



METROPOLITAN
TRANSPORTATION
COMMISSION

Agenda Item 6

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Memorandum

TO: Legislation Committee

DATE: October 9, 2009

FR: Deputy Executive Director, Policy

RE: California Transit Association Wins Lawsuit Protecting State Public Transit Funds

Background

The California Transit Association won a decisive victory last week when the State Supreme Court declined to hear the state's appeal of the lower court's ruling in favor of protecting state public transit funds. This will provide a significant potential boost in state public transit funding. For FY 2010-11 and beyond, the Legislature will not be able to divert Public Transportation Account (PTA) funds to various General Fund purposes as they have in past years. However, it is likely that complete restoration of the State Transit Assistance (STA) funds that were diverted since FY 2007-08 (almost \$2 billion statewide) will be a difficult legislative fight and the outcome is uncertain.

Next Steps

The Supreme Court is sending 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. The new judgment will spell out what next steps must be taken to remedy the illegal diversion of funds. 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. The Bay Area's share of this amount is approximately \$721 million; of which \$532 are revenue-based funds that are apportioned to the operators by formula and \$189 million are population-based funds allocated by MTC (see Attachment A). However, because the state faces a significant structural deficit, there are obviously no funds readily available in the General Fund for repayment. 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.

For the upcoming budget year, it is likely that a significant amount of public transit funding will be restored to the STA program. It should be noted; however, that this will still require a statutory change to override the Legislature's temporary elimination of the STA program through FY 2012-13. Based on preliminary revenue projections, a full restoration of STA would be approximately \$700 million, resulting in a Bay Area share 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

The most central question in the lawsuit was how to interpret the term “mass transportation.” Proposition 116 (June 1990) established the PTA 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 this open for a subsequent court to determine if there continues to be a dispute.

The lower courts 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, the courts found that 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 courts’ ruling also drew upon Proposition 2 (November 1998), which further restricted the conditions under which PTA funds may be loaned to other accounts.

On the question of how to interpret the term “mass transportation,” the Administration proposed the following definition: “a means or system of conveying a large number of people.” The courts rejected this definition, and instead reasoned that the language of Proposition 116 suggested that the voters intended “mass transportation” to be synonymous with “public transit” or “public transportation.”

Based on this reasoning, the courts concluded:

- 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; and
- 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.



Ann Flemer