

California Transit
Association



Update on PEPRA and 13(c), Impacts on California Transit Agencies

December 8, 2021

USDOL Issues New Determination

- “...PEPRA effectively precludes certification under Section 13(c) for those transit agencies subject to its reforms...”
- USDOL “...not rescinding or otherwise taking retrospective action as to the particular grant certifications addressed in the 2019 Determination...”
- While USDOL “...will change its approach going forward, it will of course continue to comply with the injunction entered by the Court in the prior case.”

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210



October 28, 2021

Ray Tellis, Regional Administrator
Federal Transit Administration, Region IX
201 Mission Street, Suite 2210
San Francisco, California 94105

Re: Reconsideration of June 14, 2019 Determination Responding to Objections to Employee Protection Terms for Pending FTA Grant Applications Alameda-Contra Costa Transit District, CA-2017-017-01 and CA-2019-011; Golden Gate Bridge, Highway and Transportation District, CA-2019-041; Los Angeles County Metropolitan Transportation Authority, CA-2018-012-01 and CA-2018-093-01; Riverside Transit Agency, CA-2019-048; San Francisco Bay Area Rapid Transit District, CA-2019-029; San Joaquin Regional Transit District, CA-2019-034; San Mateo County Transit District, CA-2017-104-01; Santa Clara Valley Transportation Authority, CA-2018-081-01 and CA-2019-047

Dear Mr. Tellis:

Before state and local transportation agencies can receive certain federal mass transit funding assistance, Section 13(c) of the Urban Mass Transportation Act of 1964 (“UMTA”) requires that the U.S. Secretary of Labor certify that “fair and equitable” arrangements are in place to protect the interests of affected employees. 49 U.S.C. § 5333. Those arrangements “shall include provisions that may be necessary for” “the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise” and “the continuation of collective bargaining rights.” *Id.* § 5333(b)(2)(A), (B) (commonly referred to as Section 13(c)(1) and (c)(2)).

In 2013, the Department¹ determined that the enactment of the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”), Cal. Gov’t § 7522 *et seq.*, precluded Section 13(c) certification of grants to two California transit agencies. The transit agencies had received federal transit funding for decades and committed to abide by Section 13(c)’s requirements. Nevertheless, the transit agencies unilaterally reduced their employees’ pension benefits in order to comply with the substantial restrictions imposed by PEPRA on public employers in California.

¹ The Secretary of Labor delegated his authority under Section 13(c) to the Office of Labor-Management Standards (OLMS). See Secretary’s Order 8-2009, § 5 A(4), 74 Fed. Reg. 58835 (Nov. 13, 2009). For simplicity, this reconsideration uses the term “the Department” generally to refer to those at the U.S. Department of Labor given authority for Section 13(c) certification.

USDOL's Role in Transit Funding



- USDOL required to certify that “employee protective arrangements” are “fair and equitable” before federal grants can be released to a “mass transit provider”

Impact on California Transit Agencies



- New determination puts at risk:
 - Approximately \$2.5 billion in remaining federal emergency relief
 - Approximately \$9.5 billion in newly-authorized federal transit funding
 - Competitive grants awarded to CA transit agencies, requiring certification
 - Newly-authorized competitive grant funding

How Could This Happen?

- In August 2019, ATU filed a new PEPRA-based lawsuit against USDOL
 - Contested USDOL's certification in 2019 of federal transit grants owed to CA
 - Sought revocation of those certifications and enjoinder against USDOL
- The lawsuit asserted that the District Court's ruling in a prior round of litigation:
 - Specifically denied California's request for a broad permanent injunction
 - And, instead, established a limited permanent injunction preventing USDOL from relying on PEPRA to deny certification of grants to SacRT and MST only

How Could This Happen? *(Cont.)*

- Litigation was proceeding in the District Court, with expected resolution in summer 2021
- With change in Presidential Administrations, USDOL requested a delay in the hearing schedule and worked to rescind their previous determination
 - Brings us to today

How the State is Responding



- **November 19:** State of California filed Motion to Stay Implementation of Oct. 28 determination
 - Included information about outstanding balance of relief funds, authorized funding at risk
 - Association coordinated declarations in support from BART, GGBHTD, LA Metro, OCTA, VTA
 - State secured declarations in support from CalSTA, ARB, Caltrans

Next Steps in Litigation



- **December 3:** Opposition Briefs to Motion to Stay due from ATU and USDOL
- **December 10:** Reply Brief due from State of California
- **December 17:** Hearing on Motion to Stay
- **December 21:** Ruling on Motion to Stay *Expected*

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