

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1091 (Berman) – As Introduced February 18, 2021

SUBJECT: Santa Clara Valley Transportation Authority: board of directors.

SUMMARY: This bill makes changes to the Board of the Santa Clara Valley Transportation Authority (VTA). Specifically, **this bill:**

- 1) Requires, beginning July 1, 2022, the government of VTA to be vested in a board of directors that consists of nine members, as follows:
 - a) One resident of each county supervisorial district, nominated by the supervisor and confirmed by the board of supervisors;
 - b) Two residents of the City of San Jose, nominated by the mayor and confirmed by the city council;
 - c) Two residents of cities in the county, other than the City of San Jose, consistent with the following:
 - i) One resident of the City of Los Altos, Los Altos Hills, Mountain View, Milpitas, Palo Alto, or Sunnyvale; and,
 - ii) One resident of the City of Campbell, Cupertino, Gilroy, Los Gatos, Monte Serreno, Morgan Hill, Santa Clara, or Saratoga.
 - d) Specifies that a board member shall not simultaneously serve as an elected official.
 - e) Provides that the nominating authorities shall ensure that expertise, experience, or knowledge relative to transportation, infrastructure or project management, accounting or finance, and executive management are represented on the board.
 - f) Specifies that, beginning July 1, 2022, and except as otherwise provided, the term of office for each director shall be four years and until the appointment and qualification of their successor. A successor shall be appointed not later than 30 days immediately upon the expiration of a director's term. Any vacancy shall, within 60 days of its occurrence, be filled for the balance of the term by the original appointing authority.

EXISTING LAW:

- 1) Creates VTA with various duties relative to transportation projects, planning and services, and the operation of public transit in the County of Santa Clara.
- 2) Defines the Santa Clara Valley Transit District as meaning the VTA.
- 3) Designates that the governing board of VTA shall consist of 12 members, as follows:

- a) Two representatives of the county and one alternate who shall be members of the board of supervisors of the county, appointed by the board of supervisors;
 - b) Five representatives of the City of San Jose and one alternate who shall be city council members or the mayor of the City of San Jose, appointed by the city council; and,
 - c) Five city council members or mayors selected from among the city councils and mayors of all of the cities in the county, other than the City of San Jose, as provided by agreements among those cities. The agreements may provide for the appointment of alternates, who shall be city council members or mayors, for those city representatives.
- 4) Specifies that an alternate may vote in place of a director represented by that alternate if the director is absent.
 - 5) Requires that, to the extent possible, the appointing powers shall appoint individuals who have expertise, experience, or knowledge relative to transportation issues.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary.** This bill, starting July 1, 2022, alters the board structure of VTA by reducing the number of appointed board members to 9 and prohibiting the board members from also serving as elected officials simultaneously. This bill requires the nominating authorities to ensure that expertise, experience, or knowledge relative to transportation infrastructure or project management, accounting or finance, and executive management are represented on the board. Lastly, this bill specifies that each board member's term is four years and provides a process for filling vacancies. This bill is sponsored by the author.
- 2) **Author's Statement** According to the author, "Valley Transportation Authority provides essential public transit options that help get Santa Clara County's two million residents to and from work, school, and home. However, three Civil Grand Jury Reports over the last 17 years have concluded that VTA's governance structure is a root cause of the agency's poor performance and is in need of structural reform. AB 1091 delivers this structural reform by replacing the current board—a rotating group of 18 elected officials in Santa Clara County—with a 9-member board composed of qualified members of the public. The new VTA board members would be appointed by city and county officials, who would ensure that expertise related to transportation, infrastructure or project management, and executive management are represented on the board. A smaller, more experienced, and more regionally focused VTA Board will be better positioned to meet Santa Clara County's complex transportation needs."
- 3) **Santa Clara Valley Transportation Authority.** The Santa Clara County Transit District was created through state legislation in 1969 [SB 49 (Alquist and Bradley), Chapter 180, Statutes of 1969] to provide public transit service for the communities of Santa Clara County. On December 1, 1994, VTA became the congestion management agency in Santa Clara County, responsible for countywide transportation planning and funding and for managing the county's blueprint to reduce congestion and improve air quality. Prior to January 1, 1995, the County Board of Supervisors served as the Board of Directors of VTA. Since January 1,

1995 [AB 2442 (Cortese), Chapter 254, Statutes of 1994], VTA has operated under a separate Board of Directors composed of County and city representatives. On January 1, 2000, AB 1650 (Committee on Transportation), Chapter 724, Statutes of 1999, changed VTA's name.

VTA is an independent special district that provides bus, light rail, and paratransit services, as well as participates as a funding partner in regional rail service including Caltrain, Capital Corridor, and the Altamont Corridor Express. As the county's congestion management agency, VTA is responsible for countywide transportation planning, including congestion management, design and construction of specific highway, pedestrian, and bicycle improvement projects, as well as promotion of transit oriented development.

VTA provides these services throughout the county, including Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga and Sunnyvale.

- 4) **Santa Clara County Grand Jury.** The Santa Clara County Civil Grand Jury has conducted three studies on VTA in the last 20 years. In its 2019 report, the grand jury stated, "For many years, VTA has been plagued by declining operating performance and recurring budget gaps between projected revenues and expenses (referred to as structural financial deficits) – notwithstanding significant population growth and, in recent years, increased employment levels throughout much of Silicon Valley.

"The 2003-2004 Santa Clara County Civil Grand Jury conducted an 'Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority' which found, among other things, that:

- The operating performance of VTA compared unfavorably to its peer organizations;
- The VTA Board had not effectively managed the finances of VTA, resulting in a substantial structural financial deficit that was projected to increase in the following year; and,
- A root cause of VTA's poor performance was the governance structure of the VTA Board, which was 'too large, too political, too dependent on staff, too inexperienced in some cases, and too removed from the financial and operational performance of VTA.'

"To address these issues and attempt to make the VTA Board more responsive, the 2003-2004 Grand Jury proposed various changes to the Board's structure. Although responses filed by seven of VTA's constituent municipalities were supportive of some or all the recommended changes, VTA's response defended the status quo, and most of the other municipalities adopted VTA's position. Accordingly, the recommended changes were not made.

"The 2008-2009 Grand Jury again examined the governance of VTA and reiterated some of the same concerns noted in the earlier report, although the focus of the 2008-2009 report was primarily on the role and functioning of the VTA Board's appointed advisory committees.

“The 2018-2019 Civil Grand Jury (Grand Jury) revisited the subject of VTA’s governance and the work of the earlier grand juries and found that:

- VTA’s operating performance has continued to deteriorate over the last 10 years, relative to both its own historical performance and the performance of its peers, across a wide variety of metrics;
- The VTA Board has consistently failed to adequately monitor VTA’s financial performance and has taken action, albeit less than fully effective action, only in the face of imminent financial crises; and,
- Despite the serious ongoing structural financial deficit, the VTA Board has been unwilling to review and reconsider decisions made years or even decades ago regarding large capital projects (and their attendant operating costs) that are no longer technologically sound or financially viable, based on their costs and projected ridership.

“The Grand Jury concluded that today, more so than in 2004 or 2009, the VTA Board is in need of structural change to enable it to better protect the interests of the County’s taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology and the changing needs of Silicon Valley residents. The Grand Jury recommends several changes to the governance structure and operations of the VTA Board which will improve the Board’s ability to effectively perform its important oversight and strategic decision-making functions.”

- 5) **VTA’s Response to Report.** VTA responded to the report by writing, “As it is true of boards of large organizations, there are different levels of tenure on the Board. The goal is to encourage a balance of new perspectives with institutional knowledge and continuity. It is important to point out there is significant longevity on the Board. The combined years of service for all members is 95 years. The average (mean) length of service is five (5) years, the median is four (4) years, and the mode (the years of service most common to all Board members) is three (3) years. The longest tenure is 15 years. Additionally, staff provides significant resources to orient and assist Board members on a regular basis.

“The finding that the organization is staff driven and simultaneously dominated by the largest member agency is contradictory. Similar to other organization, the Board sets the policy and provides direction to staff. Staff then implements the Board adopted policy and direction.

“Regarding the finding of the Board’s fiduciary responsibilities and regional role, the Board’s voting history shows there is generally consensus in approving projects with regional benefits.”

- 6) **Policy Consideration.** According to the City of San Jose, it “comprises by far the largest share of VTA transit riders (69%) and County residents (53%).” However, this bill would reduce the number of VTA Board seats appointed by San Jose from 5 to two. In its response to the 2019 civil grand jury report, San Jose shared that, “We disagree with the assertion that the board is dominated by representatives from the City of San Jose. It is important for a government body to reflect the geographic distribution of its residents. As the largest city in the county, it is natural that a plurality of seats at VTA are elected officials whose jurisdictions include San Jose. With approximately 53% of the county’s population living

within our borders, the majority of transit service, road infrastructure, and project planning will directly affect our residents. Therefore, any adjustments to governance at VTA should not reduce the number, nor the ratio (of) members appointed from the City of San Jose.”

Additionally, the City of Cupertino is concerned that, “AB 1091 would permanently undermine this process because it asks that we replace this with a construct wherein the Board members representing the overwhelming majority of our municipalities have no voter accountability. It seems that your proposed bill contemplates a process wherein each member of the Board of Supervisors has some say in selecting one nonelected representative each, for a total of five. San Jose’s City Council would select two nonelected representatives. And yet the elected governance of the remaining fourteen municipalities of Santa Clara County would apparently have no say whatsoever in selecting their non-elected VTA Board representative. That is deeply troubling. On a broader level and at least equally disconcerting is the question of voting rights pertaining to the County. The electorate of Santa Clara County should determine future VTA Board structure, as opposed to putting this to a State-wide vote in the Legislature. The adverse relation of this proposal as relates to democratic process and representation creates significant concerns.”

In light of these concerns, the Committee may wish to consider if this bill strikes the right balance to ensure equitable representation.

- 7) **Arguments in Support.** According to Zach Hilton, Gilroy City Council Member, “Santa Clara County Valley Transportation Authority (VTA) is responsible for public transportation, congestion management, and managing voter-approved local sales tax for transportation programs in Santa Clara County. VTA has faced declining operating performance and structural financial deficits, which have been investigated by three Civil Grand Juries over the last seventeen years. In 2019, the Civil Grand Jury stated that ‘today, more so than in 2004 or 2009, the VTA Board is in need of structural change to enable it to better protect the interests of the County’s taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology, and the changing needs of Silicon Valley residents.’ The Grand Jury concluded that VTA is in a crisis and instructed VTA to propose legislation to restructure the governing board, which is enshrined in state statute.

“AB 1091 would replace the current eighteen-member board composed of currently serving elected officials with a nine-member board composed of appointed members of the public with relevant transportation experience. It would also increase terms from two to four years to provide continuity. Santa Clara County transit riders, residents, and taxpayers deserve a VTA board that has the time and expertise to provide high quality direction and oversight of VTA.”

- 8) **Arguments in Opposition.** According to VTA, “First, I would highlight that VTA conducts annual Board Member Self-Assessments and other proactive opinion-gathering efforts on a routine basis. Many areas of potential improvement in our governance process have been previously identified through these surveys. This information, combined with VTA’s culture of self-improvement, resulted in the Board of Directors taking the extraordinary step in 2019 of embarking on a critical analysis of the VTA governance process to identify potential areas of improvement. As part of this effort, VTA engaged an independent consulting firm to conduct a governance process assessment. As their final report correctly concluded, the

current VTA board governance structure is a very workable model but there are several opportunities for improvement. VTA is in the latter stages of evaluating and implementing many of the more than 90 recommended enhancements generated by the consultant as well as the ad hoc committee established to oversee the consultant's work.

“Many meaningful enhancements have been implemented with more projected in the upcoming months. As a result, new guidelines for the chairperson and board members were developed and the length of the terms for the leadership of the Board of Directors has been modified to provide continuity and experience in those critical roles. It is important to note that the entire ongoing process, including consultant's report and the evaluation and implementation of recommendations, was conducted to maximize public input and participation in the process. VTA opposes this bill because our current governance model has effectively served county residents well for over 25 years. By relying on elected officials from across Santa Clara County, our governance model is geographically balanced, recognizes population differences among cities and is especially helpful in integrating land use and transportation decision-making while ensuring broad public accountability...

“Additionally, evidence that a particular independent special district has a culture of self-evaluation and improvement should not be overlooked. As an example, over the past quarter of a century, the economy has had many significant ups and downs. In addition to the ad hoc governance committee discussed here VTA has, on three separate occasions, formed year-long ad hoc committees to review the agency's budgeting practices to ensure that we are good stewards of the public purse and that we are taking prudent care of our employees as well. One example is the completion of the Phase 1 Extension of the BART system into Santa Clara County. Using local funds along with state and federal contributions, this extension was completed under budget. Self-assessment and self-initiated improvement are nothing new for VTA and reflect a long-standing component of our governance culture. It is therefore VTA's position that enhancement of its Board of Directors should continue to be addressed locally and not through state legislative efforts.”

REGISTERED SUPPORT / OPPOSITION:

Support

Democratic Club of Sunnyvale
Kavita Tankha, Mayor, City of Los Altos Hills
Livable Sunnyvale
Lucas Ramirez, Vice Mayor, City of Mountain View
Patricia Showalter, Councilmember, Mountain View
Peninsula Democratic Coalition
R. Patrick Kasperzak, Former Mayor, City of Mountain View
Rod Sinks, Former Mayor, City of Cupertino
Russ Melton, Councilmember, City of Sunnyvale
Teresa O'Neill, Former Chair, Valley Transportation Authority
Zach Hilton, City Council Member, City of Gilroy

Opposition

City of Cupertino
City of Morgan Hill
City of San Jose
Santa Clara Valley Transportation Authority

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