

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 827 (Glazer)  
Version: February 17, 2023  
Hearing Date: January 11, 2024  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

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

**DIGEST**

This bill revises the duties and responsibilities of the San Francisco Bay Area Rapid Transit District (BART) Inspector General (BART IG), as specified, and provides that the BART 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 specifies the BART IG's access to BART facilities and the authority to examine records and other property, as provided.

**EXECUTIVE SUMMARY**

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.

The bill is author sponsored and supported by the Association of Local Government Auditors, Bay Area Council, Mission Street Neighbors, and Livable California. No opposition was received by the Committee. The bill failed passage in the Senate Transportation Committee in April 2023 on a vote of 7 to 1, but was granted reconsideration. The bill passed the Senate Transportation Committee on a vote of 16 to 0.

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. (Pub. Util. Code § 28840(a.)
  - 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. (*Id.* at (b).)
  - 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. (*Ibid.*)
  - 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. (*Ibid.*)
- 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. (Pub. Util. Code § 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. (Pub. Util. Code § 28844.)

This bill:

- 1) Provides that the BART IG that is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program.
- 2) Provides that the BART IG is to have 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, confidential information that is subject to a privilege, does not constitute a waiver of that privilege.
- 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.
  - 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.
- 5) Makes it a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and fine, to do any of the following:

- a) Fail or refuse 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 BART IG or in any way interfere with such examination conducted pursuant to this article.
- b) Interfere, intend to deceive or defraud, or obstruct the BART IG in the performance of an audit, evaluation, investigation, or review pursuant to this article.
- c) Manipulate, correct, alter, or change records, documents, accounts, reports, or correspondence before or during any audit, evaluation, investigation, or review conducted pursuant to this article.
- d) Distribute, reproduce, release, or fail to safeguard confidential draft documents exchanged between the BART IG and the entity subject to the audit, evaluation, investigation, or review conducted pursuant to this article before the release of the final report and without the BART Inspector General's express permission.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

Inspector Generals are supposed to be independent watchdogs of the agency with which they serve. This bill would give new powers and protections to the BART Inspector General to ensure that the office is truly independent. The changes proposed in this bill are modeled after current laws governing the CalTrans Inspector General and the state Auditor, and nationally recognized best practices or standards for auditors and inspector generals. With these changes, the residents of the Bay Area could be confident that the Inspector General can exercise the independent oversight that was intended when SB 595 was enacted in 2017 and later ratified by the voters.

#### 2. Establishment of the BART IG and issues getting the Office of the BART IG's charter adopted

Senate Bill 595 (Beall, Ch. 650, Stats. 2017), which authorized Regional Measure 3,<sup>1</sup> also created the independent Office of the BART IG to ensure BART makes effective use of bridge tolls and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws. In June 2019, Governor Newsom appointed Harriet Richardson as the first BART IG. The Fiscal Year 2021 Annual Report to the Legislature from the BART IG details issues the BART IG has encountered establishing

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<sup>1</sup> Regional Measure 3 was approved by the voters in 2018 and raised tolls on the Bay Area region's state-owned toll bridges.

the Office, specifically, developing the Office of the BART IG's charter and getting it approved by the Board.<sup>2</sup>

The Annual Report states that the Board requested the BART IG have discussions with labor unions regarding the proposed charter and that the BART IG was "surprised" that the unions presented revisions to the proposed charter, "including major changes that would alter the intent of the legislation that created our office and create independence impairments."<sup>3</sup> The report further stated:

[...] 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 traditional and required of an OIG such that we cannot work independently. We, therefore, declined to accept some of the changes. Our position does not imply that we will fail to uphold the rights of union represented employees, or that we will not work with union leaders in a manner that allows for their feedback and input when appropriate.

The charter was never adopted by the Board and no charter has been adopted to date. Harriet Richardson resigned as BART IG in March 2023. In May 2023 Governor Newsom appointed Claudette Biemeret as the new BART IG.

3. Bill provides the BART IG specified powers and authority to fulfill purpose of independent oversight of BART

In 2022, the author introduced SB 1488 with the goal of ensuring the BART IG has the statutory authority and powers needed to be an independent inspector general. SB 1488 was similar to this bill, but included additional specific powers for the BART IG, such as subpoena power and the authority to meet with any employee or officer of BART or contractor of BART. SB 1488 passed this Committee on a vote of 10 to 0. However, SB 1488 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."

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<sup>2</sup> Harriet Richardson, *Fiscal Year 2021 Annual Report* Bart Office of the Inspector General (July 16, 2021) at p. 4, available at:

<https://www.bart.gov/sites/default/files/docs/BART%20OIG%20Fiscal%20Year%202021%20Annual%20Report%20to%20Legislature.pdf>.

<sup>3</sup> *Ibid.*

This bill is a pared down version of SB 1488 and many of its provisions are modeled off existing provisions of law related to other existing inspector generals and their authority and powers, such as the 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, this bill states that the BART IG is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation.

The bill requires BART to give the BART 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. It requires any officer or employee of BART or any 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. The bill additionally 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. The bill also provides that complying with these provisions as it relates to confidential information, including, but not limited to, confidential information that is subject to a privilege, does not constitute a waiver of that privilege.

This authority 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. <sup>4</sup> (Pen. Code § 6126.5; LACMTA Admin, Code § 2-20-010.)

The bill ensures that the confidentiality of any records accessed by the BART IG or their designee remains confidential by requiring 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, officer, or external entity that provided the information or documents. Additionally the bill ensures that complying with these provisions does not constitute a waiver of confidentiality or privilege.

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<sup>4</sup> The LACMTA IG, similarly to the IG, is established in state law but the statute is largely silent on its powers. (Pub. Util. Code § 130051.28) The LACMTA IG gets most of its authority via an ordinance adopted by the LAMTA's Board of Directors. (LACMTA Admin, Code § 2-20-010.)

The bill also specifically states that all books, papers, records, and correspondence of the BART IG Office pertaining to its work are public records and subject to the California Public Records Act, except for the following:

- Personal papers and correspondence of any person providing assistance to the BART Inspector General 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.
- Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed.
- 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.
- 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.
- Any record of an investigation, including, but not limited to, all investigative files and work product.

The bill authorizes the BART IG, whenever the BART IG determines it necessary to serve the interests of the state, to 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. It also authorizes the BART IG to 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.

The bill makes it a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both, for doing any of the following:

- 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 BART IG or to interfere in any way with such examination.
- Interfering, intending to deceive or defraud, or obstructing the BART IG in the performance of an audit, evaluation, investigation, or review.
- Manipulating, correcting, altering, or changing records, documents, accounts, reports, or correspondence before or during any audit, evaluation, investigation, or review conducted.
- Distributing, reproducing, releasing, or failing to safeguard confidential draft documents exchanged between the BART IG and the entity subject to the audit, evaluation, investigation, or review conducted before the release of the final report and without the BART IG's express permission.

#### 4. Stated concerns by stakeholders

BART states that they could potentially support the bill if certain amendments were taken. These include:

- Removing the misdemeanor provisions;
- Inserting language granting the BART IG subpoena power, similar to SB 1488 (Glazer, 2022); and
- Inserting language that was in SB 1488 that defines the scope of the BART IG authority as to not conflict with other audit and oversight offices, such as BART's Office of Civil Rights;

The Bay Area Transportation Working Group writes with recommendations to address issues they see in the bill. These include:

- Establishing a budget for the BART IG in statute;
- Changing how the BART IG is selected and qualifications needed;
- Requiring the Governor's approval to extend the term of the BART IG; and
- Subpoena power for the BART IG;

#### 5. Amendments agreed to in Senate Transportation Committee

In the Senate Transportation Committee the author agreed to make amendments to the bill to delete the misdemeanor provisions from the bill and add language addressing how the BART IG may interact with employees represented by an employee organization. A mock-up of the amendments is attached to the end of this analysis.<sup>5</sup>

#### 6. Statements in support

The Bay Area Council writes in support:

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

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<sup>5</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

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.

### SUPPORT

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

### OPPOSITION

None received

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1488 (Glazer, 2022) was somewhat similar to this bill though it included more robust provisions that are not included in this bill related to, among other things, subpoena power and the authority to meet with any employee or officer of BART or contractor of BART. The Governor vetoed SB 1488. *See Comment 3, above, for the Governor's veto message.*

SB 87 (Committee on Budget and Fiscal Review, Ch. 32, Stats. 2019) added new powers and duties to the Caltrans Office of Audits and Investigations.

SB 595 (Beall, Ch. 650, Stats. 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.

SB 1 (Beall, Ch. 5, Stats. 2017) provided more than \$5 billion annually in new funding for transportation infrastructure, and created the Independent Office of Audits and Investigations within Caltrans, with specified powers and duties.

### PRIOR VOTES

Senate Transportation Committee (Ayes 16, Noes 0)

Senate Transportation Committee (Ayes 16, Noes 0) Reconsideration granted.

Senate Transportation Committee (Ayes 7, Noes 1) Failed passage in Committee.

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**Mock-up of Amendments to SB 827 (Glazer)**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 28840 of the Public Utilities Code is amended to read:

**28840.** (a) There is hereby created in the district an independent Office of the BART Inspector General to ensure that the district makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws.

(b) (1) The board shall nominate three persons to the Governor who shall appoint one of the three persons nominated by the board to serve as the BART Inspector General for an initial four-year term. The board shall have the option to renew the term at will. The BART Inspector General shall be removed from office by the board, subject to approval of the Governor, only if either of the following occur:

(A) A two-thirds majority of the members of the board votes for removal.

(B) The BART Inspector General violates a federal or state law or regulation, a local ordinance, or a policy or practice of the authority relative to ethical practices, including, but not limited to, the acceptance of gifts or contributions.

(2) The reasons for removal of the BART Inspector General shall be stated in writing and shall include the basis for removal. The document stating the reasons for dismissal shall be deemed a public document and posted on the district's internet website.

(c) The BART Inspector General is vested with the full authority to exercise all responsibility for maintaining a full scope, independent, and objective audit and investigation program, including, but not limited to, those activities described in subdivision (d) of Section 28841 and Section 28841.2.

**SEC. 2.** Section 28841.2 is added to the Public Utilities Code, to read:

**28841.2.** (a) The Office of the BART Inspector General shall have access and authority to examine all records, files, documents, accounts, reports, correspondence, or other property of the district and external entities that perform work for the district. The Office of the BART Inspector General may enter any district 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. Any officer or employee of the district or entity having these records or property in their possession, under their control, or otherwise having access to them,

shall permit access to, and examination and reproduction thereof, upon the request of the BART Inspector General or the BART Inspector General's authorized representative.

*(b) Before any interview conducted with an employee represented by an employee organization, as defined in Section 28848, who is the subject of an investigation or may be subject to discipline or other adverse consequences as a result of the investigation, the BART Inspector General shall notify the employee that they are entitled to be accompanied by a representative of the employee organization and that the employee shall have all the rights afforded to them under N.L.R.B. v. J. Weingarten, 420 U.S. 251 (1975).*

**SEC. 3.** Section 28841.4 is added to the Public Utilities Code, to read:

**28841.4.** (a) The BART Inspector General may gain access to confidential records or property that are obtained in connection with any audit, evaluation, investigation, or review conducted pursuant to Section 28841.2 unless a law specifically refers to and precludes the BART Inspector General from accessing, examining, and reproducing any record or property pursuant to Section 28841.2. Information or documents obtained in connection with any audit, evaluation, investigation, or review conducted by the BART Inspector General are subject to any limitations on release of the information or documents as may apply to an employee or officer of the district or external entity subject to this article that provided the information or documents. Providing confidential information pursuant to this section, including, but not limited to, confidential information that is subject to a privilege, shall not constitute a waiver of that privilege.

(b) For purposes of this section, "confidential records or property" means records or property that may lawfully be kept confidential as a result of a statutory or common law privilege or any other law.

(c) The Office of the BART Inspector General shall not destroy any papers or memoranda used to support a completed audit sooner than three years after the audit report is released to the public. All books, papers, records, and correspondence of the office pertaining to its work are public records subject to Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code and shall be filed at any of the regularly maintained offices of the BART Inspector General, except that none of the following items or papers of which these items are a part shall be released to the public by the BART Inspector General or the employees of the BART Inspector General:

(1) Personal papers and correspondence of any person providing assistance to the BART Inspector General 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 Inspector General.

(2) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed.

(3) 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.

(4) Any survey of public employees that the BART Inspector General determines should be kept confidential to deter retaliation if the public employees respond to the survey.

(5) Any record of an investigation, including, but not limited to, all investigative files and work product, except that the BART Inspector General, whenever the BART Inspector General 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 Inspector General may also release any findings or evidence supporting any findings resulting from an investigation conducted pursuant to this article whenever the BART Inspector General determines it necessary to serve the interests of the state.

~~SEC. 4. Section 28841.6 is added to the Public Utilities Code, to read:~~

~~28841.6. It is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine, to do any of the following:~~

~~(a) Fail or refuse 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 BART Inspector General or in any way interfere with such examination conducted pursuant to this article.~~

~~(b) Interfere, intend to deceive or defraud, or obstruct the BART Inspector General in the performance of an audit, evaluation, investigation, or review pursuant to this article.~~

~~(c) Manipulate, correct, alter, or change records, documents, accounts, reports, or correspondence before or during any audit, evaluation, investigation, or review conducted pursuant to this article.~~

~~(d) Distribute, reproduce, release, or fail to safeguard confidential draft documents exchanged between the BART Inspector General and the entity subject to the audit, evaluation, investigation, or review conducted pursuant to this article before the release of the final report and without the BART Inspector General's express permission.~~

~~SEC. 5.~~ SEC. 4. The Legislature finds and declares that Section 3 of this act, which adds Section 28841.4 to the Public Utilities Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The need for the Office of the BART Inspector General to fully examine and evaluate records, files, documents, accounts, reports, correspondence, and all other property of the San Francisco Bay Area Rapid Transit District and external entities that perform work for the district outweighs the interest in public disclosure of information obtained by the Office of the BART Inspector General in connection with its activities.

~~SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~