

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

SB 904 (Dodd) – As Amended March 21, 2024

SENATE VOTE: 29-8

SUBJECT: Sonoma-Marín Area Rail Transit District.

SUMMARY: Specifies that special taxes may be imposed through the initiative process in the Sonoma-Marín Area Rail Transit District (SMART), as specified. Makes various other changes to state law governing the operations of SMART. Specifically, **this bill:**

- 1) Specifies that special taxes authorized under existing law in SMART may be imposed by qualified voter initiative if the initiative complies with both of the following:
 - a) It proposes a transactions and use tax rate that is not less than 0.25%; and,
 - b) It proposes spending the tax revenues consistent with the purpose of providing a rail transit system under the jurisdiction of SMART.
- 2) Increases, from \$40,000 to \$75,000, the maximum expenditure for the purchase of supplies, equipment, and materials that SMART may incur without putting a contract out to bid. Authorizes SMART to award contracts above that threshold to a responsible bidder that provides the best value, even if that bidder is not the lowest responsible bidder, as specified.
- 3) Requires SMART, to the extent practicable, to obtain a minimum of three quotations for any expected expenditure for the purchase of supplies, equipment, or materials that exceeds \$10,000 but does not exceed \$75,000.
- 4) Requires the Board of Supervisors of the Counties of Sonoma and Marin to call a special election in their respective counties for voters to vote on a tax measure proposed by SMART's Board of Directors or a qualified voter initiative, as specified. Permits the special election to be consolidated with a statewide election.
- 5) Requires SMART, when obtaining coverage for the district and its employees under the workers' compensation, unemployment compensation, and disability and unemployment insurance laws of the state, to obtain coverage that also complies with appropriate federal laws.
- 6) Repeals a requirement that any commuter stations that SMART locates in Sonoma County, north of Healdsburg, must be within incorporated areas.
- 7) Repeals obsolete references to the North Coast Railroad Authority (NCRA) in provisions of law governing SMART and makes other technical changes.

EXISTING LAW:

- 1) Provides that the initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them. Permits initiative powers to be exercised by the electors of each city or county under procedures that the Legislature shall provide. (California Constitution, Article II, §§8, 11)
- 2) Requires a state initiative measure to receive a majority of votes cast thereon in order to take effect. (California Constitution, Article II, §10(a); Article XVIII, §4)
- 3) Provides that if a majority of the voters voting on a proposed local initiative ordinance vote in its favor, the initiative shall take effect, as specified. (Elections Code §§9122, 9217, 9320)
- 4) Provides that in addition to any other method provided by law, ordinances may be enacted by a special district through the initiative process, except in irrigation districts; a district formed under a law that does not provide a procedure for elections; a district formed under a law which does not provide for action by ordinance; a district governed by an election procedure that permits voters, in electing the district's directors or trustees, to cast more than one vote per voter; or to a district in which the directors are empowered to cast more than one vote per director when acting on any matter. (Elections Code §9300)
- 5) Creates SMART, and authorizes it to provide passenger rail service in the counties of Sonoma and Marin. Provides that SMART is governed by a board of directors consisting of 12 appointed members. (Public Utilities Code §105000 et seq.)
- 6) Permits the SMART Board of Directors, by resolution, to submit a measure proposing a retail transactions and use tax ordinance to the voters of the district, as specified. (Public Utilities Code §105115)
- 7) Requires SMART to award contracts for the purchase of supplies, equipment, and materials in excess of \$40,000 to the lowest responsible bidder. (Public Contract Code §20355.1)
- 8) Requires any commuter stations that SMART locates in Sonoma County, north of Healdsburg, to be within incorporated areas. (Public Utilities Code §105096(c))
- 9) Requires SMART to obtain coverage for the district and its employees under the workers' compensation, unemployment compensation, and disability and unemployment insurance laws of this state. (Public Utilities Code §105181)
- 10) Prohibits a local government from imposing, extending, or increasing a general tax unless it is submitted to the electorate and approved by a majority vote. Requires the general tax proposal to be submitted to the voters at an election that is consolidated with a regularly scheduled general election for members of the governing body of the local government, except as specified. Prohibits a local government from imposing, extending, or increasing any special tax unless and until it is submitted to the electorate and approved by a two-thirds vote. Provides that any tax levied by a special purpose district or agency is a special tax. (California Constitution, Article XIII C, §2)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs. State-mandated local program; contains reimbursement direction.

COMMENTS:

1) **Purpose of the Bill:** According to the author:

The SMART train is an incredible multi-modal and multi-jurisdictional project that advances many of our state's top goals: increased rail and bicycle use, transit oriented development, and collaboration by local governments at a regional scale. SMART is the first railroad to resume passenger service in Sonoma and Marin counties in over 50 years. Since coming into service only 7 years ago, SMART has overcome many hurdles and in 2023 returned to their pre-pandemic ridership numbers. SMART was recently designated by the Federal Railroad Administration as part of the Capitol Corridor network and the State Rail Plan projects that it may one day connect with Amtrak services in Solano County, further strengthening our state's rail transit system. SB 904 updates the enabling statute that created the SMART special district, raising bidding thresholds and aligning state law with SMART's new dual status as a freight operator. This bill also empowers the voters of this special district for the first time to pursue their own ballot measures through a voter initiative. A voter-approved qualified initiative process has the potential to provide an opportunity to enhance community engagement and help inform and affirm the development of an expenditure plan, providing greater accountability and direction for how to best dedicate future resources to operate the SMART system.

2) **SMART Background:** The Assembly Transportation Committee analysis of this bill provides the following background on SMART:

AB 2224 (Nation), Chapter 341, Statutes of 2002, established the Sonoma-Marine Area Rail Transit District to build a passenger rail service on the right-of-way of the former Northwestern Pacific Railroad within Marin and Sonoma Counties. In 2012, construction began on the rail line and by 2017 the first phase of the system opened to the public. The first phase was 43 miles and ran from Northern Santa Rosa to downtown San Rafael. By 2019, the service was extended to Larkspur. The eventual goal is to extend the train an additional 27 miles north to Cloverdale. This bill repeals a requirement that any SMART stations located in Sonoma County, north of Healdsburg, must be within incorporated areas, which would allow the train eventually to be extended to Cloverdale.

SMART receives its funding primarily from two local measures, Measure M, which provided the initial fund source, and Measure Q, a 20 year ¼ cent sales tax dedicated to the SMART project. SMART's ridership has continued to grow. In April of 2024 SMART reported 80,000 passengers, marking the highest ridership in one month in the agency's history.

Measure Q is set to expire in 2028. In 2020, Sonoma and Marin voters rejected Measure I, which would have extended the sales tax measure by another 30 years. Measure I received the support of 54% of voters. (Because Measure I proposed extending a special tax, and because it was placed on the ballot by the SMART Board of Directors, it required a two-

thirds vote of the electorate for approval under Article XIII C, Section 2 of the California Constitution, as detailed above.)

- 3) **Initiative Process, Defined:** As detailed above, the California Constitution guarantees the right of voters to propose statutes and amendments to the Constitution and to adopt or reject them, and requires the Legislature to provide for initiative powers that may be exercised by city and county electors. Additionally, although not required by the California Constitution, the Legislature has adopted procedures in the Elections Code to allow voters to exercise initiative powers in some special districts.

As used in this committee analysis, the term “initiative” applies exclusively to measures that are initiated by the voters of a jurisdiction through the collection of voters’ signatures on initiative petitions. Other types of measures that appear on the ballot for voters’ consideration, including measures that a governing body of a local government initiates and places on the ballot, are not considered initiative measures under state law or for the purpose of this analysis.

- 4) **Local Taxes, Initiative Measures, and Vote Thresholds:** As detailed above, the California Constitution prohibits a local government from imposing, extending, or increasing a special tax unless and until it is submitted to the electorate and approved by a two-thirds vote. The California Constitution imposes other restrictions on taxes imposed by local governments, including a requirement that a local government that is seeking to impose a general tax must submit that tax to the electorate at an election that is consolidated with a regularly scheduled general election for members of that local government’s governing body, except in an emergency (found in Article XIII C, section 2, subdivision (b)).

In August 2017, the California Supreme Court issued its ruling in *California Cannabis Coalition v. City of Upland*, 3 Cal. 5th 924 (2017). In that case, the Court was asked to address whether the requirement that a local government must submit a proposed general tax to the voters at a regularly scheduled general election applies to general tax measures that are placed on the ballot not by the governing body of the local government, but instead by the voters through the initiative process.

In its decision, the Court concluded that Article XIII C, section 2, subdivision (b) “does not limit voters’ power to propose and adopt initiatives concerning taxation,” and thus that local general taxes proposed through the initiative process could appear on the ballot at elections other than regularly scheduled general elections. In reaching that conclusion, the majority opinion noted that the Court has consistently taken the position that courts should protect and liberally construe the people’s initiative power, and that it would not construe the Constitution as limiting that power “[u]nless a provision explicitly constrains the initiative power or otherwise provides a similarly clear indication that its purpose includes constraining the voters’ initiative power.”

Because the issue was not before the Court in the case, the majority decision in *Upland* did not directly address the question of whether a local initiative measure that proposes special taxes must comply with the two-thirds vote requirement found in Article XIII C, section 2, subdivision (d) of the California Constitution. Nonetheless, following the Court’s decision, many commentators speculated about the ruling’s potential implications on the vote threshold required to approve local special tax initiatives. (In fact, a separate opinion in the *Upland*

case that concurred in part and dissented in part from the majority opinion concluded that the logic of the majority's opinion meant that "from here on out, special taxes can be enacted by a simple majority of the electorate, as long as proponents can muster the necessary quantum of support to require consideration of the measure.")

Since the *Upland* decision, numerous lower courts have been asked to rule on whether local special taxes imposed through the initiative process require a two-thirds vote for approval, or if those measures can be approved by a majority vote. California Appellate Courts have considered seven such cases, and have uniformly concluded that the two-thirds vote requirement in Article XIII C, section 2, subdivision (d) does not apply to special tax measures proposed through the initiative process. In six of those seven cases, the California Supreme Court denied the petition for review of the Appellate Court decision (in the seventh case, it appears that no review of the Appellate Court decision was sought in the Supreme Court).

- 5) **District Initiative Measures:** As detailed above, existing state law already provides for an initiative process in some, but not all, special districts. Specifically, Section 9300 of the Elections Code provides that ordinances may be enacted in special districts through the initiative process, except in districts that meet one of five enumerated conditions. Four of those conditions do not appear to apply to SMART, but it is less clear whether the fifth condition applies. Accordingly, it is somewhat unclear whether a voter could propose to enact an ordinance of SMART through the initiative process under existing law.

Specifically, state law provides that the initiative process is not available in a district "formed under a law that does not provide a procedure for elections." State law does not further elaborate on what it means for a law to provide "a procedure for elections," nor is there relevant case law that interprets the meaning of that phrase.

The state law that provided for the formation of SMART specifies a number of actions that require the approval of SMART's voters, including imposing a retail transactions and use tax, incurring bonded indebtedness under certain circumstances, and dissolving the district. It could be argued that the statutory provisions for SMART voters to consider those questions are "a procedure for elections." On the other hand, the governing board of SMART is appointed, rather than elected, so the district does not hold regularly-scheduled district elections for the purpose of electing governing board members. This fact may support an argument that the law governing SMART does *not* provide a procedure for elections.

By expressly providing that SMART's voters may propose an initiative to impose special taxes, this bill would appear to resolve the ambiguity about whether the initiative process is available in SMART *for that purpose*. As discussed in more detail below, however, the language of this bill that expressly specifies that a qualified voter initiative may be enacted by the voters of SMART is limited to initiatives that meet certain specified requirements. Accordingly, this bill will not resolve any existing ambiguity about whether SMART voters may pursue initiative measures that do not meet the requirements outlined in this bill.

- 6) **Limited Initiative Power:** In specifying that the voters of SMART may propose a retail transactions and use tax through the initiative process, this bill provides that any such initiative must propose a tax rate that is not less than 0.25%, and must propose expenditures for the revenues generated from the tax that are consistent with the purpose of providing a

rail transit system in SMART's jurisdiction. To the extent that a proposed voter initiative for SMART did not meet those conditions, it is unclear whether the initiative would be permissible under existing law, as discussed above.

California courts have held that county and city voters' initiative power generally is co-extensive with the legislative power of the local governing body, except where there is a clear showing of legislative intent otherwise. In *DeVita v. County of Napa*, 9 Cal.4th 763 (1995), the California Supreme Court wrote:

As we recently stated in *Voters for Responsible Retirement v. Board of Supervisors*: "[W]e will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors ... are subject to initiative and referendum." This presumption rests on the fact that the 1911 amendment to the California Constitution conferring the right of initiative and referendum was "[d]rafted in light of the theory that all power of government ultimately resides in the people" and that "the amendment speaks of initiative and referendum, not as a right granted the people, but as a power reserved by them." It is "the duty of the courts to jealously guard this right of the people'.... [I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled."

The presumption in favor of the right of initiative is rebuttable upon a definite indication that the Legislature, as part of the exercise of its power to preempt all local legislation in matters of statewide concern, has intended to restrict that right. [Internal citations omitted]

Unlike in counties and cities, the California Constitution does not guarantee the right of initiative or referendum to voters in special districts. Instead, the Legislature has chosen to permit initiative measures in special districts by statute in certain circumstances. Because the initiative is not a constitutional right guaranteed to voters in special districts, the Legislature may have greater latitude in imposing conditions and restrictions on that right. Nonetheless, authorizing the use of the initiative process only for one type of policy proposal, and only with significant restrictions on such a proposal, is a departure from the broad nature of the initiative power as available in California under existing law.

- 7) **Arguments in Support:** The sponsor of this bill, the Sonoma-Marín Area Rail Transit District, writes in support:

SB 904 allows SMART's Board of Directors to consider a voter-approved qualified initiative organized by citizen groups. This approach can enhance community engagement and help inform and affirm the development of an expenditure plan to reauthorize Measure Q, a quarter-cent sales tax used for operations. In the Marin County Grand Jury's June 2023 Report: "SMART at a Crossroads Here Today, Gone Tomorrow?" the Grand Jury noted on "four occasions since 1998, a majority of Marin and Sonoma county voters supported an inter-county passenger train"... The SMART Board of Directors discussions of the report findings included public comment that SMART should be open to

voter-approved qualified initiatives to ensure the public investment, including over \$500 million in State, Federal, Regional and local grants matching Measure Q voter-approved funds, is maintained in the highest and best productive public use.

- 8) **Arguments in Opposition:** In a joint letter of opposition, the California Taxpayers Association and Howard Jarvis Taxpayers Association write:

SB 904 fails to specify that special taxes placed on the ballot via an initiative require a two-thirds vote of the electorate. The two-thirds vote was enacted to require bipartisan consensus on tax increases, counterbalance well-financed special interests influencing the local election process, and require local jurisdictions to provide a clear and critical need for a particular public project. Voters have consistently supported a two-thirds vote threshold for special taxes...

SB 904 does not require sunset dates for the special taxes it encourages. A sunset date would ensure that voters have an opportunity to review the district's use of their tax dollars after an appropriate amount of time, thereby increasing accountability.

- 9) **Double-Referral:** This bill was heard in the Assembly Transportation Committee on June 17, 2024, where it was approved by a vote of 11-3. This analysis focuses on issues that are primarily in the jurisdiction of the Assembly Elections Committee. For a discussion of the policy issues in this bill that relate to the jurisdiction of the Assembly Transportation Committee, see that committee's policy analysis of this bill.
- 10) **Previous Legislation:** SB 69 (McGuire), Chapter 423, Statutes of 2021, reorganized the NCRA into the Great Redwood Trail Agency, and transferred its authority related to rail and freight to SMART. This bill repeals obsolete references to NCRA in provisions of law related to SMART.

REGISTERED SUPPORT / OPPOSITION:

Support

Sonoma-Marín Area Rail Transit District (SMART) (Sponsor)
 California Alliance for Jobs
 California Teamsters Public Affairs Council
 North Bay Leadership Council
 Sonoma County Transportation Authority/Regional Climate Protection Authority
 Transform
 Transportation Authority of Marin

Opposition

California Taxpayers Association
 Howard Jarvis Taxpayers Association

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