

GOVERNOR SIGNS ASSEMBLY BILL 481 ESTABLISHING NEW REQUIREMENTS ON THE WAY AGENCIES FUND, ACQUIRE, AND USE MILITARY EQUIPMENT

On September 30, 2021, Governor Newsom signed Assembly Bill 481 (“AB 481”), which will become effective on January 1, 2022.¹ AB 481 stated goals are to provide legally enforceable safeguards to protect the public’s welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, or used.

Background

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. Existing law, the Federal Surplus Property Acquisition Law of 1945, authorizes a local agency to acquire surplus federal 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.

AB 481 declares that the acquisition of military equipment and its deployment in communities adversely impacts the public’s safety and welfare, “including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being, and inurement of significant financial costs.” The bill declares that military equipment is “more frequently deployed in low-income Black and Brown communities, meaning the risks and impacts of police militarization are experienced most acutely in marginalized communities.” AB 481 intends in part to provide a public forum to discuss the acquisition of military equipment, finding that decisions on such matters should be based on meaningful public input based on the public’s rights to know about and participate in such matters.

Discussion

AB 481 adds Chapter 12.8, which begins with Section 7070, to the Government Code. Section 7070 defines relevant terms, including “governing body,” “military equipment,” and “military equipment use policy.” “Governing body” means the elected or appointed body that oversees a law enforcement agency. For county law enforcement agencies, including a sheriff’s department or a district attorney’s office, the “governing body” is the county’s board of supervisors. A variety of items set forth in Section 7070, subdivision (c) comprises the definition of “military equipment.” These items include:

“(c) ‘Military equipment’ means the following:

- (1) **Unmanned, remotely piloted, powered aerial or ground vehicles.**
- (2) **Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.** However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
- (3) High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or **wheeled vehicles that have a breaching or entry apparatus attached.** However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.

(4) Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

(5) **Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.**

(6) Weaponized aircraft, vessels, or vehicles of any kind.

(7) Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.

(8) Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

(9) Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

(10) Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

(11) Any firearm or firearm accessory that is designed to launch explosive projectiles.

(12) **'Flashbang' grenades and explosive breaching tools, 'tear gas,' and 'pepper balls,'** excluding standard, service-issued handheld pepper spray.

(13) Taser Shockwave, microwave weapons, water cannons, and the Long Range [sic] Acoustic Device (LRAD).

(14) The following projectile launch platforms and their associated munitions: **40mm projectile launchers, 'bean bag,' rubber bullet, and specialty impact munition (SIM) weapons.**

(15) **Any other equipment as determined by a governing body or a state agency to require additional oversight.**

(16) Notwithstanding paragraphs (1) through (15), "military equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency." (Emphasis added.)

According to the Defense Logistics Agency, "prohibited" equipment is defined as: "Prohibited equipment includes: any aircraft, vessels or vehicles that inherently contain weaponry, (e.g. tanks, Bradley fighting

vehicles, armed drones); crew served/large caliber (.50 cal. or greater) weapons and ammunition; military uniforms; body armor; Kevlar helmets; and explosives or pyrotechnics of any kind. Also, aircraft and vehicles available in the program are “demilitarized,” meaning that any specific military technology (e.g. communication equipment) are removed prior to transfer to law enforcement agencies.” Pursuant to 10 U.S.C. section 2576a(g), “controlled equipment” is defined as “any item assigned a demilitarization code of B, C, D, E, G, or Q under Department of Defense Manual 4160.21–M, “Defense Materiel Disposition Manual”, or any successor document.”

Note that this list contains many items currently in use by law enforcement agencies throughout California. These items are noted in bold print above. In addition, subdivision (c)(15) contains a catchall provision that could have widespread applicability as determined by the particular governing body of your jurisdiction. Essentially, pursuant to the verbiage of this subdivision, “military equipment” includes anything that a governing body says it is if the body determines that the equipment should be subject to “additional oversight.”

“Military equipment use policy”² is defined as a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency. The policy document must address, at a minimum, all of the following:

- A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.
- The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.
- The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
- The legal and procedural rules that govern each authorized use.
- The training, including any course required by the Commission on Peace Officer Standards and Training (“POST”), that must be completed before any officer, agent, or employee of the law enforcement agency or the state 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.
- The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
- For a law enforcement agency, 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.

Section 7071 requires each law enforcement agency to obtain approval of the applicable governing body, by adoption of a military equipment use policy, by ordinance at a regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating to the funding, acquisition, use, **or collaboration with another agency in the use, of military equipment.**³ The section requires similar approval **for the continued use of military equipment acquired before January 1, 2022, with May 1, 2022** as the deadline for an agency **to begin** a governing body approval process.⁴ (Emphasis added.)

A law enforcement agency seeking the approval of the governing body must submit a proposed military equipment use policy to the governing body and make those documents available on the agency's website at least 30 days before any public hearing concerning the military equipment at issue. The governing body may only approve a military equipment use policy if the body determines each of the following:

- The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
- Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

Section 7071 also directs each law enforcement agency to **make publicly available on the agency's website any proposed or final military equipment use policy** for as long as the military equipment is available for use.⁵ The section also requires the **governing body to annually review** the ordinance and to either disapprove a renewal of the authorization for a type of military equipment or modify the military equipment use policy if it determines, based on an annual military equipment report (under Section 7072) prepared by the law enforcement agency, as provided, that the military equipment does not comply with the specified standards for approval. Section 7073 describes the same or similar requirements for state agencies as Section 7071 does for law enforcement agencies. A state agency must provide a copy of the military equipment use policy to the Governor or the Governor's designee.

Significantly, Section 7071, subdivision (f) provides: "Notwithstanding subdivisions (a) to (e), inclusive, if a city contracts with another entity for law enforcement services, the city shall have the authority to adopt a military equipment use policy based on local community needs." In sum, a jurisdiction that contracts with another law enforcement agency for law enforcement services will still have the authority to adopt a military equipment use policy governing the use of such equipment in its jurisdiction. Accordingly, it may be prudent for jurisdictions engaged in a contractual relationship for provision of law enforcement services to coordinate the language of their respective policies in order to avoid potential conflicts in the use of "military equipment."

Section 7072 specifies that after receiving approval for its military equipment use policy, the law enforcement agency must submit an annual military equipment report providing certain required information for each type of military equipment approved by the governing body for as long as the equipment is available for use. The report must include, at a minimum, the following information for the immediately preceding calendar year for **each type** of military equipment:

- A summary of how the military equipment was used and the purpose of its use.
- A summary of any complaints or concerns received concerning the military equipment.

- The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
- The total annual cost for each type 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.
- The quantity possessed for each type of military equipment.
- If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

Within 30 days of submitting the annual military equipment report, a law enforcement agency must hold at least one “well-publicized and conveniently located community engagement meeting,” to allow for public discussion of the report.

Section 7074 finds and declares that ensuring adequate oversight of the acquisition and use of military equipment is a matter of statewide concern rather than a municipal affair and, therefore, these provisions apply to all cities, including charter cities. Moreover, these provisions supersede any inconsistent charter provisions.

Section 7075 states that nothing in Chapter 12.8’s provisions preclude a county or local municipality from implementing additional requirements and standards related to the purchase, use, and reporting of military equipment by local law enforcement agencies.

HOW THIS AFFECTS YOUR AGENCY

With AB 481, agencies will be required to adjust current approaches to funding, acquisition, and use of military equipment. Any agency seeking to use existing or new military equipment must create a military equipment use policy, present the proposed or final policy for governing body approval and public comment during the approval process, and produce annual reports pertaining to the policy and use of military equipment.

While the 1033 program is mentioned by AB 481, as noted above, the scope of the language in the bill covers the use of “military equipment” that does not derive from this source. In addition, the definition of “military equipment” is broad in application, including anything a governing body determines requires additional oversight. This could essentially encompass all law enforcement equipment if a governing body deems it so.

A summary of the requirements/key points of AB 481:

1. Beginning on January 1, 2022, an agency must adopt a military equipment use policy prior to seeking funding for; acquiring; requesting equipment under the 1033 program; 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; or

collaborating with another agency in the use of “military equipment” **acquired after January 1, 2022**. See 7071(a)(1) requirements for complete list.

2. **Submit** your proposed military equipment use policy **to the governing body and make those documents available on the law enforcement agency’s internet website at least 30 days prior to any public hearing concerning the military equipment at issue.**⁶ See 7071(b).
3. For the continued use of equipment **obtained prior to January 1, 2022**, a law enforcement agency seeking to **continue the use** of any military equipment that was acquired prior to January 1, 2022, **shall, no later than May 1, 2022, commence a governing body approval process in accordance with this section.**⁷ See 7071(a)(2).
4. If, **within 180 days of submission** of the proposed military equipment use policy to the governing body, you do not obtain approval, you must cease use of the military equipment until you do receive the approval of the governing body. Id.
5. You must adopt the military equipment use policy, in accord with the applicable timing provisions, to **collaborate in the use** of such equipment with another jurisdiction. See 7071(a)(1)(D). See also 7071(a)(1)(F) requirements re MOUs, etc.
6. Contract cities may adopt a military equipment use policy, which may conflict with the jurisdiction providing law enforcement services if not coordinated between the two jurisdictions. See 7071(f).
7. The governing body may only adopt the military equipment use policy in a public meeting if it finds that it all of the requirements in **Section 7071(d)(1) are met**. See 7071(d)(1).
8. The military equipment use policy must be published on your website as long as the equipment is in use. See 7071(d)(2).
9. You must prepare a military equipment report **addressing each of the elements in Section 7072(a)** for each type of equipment within one year of approval and at least annually thereafter. See 7072(a).
10. You must hold a public, community engagement meeting **within 30 days of submitting and publicizing the military equipment report** to respond to questions and discuss your military equipment program. See 7072(b).
11. The governing body shall review any ordinance that it has adopted pursuant to this section approving the funding, acquisition, or use of military equipment **at least annually** and vote on whether to renew the ordinance in a **regular public meeting** in compliance with the Brown Act or Bagley-Keene Act, as applicable. See 7071(e)(1).
12. The finding of “statewide concern” requires charter counties and cities to comply with the provisions of AB 481. See 7074.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.