



COUNCIL AGENDA: 6/21/2022

ITEM: 2.29

FILE NO: 22-1057

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: June 21, 2022


SUBJECT: AB 2181 (Berman): Santa Clara Valley Transportation Authority: Board of Directors

Recommendation

As recommended by the Rules and Open Government Committee on June 15, 2022, adopt an oppose position on AB 2181 (Berman) Santa Clara Valley Transportation Authority: Board of Directors.

CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative activities resulting in no changes to the physical environment. (Transportation/City Manager)
[Rules Committee referral 6/15/2022 - Item B.4]

CITY COUNCIL ACTION REQUEST

Department DOT/CMO	Date: June 3, 2022	Coordination: CAO	Dept. Approval: /s/ John Ristow /s/ Sarah Zárate CMO Approval: 
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SUBJECT: AB 2181 (Berman): Santa Clara Valley Transportation Authority: Board of Directors

RECOMMENDED POSITION: Oppose

RECOMMENDED ACTION:

- (a) Adopt an oppose position on AB 2181 (Berman) Santa Clara Valley Transportation Authority (VTA): Board of Directors.
- (b) Recommend this item be agendized for the June 21, 2022 City Council Meeting.

BILL SYNOPSIS:

The Santa Clara Valley Transportation Authority (VTA) is currently governed by a Board of Directors as defined by state law (Cal. Pub. Util. Code §§ 100060-100063). The law creates a twelve-member Board, consisting of five representatives from the City of San José, two representatives from Santa Clara County, and five representatives of cities within Santa Clara County excluding the City of San José. All twelve representatives are currently elected officials (either City Councilmembers, City Mayors, or members of the County Board of Supervisors), and serve two-year terms.

Assemblymember Marc Berman (AD-24) introduced AB 2181 on February 15, 2022, to propose changes to the structure and composition of the VTA Board of Directors and the process for selecting board members. Assemblymember Berman introduced the bill in 2022 after a similar VTA governance reform bill (AB 1091) in 2021 stalled. AB 2181 initially only included extending the terms of board members from two to four years, but was substantially amended on April 18, 2022, to include specific instructions on the creation of a new hybrid board. These changes include:

- Replacing two or three of the five San José representatives with non-elected community members.
- Adding a requirement that at least one of the five San José representatives be someone who “uses public transit as their primary mode of transportation.”
- Replacing the Santa Clara County representatives with non-elected community members with specified expertise.
- Replacing two or three of the five representatives of non-San José cities with non-elected community members.
- Changing the election process for representatives of non-San José cities to a complex rank-choice voting scheme.
- Extending all board members from two to four-year terms.

Please reference Attachment A for the full legislative text.

IMPACTS TO CITY OF SAN JOSE:

This bill would not change the City’s fundamental representation on the VTA Board of Directors (five members out of the total twelve voting members) or the current selection process for the City’s five members (appointed by the Mayor with City Council approval). As detailed above, the bill would change the composition of the overall Board to replace between six and eight elected officials with non-elected community members with specified expertise. Each of the City’s five members would need to live in San José; at least two, but no more than three, would be non-elected community members; at least two, but no

more than three, would continue to be elected officials; and at least one would use public transit as their primary mode of transportation. Elected officials appointed to the VTA Board could complete their 4-year term, even if they are no longer on the City Council.

The legislation requires VTA to ensure that representatives of a single city do not compose a majority of the Board of Directors. This does not change the City of San José's share of representation, but it does lock in existing structural inequities. The City of San José represents more than 52% of the County's population (U.S. Census Bureau, 2020 Census Population), nearly 70% of the County's transit riders, and 53% of Congestion Management Agency (CMA)-monitored intersections—yet is only allotted five of the twelve VTA Board of Directors (42%). This current underrepresentation is preserved by the proposed legislation.

The more consequential, negative impacts of the bill are to the effectiveness of VTA as a whole, which is of critical importance to San José and the other jurisdictions within Santa Clara County. These anticipated impacts include, but are not limited to:

1. A Board comprised of elected officials bestows much needed accountability directly to the people on the VTA governing body; a Board comprised of fewer elected leaders, as proposed by the bill, would diminish trust and effectiveness, especially considering VTA's role in raising funding through countywide measures and the critical connection between local land use decisions and transportation.
2. The proposed selection process for non-San José representatives is exceedingly complex, raising significant concerns from jurisdictions throughout the County. Members would be selected for four-year terms through a complex voting process that potentially limits individual cities' selection of their city group representatives.
3. VTA has numerous critical challenges to face – from pandemic recovery, to helping its employees recover from the May 2021 mass shooting, to leading major infrastructure and funding projects – and this reform effort could distract from those tasks.

Additionally, VTA began a major Board Enhancement process in 2019 to address many of the concerns expressed in the proposed legislation. That process generated more than 80 recommendations, roughly 60 percent of which have been advanced to date. Further changes to Board practices, training, and resources are planned by VTA, including through ongoing implementation of Board Enhancement process recommendations, but do not require legislation to proceed.

POLICY ALIGNMENT:

The proposed “oppose” position aligns with elements of the existing 2022 Legislative Program policy position (approved by Council on 11/30/21), namely Local Control, Transportation Funding, and Rapid Transit/Rail Infrastructure.

SUPPORTERS/OPPONENTS:

The bill is opposed by the Santa Clara Valley Transportation Authority, the City of Mountain View, and numerous individuals representing cities throughout Santa Clara County. The City of Morgan Hill and City of Sunnyvale have adopted “oppose unless amended” positions. Other Santa Clara County cities are considering oppose positions as well.

STATUS OF BILL:

AB 2181 has passed the Assembly and is slated to be heard by the Senate Transportation Committee on June 28, 2022.

FOR QUESTIONS CONTACT: Zane Barnes (zane.barnes@sanjoseca.gov) / Tom Westphal (thomas.westphal@sanjoseca.gov) / Andrea Arjona-Amador (andrea.arjonaamador@sanjoseca.gov)

AMENDED IN ASSEMBLY MAY 2, 2022

AMENDED IN ASSEMBLY APRIL 18, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2181

Introduced by Assembly Member Berman

February 15, 2022

An act to amend and repeal Section 100060.2 of, and to amend, repeal, and add Section 100060 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2181, as amended, Berman. Santa Clara Valley Transportation Authority: board of directors.

Existing law creates the Santa Clara Valley Transportation Authority (VTA) with various powers and duties relative to transportation projects and services and the operation of public transit in the County of Santa Clara. Existing law vests the government of the VTA in a 12-member board of directors, which consists of 2 representatives of the County of Santa Clara who are members of, and appointed by, the county's board of supervisors, 5 representatives of the City of San Jose who are city council members or the mayor and appointed by the city council, and 5 representatives of the other cities in the county who are city council members or mayors of those cities as provided by agreements among those cities, whose terms of office are 2 years, as specified.

This bill, on and after July 1, 2023, would revise the membership of the board of directors to instead consist of 2 representatives of the county who are community members and appointed by the president of the board of supervisors with board of supervisors approval, 5

representatives of the City of San Jose, including at least 2 city council members or the mayor and 2 community members, appointed by the mayor with city council approval, and 5 representatives of the other cities in the county, including at least 2 community members and 2 city council members or mayors of those cities, elected through a ranked choice voting process by the city councils of those cities, as specified. *The bill would impose city or county residency requirements on the community members serving on the board of directors, as provided.* The bill would, on and after July 1, 2023, authorize the board of directors to include ex officio nonvoting members from regional transportation or governmental bodies and would increase the directors' terms of office to 4 years. To the extent this bill would mandate that a local government provide a new program or higher level of service, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 100060 of the Public Utilities Code is
2 amended to read:
3 100060. (a) The government of the VTA shall be vested in a
4 board of directors that shall consist of 12 members, as follows:
5 (1) Two representatives of the county and one alternate who
6 shall be members of the board of supervisors of the county,
7 appointed by the board of supervisors.
8 (2) Five representatives of the City of San Jose and one alternate
9 who shall be city council members or the mayor of the City of San
10 Jose, appointed by the city council.
11 (3) Five city council members or mayors selected from among
12 the city councils and mayors of all of the cities in the county, other
13 than the City of San Jose, as provided by agreements among those
14 cities. The agreements may provide for the appointment of

1 alternates, who shall be city council members or mayors, for those
2 city representatives.

3 (b) An alternate may vote in the place of a director represented
4 by that alternate if the director is absent.

5 (c) To the extent possible, the appointing powers shall appoint
6 individuals who have expertise, experience, or knowledge relative
7 to transportation issues.

8 (d) This section shall become inoperative on July 1, 2023, and,
9 as of January 1, 2024, is repealed.

10 SEC. 2. Section 100060 is added to the Public Utilities Code,
11 to read:

12 100060. (a) The government of the VTA shall be vested in a
13 board of directors that shall consist of 12 voting members, as
14 follows:

15 (1) Two representatives of the county, who shall be appointed
16 by the president of the board of supervisors with board of
17 supervisors approval by at least a four-fifths vote, consistent with
18 ~~both all of the following requirements:~~ *following:*

19 (A) One representative shall be a nonelected community member
20 with expertise in financing and accounting.

21 (B) One representative shall be a nonelected community member
22 with expertise in infrastructure management, construction
23 management, or project management.

24 (C) *The nonelected community members shall reside in the*
25 *county.*

26 (2) Five representatives of the City of San Jose, who shall be
27 appointed by the mayor of the City of San Jose with city council
28 approval, consistent with all of the following:

29 (A) At least two representatives shall be city council members
30 or the mayor of the City of San Jose.

31 (B) At least two representatives shall be nonelected community
32 members who, to the extent possible, have expertise, experience,
33 or knowledge relative to transportation issues.

34 (C) The mayor of the City of San Jose shall appoint at least one
35 representative pursuant to this paragraph who uses public transit
36 as their primary mode of transportation.

37 (D) *The nonelected community members shall reside in the City*
38 *of San Jose.*

1 (3) Five representatives of the cities in the county, other than
2 the City of San Jose, elected in a manner consistent with all of the
3 following:

4 (A) At least two representatives shall be nonelected community
5 members who, to the extent possible, have expertise, experience,
6 or knowledge relative to transportation issues.

7 (B) At least two representatives shall be city council members
8 or mayors of the cities in the county, other than the City of San
9 Jose.

10 (C) *The nonelected community members shall reside in one of*
11 *the cities in the county, other than the City of San Jose.*

12 ~~(C)~~

13 (D) To the extent possible, each regional group, as provided for
14 by agreements among the cities in the county, other than the City
15 of San Jose, shall be represented on the board of directors by a
16 representative elected pursuant to this paragraph.

17 ~~(D)~~

18 (E) The representatives shall be elected through the following
19 ranked choice voting process:

20 (i) VTA shall develop an application process.

21 (ii) In order to be eligible to be selected, a candidate shall
22 complete an application and submit the application to VTA.

23 (iii) VTA shall create one ranked choice ballot that includes
24 only those candidates that submitted complete applications.

25 (iv) The city council of each city in the county, other than the
26 City of San Jose, shall, in a public forum, rank those candidates
27 using the ranked choice ballot created pursuant to clause (iii) and
28 submit the ranked choice ballot to VTA by a date determined by
29 VTA.

30 (v) VTA shall count the ranked choice ballots submitted
31 pursuant to clause (iv).

32 ~~(E)~~

33 (F) (i) If a representative who is elected as a city council
34 member or mayor of a city in the county, other than the City of
35 San Jose, no longer serves in that capacity as a city council member
36 or mayor, the representative may continue to serve on the board
37 of directors until their term on the board of directors expires, except
38 as specified in clause (ii).

39 (ii) If a representative continuing to serve on the board of
40 directors pursuant to clause (i) would violate the requirements of

1 subparagraph (A) or (B), the representative shall not continue to
2 serve on the board and shall be replaced in a special election
3 conducted through the process described in subparagraph ~~(D)~~; (E).

4 (b) In addition to the 12 voting members described in
5 subdivision (a), VTA's board of directors may include ex officio
6 nonvoting members from regional transportation or governmental
7 bodies.

8 (c) VTA shall ensure that representatives of a single city do not
9 compose a majority of the board of directors.

10 (d) A representative appointed or elected pursuant to this section
11 shall serve a four-year term and may be reappointed without
12 limitation.

13 (e) VTA shall implement guidelines to provide for the removal
14 for cause of a representative appointed or elected pursuant to this
15 section.

16 (f) This section shall become operative on July 1, 2023.

17 SEC. 3. Section 100060.2 of the Public Utilities Code is
18 amended to read:

19 100060.2. (a) Except as otherwise provided, the term of office
20 for each director shall be two years and until the appointment and
21 qualification of their successor. A successor shall be appointed
22 not later than 30 days immediately upon the expiration of a
23 director's term. A vacancy exists whenever a director ceases to
24 hold office on the city council or board of supervisors from which
25 they were appointed. Any vacancy shall, within 60 days of its
26 occurrence, be filled for the balance of the term by the body that
27 made the original appointment.

28 (b) This section shall become inoperative on July 1, 2023, and,
29 as of January 1, 2024, is repealed.

30 SEC. 4. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.