

Date of Hearing: April 18, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 3131 (Gloria) – As Amended March 22, 2018

SUBJECT: Law enforcement agencies: military equipment: funding, acquisition, and use.

SUMMARY: Establishes requirements that must be met before a law enforcement agency may take a number of specified actions related to the acquisition and use of military equipment.

Specifically, **this bill:**

- 1) Requires a law enforcement agency to obtain approval of its governing body, by an ordinance adopting a military equipment impact statement (impact statement) and a military equipment use policy (use policy) at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Bagley-Keene Act) or the Ralph M. Brown Act (Brown Act) prior to engaging in any of the following:
 - a) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code (commonly referred to as the 1033 Program);
 - b) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers;
 - c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing;
 - d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body;
 - e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter; and,
 - f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.
- 2) Requires, no later than May 1, 2019, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2019, to commence a governing body approval process in accordance with the requirements of this bill. If the governing body does not approve the continuing use of military equipment, including by adoption of an impact statement and use policy submitted pursuant to 3), below, within 180 days of submission of the proposed impact statement and use policy to the governing body, the law enforcement agency must cease its use of the military equipment until it receives the approval of the governing body in accordance with the requirements of this bill.
- 3) Requires a law enforcement agency, in seeking the approval of the governing body pursuant to 1), above, to submit a proposed impact statement and use policy to the governing body and

make those documents available on the law enforcement agency's Internet Web site (website) at least 30 days prior to any public hearing concerning the military equipment at issue.

- 4) Requires the governing body to consider a proposed impact statement as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Act or the Brown Act, as applicable.
- 5) Requires the governing body to only approve a request to fund, acquire, or use military equipment pursuant to this bill if it determines all of the following:
 - a) The military equipment is needed despite available alternatives;
 - b) The proposed impact statement and use policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
 - c) The use of military equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group; and,
 - d) The use of military equipment is the most cost-effective option among all available alternatives.
- 6) Requires, in order to facilitate public participation, any proposed or final impact statement and use policy to be made publicly available on the website of the relevant law enforcement agency for as long as the military equipment is available for use.
- 7) Provides that, if the impact statement identifies a risk of potential adverse impacts on the public's welfare, safety, civil rights, or civil liberties, the approval for the funding, acquisition, or use of military equipment by the governing body pursuant to this bill shall not be deemed an acquiescence to those impacts, but instead an acknowledgment of the risk of those impacts and the need to avoid them proactively.
- 8) Prohibits the funding, acquisition, or use of military equipment by a law enforcement agency without the express approval of the governing body, including adoption of an impact statement and use policy submitted to the governing body pursuant to the requirements of this bill.
- 9) Requires the governing body to review any ordinance that it has adopted pursuant to this bill approving the funding, acquisition, or use of military equipment at least annually and, subject to 10), below, vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Act or the Brown Act, as applicable.
- 10) Requires the governing body to determine, based on the annual military equipment report (annual report) submitted pursuant to 11), below, whether each piece of military equipment identified in that report has complied with the standards for approval set forth in 5), above. If the governing body determines that a piece of military equipment identified in that annual report has not complied with these standards for approval, the governing body shall either disapprove a renewal of the authorization for that piece of military equipment or require modifications to the use policy in a manner that will resolve the lack of compliance.

- 11) Requires a law enforcement agency that receives approval for the funding, acquisition, or use of military equipment pursuant to the requirements of this bill to submit to the governing body an annual report for each piece of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use. The law enforcement agency shall also make each annual report publicly available on its website for as long as the military equipment is available for use.
- 12) Requires the annual report mandated by this bill to include the following information for the immediately preceding calendar year for each piece of military equipment:
 - a) A summary of how the military equipment was used;
 - b) If applicable, a breakdown of where the military equipment was used geographically by individual census tract, as defined in the relevant year by the United States Census Bureau. For each census tract, the law enforcement agency shall report the number of days the military equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization;
 - c) A summary of any complaints or concerns received concerning the military equipment;
 - d) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response;
 - e) An analysis of any discriminatory, disparate, any other adverse impacts that the use of military equipment may have had on the public's safety, welfare, civil rights, and civil liberties and on any community or group, including, but not limited to, those protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution; and,
 - f) The total annual cost for each piece of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
- 13) Requires a law enforcement agency, within 30 days of submitting and publicly releasing an annual report pursuant to this bill, to hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual report and the law enforcement agency's funding, acquisition, or use of military equipment.
- 14) Requires the Attorney General (AG) to do the following:
 - a) By January 31, 2019, develop a list of military equipment that warrants public input pursuant to this bill. The list shall include, at a minimum, the military equipment expressly listed in 16)(b), below;
 - b) Post this list on his or her website and update it at least annually; and,
 - c) Make available on the AG's website a form by which members of the public may submit suggestions for equipment to be included as military equipment on the list.

- 15) Allows any person to enforce this bill by bringing a civil action seeking injunctive relief, declaratory relief, a writ of mandate, or other relief in a court of competent jurisdiction. In any action brought, the court shall award costs and reasonable attorneys' fees to a prevailing plaintiff.
- 16) Provides the following definitions:
- a) "Governing body" means the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. In the case of a law enforcement agency of a county, including a sheriff's department or a district attorney's office, "governing body" means the board of supervisors of the county;
 - b) "Law enforcement agency" means any of the following:
 - i) A police department, including the police department of a transit agency, school district, or any campus of the University of California, the California State University, or California Community Colleges;
 - ii) A sheriff's department;
 - iii) A district attorney's office;
 - iv) A county probation department;
 - v) The Department of the California Highway Patrol;
 - vi) The Department of Justice; or,
 - vii) Any other state or local agency authorized to conduct criminal investigations or prosecutions;
 - c) "Military equipment" means equipment that is militaristic in nature and includes, but is not limited to, all of the following:
 - i) Powered aircraft with a crew aboard, such as an airplane, that use a fixed wing for lift;
 - ii) Powered aircraft with a crew aboard that use a rotary wing for lift, such as a helicopter;
 - iii) Unmanned, remotely piloted, powered aerial vehicles;
 - iv) Wheeled armored vehicles that are either built or modified to provide ballistic protection to their occupants, including a mine-resistant ambush protected (MRAP) vehicle or an armored personnel carrier;
 - v) Wheeled tactical vehicles that are either built to operate both onroad and offroad in supporting military operations, such as a high mobility multipurpose wheeled vehicle

- (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, a five-ton truck, or have a breaching or entry apparatus attached;
- vi) Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion;
 - vii) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units;
 - viii) Weaponized aircraft, vessels, or vehicles of any kind;
 - ix) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, ballistic, such as a slug, or explosive in nature;
 - x) Firearms of .50 caliber or greater;
 - xi) Ammunition of .50 caliber or greater;
 - xii) Specialized firearms and ammunition of less than .50 caliber, other than service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency;
 - xiii) Any firearm or firearm accessory that is designed to launch small, explosive projectiles;
 - xiv) Any large knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat;
 - xv) Explosives and pyrotechnics, including grenades referred to as flashbang grenades and explosive breaching tools;
 - xvi) Riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed-length straight batons;
 - xvii) Long-range acoustic devices;
 - xviii) Camouflage uniforms, other than uniforms with woodland or desert patterns or solid color uniforms; and,
 - xix) Any other equipment as determined by the AG pursuant to 14), above;
- d) "Military equipment impact statement" means a publicly released, legally enforceable written document that includes, at a minimum, all of the following:
- i) A description of each piece of military equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the military equipment;

- ii) The purposes and reasons for which the law enforcement agency proposes to use each piece of military equipment;
 - iii) The fiscal impact of each piece of military equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs;
 - iv) An assessment specifically identifying any potential impacts that the use of military equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts; and,
 - v) Alternative method or methods by which the law enforcement agency can accomplish the purposes for which the military equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public;
- e) "Military equipment use policy" means a publicly released, legally enforceable written document governing the use of military equipment by a law enforcement agency that addresses, at a minimum, all of the following:
- i) The specific purpose or purposes that each piece of military equipment is intended to achieve;
 - ii) The specific capabilities and authorized uses of military equipment, the legal and procedural rules that govern each authorized use, and the potential uses of the military equipment that are prohibited;
 - iii) The course of training that must be completed before any officer, agent, or employee of the law enforcement agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy;
 - iv) The mechanisms to ensure compliance with the use policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy; and,
 - v) The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.
- 17) Expresses a number of findings and declarations regarding the adverse impacts that the acquisition of military equipment and its deployment in our communities can create on the public's safety and welfare, and the public's right to know about and participate in any government agency's decision to fund, acquire, or use such equipment.

- 18) Finds and declares that this bill addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter applies to all cities, including charter cities and shall supersede any inconsistent provisions in the charter of any city, county, or city and county.
- 19) Finds and declares that this bill furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies, and declares, pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings: Requiring local agencies to hold public meetings prior to the acquisition of military equipment further exposes that activity to public scrutiny and enhances public access to information concerning the conduct of the people's business.
- 20) Provides that no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district under this bill would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

EXISTING LAW:

- 1) Requires, pursuant to the Brown Act, that all meetings of a legislative body, as defined, of a local agency be open and public and all persons permitted to attend, unless a closed session is authorized.
- 2) Defines "legislative body" to mean:
 - a) The governing body of a local agency or any other local body created by state or federal statute;
 - b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of the Brown Act;
 - c) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
 - i) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity; or,
 - ii) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

- 3) Authorizes the Department of Defense (DOD), pursuant to Section 2576a of Title 10 of the United States Code, to transfer surplus personal property, including arms and ammunition, to federal or state agencies for use in law enforcement activities, subject to specified conditions, at no cost to the acquiring agency. This program is commonly referred to as the 1033 Program.
- 4) Allows, pursuant to California's Federal Surplus Property Law, a local agency, as defined, to acquire surplus federal property without regard to any law that requires posting of notices or advertising for bids, inviting or receiving bids, delivery of purchases before payment, or that prevents the local agency from bidding on federal surplus property.
- 5) Defines "local agency" as used in California's Federal Surplus Property Law to mean county, city, municipal corporation, or public district.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Author's Statement.** According to the author, "President Obama recognized the need to improve Federal support for the appropriate use, acquisition, and transfer of controlled equipment by law enforcement agencies. Under his Executive Order #13688, stakeholders convened and developed a number of recommendations to, among other things, harmonize federal acquisition processes. Yet, last August under the current federal administration, Executive Order #13688 was rescinded along with any semblance of oversight of the 1033 Program.

"AB 3131 is necessary because the lack of a public forum to discuss the acquisition of military equipment jeopardizes the relationship police have with the community which can be undermined when law enforcement is seen as an occupying force rather than a public safety service."

- 2) **Background.** While the militarization of local police departments has been in news headlines for several years, starting with the unrest in Ferguson, Missouri, it is not new. It has been researched and written about for at least the past two decades, having its roots in the law enforcement response to the social unrest of the 1960s, and the development of Special Weapons and Tactics (SWAT) units. There has been a dramatic expansion in the use of SWAT teams since then, with a significant increase in their use for drug raids, as noted in an article released by the U.S. Department of Justice in December 2013 entitled "Will the Growing Militarization of Our Police Doom Community Policing?" The article also cites the use of battle dress uniforms and stress training as contributors to the increased militarization of local police practices.

The ACLU released a comprehensive report in June entitled, "War Comes Home: The Excessive Militarization of American Policing," which recommends that state legislatures and municipalities "impose meaningful restraints on the use of SWAT" and notes that there needs to be greater documentation, transparency, and accountability on how the police are spending tax dollars. The report also includes a laundry list of recommendations for local agencies, primarily directed at best practices in the use of SWAT teams.

- 3) **1033 Program.** The DOD 1033 Program allows surplus U.S. military equipment to be transferred to municipal police departments free of charge. The 1033 Program is named for the section of the National Defense Authorization Act of 1997 that granted permanent authority to the Secretary of Defense to transfer defense material to federal and state agencies for use in law enforcement, particularly those associated with counter-drug and counter-terrorism activities.

According to the Defense Logistics Agency (DLA), which administers the 1033 Program, "Since its inception, the program has transferred more than \$6.8 billion worth of property. In 2017, \$504 million worth of property (based on initial acquisition cost) was transferred to law enforcement agencies. Requisitions cover the gamut of items used by America's military – clothing and office supplies, tools and rescue equipment, vehicles, rifles, and other small arms. Of all the excess equipment provided through the program, only five percent are small arms and less than one percent are tactical vehicles. More than 7,000 law enforcement agencies have enrolled in the program.

"For states to participate in the program, they must each set up a business relationship with DLA through a Memorandum of Agreement (MOA). Each participating state's governor is required to appoint a State Coordinator to ensure the program is used correctly by the participating law enforcement agencies. The State Coordinators are expected to maintain property accountability records and to investigate any alleged misuse of property, and in certain cases, to report violations of the MOA to DLA. State Coordinators are aggressive in suspending law enforcement agencies who abuse the program.

"Additionally, DLA has a compliance review program. The program's objective is to have (DLA's) Law Enforcement Support Office staff visit each state coordinator and assist him or her in ensuring that property accountability records are properly maintained, minimizing the potential for fraud, waste and abuse."

Law enforcement agencies also purchase equipment with their own money and/or with federal grants, in addition to equipment acquired through the 1033 Program.

- 4) **Office of Emergency Services.** The Governor's Office of Emergency Services (OES) administers the 1033 Program for the state. According to the OES website, "California law enforcement agencies that wish to acquire and/or retain property acquired through the Federal Law Enforcement Office (LESO) Program (previously known as the 1033 and/or 1208 Federal Excess Property Program) must be certified and currently authorized, through the State Coordinator's Office and the LESO to use the LESO Program....Certification paperwork is required annually and whenever a participating agency's Chief Executive Official Changes."
- 5) **Executive Order #13688.** President Obama in 2015 issued Executive Order #13688, which commissioned a report to identify changes to the 1033 process in order to minimize the potential negative effects of deploying surplus military equipment. The report recommended, among other steps, that certain equipment be either prohibited from being provided to local agencies through the 1033 process, or subject to stricter controls, as follows:

Prohibited Equipment	Controlled Equipment
<ul style="list-style-type: none"> • Aircraft, ships, or vehicles with intact weapons • Armored vehicles with treads • Large caliber firearms and ammunition • Grenade launchers • Bayonets • Camouflage uniforms 	<ul style="list-style-type: none"> • Other aircraft • Other armored vehicles, including mine-resistant ambush protected vehicles • Tactical vehicles, such as Humvees • Command and control vehicles • Specialized firearms and ammunition • Explosives • Battering rams and other breaching devices • Riot control equipment, including batons, helmets, and shields

President Trump rescinded this order in August of last year.

Military equipment, as defined in this bill, is nearly identical to the prohibited or controlled equipment contained in these recommendations, with the addition of long-range acoustic devices and any additional equipment the AG adds to the list pursuant to this bill's requirements.

6) **Bill Summary.** This bill establishes requirements that law enforcement agencies and their governing bodies must follow before undertaking specified actions regarding military equipment. This bill is sponsored by the American Civil Liberties Union of California, the Friends Committee on Legislation of California, and Indivisible CA: StateStrong.

a) The bill contains the following parts:

i) **Requirements on Law Enforcement Agencies:**

(1) **Approval From Governing Body.** This bill requires law enforcement agencies to obtain approval from their governing bodies, via an ordinance adopting an impact statement and use policy at a regular meeting, before doing any of the following: requesting military equipment under the 1033 Program; seeking funds for or acquiring military equipment; collaborating with another law enforcement agency in deploying military equipment; using any military equipment in a manner or by a person not previously approved in accordance with this bill's requirements; and, soliciting or responding to a proposal for, or entering an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use or collaborate in the use of military equipment;

(2) **Impact Statement and Use Policy.** A law enforcement agency must submit a proposed impact statement and use policy to its governing body and make those documents available on the agency's website at least 30 days before any public hearing concerning the equipment. These documents, either proposed or final, must remain on the agency's website for as long as the equipment is available for use;

The proposed impact statement must include a number of elements, including specified information about each piece of equipment, the purposes for its use, its fiscal impact, potential impacts of its use and measures to safeguard the public from potential adverse impacts, and alternatives the agency can pursue instead of using military equipment;

The proposed use policy must address the purposes for each piece of military equipment, capabilities and uses of the equipment, training that must be completed before equipment can be used, mechanisms to ensure compliance with the use policy, and procedures the public may follow to register complaints, concerns or questions about the use of the equipment and how the agency will ensure a timely response;

- (3) **Annual Report and Community Engagement.** A law enforcement agency that receives approval for funding, acquisition or use of military equipment must submit to its governing body within one year of approval and annually thereafter an annual report for each piece of equipment approved. This report must also be posted on the agency's website for as long as the equipment is available for use. The agency must hold a well-publicized and conveniently located community engagement meeting within 30 days of submitting and publicly releasing the report;

The report must include specified information for the prior calendar year for each piece of equipment, including: how it was used; where it was used, broken down by census tract; a summary of complaints or concerns regarding the equipment; the results of any audits, information about violations of the use policy and any responses taken; an analysis of any adverse impacts on public safety, welfare, civil rights, civil liberties and any community or group; and the total annual cost for each piece of equipment;

- (4) **Continued Use of Equipment.** Law enforcement agencies must complete the approval process created by this bill in order to continue using military equipment acquired before January 1, 2019;
- ii) **Requirements on Governing Bodies.** Governing bodies must consider a proposed impact statement submitted by a law enforcement agency as an agenda item for open session at a regular meeting and provide for public comment, and can only approve a request to fund, acquire, or use military equipment if it makes specified determinations as outlined in the bill. Governing bodies must also determine whether each piece of military equipment in a law enforcement agency's annual report complies with these determinations. If not, the governing body must disapprove a renewal of authorization for that piece of equipment or require modifications to the use policy that will resolve the lack of compliance. Any ordinance adopted, pursuant to the bill, must be reviewed at least annually and renewed via a vote at a regular meeting;
- iii) **Requirements on the AG.** The AG must develop a list of military equipment that warrants public input pursuant to this bill by January 31, 2019, and update it at least annually. The list must include, at a minimum, the military equipment expressly

listed in this bill's definition of military equipment (which, in turn, must include any additional equipment the AG adds to the list). The AG must post on his or her website this list, as well as a form by which members of the public may submit suggestions for equipment to be included as military equipment on the list;

iv) **Other Provisions.** This bill also includes these additional provisions:

- (1) The funding, acquisition, or use of military equipment by a law enforcement agency is expressly prohibited without governing body approval in accordance with this bill's provisions;
- (2) If an impact statement identifies a risk of potential adverse impacts on the public's welfare, safety, civil rights, or civil liberties, the approval for the funding, acquisition, or use of military equipment by a governing body, pursuant to this bill, shall not be deemed an acquiescence to those impacts, but instead, an acknowledgment of the risk of those impacts and the need to avoid them proactively; and,
- (3) Any person may enforce this bill by bringing a civil action seeking injunctive relief, declaratory relief, a writ of mandate, or other relief in a court of competent jurisdiction. In any action brought, the court shall award costs and reasonable attorneys' fees to a prevailing plaintiff.

b) This bill would apply to the following entities:

i) **Law enforcement agencies include:**

- (1) A police department, including the police department of a transit agency, school district, or any campus of the University of California, the California State University, or California Community Colleges;
- (2) A sheriff's department;
- (3) A district attorney's office;
- (4) A county probation department;
- (5) The Department of the California Highway Patrol;
- (6) The Department of Justice; and,
- (7) Any other state or local agency authorized to conduct criminal investigations or prosecutions;

ii) **Governing bodies** include the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. In the case of a law enforcement agency of a county, including a sheriff's department or a district attorney's office, "governing body" means the board of supervisors of the county; and,

iii) **Charter cities.** This bill provides that it addresses a matter of statewide concern rather than a municipal affair and, therefore, applies to all cities, including charter cities and shall supersede any inconsistent provisions in the charter of any city, county, or city and county.

7) **Policy Considerations.** The Committee may wish to consider the following policy issues:

- a) **School District Requirements.** SB 242 (Monning), Chapter 79, Statutes of 2015, required a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment. The Committee may wish to ask the author if the provisions of this bill should apply to school districts.
- b) **Collaboration During Active Incidents.** This bill requires law enforcement agencies to obtain approval from their governing bodies before collaborating with another law enforcement agency in deploying military equipment. It is not clear how this requirement could affect an active incident to which multiple law enforcement agencies respond concurrently. Even if each law enforcement agency individually complies with this bill's provisions and receives approval for the use of military equipment, do they still need additional approval to deploy this equipment in a situation where multiple agencies "collaborate" in responding to the same incident? The Committee may wish to ask the author to discuss this provision.

8) **Previous Legislation.** AB 36 (Campos) of 2015 prohibited local agencies, except local law enforcement agencies that are directly under the control of an elected officer, from applying to receive specified surplus military equipment from the federal government, unless the legislative body of the local agency approved the acquisition at a regular meeting held pursuant to the Brown Act. AB 36 was vetoed with the following message:

"Transparency is important between law enforcement and the communities they serve, but it must be tempered by security considerations before revealing law enforcement equipment shortages in a public hearing. This bill fails to strike the proper balance. Moreover, the bill is unnecessary, as President Obama's Executive Order 13688 will implement a similar requirement for governing bodies to grant approval of surplus military equipment."

SB 242 (Monning), Chapter 79, Statutes of 2015, required a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

9) **Proposition 42.** Proposition 42 was passed by voters on June 3, 2014, and requires all local governments to comply with the Public Records Act and the Brown Act and with any subsequent changes to those Acts. Proposition 42 also eliminated reimbursement to local agencies for costs of complying with the Public Records Act and the Brown Act.

This bill contains language that says that the Legislature finds and declares that this bill furthers the purpose of the California Constitution as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the Constitution, the

bill also includes a finding that states, "This act ensures that more Californians can meaningfully participate in the meetings of legislative bodies of local agencies."

This bill specifies that no reimbursement for local agencies to implement the bill's provisions is necessary because "the only costs that may be incurred by a local agency or school district...would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution."

10) **Arguments in Support.** The American Civil Liberties Union of California, co-sponsor of this measure, writes, "American neighborhoods are increasingly being policed by peace officers armed with the weapons and tactics of war. Local law enforcement agencies can acquire surplus U.S. military equipment from the U.S. Department of Defense's 1033 Program, including armored tanks, grenade launchers, and assault rifles. They can also purchase the same types of equipment from private companies, often with the use of federal grants. But there is an absence of transparency and civilian decision-making at the local level for the acquisition and use of this equipment, despite the use of local tax dollars for maintenance of these weapons, and their impact on local communities...AB 3131 provides the authority to impose appropriate rules for its use."

11) **Arguments in Opposition.** The Fraternal Order of Police, the Association of Orange County Deputy Sheriffs, the Long Beach Police Officers Association, and the Sacramento County Deputy Sheriffs' Association, in opposition, state, "While we understand the author's intent, this approval process is unnecessary as it is already done through the normal annual budget process in each jurisdiction. However, even if the specific purchases had to be approved in open forum by the elected body, it is overly burdensome to require law enforcement agencies to request approval annually and require additional reporting requirements that are redundant and duplicative. Without additional funding, law enforcement agencies throughout the state do not have the resources to comply with these requirements."

12) **Double-Referral.** This bill is double-referred to the Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California [CO-SPONSOR]
 Friends Committee on Legislation of California [CO-SPONSOR]
 Indivisible CA: StateStrong [CO-SPONSOR]
 American Friends Service Committee
 American Solidarity Movement
 A New PATH
 Anti Police-Terror Project
 Burbank Indivisible Against Hate
 California Council of Churches IMPACT
 California Immigrant Policy Center
 California Immigrant Youth Justice Alliance
 Californians United for a Responsible Budget
 Campaign Zero

Support (continued)

CD4 Indivisible Network
Change Begins With Me, Indivisible in California Assembly District 78
Cloverdale Indivisible
Council on American-Islamic Relations, California
Courage Campaign
Defending Our Future, Indivisible in CA 52nd District
Ella Baker Center for Human Rights
Fair Chance Project
Indivisible Auburn CA
Indivisible Blossom Manor Los Gatos
Indivisible CA-25 Simi Valley Porter Ranch
Indivisible California District 33
Indivisible CA 39
Indivisible Los Angeles, CA-43
Indivisible 49
Indivisible CA 50
Indivisible Central Contra Costa County
Indivisible Colusa County
Indivisible East Bay
Indivisible Healdsburg
Indivisible Marin
Indivisible Sacramento
Indivisible: San Diego Central
Indivisible San Diego Districts 52/53
Indivisible Sausalito
Indivisible Ventura
Indivisible Watu
Justice Teams Network
LA Resisters Indivisible
Legal Services for Prisoners with Children
Lockwood perSisters
Media Alliance
Oakland Privacy
Orange County Congregation Community Organization
Orinda Progressive Action Alliance
PICO California
Root & Rebound
San Diego Indivisible Downtown
San Diego Organizing Project
Santa Cruz Indivisible
Southeast Asia Resource Action Center
The Indivisibles of Sherman Oaks
The Resistance – Northridge, Indivisible
Together We Will – Los Gatos

Opposition

Association of Orange County Deputy Sheriffs
California State Sheriffs' Association
Fraternal Order of Police
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Sacramento County Deputy Sheriffs' Association

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