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SB-1703 San Diego: consolidated transportation agency. (2001-2002)

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Senate Bill No. 1703

CHAPTER 743

An act to amend Section 29532.1 of the Government Code, and to amend Section 99233.5 of, and to add Chapter 3 (commencing with Section 132350) to Division 12.7 of, the Public Utilities Code, relating to transportation.

[Filed with Secretary of State September 20, 2002. Approved by Governor September 20, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1703, Peace. San Diego: consolidated transportation agency.

Existing law, the San Diego County Regional Transportation Commission Act, requires the Board of Directors of the San Diego Association of Governments to serve as the San Diego County Regional Transportation Commission. Existing law provides that any board, commission, or department succeeding to the functions of the association is granted the powers and duties of the association.

This bill would create a consolidated transportation agency in San Diego from specified existing agencies, including the San Diego Association of Governments (SANDAG), the Metropolitan Transit Development Board (MTDB), and the North County Transit Development Board (NCTD), and would authorize that agency to assume certain responsibilities and functions of those agencies. The consolidated agency would be governed by a board of 20 members selected from specified areas within the county. The bill would provide that this agency assumes the powers of the transportation commission and would be designated the transportation planning agency for its area. The bill would allocate the agency's votes among the board and specify a weighted vote formula. The bill would create the executive, transportation, regional planning, and borders policy committees and would authorize these committees to perform specific functions. The bill would authorize the agency to own, operate, and maintain property and to adopt regulations regarding specified transportation matters. The bill would authorize the agency to, among other things, contract for goods and services, employ legal counsel, provide retirement benefits to its employees, enter joint powers agreements, provide insurance, and issue bonds. The bill would provide that the executive director is the administrator of the agency. The bill would require the agency to submit a report to the Governor and the Legislature beginning in 2005 regarding its progress in carrying out the provisions of this bill. The bill would make related conforming changes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares that this act is an incremental step toward establishing a regional agency having authority over a range of regional issues. There is a clear need for a regional agency having sufficient land-use authority to implement an efficient regional transportation system and develop a comprehensive plan coordinated with the regional transportation plan. The goals should include reducing traffic

congestion, limiting sprawl, and improving the quality of life for San Diegans. To accomplish this, future legislation must assure an effective form of governance that includes, but is not limited to, public participation, accountability, and proportional representation, which would be approved by the voters of San Diego County.

SEC. 2. Section 29532.1 of the Government Code is amended to read:

29532.1. Pursuant to subdivision (a) of Section 29532, each of the following entities is designated the transportation planning agency for its respective area:

- (a) The Metropolitan Transportation Commission created by Title 7.1 (commencing with Section 66500).
- (b) The Tahoe Regional Planning Agency created by interstate compact and ratified by Title 7.4 (commencing with Section 66800).
- (c) The Placer County Transportation Planning Agency created by Title 7.91 (commencing with Section 67910).
- (d) The Nevada County Transportation Planning Agency created by Title 7.92 (commencing with Section 67920).
- (e) The Transportation Agency of Monterey County created pursuant to Title 7.93 (commencing with Section 67930).
- (f) The Santa Cruz County Regional Transportation Commission created by Title 7.94 (commencing with Section 67940).
- (g) The El Dorado County Transportation Planning Agency created by Title 7.95 (commencing with Section 67950).
- (h) The consolidated agency created by Chapter 3 (commencing with Section 132350) of Division 12.7 of the Public Utilities Code.

SEC. 3. Section 99233.5 of the Public Utilities Code is amended to read:

99233.5. Up to 10 percent of the remaining money for the area under the jurisdiction of a transit development board created pursuant to Division 11 (commencing with Section 120000) shall be allocated to the transit development board and the transportation planning agency to carry out administrative and planning powers, duties, and functions and construction and acquisition programs in accordance with Article 4 (commencing with Section 132353) of Chapter 3 of Division 12.7.

Thereafter, the remaining money for allocation in that area shall be allocated by the transportation planning agency to claimants.

SEC. 4. Chapter 3 (commencing with Section 132350) is added to Division 12.7 of the Public Utilities Code, to read:

CHAPTER 3. Transportation Consolidation For San Diego
Article 1. General Provisions, Findings, and Definitions

132350. This chapter shall be known and may be cited as the San Diego Regional Transportation Consolidation Act. The purpose of this act is to provide for the consolidation of transportation responsibilities in the San Diego region which can only be provided for by and through enactment of state law.

132350.1. The Legislature hereby finds and declares all of the following:

- (a) There is an imperative need for comprehensive planning and implementation of regional transportation projects in the San Diego region. Diminution of congestion on the streets and highways in the San Diego region will facilitate passage of all Californians traveling through San Diego, and especially benefit persons who live or work in San Diego County who must commute to points within and outside the San Diego region on a daily basis.
- (b) Several separate limited-purpose transportation agencies have been established in the San Diego region, however, the San Diego region would benefit from coordinated and comprehensive planning by these agencies.
- (c) In view of the limited powers of the San Diego Association of Governments (SANDAG), to provide the needed comprehensive transportation planning and implementation without consolidation of certain responsibilities of the transit boards, the Legislature finds that consolidation of the planning, programming, project development, and

construction activities of various transportation agencies in the San Diego region will improve the efficiency and effectiveness of implementing needed transportation infrastructure and services and provide for a focus on meeting the mobility needs of the region.

(d) It is, therefore, the intent of the Legislature in enacting this chapter to consolidate SANDAG and certain responsibilities of the transit boards to provide for sufficient power and authority to solve the transportation problems in the San Diego region and the needed comprehensive transportation system.

132350.2. For purposes of this chapter, the definitions contained in this section have the following meanings:

(a) "Consolidated agency" means the authority resulting from the consolidation of SANDAG and the transit boards' responsibilities as set forth herein.

(b) "Consolidated entities" means SANDAG and the transit boards as set forth in Article 4 (commencing with Section 132353).

(c) "Population" means that population of any agency last determined for the agency as certified by the Department of Finance as of April 1 of each year, or if no certification has been made, the last Federal Decennial Census, except that the population of San Diego County shall be that population determined in the same manner for the unincorporated area of the county. The population of the region shall be that population determined by adding the population of each agency.

(d) "North county coastal" means the Cities of Del Mar, Solana Beach, Encinitas, Carlsbad, and Oceanside.

(e) "North county inland" means the Cities of Vista, San Marcos, Escondido, and Poway.

(f) "South county" means the Cities of Chula Vista, National City, Imperial Beach, and Coronado.

(g) "East county" means the Cities of El Cajon, Santee, La Mesa, and Lemon Grove.

(h) "San Diego region" means the territory located within the boundaries of San Diego County.

(i) "Transit boards" means the San Diego Metropolitan Transit Development Board (MTDB) and the North San Diego County Transit Development Board (NCTD).

Article 2. Organization and Governance

132351. The consolidation of SANDAG and the transit boards will consolidate responsibilities under the organization and governance structure and with the powers, duties, functions, and authority as set forth herein.

132351.1. (a) A board of directors consisting of 20 members shall govern the consolidated agency.

(b) All powers, privileges, and duties vested in or imposed upon the consolidated agency shall be exercised and performed by and through a board of directors provided, however, that the exercise of all executive, administrative, and ministerial power may be delegated and redelegated by the board, to any of the offices, officers, or committees created pursuant to this chapter or created by the board acting pursuant to this chapter.

(c) The board shall be composed of one primary representative selected by the governing body of each city in the county and a member of the San Diego County Board of Supervisors to serve until recalled by the governing body of the city or county. The City of San Diego shall have two primary representatives. Each director shall be a mayor, councilperson, or supervisor of the governing body which selected him or her. Vacancies shall be filled in the same manner as originally selected. Each city or county shall also select in the same manner as the primary representative one alternate to serve on the board when the primary representative is not available. The alternate shall be subject to the same restrictions and have the same powers, when serving on the board, as the primary representative.

(d) At its discretion, each city and county may select a second alternate, in the same manner as the primary representative, to serve on the board in the event that neither the primary representative nor the regular alternate is able to attend a meeting of the board. This alternate shall be subject to the same restrictions and have the same powers, when serving on the board, as the primary representative.

(e) The board may allow for the appointment of advisory representatives to sit with the board but in no event shall said representatives be allowed a vote. The current advisory representatives to the San Diego Association of Governments may continue his or her advisory representation on the consolidated agency at their discretion.

The County of Imperial and the cities in that county may collectively designate an advisory representative to sit with the board.

132351.2. (a) A majority of the member agencies constitute a quorum for the transaction of business. In order to act on any item, except consent items which only require the vote specified in paragraph (1), the following voting formula in both paragraphs (1) and (2) shall apply:

(1) A majority vote of the members present on the basis of one vote per agency.

(2) A majority of the weighted vote of the member agencies present.

(b) The City of San Diego shall determine how to allocate its single agency vote and its weighted votes between its two members.

(c) For the weighted vote, there shall be a total of 100 votes, except additional votes shall be allowed pursuant to subdivision (f). Each representative shall have that number of votes determined by the following apportionment formula, provided that each agency shall have at least one vote, no agency shall have more than 40 votes, and there shall be no fractional votes:

(1) If any agency has 40 percent or more of the total population of the San Diego County region, allocate 40 votes to that agency and follow paragraph (2), if not, follow paragraph (3).

(2) Total the population of the remaining agencies determined in paragraph (1) and compute the percentage of this total that each agency has.

(A) Multiply each percentage derived above by 60 to determine fractional shares.

(B) Boost fractions that are less than one, to one and add the whole numbers.

(C) If the answer to subparagraph (B) is 60, drop all fractions and the whole numbers are the votes for each agency.

(D) If the answer to subparagraph (B) is less than 60, the remaining vote(s) is allocated one each to that agency(s) having the highest fraction(s) excepting those whose vote was increased to one in subparagraph (B) above.

(E) If the answer to subparagraph (B) is more than 60, the excess vote(s) is taken one each from the agency(s) with the lowest fraction(s). In no case shall a vote be reduced to less than one.

(3) Total the population determined in paragraph (1) and compute the percentage of this total that each agency has.

(A) Boost fractions that are less than one, to one and add the whole numbers.

(B) If the answer to subparagraph (A) is 100, drop all fractions and the whole numbers are the votes for each agency.

(C) If the answer to subparagraph (A) is less than 100, the remaining vote(s) is allocated one each to that agency(s) having the highest fraction(s) excepting those whose vote was increased to one in subparagraph (A) above.

(D) If the answer to subparagraph (A) is more than 100, the excess vote(s) is taken one each from that agency(s) with the lowest fraction(s). In no case shall a vote be reduced to less than one.

(d) When a weighted vote is taken on any item that requires more than a majority vote of the board, it shall also require the supermajority percentage of the weighted vote.

(e) The weighted vote shall be recomputed in the above manner every July 1.

(f) Any other newly incorporated city shall receive one vote under the single vote procedure and one vote under the weighted vote procedure specified above until the next recomputation of the weighted vote, at which time the new agency shall receive votes in accordance with the formula specified in subdivision (b). Until this recomputation, the total weighted vote may exceed 100.

132351.3. The consolidated agency is the successor agency to the San Diego Association of Governments (SANDAG) and those entities set forth in Article 4 (commencing with Section 132353). The consolidated agency

is a statutorily created regional transportation planning agency under Section 29532.1 of the Government Code. As the successor to SANDAG, the consolidated agency succeeds to, continues, and maintains SANDAG's federal, state and local designations, including, but not limited to, designation as the Metropolitan Planning Organization, is the San Diego County Regional Transportation Commission pursuant to Section 132005, is the congestion management agency, and is the council of governments for the San Diego region.

132351.4. (a) The consolidated agency shall have four standing policy advisory committees named the executive, transportation, regional planning, and borders committees. The responsibilities of the committees shall be established by the board. Committee membership may be expanded by the consolidated agency, and shall be selected in accordance with a process established by the consolidated agency. The membership shall be as follows:

(1) The executive committee shall consist of six voting members with board members representing east county, north county coastal, north county inland, south county, and the representative, or the representative's alternate in their absence, from the City of San Diego and the county. The chairperson of the consolidated agency shall be one of the six voting members. The vice chairperson of the consolidated agency shall be one of the six voting members if the vice chairperson represents an area of the region that is different from the area of the region represented by the chairperson, as those areas are described in subdivisions (d) to (g), inclusive, of Section 132350.2.

(2) (A) The transportation committee shall consist of nine voting members with board members or alternates representing east county, north county coastal, north county inland, south county and the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, a member of the board of the MTDB appointed by the board of the MTDB, a member of the board of the NCTD appointed by the board of the NCTD, and a member of the San Diego County Regional Airport Authority appointed by the airport authority.

(B) Among its transportation responsibilities, the transportation committee shall provide a strong focus and commitment to meeting the public transit needs of the San Diego region, set transit funding criteria and recommend transit funding levels, and undertake transit responsibilities resulting from consolidation, as delegated by the board.

(3) The regional planning committee shall consist of six voting members with board members or alternates representing east county, north county coastal, north county inland, south county, and the mayor or a council member from the City of San Diego, and a supervisor from the County of San Diego.

(4) The borders committee shall consist of seven voting members with board members or alternates representing east county, north county coastal, north county inland, south county, the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, and a mayor, council member, or supervisor from the County of Imperial.

(b) The board may appoint other standing and ad hoc working groups to advise it in carrying out its responsibilities.

(c) No board member may serve as a member of more than two standing policy advisory committees at any one time.

132351.5. (a) Each member of the consolidated agency, including alternate members when serving in the absence of a regular member at board meetings, and members, including alternates, of the policy advisory committees of the consolidated agency, shall be compensated as determined by the board, and for his or her necessary and reasonable expenses in performing his or her duties as a consolidated agency or policy advisory committee member.

(b) The chairperson shall receive additional monthly compensation in an amount established from time to time by the board.

132351.6. District 11 of the Department of Transportation shall coordinate with the consolidated agency on transportation planning for all projects within the jurisdiction of the consolidated agency in which the department and the consolidated agency have common planning or programming responsibilities.

Article 3. Administration

132352. The consolidated agency may adopt bylaws and other rules necessary to carry out its responsibilities.

132352.1. All meetings of the consolidated agency, including, but not limited to, adjourned regular and special meetings of the board, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). Ten members of the board shall constitute a quorum for transaction of the business of the board.

132352.2. Acts of the board shall be expressed by motion, resolution, or ordinance.

132352.3. The officers of the board are the chairperson and the vice chairperson. The board may create additional officers and elect members to those positions. However, no member may hold more than one office. The term of office for the officers of the board shall be established by the board.

132352.4. (a) The Legislature finds and declares that there is a compelling interest in ensuring that all federal, state, local, and private funds available to the consolidated agency are captured and used in a timely manner. In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, the consolidated agency shall have the authority to establish and use a flexible contracting process to maximize efficient use of public funds.

(b) The consolidated agency shall have the following powers with regard to contracting:

(1) The consolidated agency may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, without limiting the generality of the foregoing, contracts and stipulations to indemnify and hold harmless, and to do all acts necessary for, incidental to, or convenient for the full exercise of the powers granted in this chapter.

(2) The consolidated agency may contract with any department or agency of the United States or the State of California, local governmental authorities within or outside of the region, including those in Mexico, any city, county, public district, public corporation, or joint powers authority formed pursuant to the provisions of the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code upon those terms and conditions as the consolidated agency finds are for the best interests of the consolidated agency.

(3) If the estimated total cost of any construction project or public works project will exceed fifty thousand dollars (\$50,000), the consolidated agency shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. The consolidated agency shall establish rules for procurement of construction of public works projects.

(4) Notwithstanding any provision of the Public Contract Code or any other provision of law, the consolidated agency may contract for the construction of buildings, structures, roads, bridges, and related facilities in accordance with Article 6.8 (commencing with Section 20209.5) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.

(5) Except in cases when an article of a specified brand or trade name is the only article that will properly meet the needs of the consolidated agency, all contracts for the acquisition or lease of materials, supplies, or equipment in an amount of fifty thousand dollars (\$50,000) or a higher amount as may be authorized by the board, shall be made or entered into with the lowest responsible bidder meeting specifications. For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid.

(6) If the estimated total cost of required services exceeds one hundred thousand dollars (\$100,000), the services will not be performed by an entity described in paragraph (2) of subdivision (b) of Section 132352.4, and the services are not within the category of services defined in Section 4525 of the Government Code, the consolidated agency shall solicit bids in writing and shall award the work in a competitive procurement process that is in the best interest of the consolidated agency.

(7) Contracts for architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management services in excess of fifty thousand dollars (\$50,000) shall be let in accordance with the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(8) Notwithstanding any other provisions of this chapter, the consolidated agency is authorized to use any procurement method authorized for state or local agencies by state or federal law, including, but not limited to, use of a competitive negotiation process in accordance with the provisions of Article 7.5 (commencing with

Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. The consolidated agency shall maintain acquisition and contracting guidelines to be followed by the consolidated agency with respect to procurement of goods and services. These guidelines may be in the form of standard formats or model formats.

132352.5. (a) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees of a public agency when performing their respective functions shall apply to employees of the consolidated agency.

(b) All claims for money or damages against the consolidated agency or its employees shall be governed by Part 1 (commencing with Section 810), Part 2 (commencing with Section 814), Part 3 (commencing with Section 900), and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code applicable to public agencies and their employees, or by other statutes or regulations expressly applicable thereto.

132352.6. (a) The consolidated agency shall submit a report to the Governor and Legislature by December 31 of odd numbered years beginning in 2005, regarding progress in carrying out the provisions of this act.

(b) By December 31, 2004, the Legislative Analyst Office (LAO) shall prepare a report to the Governor and the Legislature which shall evaluate and make recommendations on the consolidated agency in the following areas:

(1) The effectiveness of the current governance structure within the region including, but not limited to, public participation, accountability, proportional representation and to examine various alternative governance structures.

(2) The effectiveness in addressing the transportation needs of the region, including coordination and efficiencies in transportation planning and implementation as a result of the consolidation.

(3) The effectiveness of addressing quality of life indicators including, but not limited to, land use patterns, a viable and sustainable economy, affordable public transportation, affordable housing, transportation mobility options, air and water quality, and open space and natural habitat preservation, including, but not limited to, the agency created by the act, the county board of supervisors.

(4) The adequacy of the scope and authority for regional decisionmaking.

(c) The consolidated agency shall pay for the costs of the study which shall be capped at an amount not to exceed one hundred fifty thousand dollars (\$150,000).

Article 4. Consolidation

132353. Definitions. The following definitions contained in this article shall govern the construction of this article.

(a) "Construction" shall mean the final design, permitting and building of all transit projects including, but not limited to, commuter and freight rail, light rail, general rail infrastructure, regional bus facilities, paratransit, and other regional transit projects. Construction shall exclude the Oceanside to Escondido Rail Project and the Mission Valley East Extension Light Rail Project, and other projects or those portions of projects which have a construction contract in place at the time of the subsequent transfer defined in Section 132353.2. The aforementioned construction contracts may be assigned to the consolidated agency with mutual agreement of the consolidated agency and the respective transit board. Construction projects shall exclude local and minor improvement projects as defined in the transition plan.

(b) "Planning" shall include, but not be limited to, conceptual development of transit projects and services and integration and coordination of all modes of transportation.

(c) "Programming" shall mean the, acquisition, prioritization and allocation of funding of transit projects and services.

(d) "Project development" shall mean alternative analysis, environmental review and clearance, preliminary engineering, and any other activities necessary to prepare for the construction of a transit project, as defined in the transition plans.

132353.1. Notwithstanding any other provision of law and except as provided in this chapter, the San Diego Association of Governments shall be consolidated into a public agency known as the consolidated agency. In addition, upon adoption of the 2030 Regional Transportation Plan by the consolidated agency, and not later than

July 1, 2003, all public transit and other transportation planning and programming responsibilities, including, but not limited to, short and near-term operational and financial planning and program development of the San Diego Metropolitan Transit Development Board (MTDB) and the North San Diego County Transit Development Board (NCTD), except as set forth in subdivision (c) of Section 132353.2 shall be consolidated into the consolidated agency. This consolidation shall be referred to as the initial transfer. A transition plan for the initial transfer of transit functions and responsibilities shall be developed by February 28, 2003, by the consolidated agency in consultation with the transit boards to ensure the efficient and timely transfer of the transit boards' functions and responsibilities. All local, state, federal, and other funding available to carry out these responsibilities and those set forth in Section 132353.2, upon any consolidation, shall be deemed to be funding of the consolidated agency.

132353.2. (a) A transition plan for the transfer of project development and construction responsibilities of the transit boards and the financial resources therefore to the consolidated agency shall be developed by the consolidated agency in consultation with the transit boards to ensure the efficient and timely transfer of the transit boards' project development and construction functions and responsibilities to the consolidated agency no later than September 30, 2003. The transfer and consolidation of project development and construction functions and responsibilities and the funding therefore shall occur no later than January 30, 2004, and shall be referred to as the subsequent transfer.

(b) The transition plans should define the functional roles and responsibilities of the consolidated agency and the transit boards and should define, in the applicable transition plan, service and operational planning; programming; project development and construction. The transition plans should acknowledge a strong linkage between service planning and operations scheduling.

(c) Local route planning and scheduling and local financial planning therefore, would continue to be the responsibility of the transit boards in accordance with guidelines provided by the consolidated agency. The initial transition plan would include the development of guidelines, and would define local route planning.

(d) Notwithstanding the provisions of Section 132353.2, at any time after the initial transfer, the consolidated agency may enter into individual agreements with MTDB or NCTD for the transfer and consolidation of any or all functions, personnel and funding of either agency, except those functions set forth in Section 132354.5, to the consolidated agency on such terms and conditions as may be mutually agreed upon.

(e) MTDB and NCTD shall continue to be a claimant, applicant and grantee of local, state and federal grants until the transfer and consolidation of functions or responsibilities to the consolidated agency pursuant to a transition plan at which time the consolidated agency shall become the claimant, applicant and grantee for such funds. Except for funds which are transferred to the consolidated agency pursuant to a transition plan, MTDB and NCTD shall continue to receive funding pursuant to Transportation Development Act Articles 4.0 and 4.5 and the State Transportation Assistance fund in accordance with state law. Except for funds which are transferred to the consolidated agency pursuant to a transition plan, MTDB and NCTD shall continue to receive the Federal Section 5307 Urbanized Area Formula funds pursuant to federal statute. These funds should be allocated in a manner which will help to enable the transit boards to meet their obligations and responsibilities recognizing the methodology and historic funding levels that have previously guided these funding decisions. The consolidated agency shall conduct periodic review of the allocation and methodology for all formula-based funding.

(f) The consolidated agency and MTDB and NCTD shall work together to obtain funds for transit projects and services.

(g) It is the intent of the Legislature that future consolidation of transit operations of MTDB and NCTD into the consolidated agency should be comprehensively evaluated by the consolidated agency. Such a consolidation shall be referred to as a complete consolidation and shall be implemented only if it is considered to be appropriate by the consolidated agency and approved by a statute enacted by the Legislature.

132353.3. In the event of complete consolidation of MTDB with the consolidated agency, any corporation that is a wholly owned subsidiary of MTDB shall become a subsidiary of the consolidated agency.

132353.4. Upon the transfer of responsibilities and obligations from the consolidated entities into the consolidated agency, the consolidated agency, shall by operation of law, and in accordance with transition plans, succeed to all of the rights and obligations of the consolidated entities, including MTDB and NCTD, which enable the consolidated agency to perform the responsibility and obligations transferred, as provided in this section. This shall include, but not be limited to:

- (a) The rights and property of the consolidated entities, including MTDB and NCTD, pertaining to the responsibilities and obligations transferred.
- (b) The legally enforceable debts and liabilities of the consolidated entities, including MTDB and NCTD, pertaining to the responsibilities and obligations transferred in the same manner as if the consolidated agency had itself incurred them.
- (c) The rights of creditors and all liens upon the property of the consolidated entities or of their responsibilities shall be preserved unimpaired, limited in lien to the property affected by the liens immediately prior to the transfer of related responsibilities and obligations.
- (d) An action or proceeding pending by or against a consolidated entity, including MTDB and NCTD, may be prosecuted to judgment, and the judgment shall be binding on the consolidated agency, or the consolidated agency may be proceeded against or substituted in the place of a consolidated entity, if the action or proceeding pertains to a transferred responsibility or obligation.
- (e) In order to protect the holders of outstanding, unmatured bonds and other evidences of indebtedness of the consolidated entities, including MTDB and NCTD pertaining to the responsibilities and obligations transferred, the consolidated agency shall have the power to take all actions and do all things necessary or required for the protection of those holders and for compliance with the terms of those bonds and other evidences of indebtedness. The consolidated agency shall have the power to continue all services that the consolidated entities, including MTDB and NCTD are furnishing pertaining to the responsibilities and obligations transferred on the date of the transfer.

Article 5. Powers and Functions

132354. The consolidated agency shall have and may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this chapter, including, but not limited to, the power to do all of the following:

- (a) Sue and be sued.
- (b) (1) To acquire any property by any means, and to hold, manage, occupy, develop, jointly develop, dispose of, convey, or encumber property.
- (2) To create a leasehold interest in property for the benefit of the consolidated agency.
- (c) To acquire, by eminent domain, any property necessary to carry out any of its powers or functions.
- (d) To merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land or as needed in order to carry out its functions.
- (e) To construct, acquire, develop, jointly develop, maintain, operate, lease, and dispose of work, property, rights-of-way, and facilities.
- (f) To appoint necessary employees, including counsel, and to define their qualifications and duties.
- (g) To enter into and perform all necessary contracts.
- (h) To fix and collect fees for any services rendered by it.
- (i) To adopt a seal and alter it at the consolidated agency's pleasure.
- (j) To adopt an annual budget and to fix the compensation of its officers, board members, and employees.
- (k) To establish and enforce rules and regulations for the administration, operation, and maintenance of facilities and services.
- (l) To enter joint powers arrangements with other entities.
- (m) To provide insurance.
- (n) To issue bonds.
- (o) To do any other things necessary to carry out the purposes of this chapter.

132354.1. The board shall arrange for a post audit of the financial transactions and records of the consolidated agency to be made at least annually by a certified public accountant.

132354.2. This chapter is necessary for the public health, safety, and welfare, and shall be liberally construed to carry out the objects and purposes of this chapter and the declared policy of the state as set forth in this chapter.

132354.3. It is the intent of the Legislature that the federal government, the state, and local agencies within the jurisdictional area of the consolidated agency will participate in support of the consolidated agency. It is further the intent of the Legislature that financial support for the activities of the consolidated agency will be made available from federal, state, and local sources normally available for transportation and other planning purposes in the region and for those functions consolidated within the consolidated agency.

132354.4. The consolidated agency shall be excluded from the requirements of a "local agency" set forth in Section 53091 of the Government Code.

132354.5. Nothing in this chapter authorizes the consolidated agency to operate public transit systems.

132354.6. Except as otherwise provided by law, the consolidated agency shall not have any authority over local land use decisions affecting permitting or zoning of public or private development projects.

Article 6. Staffing, Labor, and Retirement Benefits

132355. Administrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the board. The executive director shall serve at the pleasure of the board and may appoint employees as may be necessary to carry out the functions of the consolidated agency.

132355.1. The employees of the consolidated entities affected by this chapter shall become employees of the consolidated agency and shall suffer no loss of employment or reduction in wages, health and welfare and other benefits, seniority, retirement benefits or contributions made to retirement plans, or any other term or condition of employment as a result of the enactment of this chapter.

132355.2. (a) Upon succession of the consolidated agency under Section 132351.3, and in accordance with Article 4 (commencing with Section 132353), all affected employees of the consolidated entities shall become employees of the consolidated agency at their existing or substantially equivalent classifications, salaries, and benefits. All consolidated entity employees who become employees of the consolidated agency shall be given sick leave, seniority, and vacation credits in accordance with the records of the consolidated entity that previously employed them.

(b) On the effective date of succession of the consolidated agency:

(1) Regular employees of the consolidated entities shall be deemed qualified, and no other qualifications shall be required for employment or retention by the consolidated agency.

(2) Probationary employees of consolidated entities shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Upon transfer of any public benefit corporation owned solely by the MTDB pursuant to Section 132353.3, any reference to the board or to the San Diego Metropolitan Transit Development Board in Article 1 (commencing with Section 120500), Article 2 (commencing with Section 120520), and Article 3 (commencing with Section 120540) of Chapter 5 of Division 11 shall be deemed to refer to the consolidated agency.

132355.3. (a) Members and beneficiaries of any pension or retirement system or other benefits established by the consolidated entities shall continue to have comparable rights, privileges, benefits, obligations, and status with respect to the established systems.

(b) The consolidated agency and the Public Employees' Retirement System (PERS) shall enter into an agreement to provide comparable benefits to those persons who were employees, retirees, or beneficiaries of the consolidated entities' pension and retirement plans at the time of consolidation. Any expense related to this agreement between the consolidated agency and PERS, including retiree coverage, shall be borne by the consolidated agency. The agreement shall be effective as of the date of succession by the consolidated agency.

(c) Those retired employees of the consolidated entities, including their eligible dependents, who are (1) retired on the effective date of the succession; or (2) an eligible beneficiary of a retired employee on the effective date of succession, and (3) who were eligible for benefits through PERS as provided and paid for by a consolidated entity, shall continue to be eligible for comparable benefits, including health care insurance, under the terms of the contracts between the consolidated entities and PERS in effect on the day prior to the succession. These benefits shall be provided at no cost to the retired employee or eligible beneficiary, except for normal copayments as otherwise provided for in the terms of the contracts between the consolidated entities and PERS in effect on the day prior to the succession.

(d) Allowances of persons retired from the consolidated entities as of the consolidation date and their beneficiaries and of beneficiaries of deceased members or retired persons who are receiving allowances as of the succession date, shall be continued in at least the amount provided under the contracts between the consolidated entities and PERS in effect on the day prior to the succession. The succession shall not affect the contribution rate of any employee, retiree, or beneficiary or any retirement allowance or other benefit based on service to a consolidated entity being paid on the day prior to succession.

(e) Notwithstanding Section 20511 of the Government Code, time of service by consolidated entity employees shall be credited as services rendered for the consolidated agency for purposes of calculating retirement benefits. The time of service by consolidated entity employees shall create prior service liabilities against the consolidated agency. Service rendered by consolidated entity employees who become employees of the consolidated agency on the date of succession shall be combined with service rendered by the employee as an employee of the consolidated agency for purposes of calculating retirement benefits. The consolidated agency's contract with PERS shall contain a provision to bring this section into effect.

132355.4. (a) Whenever a majority of the employees employed by the consolidated agency in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, and upon determining that the labor organization represents at least a majority of the employees in the appropriate unit, the determination of questions concerning employee representation and the conduct of employee-employer relations for the consolidated agency shall be governed by the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(b) For the purposes of the wage orders of the Industrial Welfare Commission, the consolidated agency shall be considered a special district.

Article 7. Voter Approval

132632. In addition to the authority set forth in Article 5 (commencing with Section 132300) and Article 6 (commencing with Section 132320) of Chapter 2 of Division 12.7, if the consolidated agency provides compensation to San Diego County for the cost of including an ordinance or measure on the ballot, the consolidated agency may call an election, including an advisory election, in San Diego County on any ordinance or measure regarding the governance of or matters related to the powers, privileges, or duties of the consolidated agency, including, but not limited to, merger or complete consolidation of the transit boards.

132634. The county shall conduct an election, including an advisory election, called by the consolidated agency in the same manner as provided by law for the conduct of elections by a county.

Article 8. Bonds, Equipment, and Leases

132370. The consolidated agency may issue bonds, payable from revenue of any facility or enterprise to be acquired or constructed by the consolidated agency, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the consolidated agency.

132370.1. (a) The consolidated agency may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by the consolidated agency or for transit equipment described in Section 132372 below authorized to be acquired by the consolidated agency or, in the alternative, the consolidated agency may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities or for transit equipment described in Section 132372 below authorized to be acquired by the consolidated agency.

(b) Nothing in this article prohibits the consolidated agency from availing itself of, or making use of, any procedure provided in this chapter for the issuance of bonds of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be carried on simultaneously or, in the alternative, as the consolidated agency may determine.

(c) Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code does not apply to the issuance and sale of bonds pursuant to this chapter and the consolidated agency shall authorize the issuance of such bonds by resolution of its governing board.

132370.2. The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), and the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), are applicable to the consolidated agency.

132370.3. Chapter 1 (commencing with Section 99000) of Part 11 of Division 10 of the Public Utilities Code is applicable to the consolidated agency.

132370.4. The consolidated agency shall be considered to be a "local agency" as defined in subdivision (h) of Section 53317 of the Government Code and the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code are applicable to the consolidated agency.

132370.5. The consolidated agency shall be considered to be a "local agency" as defined in subdivision (f) of Section 6585 of the Government Code and the provisions of Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code are applicable to the consolidated agency.

132370.6. The consolidated agency may borrow money in accordance with Article 7 (commencing with Section 53820), Article 7.6 (commencing with Section 53580), or Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

132370.7. (a) The consolidated agency may borrow money in anticipation of the sale of bonds which have been authorized to be issued, but which have not been sold and delivered, and may issue negotiable bond anticipation notes therefor and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond application notes, including the renewals thereof, shall not exceed five years from the date of delivery of the original bond anticipation notes.

(b) The bond anticipation notes may be paid from any money of the consolidated agency available therefor and not otherwise pledged. If not previously otherwise paid, the bond anticipation notes shall be paid from the proceeds of the next sale of the bonds of the consolidated agency in anticipation of which they were issued. The bond anticipation notes shall not be issued in any amount in excess of the aggregate amount of bonds which the consolidated agency has not been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding.

(c) The bond anticipation notes shall be issued and sold in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations which a resolution of the consolidated agency authorizing the issuance of bonds may contain.

132370.8. The consolidated agency may bring an action to determine the validity of any of its bonds, equipment trust certificates, warrants, notes, or other evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

132370.9. All bonds and other evidences of indebtedness issued by the consolidated agency under this chapter, and the interest thereon, are free and exempt from all taxation within the state, except for transfer, franchise, inheritance and estate taxes.

132370.10. (a) Notwithstanding any other provisions of this article or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the consolidated agency of any bonds, bonds with a pledge of revenues, bonds for any and all evidences of indebtedness or liability constitute a contract between the consolidated agency and the holders of the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the consolidated agency or any or

all of its successors or assigns, by mandamus or any other appropriate suit, action, proceeding in law or in equity in any court of competent jurisdiction.

(b) Nothing in this article or in any other law shall be held to relieve the consolidated agency or the territory included within it from any bonded or other debt or liability contracted by the consolidated agency. Upon dissolution of the consolidated agency or upon withdrawal of territory therefrom, that territory formerly included within the consolidated agency, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the consolidated agency had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

(c) Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the consolidated agency shall be pledged, charged, assigned, and have a lien thereon for the payment of the bonds as long as they are outstanding, regardless of any changes in ownership, operation, or control of the revenue-producing improvements, works, facilities or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, and property as long as bonds are outstanding.

132372. (a) The consolidated agency may purchase transit equipment such as cars, trolley buses, motorbuses, light rail vehicles, or rolling equipment, and may execute agreements, leases, and equipment trust certificates in the forms customarily used by private corporations engaged in the transit business appropriate to effect the purchase and leasing of transit equipment, and may dispose of the equipment trust certificates upon the terms and conditions that the consolidated agency may deem appropriate.

(b) Payment for transit equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates that are or will be legally available to the consolidated agency. Title to the equipment shall not vest in the consolidated agency until the equipment trust certificates are paid.

132372.1. The agreement to purchase or lease transit equipment may direct the vendor or lessor to sell and assign or lease the transit equipment to a bank or trust company duly authorized to transact business in the state as trustee for the benefit and security of the equipment trust certificates, and may direct the trustee to deliver the transit equipment to one or more designated officers of the consolidated agency and may authorize the consolidated agency to simultaneously therewith execute and deliver an installment purchase agreement or a lease of such equipment to the consolidated agency.

132372.2. (a) The agreements and leases shall be duly acknowledged before a person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds.

(b) The agreements, leases and equipment trust certificates shall be authorized by resolution of the consolidated agency and shall contain covenants, conditions, and provisions which may be deemed necessary or appropriate to ensure the payment of the equipment trust certificates from such legally available source or sources of funds as may be specified in the certificates.

132372.3. The covenants, conditions, and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any trust agreement or similar document securing the payment of bonds, notes, or certificates of the consolidated agency.

132372.4. (a) An executed copy of each agreement and lease shall be filed in the office of the Secretary of State, who shall be entitled to receive one dollar (\$1) for each copy filed.

(b) The filing constitutes notice to any subsequent judgment creditor or any subsequent purchaser.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.