

September 14, 2023

Toks Omishakin, Secretary
California State Transportation Agency
400 Capitol Mall, Suite 2340
Sacramento, CA 95814

RE: Response to Formal Draft Guidelines for TIRCP and ZETCP

Secretary Toks Omishakin:

On behalf of the California Transit Association, I write to you today to formally respond to the formal draft guidelines for the Transit and Intercity Rail Capital Program (TIRCP) and Zero-Emission Transit Capital Program (ZETCP), released by the California State Transportation Agency (CalSTA) on September 1. This letter follows our earlier letter, dated August 30, submitted in response to the informal draft guidelines released by CalSTA on August 19. The Association and our members continue to appreciate the open dialogue and transparency CalSTA has maintained throughout the guideline development process and we again thank CalSTA for its ongoing and direct engagement with California transit agencies and regional transportation planning agencies to ensure all recommendations for this critical source of funding are heard and thoroughly discussed.

The Association finds that, on balance, the formal draft guidelines, like the informal draft guidelines that preceded them, represent a faithful interpretation of SB 125's (Committee on Budget and Fiscal Review) [Chapter 54, Statutes of 2023] statutory intent and further our shared interest in immediately advancing the historic investment in transit capital and operations authorized under AB 102 (Committee on Budget) [Chapter 38, Statutes of 2023]. We believe that the formal draft guidelines strike an appropriate balance between the quick administration of this new funding, which is vital to transit capital projects and to avoid service cuts, and accountability to the state and its taxpayers. The formal draft guidelines also provide helpful clarifications to a series of implementation and interpretation questions raised by the Association and other industry players in response to the informal draft guidelines. That said, through this letter, we wish to further punctuate several of our priorities for the final guidelines and the administration of AB 102 funding, which were not addressed in the clarifications and/or edits offered between the informal draft and formal draft guidelines. For each of these priorities, we offer a series of recommendations to support compliance with SB 125 requirements and to adhere to our understanding of the statutory intent for this funding. As you will find, we have modified our recommendation for the definition of "Transit Operator," used to establish eligibility for Transit and Intercity Rail Capital Program funding, and provide a new recommendation relative to project eligibility. We look forward to continuing to engage CalSTA as the guidelines

are finalized over the coming weeks. The comments that follow represent the interests of our diverse membership, which includes 220 member organizations.

Scope of Review and Approval: SB 125 requires regional transportation planning agencies to develop and submit, and CalSTA to approve, short- and long-term financial plans to access AB 102 funding. As this requirement was enacted, we raised concerns about the potential for CalSTA to apply a subjective analysis and an onerous approval process to these financial plans, which could slow the release of critical funding to RTPAs and the transit agencies in their jurisdiction and interfere in regional and local decision-making.

The formal draft guidelines, like the informal draft guidelines that preceded them, address this concern head-on and specify that CalSTA will only review and analyze these plans for completeness and for project eligibility and will not infringe on local decision-making processes that determined the specific projects proposed for funding.

We appreciate and support the clarification on the scope of CalSTA's review and approval of the short- and long-term financial plans included in the guidelines, as we believe it is consistent with statutory intent to move AB 102 funding forward quickly. We continue to request that this clarification be maintained as the guidelines are finalized.

Definition of Transit Operator: SB 125 refers to “transit operator” in outlining the requirements for RTPAs relative to the short- and long-term financial plans, data reporting, and funding and project eligibility. However, the bill does not define “transit operator” directly or through cross-reference with current law, creating confusion on the most fundamental compliance requirements.

The formal draft guidelines, like the informal draft guidelines that preceded them, address this omission by creating, in effect, two definitions of “transit operator” – one that applies to funding eligibility for investments in operation, and another that applies to funding for capital projects. The definition of “transit operator,” as tied to funding eligibility for investments in operations, is limited to transit agencies eligible for Section 99314 funding under the State Transit Assistance program at the time of distribution of funding to the RTPA. The definition of “transit operator,” as tied to funding eligibility for transit capital, is far broader and incorporates all public agencies – whether eligible for Section 99314 funding or not – that are eligible for traditional TIRCP.

In our August 30 letter, we raised concerns about the expansive eligibility definition for transit capital and recommended that CalSTA create one definition for “transit operator” which is limited to transit agencies’ eligibility for Section 99314 funding under the State Transit Assistance program at the time of distribution of funding to the RTPA. Through expanded engagement with transit agencies across the state, we now update our recommendation for the definition of “transit operator.”

We request that CalSTA limit the definition of “transit operator” for purposes of eligibility for TIRCP capital funding to transit agencies eligible for Section 99314 funding under the State Transit Assistance program, RTPAs that operate commuter bus or local bus service and that are eligible for Section 99313 funding under the State Transit Assistance Program, and rail agencies eligible for funding under the State Rail Assistance Program at the time of distribution of funding to the RTPA. (Emphasis added to clarify the modifications to our previous recommendation.)

Eligible Projects: The formal draft guidelines, like the informal draft guidelines that preceded them, include an expansive list of eligible projects for TIRCP that is informed in part by the Cycle 6 (or 2022) TIRCP guidelines. The Cycle 6 TIRCP guidelines expanded, with statutory direction and a dedicated funding set-aside, the list of eligible projects to include “major project development.” The intent behind this expanded list of eligible projects was to support “the delivery of capital projects and programs of projects that have entered or have applied to enter federal project development processes for at least a portion of the project or program of projects” by funding project development – i.e. pre-construction activities – with roughly 10 percent of funding available under Cycle 6 TIRCP.

We generally support the inclusion of eligibility for project development in the formal draft guidelines, like we supported the set-aside for “major project development” in Cycle 6 TIRCP, but we have serious concerns that the formal draft guidelines do not establish limiting parameters on this project category. As CalSTA is aware, the industry advocacy, and engagement by the Legislature, that supported and secured the restoration of \$2 billion for TIRCP (for \$4 billion total) and the creation of new flexibility in the program to fund transit operations focused on ensuring that transit agencies could deliver transformative capital projects and receive critical funding to prevent service cuts and layoffs. Unfortunately, as the formal draft guidelines are written, entities eligible to receive TIRCP funding, could use their total regional or agency share of TIRCP funding to support project development, including for projects that do not have a clear path to, or reasonable timeline for, construction.

We request that CalSTA include a parameter for the use of TIRCP funding for project development that limits the use of funding for this purpose to the advancement of projects that will enter construction by a specified, but reasonable, date. As an Association, we are committed to working with CalSTA to determine an appropriate date for this parameter.

Administrative Expenses: As noted above, SB 125 requires regional transportation planning agencies to develop and submit, and CalSTA to approve short- and long-term financial plans to access AB 102 funding. The bill also imposes new short-term data reporting requirements on the RTPAs to continue to access this funding. Despite these new administrative and planning requirements, the bill does not identify any funding for the RTPA to address the costs associated with them.

The formal draft guidelines, like the informal draft guidelines that preceded them, address this omission by specifying that the RTPA may request a total of 5% of total multi-year ZETCP funding, or \$5 million, whichever is lower, for administration of funding and planning expenses related to development of the long-term financial plans. We support the identification of funding for the RTPAs to fulfill the new requirements imposed on them by SB 125, as we communicated in our previous letter and in follow-up discussions with CalSTA, but continue to believe that the current maximum of 5% of total multi-year ZETCP funding, or \$5 million, whichever is lower, is too high.

We continue to request that CalSTA reduce the maximum amount of funding an RTPA may request for the administration of funding and planning expenses to 2% of total multi-year ZETCP funding, or \$2 million, whichever is lower.

Additional Considerations: In addition to these priorities and recommendations, we request the following: clarification in the guidelines, consistent with the verbal feedback provided on the

August 28 explanatory webinar, on the scope of the requirement to provide in the allocation package narrative “an explanation of what funding and service actions are being taken within the region that utilize resources other than SB 125 funding”; clarification on the definition of “project location” to permit transit agencies to report on the geographies/locations that projects are providing benefits to – a particularly important consideration for rolling stock; and guidance on service changes and improvements that agencies can include in their project applications to demonstrate ridership increases for fleet replacement projects.

Finally, we will continue to elevate that, while we believe the guidelines further our shared interests and address many of our priorities, the Administration and Legislature must pursue amendments to SB 125 to codify the important clarifications included in the final guidelines. These amendments, should they move forward, should also address a provision in SB 125 that requires that an RTPA develop and submit, and CalSTA approve, a long-term financial plan for the agencies in their jurisdiction to access traditional TIRCP, beginning in Fiscal Year 2026-27. We believe that this requirement unreasonably conditions access to this long-standing funding program on compliance with requirements specific to funding available under AB 102.

In closing, I thank you again for the opportunity to provide feedback on the formal draft guidelines. We will continue to work constructively with you and your staff as the guidelines proceed to adoption on September 30. If you have any questions about this letter, please contact me at michael@caltransit.org or 916-446-4656 x1034.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Pimentel".

Michael Pimentel
Executive Director

cc: Mark Tollefson, Undersecretary, California State Transportation Agency
Chad Edison, Chief Deputy Secretary of Rail and Transit, California State Transportation Agency