



Board Report

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File #: 2016-0393, File Type: Federal Legislation / State Legislation (Position)

Agenda Number: 40

**REVISED**  
**REGULAR BOARD MEETING**  
**MAY 26, 2016**

**SUBJECT: STATE LEGISLATION**

**ACTION: ADOPT STAFF RECOMMENDED POSITIONS**

**RECOMMENDATION**

ADOPT staff recommended positions:

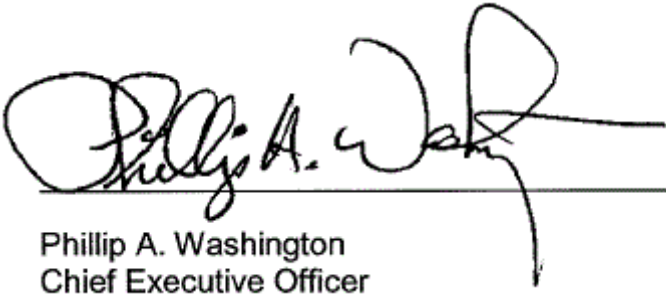
- A. AB 1640 (Stone) - Retirement: Public Employees ~~WORK WITH AUTHOR~~**
- B. AB 2542 (Gatto) - Streets And Highways: Reversible Lanes **SUPPORT IF AMENDED****
- C. SB 885 (Wolk) - Construction Contracts: Indemnity **OPPOSE****

**ATTACHMENTS**

- Attachment A - AB 1640 (Stone) Legislative Analysis
- Attachment B - AB 2542 (Gatto) Legislative Analysis
- Attachment C - SB 885 (Wolk) Legislative Analysis

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Phillip A. Washington  
Chief Executive Officer

**BILL:** ~~ASSEMBLY BILL 1640~~

**AUTHOR:** ~~ASSEMBLYMEMBER MARK STONE  
(D-SCOTTS VALLEY)~~

**SUBJECT:** ~~RETIREMENT: PUBLIC EMPLOYEES~~

**STATUS:** ~~PENDING REFERRAL TO SENATE~~

**ACTION:** ~~WORK WITH AUTHOR~~

### **RECOMMENDATION**

Staff recommends that the Board adopt a Work with Author position on Assembly Bill 1640 (Stone).

### **ISSUE**

Assemblymember Mark Stone has introduced AB 1640, a bill that would extend indefinitely a specified exemption under the Public Employees' Pension Reform Act of 2013 (PEPRA) for those public employees, whose collective bargaining rights are subject to specified provisions of federal law and who became a member of a state or local public retirement system prior to December 30, 2014.

AB 1640 would:

- ~~Permanently exempt certain public transit workers, who first became members of a public retirement system between January 1, 2013 and December 29, 2014 from the requirements of PEPRA.~~
- ~~Deletes provisions related to specified federal district court rulings regarding the certification of federal transit funding.~~

### **DISCUSSION**

Existing law enacted by AB 1222 (Bloom and Dickenson), Chapter 527, Statutes of 2013, makes an exemption to PEPRA for employees who are covered by 13(c) arrangements until either a federal district court rules that the United States Secretary of Labor (or his or her designee) erred in determining that application of PEPRA precludes certification of federal transit funding or January 1, 2015, whichever is sooner.

A recent decision in the State of California v. United States Department of Labor ended the exemption provided to transit employees by AB 1222. Transit districts are currently appealing the federal court decision, and AB 1640 (Stone) would clarify that workers hired during the exemption between January 1, 2013 and December 29, 2014 should continue to receive classic employee retirement benefits instead of PEPRA employee retirement benefits.

According to information provided to the Assembly Public Employment, Retirement and Social Security Committee by CalPERS, 1,431 members from 36 different CalPERS covered employers were reclassified back into PEPRA membership after the December 30, 2014 ruling.

~~Staff finds that the primary cost to Metro relates to paying the employee' contributions to the CalPERS plan: \$2.0 million through calendar year 2015 plus \$2.7 million annually (in 2016 dollars) going forward. The provisions outlined in AB 1640 would affect 395 current Metro employees and would increase costs to Metro while increasing benefits for employees.~~

~~The bill is supported by the Teamsters and Amalgamated Transit Union which represent Metro employees.~~

~~Staff is recommending that the Board of Directors adopt a Work with Author position on AB 1640 (Stone).~~

### **DETERMINATION OF SAFETY IMPACT**

~~Staff has determined that there is no direct impact to safety as a result of this proposal.~~

### **FINANCIAL IMPACT**

~~Staff has determined that there could be an annual fiscal impact of \$2.7 million for future costs related to an increased share of Metro CalPERS contributions on behalf of affected employees to the agency as the result of the provisions outlined in this bill.~~

### **ALTERNATIVES CONSIDERED**

~~Alternatives to the Work with Author position will be considered with respect to our agency's past positions on legislation related to exempting public transit employees from the provisions of PEPPA.~~

### **NEXT STEPS**

~~Should the Board decide to adopt a Work with Author position on AB 1640 (Stone), staff will communicate the Board's position to the author and work to address any concerns that the agency has with respect to potential fiscal impacts and employee retirement plans. Staff will continue to keep the Board informed as this issue is addressed throughout the legislative session.~~

**BILL:** ASSEMBLY BILL 2542

**AUTHOR:** ASSEMBLYMEMBER MIKE GATTO  
(D-GLENDALE)

**SUBJECT:** STREETS AND HIGHWAYS: REVERSIBLE LANES

**STATUS:** ASSEMBLY FLOOR CONSENT CALENDAR  
SCHEDULED: MAY 9, 2016

**ACTION:** SUPPORT IF AMENDED

**RECOMMENDATION**

Staff recommends that the Board adopt a SUPPORT IF AMENDED position on Assembly Bill 2542 (Gatto) as amended on March 15, 2016.

**ISSUE**

Assemblymember Mike Gatto has recently amended AB 2542, a bill that would require the Department of Transportation or a regional transportation planning agency, when submitting a capacity-increasing project or a major street or highway lane realignment project to the Transportation Commission for approval, to demonstrate that reversible lanes were considered for the project.

AB 2542 would:

- Require that Caltrans or a regional transportation planning agency to demonstrate that reversible lanes were considered in the planning, design and evaluation of a capacity increasing project on a major street or highway.

**DISCUSSION**

Metro's Long Range Transportation Plan includes a number of highway capacity increasing and efficiency projects. The provisions of AB 2542 would potentially require that Metro evaluate the use of reversible lanes for capacity increasing projects to mitigate impacts to vehicle traffic on major streets and highways.

The Assembly Committee on Transportation finds that reversible lanes add peak-direction capacity to a two-way road and decrease congestion by "borrowing" available lane capacity from the other (off-peak) direction. The lanes are particularly beneficial where the cost to increase capacity is expensive, like on bridges and in dense urban areas.

AB 2542 as amended does not specifically outline how Caltrans or a regional transportation planning agency would demonstrate that reversible lanes were considered in the planning or design of a highway or major street project. Staff finds that the bill's provisions could be clarified so that the CTC could determine how operationally the reversible lane evaluation could be integrated into the project development process.

Staff is recommending that the Board of Directors adopt a SUPPORT IF AMENDED position on the measure AB 2542 (Gatto).

### **DETERMINATION OF SAFETY IMPACT**

Staff has determined that there is no direct impact to safety as a result of this proposal.

### **FINANCIAL IMPACT**

Staff has determined that there are no negative financial impacts to the agency as the result of the provisions outlined in this bill.

### **ALTERNATIVES CONSIDERED**

The Board of Directors could consider adopting an OPPOSE position on this legislation; however, this would be inconsistent with our agency's goal to increase mobility in the region.

### **NEXT STEPS**

Should the Board decide to adopt a SUPPORT IF AMENDED position on AB 2542 (Gatto), staff will communicate the Board's position to the author and work to address any concerns that the agency has with respect to potential impacts to the Long Range Transportation Plan for highway projects. Staff will continue to keep the Board informed as this issue is addressed throughout the legislative session.

**BILL:** SENATE BILL 885

**AUTHOR:** SENATOR LOIS WOLK  
(D-DAVIS)

**SUBJECT:** CONSTRUCTION CONTRACTS: INDEMNITY

**STATUS:** PENDING SECOND READING FILE

**ACTION:** OPPOSE

**RECOMMENDATION**

Staff recommends that the Board adopt a OPPOSE position on Senate Bill 885 (Wolk) as amended on April 18, 2016.

**ISSUE**

Senator Lois Wolk has recently amended SB 885, a bill that would limit the liability of a design professional in construction contracts.

SB 885 would:

- Provide that a design professional would not have a duty to defend claims or lawsuits against any other person or entity arising from a construction project, except that person or entity's reasonable defense costs arising out of the design professional's degree of fault.

**DISCUSSION**

SB 885 would modify the way in which Metro would be indemnified in design contracts and fundamentally shift the responsibilities and risks in litigation. SB 885 places most of the responsibility and risk on the contracting entity and substantially limits the risks and responsibilities of the design professional. This could result in significant costs to the agency and substantially increase our risks especially as we embark upon a major public works expansion program.

The provisions of the measure create major changes in the way in which contracts are structured between design professionals and public and private entities. The bill is supported by a number of private sector design firms and is opposed by a number of public sector agencies.

Staff is recommending that the Board of Directors adopt an OPPOSE position on the measure SB 885 (Wolk).

**DETERMINATION OF SAFETY IMPACT**

Staff has determined that there is no direct impact to safety as a result of this proposal.

### **FINANCIAL IMPACT**

Staff has determined that there are potential negative impacts to the agency as the result of the provisions outlined in this bill.

### **ALTERNATIVES CONSIDERED**

The Board of Directors could consider adopting a NEUTRAL position on this legislation; however, this would not allow us to defend the agency's potential concerns with the provisions of the bill and to speak against an issue that negatively impacts the agency and affects the public contracting process.

### **NEXT STEPS**

Should the Board decide to adopt an OPPOSE position on SB 885 (Wolk), staff will communicate the Board's position and concerns with the bill to the author. Staff will continue to keep the Board informed as this issue is addressed throughout the legislative session.