

Date of Hearing: April 24, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Jim Frazier, Chair  
AB 805 (Gonzalez Fletcher) – As Amended April 20, 2017

**SUBJECT:** County of San Diego: transportation agencies

**SUMMARY:** Makes changes to the governance and financing authority of the San Diego Association of Governments (SANDAG), the San Diego Metropolitan Transit System (MTS), and the North County Transit District (NCTD), and adds requirements to SANDAG's regional comprehensive plan. Specifically, **this bill:**

- 1) Revises the 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 each director to be a mayor, councilmember, or supervisor of the governing body which selected him or her. Requires the alternate director from each city and the County to be a mayor, councilperson or supervisor.
- 2) Removes a provision in existing law that 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 that 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 one member of each city council to serve on the MTS board from the cities of Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee;

- b) Requires the MTS board to include four members of the city council from the city of San Diego, one of whom shall be the mayor; and two members of the city council from Chula Vista, one of whom shall be the mayor, appointed by their respective city council; and,
  - 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.
- 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) Requires all official acts of the NCTD board to require the affirmative vote of the majority of the weighted vote of the members present.
- 28) Establishes the same weighted vote total and formula as described for MTS, above.
- 29) Requires the NCTD board to adopt policies and procedures to implement the weighted vote requirements.

- 30) 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.
- 31) 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.
- 32) 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.
- 33) 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.
- 34) 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.
- 35) 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.
- 36) 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.
- 37) Provides the manner in which the County shall call the election.
- 38) 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.
- 39) 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.
- 40) 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.
- 41) 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.
- 42) 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.

- 43) 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.
- 44) 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.
- 45) Requires SANDAG's regional comprehensive plan to address the following:
- a) Regional greenhouse gas emissions targets set by the state Air Resources Board (ARB), pursuant to existing law, and to include strategies that provide for mode shift to public transportation; and,
  - b) Identify disadvantaged communities, pursuant to existing law, and include transportation strategies to reduce pollution exposure in those communities.
- 46) Adds water supply and open space to the list of components that the regional comprehensive plan may include.

**EXISTING LAW:**

- 1) Creates a consolidated transportation agency in San Diego, including the SANDAG, MTS, and NCTD, and authorized that agency to assume certain responsibilities, including the development of a regional transportation plan.
- 2) Defines the governance structure of the SANDAG, MTS, and NCTD boards, including membership and voting.
- 3) Authorizes cities and counties, and some transportation agencies such as SANDAG, 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%.

- 4) Requires SANDAG to adopt a regional comprehensive plan based on the local general and regional plan that integrates land uses, transportation systems, infrastructure needs, and public investment strategies, within a regional framework, in cooperation with member agencies and the public.
- 5) Requires regional transportation planning agencies to develop and adopt of a regional transportation plan (RTP) directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services.
- 6) Enacts SB 375 (Steinberg), Chapter 728, Statutes of 2008, that requires ARB to provide each region of the state with greenhouse gas emission reduction targets for the automobile and light truck sector and requires a regional transportation plan to include a sustainable communities strategy (SCS) to achieve the targets for greenhouse gas emmision reduction.
- 7) Requires the California Environmental Protection Agency to identify disadvantaged communities for investment opportunities related greenhouse gas reduction funds based on geographic, socioeconomic, public health, and environmental hazard criteria.

**FISCAL EFFECT:** Unknown

**COMMENTS:** For a detailed discussion of the governance issues included in this bill, please see the Assembly Committee on Local Government analysis.

AB 805 reconfigures the current makeup and governing structure of the Boards of SANDAG, MTS and NCTD. SANDAG serves as the metropolitan planning organization, under federal law, and regional transportation agency for San Diageo County and its cities. SB 1703 (Peace), Chapter 743, Statutes of 2002, consolidated the governance structure of SANDAG and the county's two transit providers MTS and NCTD to provide for a comprehensive regional approach to planning and implementing public transportation projects. In addition to serving as the regional planning body, SANDAG also has the authority to sponsor local transaction and use sales tax measures to fund transportation projects, and currently manages a voter approved half-percent transportation sales tax. SANDAG also manages the project development and construction activities for the transit agencies and MTS and NCTD primarily serves as operators public transit services.

MTS currently serves approximately 3 million people in San Diego County, with an annual ridership of 96 million. MTS operates light rail, buses and a freight rail line that provides service for San Diego shippers. NCTD currently serves roughly 1,000 square miles of north San Diego County providing about 12 million passenger trips per year. NCTD operates the Coaster train service, the Sprinter hybrid rail, bus and paratransit services.

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 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. "

Many of the provisions of this bill could affect the planning and development of transportation projects in the San Diego region. As mentioned, this bill authorizes MTS and NCTD to levy local sales tax measures to support transit capital and operations in their service areas. As with most local sales tax measures for transportation, the boards are required to develop an expenditure plan, with specific projects listed to be funded by the tax revenue. It is unclear how the transit agencies would exercise this new authority, but according to MTS, they do have a number of projects and service improvements planned in the future including increasing service on their light rail line and replacing light rail vehicles.

Additionally, AB 805 requires SANDAG to report to the Legislature each year on public transit needs in the region and specify the funds spent on public transportation. This could serve to

elevate public transportation over all other modes as part of the regional work SANDAG undertakes.

This bill also makes changes to the regional comprehensive plan, which is required as part of the agencies consolidation. Specifically, this bill requires the inclusion of SB 375 greenhouse gas reduction targets; an identification of disadvantaged communities, as defined by CalEnviroScreen; and strategies to reduce pollution exposure in those communities. It also adds water supply and open space to the extensive list of components the plan may include which goes beyond the elements that are required to be in an RTP/SCS. As part of San Diego Forward in 2015, SANDAG combined the two planning documents into one broad plan to look at the region through 2050. As required by current law, the plan also includes greenhouse gas reduction targets for the region set by ARB and strategies to meet the targets. Therefore, some requirements of this bill in this area are duplicative of current practice.

Additionally, the requirement to define disadvantaged communities using CalEnviroScreen may cause two competing measurements for the SANDAG planning process. Currently, regional transportation planning agencies are not required to use CalEnviroScreen to identify disadvantaged communities as part of an RTP/SCS. Under federal law, an RTP does require a review of the effects of the plan on low-income and minority communities. Currently SANDAG utilizes a social equity analysis based for this purpose but also added senior populations based on stakeholder input.

Writing in support of this bill, the Environmental Center for San Diego states that, “the community has repeatedly demanded equitable, healthier transportation options but to date, proposals continue to focus on widening freeways in some of our most vulnerable neighborhoods.” Further, “[AB 805] will bring much-needed reform and accountability to SANDAG. It will also empower transit agencies like MTS and NCTD to pursue their own voter funding for public transit, and 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.”

Writing in opposition to this bill, 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."

*Double referral:* This bill was passed out of the Assembly Committee on Local Government on April 19, 2017 with a 5-4 vote.

*Related legislation:* AB 1324 (Gloria) would authorize a metropolitan planning organization or regional transportation planning agency that is authorized to levy a transaction and use tax to levy, expand, increase, or extend a tax in only a portion of the jurisdiction instead of the entire jurisdiction. AB 1324 is awaiting a hearing in the Assembly Local Government Committee.



*Previous legislation:* AB 1296 (Kehoe), Chapter 142, Statutes of 2006, added one member to the SANDAG Board from the San Diego County Board of Supervisors and specified that the two supervisor representatives on the Board be from substantially incorporated and unincorporated areas of the county.

SB 1703 (Peace), Chapter 743, Statutes of 2002, created a consolidated transportation agency in San Diego including SANDAG, MTS, and NCTD, and authorized that agency to assume certain responsibilities and functions of those agencies.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

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

### **Opposition**

City of El Cajon  
City of National City  
City of Solana Beach  
City of Poway  
City of San Marcos  
City of Vista  
San Diego Association of Governments  
San Diego County Board of Supervisors

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