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Memorandum

TO: Transit Finance Working Group

DATE: October 7, 2009

FR: Rebecca Long

RE: California Transit Association Wins Lawsuit Protecting Public Transportation Account Funds

The State Supreme Court's rejection of the Schwarzenegger Administration's appeal of a lower court's ruling in favor of protecting state public transit funds is a promising development that has the potential to provide a significant boost in state public transit funding. While restoration of the State Transit Assistance (STA) funds that have been diverted since FY 2007-08 (almost \$2 billion statewide) will likely be a difficult and lengthy legislative fight, for FY 2010-11 and beyond, the Legislature will not be able to divert Public Transportation Account (PTA) funds to offset the General Fund's costs associated with the following:

- Home-to-school transportation
- Transportation services for the developmentally disabled to regional centers
- Debt service on prior public transit bonds
- Debt service (current or prior) on non public transit related transportation bonds
- Repayment of Proposition 42 Diversions

These expenditures – previously funded by the General Fund – were statutorily permitted by a 2007 budget trailer bill (SB 79, Chapter 313, Statutes of 2007), but the Third Appellate District Court's ruling on June 30, 2009 ruled them to be an invalid use of PTA funds.

Next Steps

The Supreme Court will send the case back to the Court of Appeal, which will then send it back to the original trial court with instructions to enter a new judgment granting declaratory relief, which spells out what next steps should be taken. The actual wording of the new judgment will be negotiated between the parties as the rules require that the losing party either sign off on the court's proposed wording or submit an alternative for the court's consideration. This could result in a hearing on the final wording.

How Much Funding Could Be Restored to the Bay Area?

Since FY 2007-08, almost \$2 billion in STA funds have been illegally diverted to the General Fund. As shown in the agenda item, the Bay Area's share of this amount is approximately \$721 million, of which \$532 is revenue-based funds which flow directly to operators and \$189 million is population-based funds allocated by MTC.¹ However, because the state faces a significant structural deficit, there are obviously no funds readily available in the General Fund for repayment. Accordingly, **transit operators should not count on repayment in the near term.**

How the courts and the Legislature respond to the decision with regard to the current fiscal year is also unknown. An adjustment to the budget to restore STA funds for FY 2009-10 would require offsetting cuts or new revenue to make up for the loss of PTA funds in the General Fund. However, if the PTA revenue sources (such as the Spillover or the sales tax on diesel fuel) generate more than was estimated at the time the budget was enacted, any surplus represents uncommitted funds that could be made available to public transit without any offsetting General Fund cuts.

For FY 2010-11, it seems clear that a significant amount of public transit funding will be restored to the STA program. It should be noted, however, that this will require a statutory change to override the Legislature's elimination of the STA program through FY 2012-13. Based on current revenue projections for FY 2009-10, it appears that if full restoration were made in the *current* year, the statewide amount of STA would be approximately \$700 million, resulting in a Bay Area amount of about \$255 million, of which \$189 million would be revenue-based funds and \$67 million would be population-based funds.

Analysis of the Appellate Court's Decision

A central issue at stake in the lawsuit was how to interpret the term "mass transportation." Proposition 116 (June 1990) which renamed the former Transportation Planning and Development Account the PTA, established it as a trust fund and restricted its expenditures from "transportation purposes" generally to "transportation planning and mass transportation purposes, as specified by the Legislature." The measure also provided that the Legislature could modify the provisions of that section by a two-thirds vote, but only if the change is "consistent with, and furthers the purposes of, this section." However, Proposition 116 did not define the term "mass transportation," thereby leaving an opening for the uses listed above.

In its lengthy decision, the court specifically examined the various diversions of PTA funds in FY 2007-08 and concluded that each of them was invalid. The court found that in approving Proposition 116 — which authorized \$2 billion in general obligation bonds for passenger and commuter rail infrastructure — the voters intended to add a *new* source of funding for public transit as well as protect the sources that already existed. Specifically, Proposition 116 included intent language providing that "funding for public transit should be increased from existing sources including fuel taxes and sales tax on fuels" — the source of PTA funds. The court's ruling also drew upon Proposition 2 (November 1998), which further restricted the conditions under which PTA funds may be loaned to other accounts.

Key Legal Issue at Stake: Definition of Mass Transportation

On the question of how to interpret the term "mass transportation," the Schwarzenegger Administration proposed the following definition: "a means or system of conveying a large number of people." The court rejected this definition, pointing out that such a definition would not differentiate "mass transportation" from "transportation" generally. The court reasoned that the language of Proposition 116 suggested that the voters intended "mass transportation" to be synonymous with "public transit" or "public transportation." The court further pointed to the fact the Caltrans "Division of Mass Transportation" is responsible for programs that would fall under the widely held definition of "public transportation" and the Caltrans web site defines "mass transportation" as "transportation by bus, rail, or other conveyance, either publicly or privately owned, which provided to the public general or special service on a regular and continuing basis.

(Does not include school buses, charter or sightseeing services). See also ‘Public Transportation.’”

Based on this reasoning, the court found:

- School bus service and transportation services for the developmentally disabled could not be considered “mass transportation,” because the service in those instances is not provided “indiscriminately to the public.”
- PTA funds could not be used to fund current debt service on Proposition 116 bonds as this violated Proposition 116’s provision that it “not offset or reduce the amounts otherwise made available for transit purposes.”
- PTA funds could not be used to fund current debt service on Proposition 192 (The Seismic Retrofit Bond Act of 1996) because this does not fit the definition of a “mass transportation” purpose.
- PTA funds could not be used to refund the General Fund for prior year debt service on public transportation-related bonds because the eligible expenditure had already been incurred; as a result, the funds were really being made available to the General Fund for any governmental purpose and would not serve a “mass transportation” purpose.
- PTA funds could not be used to reimburse the General Fund for its obligation to repay prior diversions of Proposition 42 funds (pursuant to Proposition 1A) as Proposition 42 is not limited to “mass transportation” purposes.

Feel free to contact me at 510-817-5889 and rlong@mtc.ca.gov with questions.

ⁱ Consistent with California Transit Association estimates, this amount assumes that the Spillover is distributed 50/50 between PTA capital and STA. This was the policy prior to SB 79 (2007), which established the Mass Transportation Fund in order to deposit 50 percent of Spillover funds therein and use the funds for Home-to-School transportation and other purposes with the remainder split 2/3 for STA and 1/3 for PTA capital. Then in 2009, the Legislature adopted SBx3 7 (2009), diverting 100 percent of the Spillover to General Fund purposes and suspended the STA program altogether for FY 2009-10 through FY 2012-13.