

Motion No. M2025-25

A motion of the Executive Committee of the Central Puget Sound Regional Transit Authority authorizing Sound Transit to join pending litigation in which Pierce, King & Snohomish Counties and other jurisdictions challenge the legality of new federal grant provisions barring locally funded efforts to promote workplace diversity, equity and inclusion programs and obligating the agency to use local transit resources to assist with federal immigration and customs enforcement.

Background

Sound Transit receives substantial financial assistance from the Federal Transit Administration and the U.S. Department of Transportation, including approximately \$82 million subject to the new FTA grant conditions in 2025. The grants are needed to fund commuter rail, light-rail and express regional bus service, street safety improvements, Graham and 130th Street light-rail stations construction and Renton Transit Center improvements. In April, the FTA and the Secretary of Transportation imposed a new requirement that all grantees certify that they do not have programs to promote workplace diversity, equity or inclusion and will assist with immigration and customs enforcement. The new grant conditions do not define the prohibited diversity, equity, and inclusion activities, and do not define the assistance and cooperation required for immigration and customs enforcement efforts. The new grant conditions threaten substantial civil penalties under the False Claims Act for non-compliance.

On May 2, 2025, several jurisdictions including New York City, Boston, San Francisco and Santa Clara, California, Columbus, Ohio, and Pierce, King, and Snohomish Counties filed suit in federal court against the U.S. Department of Transportation, U.S. Department of Housing and Urban Development and the Federal Transportation Administration. The lawsuit alleges that the new grant conditions are not authorized by Congress and violate the First (Freedom of Association), Fifth (Due Process), and Tenth (Powers Reserved to the States) Amendments to the U.S. Constitution.

On May 7, 2025, U.S. District Judge Rothstein granted King County's motion for a temporary restraining order to block the FTA from: (1) imposing or enforcing the new Grant Conditions, ...with respect to any FTA funds awarded to Plaintiff King County; (2) rescinding or cancelling the FTA grant awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning FTA funds, based on such FTA Grant Conditions; and (3) requiring King County to make any "certification" or other representation related to compliance with the FTA Grant Conditions. King County's motion for a preliminary injunction will be heard on May 21, 2025, to continue the injunction pending trial.

Judge Rothstein's May 7th order held that King County has a substantial likelihood of prevailing in the litigation to permanently enjoin enforcement of the new grant conditions. King County's motion for a preliminary injunction is scheduled for May 21st, one day before the Sound Transit Board meeting. If Sound Transit immediately joins the litigation, and Judge Rothstein grants the preliminary injunction consistent with the May 7th temporary restraining order, Sound Transit can immediately seek reimbursement for grant payments due from Federal Transit Administration for already awarded grants. A preliminary injunction will also allow Sound Transit to apply for new operating and capital grants in 2025. Without an injunction, Sound Transit risks losing or substantially delaying receipt of the \$82 million in expected 2025 grant funding and/or risks substantial civil penalties and lawsuits to force grant repayment for failure to comply with the new grant conditions.

Motion

Because legal necessity requires action to protect the agency's legal and financial interests before the next Board meeting, it is hereby moved by the Executive Committee of the Central Puget Sound Regional Transit Authority that legal counsel is authorized to join the litigation now pending in *Martin Luther King, Jr. County, Pierce County, Snohomish County, City of Boston et al v. U.S. Departments of Transportation, Federal Transit Administration, et al.*, No. 2:25-cv-814 (W.D. Wash.).

APPROVED by the Executive Committee of Central Puget Sound Regional Transit Authority as an emergency motion required by legal necessity at a special meeting thereof held on May 13, 2025.

Dave Somers
Board Chair

Attest:

Kathryn Flores
Board Administrator