

Questions and Answers
from 9/26/09 Informational Briefing on the State Law
Allowing Dane County to Create a Regional Transit Authority (RTA)

Presenters/Respondents to the Questions:

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and

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RTA Board Structure and Appointments

Question: Can City of Madison Alderpersons or County Board Supervisors serve on the RTA Board?

Answer: Yes. There are no limits or restrictions on who can be a member of the RTA Board. The RTA law simply specifies the appointing authority, leaving it up to the appointing authority to choose the individuals. However, there may be other statutes or rules that need to be considered. [Editor's note: City of Madison Attorney Michael May issued a legal opinion on October 14, 2009, Opinion No. 09-003, stating that the common law doctrine of Incompatibility of Offices prohibited the Mayor from appointing himself or any City of Madison alderpersons to the RTA Board, unless modified by state statute. Attorneys for the City of Middleton issued a legal opinion for the City of Middleton Mayor agreeing with Attorney May's opinion.]

Question: How was the population number of 15,000 decided upon for those cities/villages that have a direct appointment to the RTA Board (currently the Cities of Fitchburg, Sun Prairie and Middleton) and who made that decision or how was that negotiated?

Answer: I can't speak to the negotiating process that went on behind the scenes. I do know that the population threshold number for direct appointments changed during the budget process. It was initially 20,000 and was later modified to 15,000. The Legislative Fiscal Bureau is the entity and service agency most directly connected to the budget process. Their Joint Finance Summary of the budget process says that the change to 15,000 was done to conform with the Governor's intent that the City of Madison should have only two Board members rather than three and to expand the Board based on current population to include a member representing the City of Middleton as well as the Cities of Fitchburg and Sun Prairie.

Question: If another city grows to larger than 15,000 in population, does the city automatically get a representative to the RTA Board?

Answer: I would say yes based on the way the statute outlines membership of the RTA Board. It simply says "one member from each city other than the City of Madison with a population of more 15,000 located in Dane County appointed by the Mayor of each city and approved by the Common Council."

Question: Just for clarification, can the RTA Board change its structure or must that be done by the State Legislature through modification of the state statute?

Answer: The RTA Board membership is specified by the statute. The only way it can change is through the addition of another city once it meets the 15,000 population threshold. The board may

change its ability to conduct business by changing quorum requirements subject to the minimum thresholds specified by law.

Taxing Authority and Funding Issues

Question: Is the RTA's bonding authority similar to municipal revenue bonds.

Answer: Yes, but with the one distinction being that the municipal bond is typically going to be backed by the property tax – a municipality's main source of revenue. It is important to understand that state statutes are clear in stating that local political subdivisions are not pledging their independent taxing authority for the bonds. This ultimately affects the rate and ability to sell those bonds in the market. If you look at other transit authorities around the country, usually what they're doing is using their bonding authority to complete a major project. The revenue they can collect on an annual basis is used to pay those bonds off.

Question: Is the City of Madison the designated recipient of federal transit formula funding or is it the Madison Area Transportation Planning Board, the Metropolitan Planning Organization (MPO) for the Madison Urban Area? Who makes that designation?

Answer: Currently, the City of Madison as the major transit operator is the designated recipient of the federal transit formula funding and not the MPO. However, if the RTA were created, the RTA could become the designated recipient of the funds. I believe the designation of the recipient of funds is made by agreement, but the Federal Transit Administration (FTA) would have the answer to that.

[Editor's note: Under FTA's Section 5307 transit formula funding program, Federal law provides that the designated recipient shall be selected by the State's Governor or designee (typically the State Department of Transportation Secretary), responsible local officials, and publicly owned operators of public transportation to "receive and apportion" the amounts made available by Congress and FTA to an urban area with over 200,000 in population such as Madison or a State or regional transit authority if the authority is responsible for transit capital projects and for financing and directly providing public transportation. (See 49 U.S.C. Section 5307(a)(2)(A)(B)).

Question: Is there a funding model that places the financial burden of providing transit services on municipalities based on the level of service provided as opposed to a model that takes an entire region and treats it as all the same regardless of the level of service?

Answer: Yes. With the Worcester, MA Regional Transit Authority model, communities are basically buying levels of service. However, it can be very difficult to make that work because of the fact that services pass through various municipalities. I recall that when I was with Madison Metro the transit agency operated closed door on the part of Broadway Street that is in the City of Monona because the City didn't contribute funding for the service. There were ADA related and other issues and that is why that decision was made. Thus, the answer is yes but it is not the cleanest and easiest model to administer and it also makes it difficult to do service planning.

Question: Does the RTA have any other taxing authority besides the sales tax?

Answer: No, the only taxing authority is the sales tax. The amount of sales tax will be specified by the RTA's bylaws not to exceed the maximum amount of ½ cent specified by statute.

Question: Can the RTA receive revenues voluntarily from other sources besides the sales tax? For example, if other communities wanted to buy transit services can the RTA receive other funding for that purpose?

Answer: Yes. The clearest answer to that question comes from the bonding provisions, which say that the RTA may pledge monies received from a variety of sources.

Question: Several people noted that many of the RTAs that have been mentioned have 1% sales taxes. What is your opinion regarding the ½% sales tax for Dane County compared to the taxes in other areas?

Answer: There is no set formula for what works. The ½% sales tax maximum is what was passed here and I guess the challenge is to make it work. Keep in mind that even though many places such as Austin, Texas had a 1% sales tax authorization it took the RTAs many years until they levied the entire 1%. The Austin, Texas RTA actually had to go back to the voters to get the authority to spend the full 1% when they decided to construct the rail line because the authorization was initially ½% or ¾%. The 1% is generally for major urban areas with a million or more in population that are much bigger than Madison or Dane County.

Question: How do you budget for a decline in the sales tax like we have been seeing now?

Answer: The answer is to have a solid financial plan. When I left Madison Metro we had built up a reserve during good years that could be drawn from during bad years when costs came in more than what was budgeted. That is the financial plan that is needed to manage the RTA—to always have some sort of reserve. That is certainly the disadvantage of the sales tax, but there are down sides with any tax that is levied. For example, there is a system in Alabama that relies on some beer tax. The income tax has dropped around the country too. The solution is to have a solid financial plan that looks ahead and has some sort of a capital and an operating reserve.

Issues Related to the RTA's Jurisdictional Area

Question: There are several questions related to communities are only partly within the MPO planning area. How would that affect those residents that could participate in the referendum vote or those properties that are subject to the RTA's taxing authority?

Answer: There is a lot of ambiguity regarding the referendum issue because the referendum provisions of the law were vetoed by the Governor. That raises a legislative intent and authority question. Because of the veto, there isn't much guidance in terms of the legislative history as to how the referendum, if permitted, should be conducted. Regarding the taxing authority, the tax is levied in the jurisdictional area of the RTA. Practically, the tax would be levied according to 9-digit zip codes that are connected to the RTA's jurisdictional area. The language relating to this is described on pages 291-292. The RTA is required to provide to the Department of Revenue a complete list of all the 9-digit zip codes that are entirely within the RTA's jurisdictional area and a complete list of all the street addresses that are within the RTA's jurisdictional area that are not included in the 9-digit zip codes entirely within the jurisdictional area. So the tax would only be levied in the portion of the municipality that is within the jurisdictional area of the RTA.

Question: Isn't there a model with the way school districts are set up now?

Answer: Yes, in the sense that the school district boundaries are co-terminus with a lot of municipalities. School districts are funded through property taxes. Ultimately, someone breaks down that jurisdictional area.

Question: Wasn't there one exception in the law related to the jurisdictional area?

Answer: Yes. The jurisdictional area of the RTA is generally the MPO planning boundary, but does not include an area of the planning boundary that was subject to an unresolved legal

challenge on January 1, 2003. Grosz asked Bob McDonald to explain what area is affected by this provision. McDonald said this involved property southwest of the intersection of State Trunk Highway 19 and U.S. Highway 51 that had been annexed by the Village of De Forest. The result of this exception is that no part of the Village of De Forest is in the MPO planning boundary and therefore RTA jurisdictional area.

Question: How is the Madison MPO planning determined and under what authority is it established?

Answer: McDonald, Planning Manager of the MPO, explained that the MPO urbanized area is determined by the U.S. Bureau of Census every ten years following the decennial census. The urbanized area boundaries are used by many different agencies for different purposes, including federal transportation funding. After the urbanized boundary is set, the MPO then determines its planning area boundary in coordination with the local units of government and the Wisconsin Department of Transportation. The planning boundary is determined by growth trends and is supposed to include at least all areas that are expected to become urbanized within the planning period of twenty years.

Question: Does the MPO set the planning boundary itself?

Answer: The MPO determines the boundary in concert with local units of government and the Wisconsin Department of Transportation. A public hearing on the boundary is held and a notice sent out to all the local units of government within the proposed planning area.

Question: Will the RTA jurisdictional boundaries change with the MPO planning area boundary every ten years?

Answer: Yes, except for the area that was subject to a legal challenge and is the exception. [Editor's note: MPO staff believes this is incorrect and that the RTA jurisdictional boundary will not change with the MPO planning area boundary. The law states that "any municipality located in whole or in part within the MPO planning area on January 1, 2003 shall be a member of the authority." Therefore, any additional municipalities that become located within a new expanded MPO planning area would not automatically become part of the RTA. The language that refers to the RTA's jurisdictional area being the area formed by the MPO planning area would likely be interpreted as referring to the area as of January 1, 2003.]

Referendum Issues

Question: Does the RTA hold the referendum or, since the referendum provision in the statute was vetoed, would the county hold it?

Answer: The mandatory and permissive referendum issue was dealt with in the budget process and ultimately the referendum language was vetoed from the act. Ultimately, the RTA Board has authority to affect its necessary powers and so it is possible the RTA could hold the referendum. The City of Madison Mayor and the County Executive have made their positions known that they want a referendum before any taxing authority goes forward.

Question: What is the area that the referendum vote would occur in? Is it the MPO planning area and thus RTA jurisdictional area or the entire county?

Answer: There is no referendum requirement in the law so I don't think that there is a statutory answer to that question.

Question: If the RTA holds the referendum, would the area for the referendum be the RTA service area?

Answer: If the RTA has the power to conduct a referendum then the RTA would also have the power to choose the applicable area for it. Administering a referendum for the RTA service area would be difficult and becomes a little bit ambiguous since the jurisdictional area of the RTA overlaps a number of voting districts. The statute doesn't really answer the question so it will be decided on the local level.

Issues Related to the RTA's Powers

Question: Please clarify how service extending beyond the county (e.g., going into Evansville) might be provided?

Answer: The service provisions of the act require that the RTA provide service only within its jurisdictional area unless by contract or in order to connect the riders of the jurisdictional area to another county. Therefore, any transit service provided outside the jurisdictional area within Dane County would have to be done through contract. Under the act the RTA could operate outside the jurisdictional area if the service is connecting with transit systems in adjacent counties.

Question: Is funding of non-transit related improvements, especially local or regional roadways, permissible under the RTA legislation?

Answer: Provisions allowing for spending on other non-transit related transportation improvements were specifically taken out of the act during the budget process. The language vetoed was on page 294 and would have given the authority or power to transfer funds to other political subdivisions within the jurisdictional area. In the context of the legislative history of the act considering the Governor's veto, the RTA has the authority to pay for and operate a transportation system. That term is defined on the first page of the act on Page 288. Generally there's a requirement for transportation passengers within the jurisdictional area. I think that has been interpreted to mean that the RTA could pay for high occupancy vehicle (HOV)/bus lanes as transit infrastructure.

Question: Does the RTA have the authority to build and operate intermodal terminals for local transit, intercity bus service, and intercity rail service?

Answer: Intermodal refers to the different types or modes of transit. If the RTA is providing different modes of transit, the agency would be able to build infrastructure related to those transit modes. Therefore, building and operating an intermodal transit terminal would be within the scope of providing the types of transit authorized under the bill. The transportation system is defined in the bill to potentially include elevated railroads, subways, underground railroads, motor vehicles, buses and any combination thereof.

Question: Is it common for RTAs around the country to use funds to build intermodal terminals?

Answer: Yes. There have been many intermodal terminals built using FTA funds. There is an intermodal terminal being built right now in Pottsville, Pennsylvania, which is in coal mine country that will include a train station. It is a very common thing and also it is a great partnership with the other entities building it. I know Wisconsin is involved in the high speed rail discussion and this may a way to coordinate local transit service with the high speed rail service and leverage those funding sources.

Question: Is it true that metropolitan planning organizations (MPOs) are merged with RTAs in California? If so, what are the advantages and disadvantages of this?

Answer: No, they are not merged. They are actually separate and there are very limited cases where the MPO and RTA are the same agency. They have separate and distinct functions. MPOs are planning agencies while RTAs are implementing agencies that fund and operate transit service.

Question: From the experience of RTAs across the country what are some of the advantages and disadvantages of having the RTA own and run the transit system versus funding existing transit systems? In our case, what are the pro's and con's of the RTA taking over Madison Metro?

Answer: This is a local decision, and it comes down to what is going to give you the most flexibility to move forward in creating an RTA that does what you envision it doing. A major reason some RTAs are set up the way they are is due to labor relations laws more than it is anything else. You see a lot the RTAs that contract for service in states that have right-to-work laws as opposed to in the northern and northeast states and California where if you have a union workers must join the union, which is the case in Wisconsin. I know the law here is that you pay your fair share for the union representation. I think you find the private contracting models very heavy in the south and in the Sun Belt states. For example, Phoenix, Arizona has regional authorities and all of the transit services except the new light rail system are operated by private entities. So there are more historical reasons underlying the functions of the RTA than anything else.

Other Issues

Question: In your discussion of Charlotte, N.C. you mentioned land use management. Can you comment more on what it means to link or not link land use with transit.

Answer: Linking land use and transportation means that you have land use development and a street network that is supportive of transit service. For example, ongoing studies show that rail transit is only successful if you have higher density development around the rail stations so that many people live near where they can walk to and use the rail transit system. The same thing is true and can happen with the bus system. The idea is focusing growth around stations or along transit corridors to support the transit system and build ridership. The studies are available on the TCRP website.

Question: Regarding the Austin, Texas RTA, what was the problem with the Federal Railroad Administration (FRA)? Why didn't the FRA allow the RTA to operate the rail and how can we avoid that problem?

Answer: It was an unfortunate series of events. The issue deals with the signals and the temporal separation between freight and passenger rail. One can understand the difficulty of coordinating the freight and passenger systems with the different types of vehicles and all the other issues. They are having major signaling problems and it is an industry wide problem as evidenced by what the NTSB did with regard to the Washington, D.C. crash. The problem in Austin was they didn't "dot all the 'i's" and cross all the "t's" and they have not been able to resolve all of the issues at this point.

Prepared by Madison Area Transportation Planning Board – An MPO Staff