

Legislative Alert

CEO Arthur T. Leahy



Suspension of Federal Transit Funds

Issue: On August 1st United States Secretary of Labor Thomas Perez transmitted the attached letter to Governor Brown regarding the withholding of federal funds to California transit agencies. In the letter, the Secretary informs the Governor that the US Department of Labor (US DOL) will wait until August 16, 2013 to begin informing transit agencies that they are decertified from receiving federal transit funds. Furthermore, the Secretary urges the Governor to enact legislation to correct the issue. We are currently scheduled to conclude the Full Funded Grant Agreement (FFGA) for the Regional Connector in November (2013) and the FFGA for the Purple Line Extension in February 2014. The Federal Transit Administration (FTA) cannot sign the FFGAs if US DOL's issues are not resolved.

Background: The Public Employees' Pension Reform Act (PEPRA) affects most public employee pensions for people hired after January 1, 2013. Several public transit unions objected to US DOL claiming that this change was not negotiated and is, therefore inconsistent with the provisions of 13c in federal transit law. To date the US DOL has declined to advance federal transit funds to our agency and other transit agencies based on the objections of several unions. US DOL will soon rule in favor of the unions and has indicated that PEPRA impairs collectively bargained pension benefits. This anticipated ruling jeopardizes all federal transit funding for such projects as the Purple Line Extension and the Regional Connector and if left unresolved will cost California billions of dollars in federal assistance. Specifically, the loss of funding for both the Purple Line Extension and the Regional Connector would eliminate more than 40,000 jobs that the Los Angeles County Economic Development Corporation estimates will be created during their construction phases.

Action Needed: The State legislative session is scheduled to conclude on September 13, 2013. That will be the last date to pass legislation that could resolve this issue before it seriously impacts our transit capital projects. If there is not a solution in the Legislature by that time there will be no opportunity for a solution until next year. We have prepared and attached a timeline outlining the issue and the impacts to our federal funds should the Legislature not resolve the issue in the remaining few weeks.

For more information please contact

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SECRETARY OF LABOR
WASHINGTON, D.C. 20210

August 1, 2013

The Honorable Edmund G. Brown, Jr.
Governor of California
Sacramento, CA 95814

Dear Governor Brown:

I write in response to your letter of May 29, 2013, in which you urge the Department of Labor (Department) to “certify the release of grants by the Federal Transit Administration (FTA) to California’s mass transit providers,” which totals \$1.6 billion for Fiscal Year 2013. Over the past several months, we have continued to work with your staff in an effort to address the issues outlined in your letter. The Department appreciates the fiscal challenges faced by California, including the solvency of the State’s public pension systems. We also share your commitment to the collective bargaining rights of public employees.

At the same time, we understand the devastating impact that a loss of federal transit dollars would have on transit services, commuters, jobs, and economic development in California. Therefore, in order to give the State additional time to resolve the impact of its newly-enacted Public Employee Pension Reform Act (PEPRA) on transit workers who are protected by Section 5333(b) of the Federal Transit Act, commonly referred to as Section 13(c), we will wait until August 16, 2013, before we issue a determination on releasing federal funds to the Los Angeles County Metropolitan Transportation Authority or any other transit district in which such impacts remain unmitigated.

Before the FTA may release funding to transit providers, Section 13(c) requires this Department to certify that protective arrangements are in place that preserve the collective bargaining rights of transit workers (including their pension rights and benefits) and continue their right to engage in collective bargaining. Recently, Wisconsin, New Jersey, Ohio and Massachusetts all passed laws that reformed the collective bargaining process, but in each case the transit agency, unions and the state came up with solutions in order to avoid a conflict with Section 13(c). These solutions ranged from carving out exemptions for mass transit workers to negotiating supplemental agreements to having the state Attorney General’s office provide assurance that the changes would not affect the ability of transit workers to collectively bargain.

In processing grants for certification, the Department has studied carefully the impact of PEPRA on the existing bargaining rights of union-represented transit employees who work for LACTMA, as well as in other jurisdictions. We are concerned that PEPRA diminishes both the substantive rights of transit employees under current collective bargaining agreements and narrows the future scope of collective bargaining over pensions. We base these concerns on a variety of considerations, including analyses of PEPRA prepared by the State, input from LACTMA and the unions, pension calculations verified by the parties, and legal principles that have historically governed the Department’s 13(c) determinations.

As you know, we have been working with your staff to help California resolve the Section 13(c) issues that result from PEPRA. In November 2012, when we received objections from the affected unions to certification of the LACMTA grants, we gave the parties 30 days to come up with a negotiated solution, as provided under our guidelines, and extended that period upon request. When that yielded no results we asked them for a detailed briefing so that we could pinpoint the areas of conflict between PEPRA and Section 13(c). In June, we brought the LACMTA parties together to see if they could find a negotiated solution, but they adjourned without resolution.

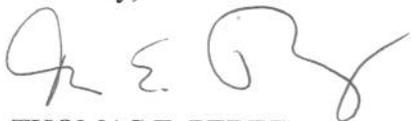
Anticipating that PEPRA's substantial changes to public pensions would implicate Section 13(c) in many transit districts, we have engaged directly with your office to seek a comprehensive solution. As we have discussed, a bill pending in the California Legislature, AB 160, would exempt mass transit workers from PEPRA. Such an exemption has historically provided a solution in situations such as this one.

I write to urge California to act immediately to develop a solution on this issue. As you know, PEPRA impacts 83 of California's 95 FTA grantees. These transit agencies are eligible for more than \$1.6 billion in funding for FY 2013. This includes over \$530 million in FTA grants awaiting certification as of the end of June, and an additional \$1.1 billion for 99 grants still under development.

There are significant negative consequences that a lack of resolution on this issue will have for service providers, employees, and transit users who depend on mass transit in California. Indeed, some grantees have informed the FTA that without federal funding they will face both service cuts and layoffs this year.

With these consequences in mind, we will refrain from issuing a determination for LACMTA until August 16. We hope that this additional time will provide an opportunity for your state to work out a possible resolution, as other states have done. In the meantime, the Department stands ready to assist you and your staff in any way possible to find an acceptable solution.

Sincerely,

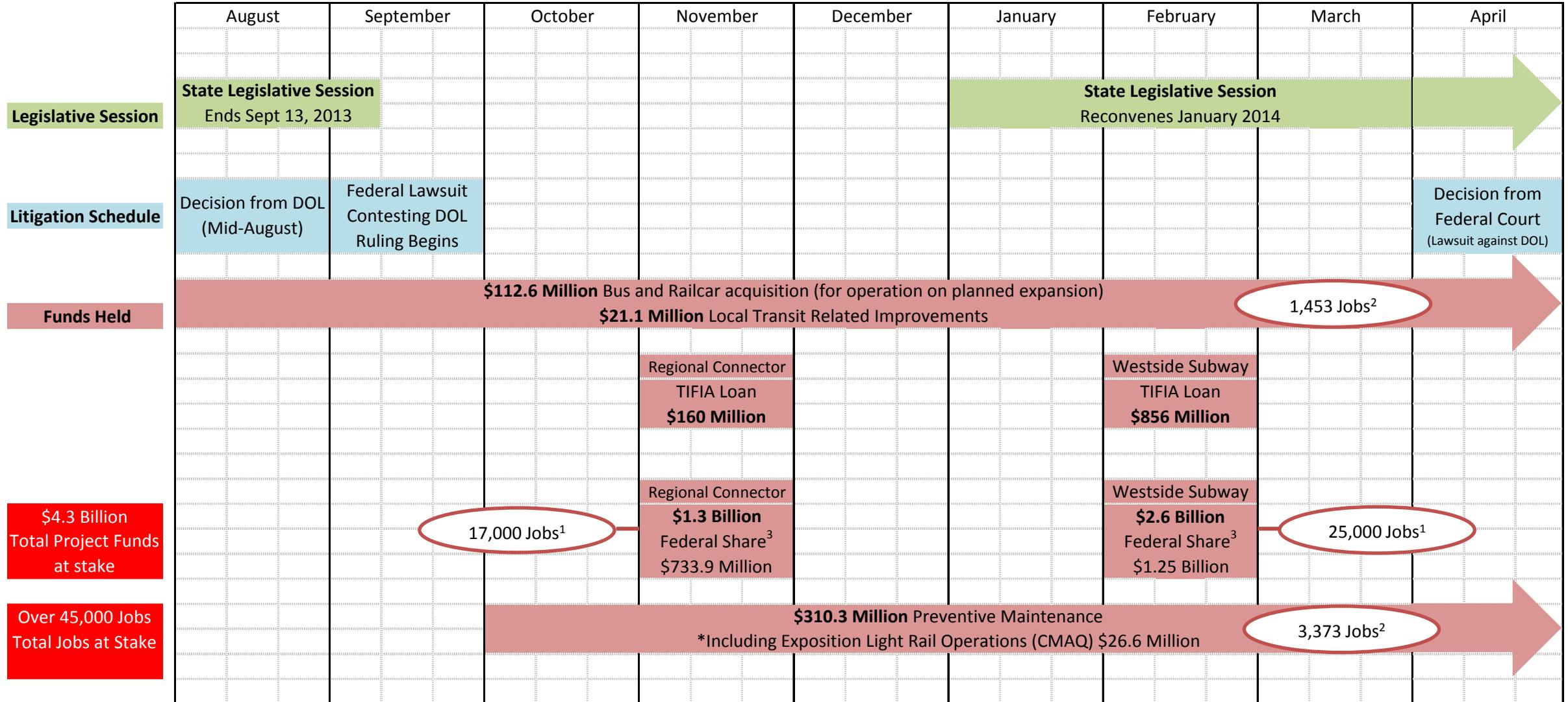
A handwritten signature in black ink, appearing to read 'T. E. Perez', written in a cursive style.

THOMAS E. PEREZ

Near Term Federal Grants and Loans at Risk by PEPRA 13(c) Issue

<i>Category</i>	<i>Project Description</i>	<i>Type of Federal Funds</i>	<i>Federal Amount</i>
Submitted			
Rolling Stock			
	Acquisition of 40-ft buses (part of 550 base order)	CMAQ	\$8,633,000
	Acquisition of 40-ft buses (part of 550 base order)	Section 5309 State of Good Repair	\$10,000,000
		Rolling Stock Subtotal	\$18,633,000
Bus & Rail Operations & Mntc.			
	FY2013 bus preventive maintenance	FY12 Section 5307	\$5,111,239
	FY2013 bus preventive maintenance	FY13 Section 5307	\$159,345,882
	FY2013 rail preventive maintenance	FY12 Section 5309	\$2,879,547
	FY2013 rail preventive maintenance	FY13 Section 5337 SGR	\$42,015,000
	Operating assistance for Expo I	CMAQ	\$26,593,000
		Bus & Rail Ops & Mntc Subtotal	\$235,944,668
Transit Related Improvements			
	LA Trade Tech College Pedestrian Enhancements	CMAQ	\$1,010,000
	LA City College Pedestrian Enhancements	CMAQ	\$1,986,000
	Construction of underground pedestrian passage between MOL and North Hollywood MRL	Section 5309 Livability Initiative	\$10,000,000
		Transit Related Improvements Subtotal	\$12,996,000
		Submitted Subtotal	\$267,573,668
To Be Submitted			
Rolling Stock			
	LRV P-3010 (part of 175 base order)	FY13 STP (RIP)	\$45,441,000
	LRV P-3010 (part of 175 base order)	RSTP	\$41,786,160
	City of Glendale Acquisition of Buses	CMAQ	\$4,925,000
	City of Pasadena Acquisition of Buses	CMAQ	\$1,839,600
		Rolling Stock Subtotal	\$93,991,760
Transit Corridor Projects			
	Westside Subway Extension	Section 5309 New Starts	\$1,250,000,000
	Westside Subway Extension	TIFIA	\$856,000,000
	Regional Connector	Section 5309 New Starts	\$669,900,000
	Regional Connector	TIFIA	\$160,000,000
	Regional Connector	CMAQ	\$64,000,000
	Crenshaw/LAX Transit Corridor Project	RSTP (\$28.214 mil); CMAQ(\$30mil)	\$58,213,840
		Transit Corridor Projects Subtotal	\$3,058,113,840
Bus & Rail Operations & Mntc.			
	FY2013 rail preventive maintenance	FY13 Section 5340 Growing States	\$7,699,762
	FY2013 & FY2014 rail preventive maintenance	FY13 Section 5337 - Fixed Guideway	\$36,593,680
	FY2014 bus preventive maintenance	FY11 Section 5307 (from other UZA's)	\$766,524
	FY2014 bus preventive maintenance	FY12 Section 5307 (from other UZA's)	\$886,256
	Capital projects	FY13 Section 5337 - High Intensity Motor Bus	\$5,640,671
	Bus capital projects	FY13 Section 5339 Bus & Bus Facilities	\$22,751,717
		Bus & Rail Ops & Mntc Subtotal	\$74,338,610
Transit Related Improvements			
	Associated Transit Improvements	FY13 Section 5307	\$721,267
	Capital and Operating projects	FY12 JARC	\$1,857,282
	Capital and Operating projects	FY12 New Freedom	\$1,245,415
	City of Glendale CNG Facility	CMAQ	\$1,500,000
	City of Avalon Cabrillo Mole Ferry Terminal Rehab	FY12 Ferry Boat Discretionary	\$2,400,000
	City of Cerritos Transit Amenities	CMAQ	\$160,000
	City of Malibu Bus Stop Improvements	RSTP	\$257,000
		Transit Related Improvements Subtotal	\$8,140,964
		To Be Submitted Subtotal	\$3,234,585,174
		Total Grants for DOL Review	\$3,502,158,842

PEPRA/13c Timeline 2013 - 2014



Jobs¹ Los Angeles County Economic Development Corporation Economic Impact Analysis Report: Construction Impact of Metro's Measure R Transportation Projects 2009
 Jobs² Executive Office of President Council of Economic Advisors: May 2009
 Federal Share Share includes all federal money as indicated in attached document