

**From:** Tom Busse

**Sent:** Friday, October 27, 2023 3:59:29 PM

**To:** MTC-ABAG Info <[info@bayareametro.gov](mailto:info@bayareametro.gov)>

**Subject:** General Public Comment: November 15th MTC meeting re: TIRCP SB 125 Funding Allocation

**\*External Email\***

Dear Members of the Commission:

In 2023, the Legislature allocated \$4 Billion to the TIRCP (Transit and Intercity Rail Capitol Program) in what is effectively a 7th grant round, but it made a major change. In the past CalSTA awarded TIRCP grants directly; however, under SB 125, this new round allocates TIRCP rail capital funds regionally via the MTC. I believe MTC staff is trying to illegally use these funds based on a close reading of the supporting documentation of Resolution 4537, which was adopted by the MTC at its October 25th meeting. The documentation was revised on October 25th, meaning that agenda and notification requirements likely ran afoul of the 72-hour requirement of Brown Act, and should you accept the minutes of the October 25th meeting, staff may have changed Attachment E and the resolution after the fact based on information that was published on October 26th. Attachment E incorrectly states that the "revised framework" for TIRCP funding comes out of SB1 and Cap and Trade, when the reality is the additional funds come from the state's General Funds under SB 125.


The next day, October 26th, the BART board held a "deep dive" budget meeting that was obviously influenced by the MTC adoption of resolution 4537 on October 25th. The BART board was shown a slide considering the MTC staff's plans for its funding allocation under SB 125. Essentially, the MTC is planning to illegally spend \$352 Million in state *capital* funds to subsidize a deficit in BART operations once CalSTA finalizes its SB 125 allocation to MTC in December:

**REVISED 10/25/23**

### Deficit Revision: Changes Since Budget Adoption

Change (\$M)	FY24	FY25	FY26	FY27	FY28	FY29
Beginning Deficit from June 2023 Adopted Budget*	0	(102)	(322)	(298)	(342)	(282)
<b>Revisions to Sources</b>						
STA hold harmless & payment timing	28	22	20	0	0	0
VTA financial assistance	(0)	0	1	1	5	6
Sales tax projections	(2)	(4)	(5)	(5)	(5)	(8)
MTC staff proposed state and regional relief*	0	58	294	0	0	0
<b>Subtotal - Sources</b>	<b>26</b>	<b>76</b>	<b>310</b>	<b>(4)</b>	<b>0</b>	<b>(2)</b>
<b>Revisions to Uses</b>						
Railcar contingency	10	11	14	14	28	0
Change to Core Capacity service expansion date	0	0	0	0	71	73
BPD wage increase	(12)	(12)	(13)	(13)	(13)	(13)
CalPERS UAL increase	3	(5)	(13)	(21)	(30)	(40)
Misc other increases	(6)	(6)	0	0	0	0
Shorter trains	7	9	9	9	9	9
<b>Subtotal - Uses</b>	<b>2</b>	<b>(3)</b>	<b>(2)</b>	<b>(11)</b>	<b>65</b>	<b>29</b>
<b>Total - Deficit Changes</b>	<b>29</b>	<b>74</b>	<b>308</b>	<b>(15)</b>	<b>65</b>	<b>27</b>
<b>Revised Deficit after Federal Aid</b>	<b>0</b>	<b>0</b>	<b>(13)</b>	<b>(313)</b>	<b>(277)</b>	<b>(255)</b>

FY25 adopted deficit increased from \$93M to \$102M to reflect \$9M in additional federal emergency funding required to balance FY23  
\* Pending MTC Commission approval of SB125, TIRCP, and regional contributions  
Numbers may not sum due to rounding



9

A close reading of CalSTA's instructions for SB 125 says that the MTC will "have the flexibility to fund *transit operations* [emph added] or capital improvements." This would be unconstitutional under

California Constitution Article XXIIIB aka Proposition 4, adopted by the California voters in 1979, commonly termed the "Gann Limit." For the 2023 budget year, the state overcollected taxes in the general fund because it exceeded the Appropriations Limit in the constitution. Legally, the state had two options: 1. refund the excess taxes or 2. fund capital projects. In 2023, the \$4Billion allocated to TIRCP are funds that constitutionally *must* be used on capital projects. TIRCP specifically was created to deal with the state's Gann Limit problem by creating a state rail infrastructure capital program. Rounds 1-6 clearly listed the projects funded, but the new program under SB 125 hides the program by shuttling it through the MTC. I should note SB 125 was passed shortly after a proposal to raise Bay Area bridge tolls to subsidize BART was knocked down in the legislature, and I suspect there was a backroom deal to repurpose TIRCP. Attachment E of Resolution 4537 gives different numbers for BART's Core Capacity program than BART's own planning document, and these are off by exactly \$352 Million, so what I suspect MTC staff is doing is calling the operating funds "core capacity" inflation so to the MTC and CalSTA to hide a planned FY 2026 bailout.

\$352 Million in lost capital funding wasted on BART operations is a big deal. There are many worthy rail infrastructure projects in Northern California that could benefit from this funding such as the DTX. Moreover MTC members should be upset staff is trying to pull a fast one on them by drafting unclear resolutions that obscure the illegal appropriation.

Yours truly,  
Tom Busse