



Metro

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Metropolitan Transportation Authority

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October 1, 2014

TO: BOARD OF DIRECTORS

THROUGH: ARTHUR T. LEAHY *ATL*
CHIEF EXECUTIVE OFFICER

FROM: STEPHANIE WIGGINS, EXECUTIVE DIRECTOR *SW*
VENDOR/CONTRACT MANAGEMENT

BRYAN PENNINGTON *BWP*
EXECUTIVE DIRECTOR, ENGINEERING AND CONSTRUCTION

MARTHA WELBORNE *MW*
CHIEF PLANNING OFFICER, COUNTYWIDE PLANNING

SUBJECT: CREATING A BUSINESS INTERRUPTION FUND

ISSUE

In response to an inquiry from members of the Board of Directors, staff is evaluating options and impacts related to a proposed Business Interruption Fund for two of Metro's capital improvement projects, Crenshaw/LAX and the Regional Connector. The Board Motion proposing the Fund is shown in Attachment A. The Construction Committee approved the Motion and forwarded it with item 57 to the full Board of Directors for consideration on October 2, 2014.

DISCUSSION

The Motion was introduced in relation to a Receive and File report on the Crenshaw/LAX Pilot Business Solution Center (Item 57). The Motion proposes the Board of Directors direct the CEO to establish a pilot program enabling that Metro to provide up to 60% of small business losses incurred during construction. In order to meet the proposed goal of assistance to small businesses experiencing construction related-losses, we recommend that specific implementation policies, cost estimates, and a Measure R Cost Containment Process and Policy analysis be performed prior to implementation.

There are key policy issues raised by the proposed program including, but not limited to, the following:

1. The proposed business interruption fund is a precedent setting budget increase to each of the two capital project budgets in question: the Crenshaw/LAX Transit Project and the Regional Connector Transit Project. When approving project budget increases, the Metro Board's Measure R Cost Containment Process and Policy analysis must first be performed.
2. The unallocated contingency portion of the existing project budgets is not available for this purpose without special dispensation from the US DOT TIFIA Credit Assistance Office. Since these costs are not likely to be viewed as an eligible federal expense, it is probable that such dispensation will be denied. Staff will pursue an answer to the question of dispensation as part of the recommended due diligence process herein.
3. In conjunction with a cost analysis, staff will recommend specific guidelines and parameters to ensure proper implementation and manage the ultimate cost of the program.
4. There is no existing infrastructure in the agency to assess these business losses. Staff will return with a recommendation as to how to address this administrative process.
5. The existing construction Contractors need to be included in the process and we will return with a recommendation as to how this might be accomplished. This is necessary because Metro's third-party liability has been contractually transferred to the relevant Contractor on each of our projects, to defend Metro at their expense and pay any losses resulting from legitimate compensable claims, including those related to business losses.

In summary, many policy parameters will need to be defined if the program is approved and funded. Staff will need time to form specific implementation recommendations for the program.

Attachments

- A. Amendment to Item 57, Motion by Directors Molina and Dupont-Walker.

**Amendment to item 57
Motion by Directors Molina and Dupont-Walker**

September 18, 2014

Business Interruption Fund

WE, THEREFORE, MOVE that the Board direct the Chief Executive Officer to:

1. Establish a pilot program for a special impact fund for mom and pop businesses located along the Crenshaw Line and within the Little Tokyo area along the Regional Connector immediately.
2. Define mom and pop businesses as those having 25 employees or fewer.
3. Conduct a baseline survey of all businesses within the pilot areas.
4. Provide funding for the pilot program to fund up to 60 percent of potential business revenue loss. Such loss shall be validated by MTA based upon supporting documentation provided by the business.
5. Participation in the program would release MTA and the general contractor from further liability claims for business loss unrelated to specific incidents of damage and would be voluntary.
6. Report back to Construction Committee monthly on implementation status.