

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 1/22/2020

Staff Report No. 20-048

TO: AC Transit Board of Directors
FROM: Denise C. Standridge, General Counsel
SUBJECT: Transit District Law

ACTION ITEM

RECOMMENDED ACTION(S):

Consideration of recommendations regarding proposed amendments to Transit District Law.

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency

This report and corresponding recommendations for proposed amendments to Transit District Law are intended to update, streamline and provide additional flexibility to the District in providing transportation services to the public. The recommendations contained in this report include updated language, repeal of language that is not applicable, clarification of voting requirements and the ability to issue debt for multi-year periods.

BUDGETARY/FISCAL IMPACT:

The recommended changes to legislation could streamline the process for issuing debt, but will have little, if any, fiscal impact in the short term.

BACKGROUND/RATIONALE:

The Board has requested a report and recommendations regarding proposed changes to the District's enabling legislation in accordance with the guidance given at the May 29, 2019 retreat. The Board's direction as described in the minutes and proposed changes appear below. Words or phrases to be deleted are in ~~strikeout type~~, and words or phrases to be added are in *italics*.

1. PUC § 24534-Publishing requirements; newspaper of general circulation. *Board direction: Add publishing on the District's website as form of publication.*

Recommend amending § 24533 to read as follows:

24533. Except as otherwise provided in this part all ordinances and notices which are required to be published shall be published within the district

pursuant to Section 6066 of the Government Code *or on the district's website.*

Repeal § 24534, which reads:

Whenever in this part publication is required and there is no newspaper of general circulation published within the district, the publication may be made in a newspaper of general circulation published in any county where the district is situated.

2. PUC § 24535-Electronic signatures. *Direction: Add use of electronic signatures.*

Recommend amending § 24535 as follows:

24535. Whenever the signature of any officer or employee of a district or of any member of the retirement board or of any officer or employee of the retirement system is authorized or required under the provisions of this part, except in the single instance provided in Section 26244, the signature may be made by the use of a plate bearing facsimiles of such signatures *or by submittal of electronic signatures consistent with section 16.5 of the Government Code or subdivision (h) of section 1633.2 of the Civil Code.*

3. PUC § 24561-Organization/incorporation of transit district/designation as rapid transit district.

Direction: Research the legislative history on the intent of the statute and report back, designate District as a rapid transit district.

There is very little legislative history available for section 24561 other than the various versions of Senate Bill 987 adopted in 1955. The bill began as a general bill providing for the formation of transit districts by any city but then was amended to limit formation of transit districts to Alameda or Contra Costa counties. When that amendment was made, the author added the language that currently appears in section 24561 describing the need for such a district.

A letter from the Attorney General indicates that the explanatory language in section 24561 was necessary in order to avoid the constitutional prohibition against special legislation contained in article IV, section 16(b). The explanatory language provides what appears to have been the motivating purpose behind the legislation, which was that the transportation problem was “unique to these counties due to their geographic location in relation to the centers of employment of many of their residents.” Presumably this meant that in 1955, residents of Alameda and Contra Costa Counties were primarily employed in Oakland and San Francisco, although nothing in the legislative history says this explicitly.

This portion of section 24561 is no longer necessary and its provision allowing cities in Alameda County or Contra Costs counties to form transit districts is confusing. We recommend repealing these sections.

In addition, Government Code section 53090 exempts rapid transit districts from the rule in Government Code section 53091 that each state-created local agency must “comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.” We therefore recommend language designating the District as a rapid transit district.

Recommend amending/repealing PUC § 24561 as follows:

24561. (a) Any city together with unincorporated territory, or two or more cities, with or without unincorporated territory, in either Alameda County or Contra Costa County or both, may organize and incorporate as a transit district. Cities and unincorporated territory included within a district may be in the same or separate counties and need not be contiguous. No city shall be divided in the formation of a district. A city may be in more than one transit district formed under this division.

(b) It is necessary that a district be formed in Alameda and Contra Costa Counties to meet the transit problem, for the area involved covers more than one city and is in two counties; moreover, the problem is unique to these counties due to their geographic location in relation to the centers of employment of many of their residents. Although a municipal utility district could provide transportation facilities, there is already an existent municipal utility district in part of the area which provides water and sewage disposal to persons who will not necessarily be benefited by the transportation facilities, and if a new municipal utility district is formed, there is a possibility of its becoming merged by operation of law with the existent district, which would result in those persons in the existent district being inequitably taxed to pay for the transit facilities and those benefited only by the transit facilities being taxed to support the water and sewage disposal functions of the district.

Also, there are existing transportation facilities in the area which may be taken over by the transit district and special provisions relating to this transfer and to the employees of these facilities, as provided for by this division, are necessary to protect the public interest.

(c) *The Alameda-Contra Costa Transit District formed pursuant to former section 24561 is hereby designated a rapid transit district.*

4. PUC § 24647-Elections; ward and at-large candidates for the Board to submit a written petition with at least 50 signatures. *Direction: At-large candidates submit 100-150 signatures or have the ability to pay a fee to qualify for the ballot (similar to the assembly, senate or county offices). It was also suggested that the Board be allowed to determine the number of signatures and the associated fee by ordinance or resolution as deemed appropriate. In light of the California Voting Rights Act, changes to the at-large provisions of PUC § 24647 are not recommended at this time.*

5. PUC § 24865-Vacancies on the Board of more than 60 days filled by the Governor. *Direction: Research the Elections Code to determine whether the Governor or the Board of Supervisors appoints. A change was suggested to give the Board 90 days to fill a vacancy.*

There is a provision for filling vacancies in Government Code § 1780 that applies to special districts like AC Transit that cover territory in more than one county and that gives the board of supervisors of the county in which the seat is located or if the seat is at large, the county that contains the larger territory of the district,

the authority to fill a vacancy if the board has not acted to fill it within 60 days.

If the District would prefer not to be governed by section 1780, which applies “notwithstanding any other law,” we suggest that PUC § 24865 be amended to increase the time in which the Board may fill a vacancy and to read as follows:

Notwithstanding section 1780 of the Government Code , the board shall fill all vacancies on the board, including those caused by the death or resignation of a member. If, however, a vacancy exists for ~~60~~ 90 days the Governor shall fill the vacancy.

6. PUC § 24907-Board quorum and vote requirements. *Direction: Clarify that actions of the Board require four affirmative votes of the body.*

Recommend amending § 24907 to read as follows:

A majority of the board constitutes a quorum for the transaction of business, provided that no act of the board shall be valid unless four members concur therein.

7. PUC § 24931 et seq. - Modernization of Board Officer job duties/requirements.

Direction:

- *Increase the level of experience for General Counsel to a minimum of five years.*
- *Change the word “shall” to “should” in § 24927.*
- *Eliminate § 24933.*
- *Eliminate § 24935.*
- *Clarify § 24936(h) that devotion of the general manager’s entire time to the District shall mean no second jobs.*
- *Extend the date in § 24937 for publication of the annual financial report from 90 days following the end of the fiscal year to 180 days.*

Recommend amending relevant sections to read as follows:

24925. The officers of the district and appointed by the board shall be a general manager and, at the board’s discretion, an attorney, and a secretary of the board. For purposes of this article, “he” or “him” includes “she” or “her.”

24927. All other things being equal, the board ~~shall~~ should appoint as general manager some person who has had experience in the construction or management of transit facilities.

[Repeal] 24930. Notwithstanding this article, until such time as the district has operated, controlled, or used facilities or parts of facilities for providing the inhabitants and cities within the boundaries of the district with transit services for a period of six months, the board may or may not appoint a executive director, who during such time holds office at the pleasure of the majority of the board.

24932. The attorney shall be admitted to practice law in the Supreme Court of the State, and shall have been actively engaged in the practice of his profession for not less than ~~three~~ five years next preceding his appointment.

[Repeal]24933. The board may consolidate any of the district offices in one person.

[Repeal]]24935. Each appointive officer shall give such bond and in such amount as the board may require.

24936. Subject to the control of the board, the powers and duties of the general manager are:

[(a) through (g) no changes]

(h) To devote his entire time to the business of the district, *meaning that he shall not engage in any other business or employment.*

[(i) no changes]

24937. The general manager shall within ~~90~~ 180 days from the end of each fiscal year cause to be published a financial report showing the result of operations for the preceding fiscal year and the financial status of the district on the last day thereof. The publication shall be made in the manner provided in this division for the publication of ordinances and notices generally.

8. PUC § 25301 et seq.-Retirement Provisions. *Direction was given to conform retirement provisions to the Public Employees’ Pension Reform Act as needed, including:*

§ 25333-Recommended that this provision be subject to any other law. Clarify language that says the Retirement System may not apply to any elective officers to say “elected Board members” or “elected directors.”

§ 25361-Composition of the Retirement Board: increase the membership. More research is required, but it appears the composition cannot be increased unless it is ratified by the voters of the jurisdiction.

Recommend amending § 25331 to read as follows:

§ 25331. The board may prescribe the terms and conditions upon which the

officers and employees of the district or their beneficiaries shall be entitled to benefits and the amounts thereof, *provided, however, that no elected board member may participate in the retirement system.*

Recommend amending § 25333 to read as follows:

The board may provide that the district shall contribute the entire cost of the retirement system or may require that an officer of employee of the district, upon becoming a member of the retirement system, shall contribute a portion of the cost, *as permitted or required by law.* The amount of said officer or employee contribution shall be determined by the board.

Note on § 25361: We discussed expanding the retirement board from five members to seven and raising the number of public members to three, with the Board of Directors having authority to expand the retirement board further. Article XVI, section 17 of the Constitution restricts the Legislature's ability to do this by statute alone:

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

The retirement board website says that the retirement board was created in 1956, and therefore article XVI, section 17's voter approval requirement will apply. The board will need to determine whether this issue is important enough to seek voter approval.

We will need to consult with pension experts in order to be confident that any proposed changes to the District's retirement provisions based on the Public Employees' Pension Reform Act and are consistent with state and federal law.

9. Financial Matters. Recommendations were presented by the Chief Financial Officer to allow the District to issue debt for more multi-year periods as well as streamline the process.

Direction: To pursue the changes requested.

Proposed change: Amend PUC § 25841.5 to read as follows:

A district may borrow money for the purpose of defraying the expenses of a district lawfully incurred after the commencement of the fiscal year, but prior to the time moneys from the tax levy for the fiscal year are received by a district, in a sum which shall not exceed five cents (\$0.05) on each one hundred dollars (\$100) of assessed valuation of taxable property in a district at the time the moneys are borrowed, and may evidence such borrowing by notes bearing

interest at a rate not to exceed six (6) percent per annum. The notes shall be payable from the tax levy from the ~~then current~~ *upcoming two* fiscal years, which levy shall contain a sums sufficient to provide for the payment of the notes and the interest thereon. The form of said notes and the proceedings relating to their issuance and sale, will be governed by the applicable provisions contained in Article 7 (commencing at Section 53820) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. The maturity of said notes shall not exceed two (2) years.

[Note: we have suggested two years because of the last sentence limiting maturity to two years, but the Board may wish to change both of those sentences.]

10. Ability to levy fees and taxes. *Direction: To research this option and report back.*

The District could seek additional funding in different ways, such as through passage of a sales or parcel tax, but our review indicates that obtaining such funding would require both new legislation and 2/3 majority voter approval.

ADVANTAGES/DISADVANTAGES:

The advantages and disadvantages related to each recommendation are set forth in the report above.

ALTERNATIVES ANALYSIS:

Alternative analysis is contained in the report and recommendations above.

PRIOR RELEVANT BOARD ACTION/POLICIES:

None

ATTACHMENTS:

None

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