



ASSEMBLY BILL NO. 805:
AMENDMENTS TO THE PUBLIC UTILITIES CODE AFFECTING THE
GOVERNANCE AND FINANCING AUTHORITY OF REGIONAL
TRANSPORTATION AGENCIES
May 19, 2017

SDCTA Position:

OPPOSE

Rationale for Position:

While the bill would implement important accountability measures in SANDAG such as the creation of an Audit Committee, SDCTA’s recent recommendations to enhance transparency and clarity for taxpayers highlight that elected leadership who serve as representatives to SANDAG need to take increased responsibility in communicating back-and-forth with their respective governance bodies and the SANDAG board. Without policies and practices in place aligned with SDCTA’s recommendations, the changes in the voting structure of these transportation agencies do not address the root causes of SANDAG’s recent governance challenges as outlined as findings in SDCTA’s recent report. Thus, AB 805’s governance changes inserted by Sacramento are premature. Additionally, and possibly more importantly, if a weighted vote is called, such a vote would greatly concentrate the decision-making power among the region’s most populous cities and eliminate the need for consensus building with the smaller member jurisdictions in SANDAG, MTS, and NCTD.

Title: AB 805 – An act to amend Sections 120050.2, 120051, 120051.6, 120102.5, 125102, 132351.1, 132351.2, 132351.4, 132352.3, 132354.1, and 132360.1 of, to add Article 11 (commencing with Section 120480) to Chapter 4 of Division 11 of, to add Article 9 (commencing with Section 125480) to Chapter 4 of Division 11.5 of, and to repeal Sections 120050.5 and 120051.1 of, the Public Utilities Code, relating to transportation.

Jurisdiction: California

Type: California State Assembly Bill

Vote: Majority vote of California Legislature

Status: Active Bill – In Committee Process

Issue: Transportation agencies in the County of San Diego

Description: “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.”

Fiscal Impact: The bill will have unknown direct fiscal impact in the form of implementation costs, which may be reimbursable by the state. The bill will also give MTS and NCTD the authority to impose, given voter approval, a sales tax on residents living within their jurisdiction and issue bonds backed by the tax revenue to fund public transit within their jurisdiction.

Background

Local Transportation Agencies

The San Diego Association of Governments (SANDAG) is a public agency that serves as the region's metropolitan planning organization, consisting of the 18 cities within San Diego County and the unincorporated areas of the county represented by the County of San Diego. The agency conducts long-range regional planning through collaboration with local governments, citizens, and other relevant groups and allocates transportation funds from federal, state and local sources. SANDAG also provides a warehouse of census data, demographic forecasts and estimates, and crime and traffic data.

SANDAG is governed by a voting Board of Directors composed of County Supervisors, mayors, and city councilmembers or their designees. The Board also consists of advisory members including representatives from Caltrans, Metropolitan Transit System, North County Transit District, Imperial County, Mexico, the Southern California Tribal Chairmen's Association, the United States Department of Defense, the San Diego Unified Port District, and the San Diego County Water Authority. The agency also employs a professional staff of engineers, researchers, and planners that provide policy direction to the Board to ensure that the appropriate data is considered when making planning decisions.

The San Diego Metropolitan Transit System (MTS) owns and operates various transportation assets in the San Diego region, providing bus and rail services to residents in various urbanized and rural areas of San Diego County. MTS is responsible for planning, scheduling, and monitoring the performance of the transportation services in its jurisdiction through funding from federal, state, and local sources. The North County Transit District (NCTD) is an organization with similar functions as MTS that operates for its jurisdiction in North San Diego County. Though both NCTD and MTS were originally tasked with construction, project development, long-range transportation planning, and financial programming, Senate Bill 1736 shifted these responsibilities to SANDAG in 2003.

Measure A

In the 2016 November election, SANDAG proposed a half-cent sales tax titled Measure A: San Diego County Road Repair, Transit, Traffic Relief, Safety, and Water Quality Measure. Measure A was meant to raise \$18 billion over 40 years to fund, along with federal and state matching dollars, transportation and habitat conservation projects throughout the County. The projects proposed to be funded are included in the 2016 Regional Transportation Improvement Program (RTIP), the five-year plan for transportation infrastructure. These projects are a subset of the projects adopted by the Board of Directors in the 2050 Regional Transportation Plan (RTP), a plan developed with extensive outreach and public input that if fully implemented would cost an estimated \$214 billion in local, state, and federal funding.

Reporting by the *Voice of San Diego* throughout the fall of 2016 and winter of 2017 brought to light errors in the Demographic and Economic Forecasting Model used by SANDAG to calculate revenue estimates for both Measure A and TransNet, the previous sales tax SANDAG brought to voters in 2004. Errors in data input into the model resulted in an overestimation of income growth and taxable

retail sales growth, which in turn resulted in an overestimation of revenue for both sales taxes. The TransNet Plan of Finance additionally did not include the most up-to-date cost estimates for its projects until after the Board of Directors was made aware of the issues with revenue estimation.

SDCTA Recommendations to SANDAG

In light of these recent errors made by SANDAG in revenue forecasting, cost estimation, and communication within the agency and with the public, SDCTA stood up a working group to evaluate these errors and offer recommendations for improving transparency and clarity around local transportation projects and funding proposals. The group found that SANDAG could significantly improve public understanding of its complex transportation endeavors by simplifying the large quantity of information it shares to its most important and relevant aspects for respective constituencies. Furthermore, the group found that governing bodies of municipal members of SANDAG do not consistently give to their representatives either the opportunities to present updates on performance to those bodies or adequate guidance to be relayed to SANDAG on their behalf.

[In its report](#), the working group developed six recommendations to improve communication between SANDAG, local governments, and San Diego County residents. In summary, the recommendations were as follows:

- SANDAG should adjust its bylaws to require that the SANDAG Board of Directors advises member agencies on the coordination of general plans.
- SANDAG staff should provide simple and graphical summaries to the Board of Directors that Board members may use to communicate back to their councils and/or constituents.
- SANDAG should fully utilize the established public engagement processes of its member jurisdictions and constituents to encourage public participation and engagement.
- SANDAG should require its Board members to report back to the constituencies they represent on program developments, project updates, changes to voter-approved expenditure plans, and potential ballot measures at least on an annual basis.
- Member jurisdiction governing bodies should require that SANDAG Board members share a list of local priorities and community concerns about all policy issues subject to funding or policy direction by SANDAG to the SANDAG Board of Directors at least on an annual basis. Each of the member jurisdiction governing bodies should post the information shared by their SANDAG representative on the jurisdiction's website within a week so that it can be easily accessed by the public.
- SANDAG should require member agency representatives to provide reports to the SANDAG Board of Directors on utilization of funds provided, as well as the reports of any city performance audits or absence thereof. Member agencies should create the same requirement for reports to their governing bodies.

The Proposal

Assembly Bill 805 (AB 805), introduced by Assemblywoman Lorena Gonzalez Fletcher in March 2017, would amend the Public Utilities Code in a number of ways, each with the goal of creating more proportional representation in the region's transportation agencies.

Amendments Affecting SANDAG

AB 805 amends the composition of the SANDAG Board of Directors to require that the mayor and council president of the City of San Diego both serve on the Board as the city's two representatives. The chair of the San Diego County Board of Supervisors would also be required to serve as one of the two Board of Supervisors representatives to the SANDAG Board. The mayors of the largest and second largest cities (currently San Diego and Chula Vista) must alternate between serving as chair and vice chair of the Board with four-year terms. Additionally representatives to the SANDAG Board of Directors and their alternates from each city and the County must be a mayor, councilmember, or supervisor of the governing body that selected him or her.

Existing law requires a majority vote of all members present at a meeting of the SANDAG Board of Directors both with one vote per agency and with the weighted vote of agencies present for action to occur on any item. AB 805 would amend this requirement to allow a majority of the weighted vote of Board members present to be called after the first majority vote if requested by at least four jurisdictions. The new weighted voting process would entail a total of 100 votes, with each SANDAG member agency having at least one vote and none having more than 50 votes. The number of votes for each agency is determined each year by the population of that agency as a percentage of the region's total population, with the County's population being that of the unincorporated areas. Both the City and County of San Diego must divide their weighted votes equally between their two representatives.

AB 805 would also require the creation of a new SANDAG advisory Audit Committee to conduct independent performance audits within SANDAG. The committee would consist of two voting SANDAG Board members and three voting members of the public appointed by the Board, and would appoint an Auditor that can hire staff as needed. All audits and reports by the Auditor are to be made public.

SANDAG would be required to submit an annual report developed by its Transportation Committee to the Legislature on or before July 1st each year. The report is to contain information about public transit needs, criteria for transit funding, recommended transit funding levels, and additional work on public transit, specifically noting funds unambiguously spent on public transportation.

SANDAG would additionally be required to address greenhouse gas emissions targets that have been set by the State Air Resources Board and include methods of shifting toward public transportation in its preparation of the regional comprehensive plan. The plan should also identify disadvantaged communities and ways to mitigate exposure to pollution for these areas. The comprehensive plan should include transportation, housing, water quality and supply, infrastructure, air quality, energy, solid waste, economy, and open space including habitat.

Amendments Affecting MTS and NCTD

AB 805 would require the mayor of San Diego to be one of the four City of San Diego representatives to the MTS Board of Directors. The City of Chula Vista would gain a second representative, its mayor,

to the MTS Board of Directors. The bill revises the process of selecting Board member alternates, and gives members of the Board the authority to select the Board Chair.

Existing law requires for both MTS and NCTD a majority vote of Board members for official action to occur on any item, except in certain cases where a weighted vote may be requested for the MTS Board. AB 805 would create a similar weighted voting process for NCTD, and necessitate that official action require a majority of the weighted vote of present Board members if such a vote is called by members of at least three jurisdictions representing at least 51% of the weighted vote. If a weighted vote is called after the majority vote is taken, action requires a supermajority of the weighted vote. Out of a total of 100 votes, each agency has at least one vote. The number of votes for each agency is determined each year by the population of that agency, with the County's population being that of the unincorporated areas. San Diego's representatives each receive 12 ½ votes for a total of 50 votes. Chula Vista's weighted votes are to be divided equally between the two representatives.

AB 805 would give MTS and NCTD the authority to impose, given two-thirds voter approval, a 0.5% transactions and use (sales) tax on individuals living in their jurisdictions with funds to be used for public transit in their jurisdictions. The bill would allow MTS and NCTD to issue bonds backed by these tax revenues to fund projects, just as SANDAG currently has the authority to do. If proposing a sales tax, the transit agency boards must develop an expenditure plan and a list of projects to be funded by the tax.

State-Mandated Local Program

AB 805 would create additional state-mandated requirements and costs for local agencies. However, the Constitution of the State of California requires reimbursement to the local agencies for any state-mandated costs. If the Commission on State Mandates views the bill as containing new state-mandated requirements, MTS and NCTD would be reimbursed for the cost of these new requirements.

Fiscal Impact

This bill will have implementation costs, including the cost of setting up the Audit Committee, updating the SANDAG regional comprehensive plan, and changing the voting structure. The Assembly Committee on Appropriations stated in its analysis that these costs could likely be in the several hundreds of thousands.¹

Governance Impact

AB 805 makes several governance changes to the governing boards of the San Diego region's transportation agencies. The bill would add requirements for who can serve as a city's representative to a Board of Directors of these agencies, and in some cases mandates exactly who the representative must be. The bill would also significantly adjust the voting process of SANDAG, MTS, and NCTD by giving a greater number of votes to those cities with larger populations.

¹ Swenson, Jennifer. "Assembly Bill Fiscal Committee Analysis." *California State Assembly Committee on Appropriations*. May 15, 2017.

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB805

AB 805 would create the possibility of MTS and NCTD collecting funds directly to use for transit and operations at their own discretion. It is unclear whether MTS and NCTD would be required to coordinate with the SANDAG regional plans when completing projects with funds from their own sales taxes, or how they would go about exercising their new taxing authority.

As noted by the Assembly Committee on Transportation in its analysis of the bill, SANDAG currently reviews the effects of its regional transportation plans on low-income and minority communities, but as a result of community input also considers senior populations. This bill would require the use of CalEnviroScreen² to measure disadvantaged communities, and there may be conflicts between the two.³

Proponents

- Assemblywoman Lorena Gonzalez Fletcher
- 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

Proponent Arguments

² CalEnviroScreen is a mapping tool used to measure pollution's effects on various communities in California.

³ White, Melissa. "Assembly Bill Policy Committee Analysis." *California State Assembly Committee on Transportation*. April 21, 2017.

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB805

- Measures need to be implemented to increase accountability at SANDAG to properly spend public transportation dollars and meet state greenhouse gas reduction targets.
- Projects implemented by SANDAG such as freeway widening often disproportionately affect disadvantaged communities. The perceived low prioritization of investing in public transit also has this effect.
- Voting on the boards of local transportation agencies is not a representative process based on the number of individuals living in the voter's community.

Opponents

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

Opponent Arguments

- AB 805 would concentrate power with the largest cities and take away the voice of the people living in areas with a smaller population.
- Some smaller cities contribute a disproportionately high level of sales tax dollars that go toward funding public transit yet would be losing some representation in the decision-making process.
- AB 805 takes away the authority of jurisdictions to choose their own representatives to the Board of Directors of these transportation agencies.

References

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