity to bring forth complaints of BART police misconduct with the certainty and confidence that such complaints will not be overlooked; but rather be recorded, investigated, and thoroughly reviewed; now therefore be it

RESOLVED: that the City of Oakland declares its support for AB 312 (Ammiano/Yee); and be it

FURTHER RESOLVED: that the City Administrator and the City's state lobbyist are directed to advocate the City's position to the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST:

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