
UNFINISHED BUSINESS

Bill No: SB 221
Author: Wiener (D), et al.
Amended: 5/17/18
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 8/29/18 (Pursuant to Senate Rule 29.10)

AYES: Skinner, Bradford, Jackson, Mitchell, Wiener

NOES: Anderson, Stone

ASSEMBLY FLOOR: 44-31, 8/27/18 - See last page for vote

SUBJECT: Agricultural District 1-A: firearm and ammunition sales at the Cow Palace

SOURCE: Author

DIGEST: This bill prohibits the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County.

Assembly Amendments delete the Senate version of the bill and amend the bill to the current version.

ANALYSIS:

Existing law:

- 1) Divides the state into agricultural districts, and designates District 1-A as the County of San Mateo and the City and County of San Francisco. (Food & Agr. Code, §§ 3851, 3853.)
- 2) Establishes District Agricultural Associations (DAA) within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of

general public interest, and states that each association is a state institution. (Food & Agr. Code, §§ 3951, 3893.)

- 3) States that a DAA may:
 - a) Contract for programs and for the purchase or lease of goods, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency;
 - b) Purchase, acquire, hold, sell, or exchange, or convey any interest in real property;
 - c) Lease for the use of its real property, or any portion of that property, to any person or public body for whatever purpose; and,
 - d) Use, manage, or operate any of its property jointly or in connection with any lessee or sublessee, for any purpose. (Food & Agr. Code, § 4051.)
- 4) Provides that brining or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)
- 5) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)
- 6) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice (DOJ) from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)
- 7) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)
- 8) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

- 9) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from DOJ. (Pen. Code § 27200.)
- 10) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to DOJ, as specified. (Pen. Code §§ 27200, 27245.)

This bill:

- 1) Prohibits any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County.
- 2) Provides that the prohibition on firearms and ammunitions sales at the Cow Palace does not apply to gun buy-back events held by a law enforcement agency.
- 3) States that this bill will become operative on January 1, 2020.

Background

Cow Palace is the 1-A DAA, a state agency of the California Department of Food and Agriculture, located in Daly City at the border of San Mateo and San Francisco counties. The Cow Palace arena was originally constructed in 1941, to serve as a permanent structure to house an animal livestock exposition. Cow Palace has since become a venue for various events including circuses, sports matches, concerts, and political conventions. Since the 1980s, Cow Palace has hosted gun shows four or five times a year.

According to an editorial in the San Francisco Chronicle, “[t]he communities living near the Cow Palace, the enormous state-owned exhibition hall in Daly City, overwhelmingly want the venue to stop hosting gun shows.” San Francisco has adopted local ordinances banning gun shows on city and county property. Likewise, since 1996, San Mateo County’s Board of Supervisors has barred gun shows at its county fairgrounds and expo center. But, because Cow Palace is situated on state-owned land between San Francisco and San Mateo County, the local governing bodies cannot regulate gun shows at Cow Palace. Thus, the

Legislature would have to enact a state-law to specifically ban gun shows on the property.

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sell, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. (Bureau of Alcohol, Tobacco, Firearms and Explosives,

According to the NRA's Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show. However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are "the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market." (Center for American Progress.)

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states.

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to

comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes." (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as Cow Palace.

There have been several legislative attempts to regulate gun shows at Cow Palace—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

Like this bill, SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace DAA to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would "set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace." Unlike SB 585, this bill will not impair any of Cow Palace's ongoing contracts because, if chaptered, it will not become operative until January 1, 2020.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, "I encourage all [DAAs] to work with their

local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Minor GF costs for DOJ to update records.
- 2) No direct cost to the California Department of Food and Agriculture.

SUPPORT: (Verified 8/27/18)

City and County of San Francisco
City of Daly City
Jefferson Union High School District
San Francisco Marin Medical Society
San Francisco Unified School District
San Mateo County Board of Supervisors

OPPOSITION: (Verified 8/27/18)

California Sportsman’s Lobby
Crossroads of the West
National Shooting Sports Foundation
Outdoor Sportsmen’s Coalition of California
Safari Club International
Safari Club International Foundation

ARGUMENTS IN SUPPORT: According to the San Mateo County Board of Supervisors:

The San Mateo County Board of Supervisors cannot restrict gun shows at the Cow Palace since it is owned by the California Department of Agriculture’s Division of Fairs and Expositions. Gun shows at the Cow Palace and other

California State Agriculture Districts promote and proliferate firearms throughout the State.

At a time when gun violence is increasing throughout the country, it is critically important that local governing bodies be afforded an opportunity to have a direct say in whether gun shows should occur in venues located within their borders.

ARGUMENTS IN OPPOSITION: According to Crossroads of the West:

It is estimated that, if the bill is enacted, the annual revenue decline to the Cow Palace from lost gun show leases, parking and related revenues will be more than \$730,000 (based on latest figures available) and that the annual loss in sales tax revenue would exceed \$600,000. It is important to note that newly-enacted legislation, AB 1499, requires vendors who sell merchandise on state fair properties to report those sales separately, providing thousands of dollars in additional revenue annually for the Cow Palace...

Firearms sales at gun shows are conducted through a dealer licensed in accordance with California law. The dealer retains custody of the firearm during the ten-day waiting period and sends the buyer's information to the State Department of Justice, which conducts a criminal and mental history background check to determine if the person is in a category prohibited from possessing firearms.

ASSEMBLY FLOOR: 44-31, 8/27/18

AYES: Baker, Berman, Bloom, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, Low, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk-Silva, Reyes, Rivas, Rubio, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Bigelow, Brough, Caballero, Cervantes, Chávez, Chen, Choi, Cooley, Cooper, Cunningham, Dahle, Flora, Fong, Frazier, Gallagher, Gray, Harper, Kiley, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Aguiar-Curry, Arambula, Daly, Quirk, Rodriguez

Prepared by: Gabe Caswell / PUB. S. /
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**** END ****