

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2181 (Berman) – As Amended April 18, 2022

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

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

- 1) Specifies that the government of VTA shall be vested in a board of directors that shall consist of 12 voting members, as follows:
 - a) Two representatives of Santa Clara County, who shall be appointed by the president of the board of supervisors with board of supervisors approval by at least a four-fifth vote, consistent with both of the following requirements:
 - i) One representative shall be a nonelected community member with expertise in financing and accounting.
 - ii) One representative shall be a nonelected community member with expertise infrastructure management, construction management, or project management.
 - b) Five representatives of the City of San Jose, who shall be appointed by the mayor of the City of San Jose with city council approval, consistent with the following:
 - i) At least two representatives shall be city council members or the mayor of the City of San Jose.
 - ii) At least two representatives shall be nonelected community members who, to the extent possible, have expertise, experience, or knowledge relative to transportation issues.
 - iii) The mayor of the City of San Jose shall appoint at least one representative who uses public transit as their primary mode of transportation.
 - c) Five representatives of the cities in the county, other than the City of San Jose, elected in a manner consistent with the following:
 - i) At least two representatives shall be nonelected community members who, to the extent possible, have expertise, experience, or knowledge relative to transportation issues.
 - ii) At least two representatives shall be city council members or mayors of the cities in the county, other than the City of San Jose.
 - iii) To the extent possible, each regional group, as provided for by the agreements among the cities in the county, other than the City of San Jose, shall be represented on the board of directors by a representative elected pursuant to this bill.

- iv) The representatives shall be elected through the following ranked choice voting process:
 - (1) VTA shall develop an application process.
 - (2) In order to be eligible to be selected, a candidate shall complete an application and submit the application to VTA.
 - (3) VTA shall create one ranked choice ballot that includes only those candidates that submitted complete applications.
 - (4) The city council of each city in the county, other than the City of San Jose, shall in a public forum, rank those candidates using the ranked choice ballot and submit the ranked choice ballot to VTA by a date determined by VTA.
 - (5) VTA shall count the ranked choice ballots submitted pursuant to (4) above.
 - v) Provides that if a representative who is elected as a city council member or mayor of a city in the county, other than the City of San Jose, no longer serves in that capacity as a city council member or mayor, the representative may continue to serve on the board of directors until their term on the board of directors expires, unless as otherwise specified.
- 2) Specifies that in addition to the 12 voting members of the VTA Board, VTA's Board may include ex officio nonvoting members from regional transportation or governmental bodies.
 - 3) Requires VTA to ensure that representatives of a single city do not compose a majority of the board of directors.
 - 4) Provides that a representative appointed or elected pursuant to this bill shall serve a four-year term and may be reappointed without limitation.
 - 5) Specifies that VTA shall implement guidelines for the removal for cause of a representative appointed or elected to the Board.
 - 6) Removes, as of January 1, 2024, the provision in existing law that provides that the term of office for each director shall be two years and until the appointment and qualification of their successor, and specified vacancy requirements.
 - 7) Specifies that this bill shall become operative on July 1, 2023.
 - 8) Provides that 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.

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.
 - 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.
- 6) Specifies that the term of office for each director shall be two 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. A vacancy exists whenever a director ceases to hold office on the city council or board of supervisors from which they were appointed. Any vacancy shall, within 60 days of its occurrence, be filled for the balance of the term by the body that made the original appointment.

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

COMMENTS:

- 1) **Bill Summary.** This bill revises the membership of the VTA Board to instead consist of the following:
 - a) Two county representatives who are community members and appointed by the president of the board of supervisors of Santa Clara County.
 - b) Five representatives of the City of San Jose, including at least two city council members or the mayor and two community members, appointed by the mayor with city council approval.
 - c) Five representatives of the other cities in the county, including at least two community members and two city council members or mayors of those cities, elected through a ranked choice voting process by the city councils of those cities, as specified.

This bill also authorizes the VTA Board to include ex officio nonvoting members from regional transportation or governmental bodies and increases the terms of the board members to four years. 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 2181 delivers this structural reform by transitioning the current board—a rotating group of 12 elected officials and 6 alternates in Santa Clara County—to a 12 member hybrid board composed of both elected officials and qualified members of the public. This bill honors local control by building in flexibility, while prioritizing both regional accountability and equity in using a regional ranked choice voting process. The new VTA board members would be selected by city and county officials in a transparent public process, ensuring that expertise related to transportation, infrastructure or project management, and budgetary expertise are represented on the board. A more experienced, transparent, and 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:

- a) The operating performance of VTA compared unfavorably to its peer organizations;
- b) 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,
- c) 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:

- a) 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;
- b) 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,
- c) 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 organizations, 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 Considerations.** The Committee may wish to consider the following:

- a) **Striking the Right Balance.** Transit agency board membership varies widely across the state based on factors such as whether district boards are elected and who makes those appointments. The Bay Area Rapid Transit District (BART) and the Alameda-Contra Costa Transit District (AC Transit) have boards where the members are independently elected. The Los Angeles County Metropolitan Transit Authority (LA Metro) board has a nonvoting member appointed by the Governor. Many other transit agency boards consist of appointees who are elected to a city or a county board. This bill would add multiple members who are nonelected community members to the VTA board in place of current appointees.

Additionally, this bill makes both Santa Clara County appointees nonelected community members, while only two City of San Jose appointees and two appointees from the other cities are required to be nonelected community members. The County could effectively lose the opportunity to have any members of its board serve on the VTA board. The Committee may wish to consider if this bill strikes the right balance between adding new perspectives to VTA’s board and if it retains an equitable distribution of elected representatives.

- b) **Nonelected Community Members.** Elected officials generally must reside in and be registered voters of the jurisdiction in which they are elected. This bill requires that the VTA board consist of a minimum amount of nonelected community members, but does not explicitly specify that the individual appointed to the VTA board must reside in the relative areas that appoints them. The Committee may wish to consider if it should be a requirement for nonelected community members to be a resident within the areas designated by this bill.

7) **Committee Amendment.** The Committee may wish to consider amending the bill to contain a requirement that the nonelected community members must reside within the relative areas that appoint them.

8) **Related Legislation.** AB 1091 (Berman) of last year would have, starting July 1, 2022, altered the board structure of VTA by reducing the number of appointed board members to 9 and prohibited the board members from also serving as elected officials simultaneously. This bill died on the Assembly Floor Inactive File.

9) **Arguments in Support.** None on file.

10) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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