

STAFF REPORT

SUBJECT: Update on Potential Delays in Receipt of Federal Grant Funds Due to Dispute Regarding Implementation of California's Pension Reform Law

FROM: Michael Conneran, Legal Counsel

DATE: December 6, 2021

Significance

A dispute regarding the implementation of California's pension reform law and its impact on transit workers may delay the release of federal grant funds.

Background

As part of the federal government's initial program in the 1960's to support local transit operators, a provision of federal law, Section 13(c) (49 U.S.C. 5333(b)), was included in what is now the Federal Transit Act to protect the interests of transit employees when federal funds were utilized in a way that might impact the terms and conditions of their employment. Initially, this law was used in the 1960's to ensure that the wages and benefits of transit workers transitioning their employment from failing private transit operators to new, federally-funded public transit operators were protected. Pursuant to this provision, the release of any federal transit grant requires a certification from the U.S. Department of Labor (DOL) that the use of the grant won't adversely affect the wages and benefits of transit workers, nor their ability to bargain collectively. More recently, this statute has been invoked during certain disputes between public transit employees and their employers to block the release of federal grant funds until such disputes can be resolved.

When the State of California implemented the Public Employees' Pension Reform Act (PEPRA) in 2013, challenges were raised by transit-sector labor unions, particularly the Amalgamated Transit Union, arguing that this state program interfered with the collective bargaining process by legally restricting the pension benefits that transit agencies could offer their workers. This resulted in DOL withholding certifications of federal grants for certain California transit agencies. Two of those agencies (Sacramento Regional Transit and Monterey-Salinas Transit) filed suit in United States District Court in Sacramento. Seven years ago, that court ruled that the DOL had exceeded its authority in refusing to certify grants under Section 13(c) on the basis of PEPRA. Since that ruling, litigation and lobbying regarding PEPRA has continued. In 2019, the DOL certified several grants to a number of transit agencies in California, an action that was challenged by the ATU, resulting in the current lawsuit. At that time, the State of California joined with the DOL in defending the DOL's view of PEPRA. However, following the recent change in leadership of the federal

Executive Branch, the DOL notified the court and the other parties that it intended to reconsider its defense of PEPRA, and the parties requested that the case be put on hold.

On October 28, 2021, the DOL issued its new determination that PEPRA precludes certification of federal grants under Section 13(c). In its new determination, the DOL explained that it will continue to comply with a court order issued in 2018 that prohibits the DOL from refusing to certify grants for the litigating transit agencies on the basis of PEPRA. Citing irreparable harm to the state's other transit agencies if federal grant funds are withheld, the State of California has asked the court to stop the DOL from applying its new determination until the court rules on the underlying lawsuit. The court will rule on the State's request for a "stay" of application of the DOL's new determination later this month. The parties have asked the court to schedule a hearing to resolve the underlying lawsuit for March 30, 2022. In the meantime, DOL has said that it will neither certify nor deny grants until this dispute is resolved. California political leaders, including the Governor and Senators Feinstein and Padilla, have expressed their concerns to the DOL regarding its new determination, and requested that federal grants, including COVID-related relief funds, continue to be certified pending the outcome of the case. (A copy of the letter from Governor Newsome to Secretary of Labor Walsh is attached.) We are monitoring this litigation closely and will advise you of any major developments in this situation.

Recommendation

None – information only.

Attachments:

1. Letter to Secretary Walsh

Approved: _____



OFFICE OF THE GOVERNOR

November 10, 2021

The Honorable Marty J. Walsh
Secretary of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh,

The recent decision by the Department of Labor's Office of Labor-Management Standards (OLMS) to cut off California transit agencies from billions of dollars in federal transit funding, on the purported basis of Section 13(c) of the Urban Mass Transportation Act of 1964, is extremely concerning. That OLMS is doing this during the national emergency caused by the COVID-19 pandemic and in disregard of multiple federal judicial decisions is even more troubling. For the reasons below, I urge you to restore California's access to federal transit grants.

OLMS's decision deprives financially beleaguered California public transit agencies that serve essential workers and our most vulnerable residents of critical support, including American Rescue Plan Act funds that those agencies need to survive through the pandemic. Because of a dramatic decline in ridership, public transit agencies rely more than ever on these federal grants just to keep trains and buses running and their workforces employed. The grants being withheld also help provide vital mobility to low-income seniors, individuals with disabilities, and other transit-dependent riders.

This decision is a complete reversal of OLMS's final determination in 2019 that California's statewide pension reform legislation, the Public Employees' Pension Reform Act of 2013 (PEPRA), "does not present a bar to certification under section 13(c)"—a determination upon which California and local transit agencies have justifiably relied for budgeting, planning, and strategy. By reversing itself, OLMS has created tremendous confusion and uncertainty for

numerous infrastructure projects on which California has closely partnered with the federal government and local transit agencies, and in which it has already invested hundreds of millions of dollars in state funding. For example, the Transbay Corridor Core Capacity Program—which is intended not only to improve service and increase system ridership in the Bay Area, but also to improve regional air quality and lower greenhouse gas emissions—cannot be completed as planned without continued federal funding. Other major transit infrastructure projects in California will suffer similar adverse impacts. Furthermore, OLMS's decision directly undermines the goals of the recently enacted infrastructure bill by cutting off transit agencies in the nation's most populous state from the very infrastructure funds just approved by Congress.

The Department's approach also disregards its past assurances to California that it would abide by the federal judiciary's resolution of the PEPPRA/Section 13(c) issue and work cooperatively to avoid disrupting California's access to federal funding during litigation. After multiple years of litigation, the reviewing federal court found in California's favor three times, and the Department did not pursue appeals. The Department's own lawyers noted that the federal court's decisions were "thoroughly reasoned," and in 2019 OLMS formally concluded that PEPPRA "does not impermissibly impair collective bargaining rights." That should conclude the matter. In addition, far from merely reverting to its prior position under the Obama-Biden Administration (as OLMS has claimed), the Department has taken the extraordinary step of cutting off California's access to federal transit grants—something the Obama-Biden Administration avoided.

The Department's decision rests on the false premise that PEPPRA has impaired collective bargaining in California. But federal and state courts alike have repeatedly rejected this argument, finding that PEPPRA does not impair collective bargaining agreements or collective bargaining rights. The numerous agreements successfully negotiated over the last nine years by transit workers utilizing collective bargaining processes under PEPPRA further directly refute OLMS's position. And it is undisputed that California's public employees continue to enjoy some of the most robust collective bargaining rights in the country, which I have championed as Governor. In fact, in 2019, I signed legislation expanding collective bargaining rights to tens of thousands of childcare workers.

Finally, OLMS's central position—that PEPPRA conflicts with federal labor policy—is no sounder now than when the federal district court rejected it. Among other

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things, OLMS continues to base that position on the National Labor Relations Act, which by its terms does not apply to public employees. OLMS's position is also surprising given that the federal government itself instituted similar pension reforms after the Federal Employees' Retirement System Act was enacted in 1986 by Congress with broad bipartisan support. OLMS has never explained why the same kinds of reforms that the federal government adopted (which apply to the Department's own employees) are inconsistent with federal labor policy.

California objects in the strongest possible terms to the premature and inappropriate effort to unilaterally implement OLMS's deeply flawed decision pending federal judicial review. I respectfully urge you instead to restore California's access to federal transit grants pending judicial resolution of these issues. Withholding billions of dollars in crucial funding on the basis of a nine-year-old state law, while California wrestles with the COVID-19 pandemic, does great harm and injustice to the people of California. If not set aside by the federal court or otherwise corrected, California will be forced to ask its delegation in Congress to remedy this situation as a matter of highest priority.

Sincerely,



Gavin Newsom
Governor of California

cc: Merrick Garland, Attorney General, U.S. Department of Justice
Pete Buttigieg, Secretary, U.S. Department of Transportation
Ron Klain, Chief of Staff to the President