

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 805 (Gonzalez Fletcher) – As Amended April 6, 2017

SUBJECT: County of San Diego: transportation agencies.

SUMMARY: Makes changes to the governance and financing authority of the San Diego Association of Governments, the San Diego Metropolitan Transit System, and the North County Transit District. Specifically, **this bill:**

- 1) Revises the San Diego Association of Governments (SANDAG) Board of Directors as follows:
 - a) Requires the mayors of the largest city and the second-largest city to alternate between serving as Chairperson and Vice Chairperson for four-year terms;
 - b) Provides that terms of office for the SANDAG Board, other than for the Chairperson and Vice Chairperson, may be established by the Board;
 - c) Requires the two directors from the City of San Diego to be the Mayor and the President of the City Council;
 - d) Requires the Chair of the San Diego County Board of Supervisors (BOS) to be one of the two SANDAG Board members from the County of San Diego (County);
 - e) Requires the weighted vote allocated to the two representatives from the BOS and City of San Diego to be equal, instead of authorizing each agency to apportion the weighted vote among their two members; and,
 - f) Requires the director from each city in the County to be the Mayor. Requires the alternate director from each city and the County to be a councilperson or supervisor.
- 2) Removes a provision in existing law which required both a majority vote of the members present on the basis of one vote per agency and a majority of the weighted vote of the member agencies present in order to act on any item.
- 3) Removes the cap in existing law which allocated 40 votes to any agency with 40% or more of the total population of the County and provided a formula to allocate the remaining 60 votes.
- 4) Makes changes to the formula to apportion weighted votes as follows:
 - a) Requires, after computing the percentage of the total population in the San Diego region for each agency, for each agency whose percentage fraction total is less than one to boost that agency to one. Requires the formula to then add to that number only whole numbers, excluding fractions, for all other agencies; and,
 - b) Provides for a specified formula if the total cumulative number of the weighted vote is less or more than 100.

- 5) Adds an audit committee to the list of standing policy advisory committees within SANDAG.
- 6) Requires the audit committee to consist of five voting members, two members from the SANDAG Board, and three members of the public appointed by the SANDAG Board. Provides an exception, for directors serving on the Audit Committee, to the prohibition in existing law which prevents a director from serving on more than two standing policy advisory committees.
- 7) Requires the audit committee to recommend to the SANDAG Board the contract of the firm conducting the annual financial statement audits and the hiring of the independent performance auditor (Auditor), and to approval the annual audit plan after discussion with the Auditor, as specified.
- 8) Requires the audit committee to appoint an Auditor, subject to approval by the SANDAG Board, who may only be removed for cause by a vote of at least two-thirds of the audit committee and the SANDAG Board.
- 9) Authorizes the Auditor to conduct or cause to be conducted performance audits of all departments, offices, boards, activities, agencies, and programs of SANDAG. Requires all SANDAG officers and employees to fully cooperate and to furnish the Auditor unrestricted access to information and records, as specified.
- 10) Requires the Auditor to prepare annually an audit plan and to conduct audits as required by ordinance or in accordance with state law and the California Constitution.
- 11) Grants the Auditor the power to appoint, employ, and remove assistants, employees, and personnel as deemed necessary for the efficient and effective administration of the affairs of the office and to prescribe their duties, scope of authority, and qualifications.
- 12) Authorizes the Auditor to investigate any material claim of financial fraud, waste, or impropriety within SANDAG and for that purpose may summon any office, agent, or employee of SANDAG and examine him or her upon oath, as specified.
- 13) Requires all SANDAG contracts with consultants, vendors, or agencies to be prepared with an adequate audit provision to allow the Auditor to access the entity's records needed to verify compliance with the terms specified in the contracts.
- 14) Requires all audits and reports to be made available to the public in accordance with the California Public Records Act.
- 15) Requires the Chairperson and Vice Chairperson of the SANDAG Board to be voting members of the executive committee.
- 16) Revises the composition of the Metropolitan Transit System Board (MTS Board), as follows:
 - a) Requires mayors to serve on the MTS Board, instead of city council members, from the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, and Santee;
 - b) Requires the MTS Board to include a member of the city council from the cities of San Diego and Chula Vista, appointed by their respective city council;

- c) Removes the BOS MTS Board member that represents one of the two supervisorial districts with the greatest percentage of its area within the unincorporated area as Chairperson of the Board, and makes conforming changes; and,
 - d) Requires the mayors of the largest city and the second largest city to alternate between serving as the Chairperson and Vice Chairperson every four years and removes provisions in existing law which required the Chairperson to be elected subject to a two-thirds vote of the MTS Board.
- 17) Removes a provision in existing law which authorizes an appointed MTS Board member to continue to serve on the Board for up to four years after the date of termination from elected office.
- 18) Requires the MTS Board member appointed by the BOS, pursuant to existing law, to represent the one supervisorial district, instead of one of the two supervisorial districts, with the greatest percentage of its area within the incorporated area of San Diego County (County).
- 19) Makes specified changes to the appointment of alternate members of the MTS Board.
- 20) Requires all affirmative votes to be a majority of the weighted vote of the members present, and removes the vote of the MTS Board on the basis of one vote per agency.
- 21) Requires any reference to a two-thirds vote of the MTS Board to mean the affirmative vote of two-thirds of the weighted vote of the members present.
- 22) Revises the weighted vote to be a total of 100 votes, with each member agency allotted the number of votes annually determined by population, and requires each agency to have a minimum of one vote, and prohibits any fractional votes.
- 23) Provides that the formula used to allocate votes be based on the total population of the cities and county within MTS and the percentage of this total for each agency, as specified. Establishes the formula to apportion the weighted vote for each agency and provides directives if the total weighted vote does not add up to 100.
- 24) Specifies that the population of the County used to determine the total population is the population in the unincorporated area of the County within the area of the jurisdiction of the MTS Board defined in existing law.
- 25) Requires the City of San Diego to allocate half of its weighted vote to the Mayor of the City and the other half divided equally between the three city council members on the MTS Board.
- 26) Requires the City of Chula Vista to allocate its weighted vote evenly between their two MTS Board members.
- 27) Revises the composition of the North County Transit District (NCTD) Board to require the mayors, instead of city council members, to represent the following cities specified in existing law: Carlsbad, Del Mar, Encinitas, Escondido, Oceanside, San Marco, Solana Beach, and Vista, and each new city that incorporates.

- 28) Requires all official acts of the NCTD Board to require the affirmative vote of the majority of the weighted vote of the members present.
- 29) Establishes the same weighted vote total and formula as described for MTS, above.
- 30) Requires the NCTD Board to adopt policies and procedures to implement the weighted vote requirements.
- 31) Authorizes the MTS and NCTD Board, subject to the approval of their voters, to impose a 0.5% transactions and use tax for public transit purposes in accordance with transactions and use tax law and the California Constitution Article XIII C.
- 32) Authorizes the transactions and use tax ordinance to be applicable in the incorporated and unincorporated territory within the area of the MTS Board and the NCTD Board, respectively, as defined in existing law.
- 33) Provides that this authority remains in effect, if at any time, the voters do not approve a transactions and use tax and authorizes both Boards to go back to their voters at any time subject to specified requirements.
- 34) Requires the ordinance to state the nature of the tax to be imposed, the tax rate, the term the tax will be imposed, purposes for which the revenue will be used, and to include an expenditure plan which must include the allocation of revenues.
- 35) Limits the use of tax revenue to public transit purposes serving the area of jurisdiction of the MTS and NCTD Board, as determined by the respective Board, as specified. Provides that these purposes include expenditure for the planning, environmental review, engineering and design costs, and related right of way acquisition.
- 36) Defines public transit purposes to include the public transit responsibilities under the jurisdiction of the Board as well as any bikeway, bicycle path, sidewalk, trail, pedestrian access, or pedestrian access way.
- 37) Authorizes each Board to allocate transactions and use tax revenues for public transit purposes consistent with the applicable regional transportation improvement program and the regional transportation plan.
- 38) Provides the manner in which the County shall call the election.
- 39) Provides for the operative date of the tax ordinance and authorizes each Board to contract with the State Board of Equalization for the administration and operation of the ordinance.
- 40) Prohibits both Boards from levying the tax, subject to voter approval, at a rate other than 0.5% or 0.25%, unless specifically authorized by the Legislature.
- 41) Authorizes each Board to seek authorization to issue bonds payable from the proceeds of the tax, as part of the ballot proposition to approve the transactions and use tax.
- 42) Requires any action or proceeding to contest the validity of the adoption of the transactions and use tax ordinance to be commenced within six months from the date of election at which

the ordinance is approved, otherwise the bonds, including the adoption and approval of the ordinance, shall be held to be valid and in every respect legal and incontestable, as specified.

- 43) Provides that both Boards have no power to impose any tax other than the transactions and use tax imposed, pursuant to this bill and subject to voter approval.
- 44) Requires the SANDAG Board to develop and adopt the following:
- a) Internal control guidelines to prevent and detect financial errors and fraud based on the internal control guidelines developed by the Controller, pursuant to existing law and to the standards adopted by the American Institute of Certified Public Accountants; and,
 - b) Administration policy that includes a process to conduct staff performance evaluations on a regular basis to determine if the knowledge, skills, and abilities of staff members are sufficient to perform their respective functions, and to monitor the evaluation process on a regular basis.
- 45) Requires the SANDAG Board to provide a report, developed by the transportation committee, to the Legislature on or before July 1 of each year that outlines the following:
- a) Public transit needs;
 - b) Transit funding criteria;
 - c) Recommended transit funding levels;
 - d) Additional work on public transit, as delegated to the transportation committee by the SANDAG Board; and,
 - e) Funds spent explicitly on public transportation.
- 46) Requires SANDAG's regional comprehensive plan to address the following:
- a) Greenhouse gas emissions reduction rules and regulation adopted by the State Air Resources Board, pursuant to existing law, and the statewide greenhouse gas emissions limit set forth in existing law, and to include strategies in that regard, including the establishment of aggressive nonautomobile modal share targets for the region; and,
 - b) Identify disadvantaged communities, as designated, pursuant to existing law, and include transportation strategies to reduce pollution exposure in those communities.
- 47) Adds open space, including habitat to the list of components that the regional comprehensive plan may include.
- 48) 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) **SANDAG.** SB 1703 (Peace), Chapter 743, Statutes of 2002, created a consolidated transportation agency in San Diego from existing agencies, including the San Diego Association of Governments (SANDAG), the San Diego Metropolitan Transit System (MTS), and the North County Transit District (NCTD), and authorized that agency to assume certain responsibilities. SANDAG is now the consolidated agency responsible for many public transit and long-term transportation planning and programming responsibilities that formerly resided with MTS and NCTD boards. SB 1703 established the general authority and powers of the revamped SANDAG in an attempt to create an agency with the power to develop a comprehensive regional public transportation system. In addition to the planning functions, SB 1703 transferred project development and construction activities to SANDAG, except on certain existing projects, and sought to refocus MTS and NCTD primarily as agencies operating public transit services.

SANDAG is the regional transportation planning agency for San Diego County and under federal law is the metropolitan planning organization for the region. SANDAG also manages a local, voter approved half-percent transportation sales tax. SANDAG has a broad scope of authority.

- 2) **Bill Summary and Existing Law.** This bill makes a number of changes to the statutes which govern SANDAG, MTS, and NCTD. This bill is author-sponsored.
 - a) **Governance.** SANDAG is governed by a 21-member board comprised of two members of the BOS, two members of the City of San Diego, which may include the mayor, and 17 members from the city councils, which may include the mayor, from each of the seventeen incorporated cities. Votes are allocated among the 21-member board by formula that apportions the total weighted vote of 100 based on the total population in the County and specifies a specific formula if any agency has 40% or more of the total population. Under existing law, a majority vote on the basis of one vote per agency and a majority vote of the weighted vote are required.

Under existing law, for the 2017 FY the weighted vote for SANDAG is allocated as follows: County (16), City of San Diego (40) Chula Vista (8), Oceanside (5), Escondido (5), Carlsbad (3), El Cajon (3), Vista (3), San Marcos (3), Encinitas (2), La Mesa (2), Santee (2), National City (2), Poway (1), Imperial Beach (1), Lemon Grove (1), Coronado (1), Solana Beach (1), and Del Mar (1).

This bill makes changes to the voting process by only requiring a majority of the weighted vote of the board members present, instead of also requiring a majority based on one vote per agency, for the SANDAG Board to act on any item. This bill also modifies the weighted vote by removing the formula in existing law which apportions votes if any agency has 40% or more of the total population, and allocates votes based on the percentage of the total population for each agency. Additionally, this bill requires the Chairperson and Vice Chairperson to be from the largest and second largest city. Under this bill, mayors from all 18 incorporated cities would serve on SANDAG.

MTS is governed by a 15-member board comprised of two members of the Board of Supervisors appointed by the BOS, four members of the San Diego City Council, one of whom may be the mayor, appointed by the city council, and nine members from the city

councils of the following cities: Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee appointed by each respective city council. Under existing law, official acts of the MTS Board require a majority vote of members of the Board. A weighted vote may be called by any two members, as specified. NCTD is governed by a nine-member board comprised of one member of the BOS, appointed by the BOS; eight members from the city councils of the following cities: Carlsbad, Del Mar, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach; and Vista appointed by each respective city council. Existing law requires a majority vote of the members of the NCTD Board for any official act.

Under this bill, MTS, and NCTD would use the weighted vote system with a total of 100 votes allocated, pursuant to the population of each jurisdiction in relation to the total population of the agency.

- b) **Taxing Authority.** Existing law authorizes cities and counties to impose transactions and use taxes in 0.125% increments in addition to the state's 7.5% sales tax, provided that the combined rate in the county does not exceed 2%. Transactions and use taxes are taxes imposed on the total retail price of any tangible personal property and the use or storage of such property when sales tax is not paid. State law has been amended multiple times to authorize specific cities, counties, special districts and county transportation authorities, including SANDAG, to impose a transactions and use tax, if voters approve the tax.

This bill authorizes MTS and NCTD to each adopt an ordinance to propose the imposition of a transactions and use tax for public transit purposes at a rate of no more than 0.5%, and with the appropriate voter approval pursuant to the California Constitution, which requires a two-thirds vote. With both MTS and NCTD including incorporated and unincorporated areas, this bill authorizes each Board to impose a transactions and use tax within the area of the Board. Additionally, this bill specifies that public transit purposes include responsibilities of the jurisdiction as well as bikeway and pedestrian access and trails.

- c) **SANDAG – Accountability Measures.** This bill also establishes an audit committee within SANDAG and requires the committee to appoint an independent performance auditor. This bill grants the Auditor broad authority and access to comply with audit requirements in existing law and those established by this bill.

- 3) **Author's Statement.** According to the author, "The San Diego Association of Governments, known as SANDAG, is the consolidated region's transportation planning agency charged with long term planning, project design, and raising revenue for projects. It is also the agency currently enveloped in scandal for misleading voters in San Diego on how much revenue a proposed sales tax increase that failed this past November, Measure A, was expected to raise for transportation projects.

"Out-of-date cost estimates were also used in the official long term plans for TransNet, the transportation infrastructure program in San Diego, despite SANDAG having updated its own figures a year earlier. This enabled SANDAG to obscure an \$8.4 billion cost increase facing the projects until after the Measure A tax increase had failed. Staff at SANDAG, its executive director, and high ranking officials knew of the faulty projections and did not act to

correct the mistakes nor inform the elected officials who serve on the SANDAG board of directors, reportedly. The San Diego region is now facing a situation where there is no real way to hold the board accountable.

"The consolidation of power and money into a board that is not directly elected has led to priorities which do not reflect the growing population centers of the area, a lack of transparency, and the inability for constituents to know who should be held responsible for failures. Taxpayers deserve more than they have received in the past from SANDAG it is time to reform the way transportation dollars are raised and spent in the San Diego region.

"AB 805 would overhaul the decision-making process at SANDAG, as well as the two transit districts that serve portions of San Diego County to provide better equity through proportional representation on the boards of directors that oversee those agencies. Additionally, the bill would create new financial controls at SANDAG by requiring that it employ an independent auditor who would report to a newly formed Audit Committee, comprised of members of the public, to oversee the agency's spending plans, financial forecasts and annual budget.

"AB 805 would also provide the two local transit operators – the Metropolitan Transit System and the North County Transit District – the ability to approach voters in the communities they represent with a ballot measure to raise the sales tax to fund transit projects and operations.

"The bill includes additional accountability measures, such as placing more decision-making authority in the hands of the mayors of each city, requiring annual reports are made to the state accounting for SANDAG's plans to fund public transit needs, and insisting that regional transportation plans address greenhouse gas reduction rules and the needs of disadvantaged communities. With billions of dollars of taxpayer money are at stake, as well as the work commutes and public health of San Diegans, we need to strengthen the checks and balances of the people. SANDAG is not going to fix itself though, and so since it was created in state statute, we should be able to use our power to help fix it through state statute. "

- 4) **Arguments in Support.** Bike San Diego argues that SANDAG "...is broken. It is failing our community, our citizens and our region...Their regional transportation plan is under litigation for failing to meet state climate targets. And, the community's repeated requests for equitable, healthier transportation options have been ignored and met with cold proposals to continue widening freeways in some of our most vulnerable neighborhoods, low-income and communities of color already devastated by pollution. Finally, we recently learned SANDAG deceived voters about Measure A, lying to the public about the money it would raise for local transportation projects." The California Environmental Justice Alliance and Environmental Health Coalition state, "This scandal is just an example of the larger problem. The funding and management of San Diego's transportation resources are controlled by an obscure agency that has very little direct accountability to the public. Votes at SANDAG and transit boards are not proportionate to the populations of the communities whose voices on transportation uses are delegated to these agencies. Further, the management of SANDAG resources lacks the proper checks-and-balances of an agency responsible for billions of dollars in funding." Bike San Diego states that this bill "...will bring much-needed reform, accountability, and democracy to SANDAG. It will also empower [MTS and NCTD] to pursue their own voter funding for public transit. Allowing MTS and NCTD to levy taxes is

a more strategic way to serve regional transportation needs as both agencies exclusively focus on transit and operations."

- 5) **Arguments in Opposition.** The City of San Marcos argues, "The City is opposed to the weighted voting process required by AB 805, since it would shift the agencies from requiring cooperation from all cities to instead concentrating the power of SANDAG and NCTD boards to the largest cities. Since those larger cities may vote in their best interests and will not need to seek cooperation from other parts of the county, a majority of cities could easily be left out of important transportation and regional planning decisions that affect all of us." The City of Poway argues, "With the proposed voting changes, AB 805 would supplant regional cooperation with urban domination by giving San Diego and Chula Vista an unfair advantage in votes...The regional voice is lost when you give the largest cities the ability to control the organizations' agendas. The current voting system, which requires a majority of tally votes and weighted votes for approval of any item, is far more equitable and reflective of the fact that, while member jurisdictions vary in population, some smaller jurisdictions contribute a disproportionately high level of TransNet sales tax dollars. The current voting structure at SANDAG and MTS is effective and ensures that all member agency voices and votes count. Additionally we are opposed to your bill because it would usurp local decision-making authority by mandating which member of each City Council shall serve on the board of directors of each agency."
- 6) **Double-Referral.** This bill is double referred to the Transportation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of Teachers Guild, Local 1931
 Association of Local Government Auditors
 Bike San Diego
 California Environmental Justice Alliance
 California Nurses Association
 Cleveland National Forest Foundation
 Climate Action Campaign
 Coastal Environmental Rights Foundation
 Environmental Center of San Diego
 Environmental Health Coalition
 International Brotherhood of Electrical Workers, Local 569
 National Nurses United
 Roberto C. Alcantar and Nora E. Vargas, Governing Board Members,
 Southwestern Community College
 San Diego 350
 San Diego County Building & Construction Trades Council
 Preserve Calavera

Opposition

California Taxpayers Association
Cities of El Cajon, National City, Poway, San Marcos, Solana Beach, and Vista
Howard Jarvis Taxpayers Association
San Diego County Board of Supervisors

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