
**Introduced by Assembly Members Gloria and Chiu
(Principal coauthor: Senator Hill)**

February 16, 2018

An act to add Chapter 12.8 (commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to military equipment.

LEGISLATIVE COUNSEL'S DIGEST

AB 3131, Gloria.

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

Existing law designates the Department of General Services as the agency for the State of California responsible for distribution of federal surplus personal property, excepting food commodities, and requires the department to, among other things, do all things necessary to the execution of its powers and duties as the state agency for the distribution of federal personal surplus property, excepting food commodities, in accordance with specified federal law. Existing law, the Federal Surplus Property Acquisition Law of 1945, authorizes a local agency, as defined, to acquire surplus federal property without regard to any law which requires posting of notices or advertising for bids, inviting or receiving bids, or delivery of purchases before payment, or which prevents the local agency from bidding on federal surplus property. Existing federal law authorizes the Department of Defense 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 bill would require a law enforcement agency, defined to include specified state and local entities, to publish a military equipment use policy prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined. The bill would also impose similar publishing requirements for the continued use of military equipment acquired prior to January 1, 2019. The bill would require that the governing body of a law enforcement agency consider a proposed military equipment use policy at a regular meeting held pursuant to specified open meeting laws. The bill would also require that a law enforcement agency prepare and make public an annual report for each piece of military equipment for as long as the military

equipment is in use and to hold a community engagement meeting within 30 days of the public release of that report, as provided.

The bill would require the state agency that has signed a current memorandum of agreement with the federal Defense Logistics Agency for the purpose of administering a state program for acquiring surplus military equipment, pursuant to specified federal law, to develop by January 31, 2019, and annually update a list of military equipment, as specified, and post the list on its Internet Web site. The bill would also include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

By adding to the duties of local officials with respect to the funding, acquisition, and use of military equipment, this bill 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 the statutory provisions noted above.

Bill Text

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

SECTION 1.

Chapter 12.8 (commencing with Section 7070) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.8. Funding, Acquisition, and Use of Military Equipment

7070.

The Legislature finds and declares all of the following:

(a) The acquisition of military equipment and its deployment in our communities can adversely impact the public's safety and welfare, including significant risks to civil rights, civil liberties, and physical and psychological well-being, and incur significant financial costs.

- (b) The public has a right to know about any funding, acquisition, or use of military equipment by state or local government officials, as well as a right to participate in any government agency's decision to fund, acquire, or use such equipment.
- (c) Decisions regarding whether and how military equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input.
- (d) Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, or used.
- (e) 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.

7071.

For purposes of this chapter, the following definitions shall apply:

- (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:
 - (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 the 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.
- (c) "Military equipment" means equipment that is militaristic in nature and includes, but is not limited to, all of the following:
 - (1) 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.
 - (2) 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, or a five-ton truck, or built with a breaching or entry apparatus attached.
 - (3) Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
 - (4) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
 - (5) Weaponized aircraft, vessels, or vehicles of any kind, whether manned or unmanned.
 - (6) 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 that is explosive in nature.

- (7) Firearms of .50 caliber or greater.
 - (8) Ammunition of .50 caliber or greater.
 - (9) Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Section 30515 of the Penal Code, with the exception of other service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency.
 - (10) Any firearm or firearm accessory, excluding the service weapons described in paragraph (9), that is designed to launch small projectiles, including, but not limited to, a grenade launcher or a riot gun used to disperse chemical agents.
 - (11) Any large knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
 - (12) Explosives and pyrotechnics, including grenades referred to as flashbang grenades and explosive breaching tools.
 - (13) Riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed-length straight batons.
 - (14) Sonic weapons, including the Long Range Acoustic Device sound cannon.
 - (15) Any other equipment as determined by the state coordinator pursuant to Section 7074.
- (d) "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:
- (1) The specific purpose or purposes that each type of military equipment is intended to achieve.
 - (2) The purposes and reasons for which the law enforcement agency proposes to use each type of military equipment.
 - (3) 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.
 - (4) 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.
 - (5) The mechanisms to ensure compliance with the military equipment 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.
 - (6) 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.
- (e) "State coordinator" means the state agency that has signed a current memorandum of agreement with the federal Defense Logistics Agency for the purpose of administering a state program for acquiring surplus military equipment pursuant to Section 2576a of Title 10 of the United States Code.

7072.

- (a) (1) A law enforcement agency shall publish a military equipment use policy 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.
 - (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, including commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of military equipment within the territorial jurisdiction of the governing body. This provision shall not apply to aircraft used in a search-and-rescue operation or in the context of a natural disaster.
 - (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.
 - (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) 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, shall publish a military equipment use policy in accordance with this section.
- (b) The governing body of a law enforcement agency shall consider a proposed military equipment use policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.
 - (c) In order to facilitate public participation, any proposed or final military equipment use policy shall be made publicly available on the Internet Web site of the relevant law enforcement agency for 30 days prior to the hearing and for as long as the military equipment is available for use. In the case of a state agency lacking a governing body, the law enforcement agency shall publish the military equipment use policy on its Internet Web site 30 days prior to taking any action described in paragraph (1) or (2) of subdivision (a).

7073.

(a) A law enforcement agency, other than the Department of the California Highway Patrol and the Department of Justice, that takes any action pursuant to Section 7072 shall submit to the governing body an annual military equipment report for each piece of military equipment acquired or used pursuant to Section 7072 within one year of that action, and annually thereafter for as long as the military equipment is available for use. The Department of the California Highway Patrol and the Department of Justice shall draft an annual military equipment report for each piece of military equipment acquired or used pursuant to Section 7072 within one year of that action, and annually thereafter for as long as the military equipment is available for use. The law enforcement agency shall also make each annual military equipment report required by this section publicly available on its Internet Web site for as long as the military equipment is available for use. The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each piece of military equipment:

- (1) A summary of how the military equipment was used.
 - (2) 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 nonwarrant forms of court authorization.
 - (3) A summary of any complaints or concerns received concerning the military equipment.
 - (4) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
 - (5) 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.
 - (6) 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.
- (b) Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the law enforcement agency shall 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 military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

7074.

- (a) The state coordinator, by January 31, 2019, shall develop a list of military equipment that warrants public input pursuant to this chapter. The state coordinator shall post this list on his or her Internet Web site and update it at least annually.
- (b) The list required by this section shall include, at a minimum, the military equipment expressly listed in paragraphs (1) to (15), inclusive, of subdivision (c) of Section 7071.
- (c) The state coordinator shall make available on its Internet Web site a form by which members of the public may submit suggestions for equipment to be included as military equipment on the list required by this section.

7075.

The Legislature finds and declares that this chapter 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.

SEC. 2.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.