

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1509 (Baker) – As Amended April 6, 2017

SUBJECT: San Francisco Bay Area Rapid Transit District.

SUMMARY: Establishes restrictions on the expenditure of funds for the Bay Area Transit District (BART) and requires the State Controller to withhold specified revenues if the required expenditures are not met, as specified. Specifically, **this bill:**

- 1) Requires BART, in any fiscal year (FY) that BART expends Measure RR revenues, to expend from other sources of revenue an amount not less than the annual average of its expenditures on acquisition, construction, or completion of rapid transit facilities during the 2013-14, 2014-15, and 2015-16, FYs.
- 2) Authorizes the California State Controller to perform audits to ensure compliance with 1), above, when deemed necessary.
- 3) Requires the Controller, if BART does not comply with 1), above, to withhold an amount equal to the difference between actual and required expenditures, from distributions provided to BART, pursuant to existing law for transactions and use tax revenue.
- 4) Prohibits BART, following approval of Measure RR at the November 8, 2016, election, from redirecting any existing funds dedicated for system infrastructure capital improvements or rolling stock to cover operating expenses.
- 5) Requires BART to maintain its existing commitment of funds for the acquisition, construction, or completion of rapid transit facilities.
- 6) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made, pursuant to current laws governing state mandated local costs.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill requires in any FY that Measure RR revenues are expended that BART expend from other sources of revenue no less than the annual average of its expenditure on the acquisition, construction, or completion of rapid transit facilities during the 2013-16 FYs. According to the author, the average expenditure for rapid transit facilities from these three FYs is around \$705 million. This bill authorizes the State Controller to perform audits to ensure that BART complies with this requirement. Under this bill, if BART does not comply with this requirement, the Controller must withhold an amount equal to the difference between actual and required expenditures from distributions provided to BART, pursuant to a section of existing law which allocates transactions and use tax revenue to BART.

This bill requires BART to maintain its existing commitment of funds for the acquisition, construction, or completion of rapid transit facilities. This bill also prohibits BART from redirecting any existing funds dedicated for system infrastructure capital improvements or rolling stock to cover operating expenses. This bill is author-sponsored.

- 2) **Author's Statement.** According to the author, "BART officials can redirect the funds previously allocated for capital or capital improvements before Measure RR passed to cover operating costs. In doing so, Measure RR revenue would effectively be diverted from BART's crumbling infrastructure, as promised repeatedly to Bay Area voters who will pay for Measure RR for the next 48 years. This would go against what voters wanted and Measure RR's original purpose of helping BART's dilapidated infrastructure."
- 3) **BART.** Existing law authorizes BART to issue a general obligation bond (GO bond), backed by property tax, subject to two-thirds voter approval. In November 2004, voters in San Francisco, Contra Costa, and Alameda counties approved Measure AA authorizing BART to issue a GO bond up to \$980 million to make earthquake safety improvements. In November 2016, voters passed Measure RR to issue a GO bond up to \$3.5 billion to repair and replace infrastructure. According to BART, some of the priorities for Measure RR funding include replacing 90 miles of track, cable replacement, repairing tunnels and structures, and renewing and modernizing stations.

BART also levies a half-cent transactions and use tax in San Francisco, Contra Costa, and Alameda counties. From the transactions and use tax, BART receives 75% of revenues which account for BART's second largest source of revenue after passenger fares. According to BART, those revenues are pledged to secure sales tax revenue bonds and are used to pay general operating and capital costs. For FY 2017, BART projects the transactions and use tax revenues at \$247.5 million. BART also receives a share of ad valorem property taxes in FY 2017 which accounted for \$40.2 million in revenues for the district.

- 4) **Arguments in Support.** Councilmember Dave Trotter, Town of Moraga, argues, "Key to the passage of Measure RR was a promise by BART voters that the funds would be dedicated exclusively to much-needed capital investment and not used to cover BART's high operating costs. BART rejected Measure RR language that would have ensured the Measure's fund could not be used to backfill operating costs. As a result, BART effectively can use Measure RR funds to redirect capital improvements to cover operating costs. As much as \$1.2 billion of Measure RR funds – a full one-third of the bond fund – can be used to backfill operating costs. Measure RR could effectively be diverted from BART's crumbling infrastructure, which was a promise made repeatedly to Bay Area voters who will pay for Measure RR for the next 48 years."
- 5) **Arguments in Opposition.** The California Conference Board of the Amalgamated Transit Union (ATU) states, "This bill is a fundamental intrusion of state government into an area of local control. Shouldn't the BART Board of Directors, who are elected officials, have the authority to determine how much money they wish to invest in capital projects and how much they wish to invest in operations?" American Federation of State, County and Municipal Employees, argue, "For years, BART's leadership has made the decision to divert funds from the operations budget to fund the capital improvement needs of the aging system. By asking the state legislature to lock BART into redirecting a specific and large amount of operating funds into the capital budget, AB 1509's authors would make this year-by-year

tactical decisions of the agency permanent policy. Already, Measure RR, a bond approved by voters in November 2016, funds cannot legally be used for BART operations. Therefore, it is not necessary for the legislature to act to protect them...One can try to predict but can't be certain in 2017 what an adequate operations budget will be in two or ten years down the line. We urge you to oppose this short-sighted proposal that does not allow for the necessary flexibility to balance the capital and operations needs of the future by tying the hands of the policy makers that are elected to make these important decisions at the District level."

- 6) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Will of the voters.** The author argues that BART officials have the ability to redirect funds previously allocated for capital improvements to cover operating costs and by doing so Measure RR funds would effectively be diverted from infrastructure. The Committee may wish to consider if 70.1% of voters supported Measure RR, whether additional restrictions need to be imposed by the Legislature. ATU argues, "The bill mentions Measure RR, which was approved by the voters with the support of our union and many other labor organizations. Measure RR did not include the limitations on budgeting that this bill contains and so there is nothing in the passage of that measure that lends support for the limits in control proposed by this bill."
 - b) **Transaction and Use Tax Revenue.** This bill requires the Controller to withhold transactions and use tax revenue if BART does not expend a specified amount of funding on rapid transit facilities in any year that they expend Measure RR funding. The Legislature authorized BART to go to the voters for a transactions and use tax in 1970 and BART obtained voter approval in San Francisco, Contra Costa, and Alameda counties. The Committee may wish to consider if it is appropriate to direct the State Controller to withhold transactions and use tax revenue that was approved by the voters. The Committee may wish to consider the potential effect this bill may have on sales tax bonds which are secured by transactions and use tax revenue and if the requirements in this bill will impact the security of those bonds.

REGISTERED SUPPORT / OPPOSITION:

Support

Councilmember Dave Trotter, Town of Moraga

Opposition

American Federation of State, County and Municipal Employees AFL-CIO (AFSCME)
AFSCME Council 57
California Conference Board of Amalgamated Transit Union
California Labor Federation

Analysis Prepared by: Misa Lennox / L. GOV. / (916) 319-3958