

SENATE RULES COMMITTEE

SB 1196

Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 1196
Author: Umberg (D)
Amended: 4/18/22
Vote: 21

SENATE TRANSPORTATION COMMITTEE: 12-1, 4/26/22

AYES: Gonzalez, Allen, Archuleta, Becker, Cortese, Dodd, Limón, McGuire,
Min, Newman, Rubio, Skinner

NOES: Melendez

NO VOTE RECORDED: Bates, Dahle, Wieckowski, Wilk

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/19/22

AYES: Portantino, Bradford, Jones, Kamlager, Laird, Wieckowski

NO VOTE RECORDED: Bates

SUBJECT: State Transit Assistance Program: eligibility: Anaheim
Transportation Network

SOURCE: Anaheim Transportation Network

DIGEST: This bill expands the definition “State Transit Assistance (STA)-eligible operator” to include the Anaheim Transportation Network (ATN), for the purposes of receiving STA funds for public transportation purposes if ATN’s bylaws are revised to increase transparency and accountability, including to provide for the appointment of the ATN’s Board of Directors by the Anaheim City Council. This bill also declares that ATN is an STA-eligible operator for the purposes of STA funding allocated according to transit operator revenues from the prior fiscal year.

ANALYSIS:

Existing law:

- 1) Provides, pursuant to the Transportation Development Act (TDA) of 1971, funding for transit and non-transit related purposes that comply with regional transportation plans. It serves to improve existing public transportation services and encourage regional transportation coordination. TDA provides funding for public transit from two funding sources: 1) the Local Transportation Fund (LTF), which is derived from a 1/4 cent of the general sales tax collected statewide; and 2) the State Transit Assistance fund (STA), which is derived from the statewide sales tax on diesel fuel.
- 2) Defines 1) public transit “operator” as any transit district, included transit district, municipal operator, included municipal operator, or transit development board; 2) “public transportation system” as any system of an operator which provides transportation services to the general public by any vehicle which operates on land or water, regardless of whether operated separated from or in conjunction with other vehicles; and 3) “municipal operator” as a city or county, including any nonprofit corporation or other legal entity wholly owned or controlled by the city or county, which operates a public transportation system, or which on July 1, 1972, financially supported, in whole or in part, a privately owned public transportation system, and which is not included, in whole or in part, within an existing transit district.
- 3) Defines “STA-eligible operator” as a public transportation operator eligible to claim LTF under either Article 4 or Article 8 of TDA law, or under both articles.
- 4) Defines “qualifying revenues” to mean fare revenues, including fares generated for community transit services under contract with the STA-eligible operator, and any other funds used by the operator in the delivery of transit service, except federal and state funds.
- 5) Requires the State Controller’s Office (SCO) to allocate funds to specified regional transportation planning agencies (RTPA)s for public transportation purposes. Requires STA funds be allocated by the SCO by formula with 50% being allocated according to population and 50% being allocated according to transit operator revenues from the prior fiscal year.

- 6) Requires that only STA-eligible operators are eligible to receive an allocation from the portion of program funds based on transit operator revenues, which includes an amount corresponding to the STA-eligible operators within the jurisdiction of each RTPA. Requires amount allocated to a RTPA be based on the ratio that the total qualifying revenue of all STA-eligible operators in the jurisdiction bears to the total qualifying revenue of all STA-eligible operators in the state.
- 7) Requires the RTPA with jurisdiction over a transit operator to verify the operator is eligible for funding under the STA program prior to the operator submitting its report to the SCO, and requires the SCO to reflect the verification on the operator's report.
- 8) Requires the SCO to design and adopt a uniform system of accounts and records under which operators, as defined, prepare and submit annual reports of their operation.
- 9) Requires operators to prepare and submit annual reports of their operation to RTPAs having jurisdiction over them and to the SCO. Requires the report to contain underlying data from audited financial statements prepared in accordance with generally accepted accounting principles, if this data is available. Requires the report to specify (1) the amount of revenue generated from each source and its application for the prior fiscal year, and (2) the data necessary to determine which section, as specified, the operator is required to be in compliance in order to be eligible for funds.
- 10) Imposes certain financial requirements on transit operators making claims for transit funds, including requirements that fares collected by the operator cover a specified percentage of operating costs, and that an operator's total operating cost per revenue vehicle hour not exceed operating revenues and the percentage change in the Consumer Price Index (CPI). Establishes different farebox recovery requirements depending upon population.

This bill:

- 1) Expands the definition of "STA-eligible operator" to include ATN for public transportation purposes if ATN's bylaws are revised to increase transparency and accountability, including to provide for the appointment of ATN's Board of Directors by the Anaheim City Council.

- 2) Declares that ATN is an STA-eligible operator for the purposes of STA funding allocated according to transit operator revenues from the prior fiscal year.

Background

- 1) *Who is ATN?* ATN is a local non-profit 501 (c) (4) transportation management association and a service provider of the Anaheim Resort Transportation (ART) system. ATN provides transportation services to the cities of Anaheim, Garden Grove, Santa Ana, Buena Park, Costa Mesa and Orange by operating a fleet of transit buses along fixed routes to provide transportation to local and regional event destinations, rail stations, retail establishments, etc. They operate along a system of 22 fixed routes and with an active fleet of 74 alternative fuel buses. Prior to March 2020, ATN was expecting to have an annual ridership of over 9.5 million passengers.
- 2) *How did ATN get started?* As described in the 2017 report, *Integrated Transportation and Capacity Building Plan (Plan)*, ATN was created in 1995 to provide various public transportation services to the City of Anaheim, including managing a transportation demand management program for large employers. According to recent press reports, roughly 88% of ATN's ridership lives outside of Southern California, with 64% living outside of the state. Nearly 93% of ATN trips were for people on vacations or attending conventions.

ATN's articles of incorporation states that, "the specific purpose of this corporation is to organize the collective actions of the public and private sectors to address the unique transportation and air quality issues of local employers, major event centers, and visitor-and convention-related businesses located throughout certain portions of the City of Anaheim, California known as the Anaheim Resort Area ("ARA") and Stadium Business Center ("SBC"); to facilitate a forum for the corporation's members and other interested persons to work together to develop workable transportation solutions; and to provide leadership to maximize access, enhance mobility, and assist with regulatory compliance, including environmental mitigation measures, all for the benefit of the corporation's members and the public who are visitors to, or are employed within, the ARA, and the SBC."

The relationship between ATN and the City of Anaheim was formalized in 2004, when the City awarded ATN a non-exclusive franchise agreement to operate ART service in Anaheim. This agreement was renewed in 2011 and again in 2019.

- 3) *How is ATN governed?* ATN is currently governed by a 15 member Board of Directors plus one ex-officio non-voting member, and ATN's Executive Director and General Counsel. The members represent resorts and businesses that are part of ATN's service territory, including Disneyland and the Anaheim Ducks arena. One board member represents the City of Anaheim. Some of the members of the Board are elected and some appointed, both by business members of the ATN service territory. Although ATN is not a public agency, according to their bylaws, the Board of Directors observe the Ralph M. Brown Act for their meetings. However, it is unclear if ATN also complies with the California Public Records Act and the California Political Reform Act as required for public agencies.
- 4) *How is ATN funded?* ATN is funded from a variety of sources, including locally generated fees, fare revenue, and some federal apportionments and grants. According to their bylaws, ATN collects membership dues from lodging establishments, retail facilities, event centers, commercial offices, institutional uses, manufacturing facilities, and standalone restaurants. Additionally, ATN receives funding from local assessments, with revenue generated by a 2% fee levied on hotel/motel room rentals and 25% of the funds are required to be allocated to support transportation activities, including ATN.

As mentioned, ATN also receives funding from the Federal Transit Administration (FTA). Specifically, ATN is authorized to contribute their ridership data to the National Transit Database, which makes them eligible to receive some federal funding. Specifically, according to the Orange County Transportation Authority (OCTA), ATN receives annual allocations based on this ridership data from FTA's Urbanized Area Formula Grants (5307) program at roughly \$750,000 annually, which is allocated to ATN through OCTA. The funds can be used for capital projects and operations.

According to ATN, they have also received federal funding from FTA's Bus and Bus Facilities (5339) program, which provides one-time grants to replace, rehabilitate and purchase buses and related equipment. Additionally, in 2018, ATN received a grant from the state's Transit Intercity Rail Capital Program, (TIRCP) for \$28 million to start a micro transit service; electrify its fleet, including the purchase and deployment of 40 ZEB electric buses; and build new operations and maintenance facilities.

- 5) *What is STA and how does it work?* In 1971, the Legislature enacted the Mills-Alquist-Deddeh Act, otherwise known as TDA, which dedicated a statewide 1/4 cent sales tax to local transportation. That 1/4 cent sales tax, now known as the LTF, generates over \$1.6 billion annually primarily for public transit. Later, the Legislature created a second state funding source for public transit under the TDA called the STA. The STA, which generates more than \$700 million annually, is derived from the sales tax on diesel fuel and can be used by transit operators for both capital projects and transit operations. STA is distributed throughout the state to RTPAs, half based on population and half based on annual revenues generated by each eligible entity. The RTPA then allocates the funding share to each eligible entity in their jurisdiction. To receive STA funds, a transit operator must be deemed eligible by the relevant RTPA for the area in which they operate. The RTPA is required to certify and report the eligible transit operators to SCO.
- 6) *What is an STA-eligible operator?* Specifically, TDA law defines a public transit operator as, “any transit district, included transit district, municipal operator, included municipal operator, or transit development board.” Additionally, the passage of AB 1113 (Bloom, Chapter 86, Statutes of 2017), which revised and recast provisions of the STA program, defined an STA-eligible operator for the purposes of receiving STA funding. Specifically, an STA-eligible operator is a public transit operator, as defined above, that operates a public transportation system, and is eligible to claim LTF funding under TDA. In addition to defining STA-eligible operator, AB 1113 set up a process requiring each RTPA to certify that each transit provider in their jurisdiction meet the definitions and requirements to be an STA-eligible operator.

STA-eligible operators also must meet numerous reporting requirements to continue to receive state funds. For example, they are required to prepare and submit annual reports of their operations to RTPAs and to the SCO. The report, called Financial Transactions Report (FTR), details the operator’s revenue and expenditures for the fiscal year. The data in the FTR is used to calculate STA payments to transit operators based on “qualifying revenue” of each of the state’s transit agencies. Additionally, STA-eligible operators are required to meet state performance measures including requirements that fares collected by the operator cover a specified percentage of operating costs, and that an operator’s total operating cost per revenue vehicle hour not exceed operating revenues and the percentage change in the Consumer Price Index (CPI), and

certain farebox recovery ratios. The SCO and the California Department of Transportation (Caltrans), oversee operators' compliance with these measures.

Comments

- 1) *Purpose.* According to the author, “public transportation is an important service to the citizens and economy in Orange County who rely on these resources. Over 9.5 million resident, employees, and visitors use the Anaheim Transportation Network each year to connect with job centers, theme parks, and other venues. The Anaheim Transportation Network is a nonprofit, federally recognized transportation agency that receives federal funds to support its services. However, Anaheim Transportation Network is currently ineligible for state funds that would allow their transportation network to expand and improve to better serve their community. Therefore, SB 1196 will put the Anaheim Transportation Network on a level playing field with other public transportation services in California by making the network eligible to receive State Transit Assistance funds.”
- 2) *SB 1196 declares ATN is an STA-eligible operator.* SB 1196 was introduced to define ATN as a STA-eligible public transit operator under state law for the purposes of receiving STA funding. Currently, although ATN does receive federal funding, it is not eligible for state transit operating funds as established by TDA law. Recent author's amendments attempt to narrow the impact of the bill by specifying that ATN is an STA-eligible operator for the “purposes of fund allocated pursuant to section 99314 of the Public Utilities Code.” This is the portion of STA funds that are calculated based on the qualifying revenues generated by each transit agency in a specific RTPA area. According to ATN, they are attempting to not negatively impact OCTA's funding that they receive from the portion of STA based on the population of Orange County.

Although ATN may have the intent of “walling off” only the revenue portion of STA funds, declaring ATN a STA-eligible operator may have wider reaching impacts. First, it is unclear whether ATN would become eligible to also be a claimant for LTF funds in the future. TDA law is quite intertwined and one of the requirements for being a STA-eligible operator is the ability to claim LTF funds. Additionally, being a STA-eligible operator automatically makes the agency eligible for programs that use STA eligibility and formulas. These include the Low Carbon Transit Operations Program (LCTOP), funded by the state's cap-and-trade revenues; and the SB 1 program, State of Good Repair program. According to an analysis by OCTA, ATN could have the potential to

be eligible for over \$25 million annually in funding. However, if the bill is able to be implemented as intended by ATN, ATN estimates they would receive roughly \$930,000 annually. The actual number is unknown as the SCO would verify the qualifying revenue for ATN to calculate STA funding to be allocated.

Finally, ATN would have to comply with state operational costs ratios, and likely TDA requirements for farebox recovery.

- 3) *SB 1196 requires ATN to change.* SB 1196 would require ATN's bylaws to be revised to increase transparency and accountability, including providing for the appointment of the Board of Directors by the Anaheim City Council. It is unclear what the impact of this requirement would be. Specifically, there are no definitions for what increasing transparency and accountability would mean. As mentioned, currently ATN voluntarily complies with the Brown Act for the purposes of public meetings. However, it is unclear whether their Board members and staff have been designated by the agency to comply with the Political Reform Act and file a Statement of Economic Interest (Form 700) with the Fair Political Practices Commission. Would this be considered a way to increase transparency and accountability? Also, the bill requires these changes to happen before ATN would receive any STA funding, but it is unclear what entity would oversee and determine whether ATN has complied.

The bill also requires the Anaheim City Council to appoint the Board of Directors. Would the make-up of the Board change? Would more public members be added? Also, it is unclear if there are any legal implications, (e.g. public agency requirements), that might apply if the city appoints all of the members of the Board. Finally, if as part of this process, ATN and City of Anaheim decide they want to update the incorporation status of ATN from a non-profit to be a public agency, what impact would that have for OCTA and what funding would ATN then be eligible for?

- 4) *OCTA and ATN could work together.* As detailed above, there is an existing AB 1113 process for transit providers to become STA-eligible operators. As ATN evolves, they could work with OCTA to determine what requirements would need to be met and try to develop a path to become a public transit operator under TDA law. However, SB 1196 legislates ATN's eligibility and attempts to define and limit the funding they could receive. TDA law still requires OCTA to certify STA-eligible operators within their jurisdiction to the SCO before any STA or other funds would be allocated. This would include OCTA confirming that ATN meets the legal requirements and ATN

would submit FTR's and other required financial documents to SCO to determine eligibility and funding amount.

- 5) *SB 1196 has statewide impacts.* AB 1113 was developed through a consensus process by the California Transit Association to clear up any confusion by operators and the SCO about who is eligible for STA funding. Adding a new operator through legislation and bypassing this process sets a concerning precedent, and could create a path for other agencies and organizations to become STA-eligible operators. STA represents a major source of funding for transit operations. Any additional STA-eligible operators added to the program, or to LCTOP or State of Good Repair, dilutes funds from every other agency in the state. At a time when transit operators continue to struggle back from COVID-19, adding new operators will impact their resources, even if it is a small amount per agency.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Unknown significant redirection of Public Transportation Account funds from other STA-eligible transit operators to ATN. Staff notes that the bill would not result in additional expenditures of state funding. Rather, funds allocated to ATN would be deducted from the amounts that would otherwise be allocated to other STA-eligible operators on a formula basis. Specifically, the actual amount redirected to ATN would be based upon the ratio of its qualifying revenues, as reported to the State Controller's Office (SCO), in relation to the total qualifying revenue of all STA-eligible operators in the state. (Public Transportation Account)
- The SCO indicates that costs to add ATN to the STA program would be minor, including reviews of annual financial transactions reports of qualifying revenues used to determine allocation amounts. (General Fund)

SUPPORT: (Verified 5/19/22)

Anaheim Transportation Network (source)
Anaheim Chamber of Commerce
Antelope Valley Transit Authority
Build
BYD North America
California Teamsters Public Affairs Council
Chrysalis

Knott's Berry Farm
Orange County Conservation Corps
Rotary Club of Anaheim
Sunline Transit Agency
Teamsters Local 952
Visit Anaheim

OPPOSITION: (Verified 5/19/22)

None received

ARGUMENTS IN SUPPORT: According to the Rotary Club of Anaheim, “public transportation service, like those provided by ATN, play a critical role in getting our clients to and from job sites. The area serviced by ATN is the core of the job market in Orange County. By strengthening our local transit system, we will be better positioned to service the needs of our community.”

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