

Overview of 2014 Cap and Trade Legislation and Opportunities for Public Transit: Implementing 2014-15 Appropriations and a Long-Term Cap and Trade Funding Program

In 2011 California's Air Resources Board (ARB) adopted a Cap and Trade regulation, expected to help California achieve the goals of AB 32 (the California Global Warming Solutions Act of 2006), which include reducing the greenhouse gas emissions that contribute to climate change. The Cap and Trade program sets a limit on the total greenhouse gas (GHG) emissions that can be emitted by specific sources within the state; those emitters that anticipate exceeding their cap must purchase additional allowances through this market-based system. The ARB conducts auctions for these allowances, and the revenue generated is available for appropriation by the Legislature.

On June 15, the California Legislature approved the 2014-15 Budget Bill and related trailer bills that support the overall Budget.

In the [2014-15 Budget Bill \(SB 852\)](#), the Legislature authorized \$872 million in one-time/ budget year expenditures for the Cap and Trade program for various transit, sustainable communities, and low-carbon transportation programs that reduce greenhouse gas emissions.

Additionally, the Legislature approved [SB 862, the Cap and Trade trailer bill](#), which establishes long-term funding programs from the Cap and Trade program for transit and sustainable communities & affordable housing, as well as for high-speed rail. In total, SB 862 dedicates 60 percent of ongoing Cap and Trade auction revenues, beginning in 2015-16, to these programs. The remaining 40 percent of the available funding is not dedicated for any specific program, but left to the discretion of future Legislatures to meet certain objectives in any future fiscal year.

For example, in 2014-15, the Legislature appropriated about \$200 million for low-carbon transportation, which includes zero emission and near-zero emission bus deployment. In 2015-16, the Legislature could make a determination that it sees better greenhouse gas reduction opportunities through bus rapid transit programs and could shift funding to another program that better supports bus rapid transit development. Similarly, the Legislature could fund *any other* GHG-reducing program from this 40% pot. (And, that means we have an opportunity to continue our advocacy for an even more robust transit funding program, as these funds are not locked in place in the statute just sent to the Governor.)

Following is a detailed overview of funding programs available to transit agencies throughout the state, and the amount of revenue dedicated to each program in 2014-15 and beyond. To help facilitate a review of the budget and trailer bills, specific bill and page citations have been included. (In the coming weeks, the Administration, the Legislature, and stakeholders will work on a technical cleanup bill to address drafting errors in SB 862; we preview some of that content in our analysis, below.)

Please note that all the programs discussed below require compliance with state guidelines on the measurement and reduction of GHG emissions, pursuant to direction that the Air Resources Board, in consultation with the California Environmental Protection Agency, shall develop funding guidelines for administering agencies that receive appropriations from the greenhouse gas reduction fund to ensure the requirements of AB 32 are met. The guidelines shall include a component for how administering agencies should maximize benefits for disadvantaged communities, as first described in [SB 535](#) and to be further defined by the California Environmental Protection Agency.

The ARB is further directed to provide an opportunity for public input prior to finalizing these guidelines; we will be working with our Legislative and Executive Committees to determine an advocacy approach to this guideline-setting process, with the goal of reducing administration burden on our agencies as they seek funds from these programs.

2014-15 ONE-TIME APPROPRIATIONS

The 2014-15 Budget Bill (SB 852) appropriates specified dollar amounts to four programs in which transit agencies are direct recipients or for which transit agencies are eligible applicants. For one of these programs, the funding eligibility and program administration details will clearly be determined in 2014-15 by the additional guidelines and program management procedures called for in the long-term trailer bill (SB 862), as further detailed below. In other words, while the long-term trailer bill sets out percentages of all Cap and Trade dollars that this program will receive, for when those funds start to flow in 2015-16, the budget year appropriation will *also* be subject to these program rules – which we believe the Administration’s agencies and departments will endeavor to set up and run in 2014-15. For the other three programs, it is less clear that SB 862 program procedures will prevail; rather, it appears that existing administrative procedures and rules will govern how these funds flow in 2014-15.

One of the transit appropriations in the Budget Bill (SB 852) will clearly be subject to the programs and procedures called for in the long-term trailer bill (SB 862):

- \$25 million is allocated according to the State Transit Assistance program statutes, but funds must be spent on transit services that meet the GHG-reduction goals of AB 32 and be further subject to the procedures and guidelines set up in SB 862’s **Low Carbon Transit Operations Program**; see below for details (SB 852, Pages 116-117).

While these two appropriations in the Budget Bill (SB 852) *seem* to be subject only to existing programs and procedures, we also believe the Administration *intends* on making the 2014-15 funds subject to the new program details to be developed in the long-term Trailer Bill (SB 862):

- \$24.791 million is available for **transit and intercity rail capital programs** for allocation by the California Transportation Commission until June 30, 2016, and available for encumbrance and liquidation until June 30, 2020 (SB 852, Page 132).
- \$129.201 million is available for transfer to the Department of Transportation, the Department of Housing and Community Development, the Department of Conservation, and the Natural Resources Agency for **support costs and local assistance associated with administering the affordable housing and sustainable communities program** (SB 852, Pages 40-41).

And, this appropriation will clearly be subject to existing ARB rules and regulations (there is no counterpart in SB 862 for this program):

- \$197.266 million is available to the ARB for its low carbon transportation programs, which includes rebates to consumers for electric vehicle purchases, but also includes **zero emission and near-zero emission transit bus deployment programs** (SB 852, Page 275).

LONG-TERM PERCENTAGE ALLOCATIONS

This section of our analysis describes in further detail the three programs for which transit agencies are direct recipients and/ or for which transit agencies are eligible applicants. All references in the remainder of this analysis are to the long-term trailer bill (SB 862).

TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM

Overview

The Trailer Bill (SB 862) continuously appropriates 10 percent of all Cap and Trade revenues throughout the life of the Cap and Trade program, beginning in 2015-16, to the Transit and Intercity Rail Capital Program (Page 17, Lines 30-34). As written, the program will fund capital improvements and operational investments that will reduce greenhouse gas emissions and modernize intercity, commuter, and urban rail systems (Page 37, Line 14 through Page 29, Line 18).

We have already worked with legislative leadership staff and the Governor's Administration to obtain agreement on a technical clean-up bill that would add bus transit to these provisions, as was the stated intent of legislative leaders when they passed this bill.

The policy objectives of the Program are to (Page 37, Lines 19-23):

- Reduce greenhouse gas emissions;
- Expand and improve rail service to increase ridership;
- Integrate the rail service of the state's various rail operators; and,
- Improve rail safety.

The technical clean-up bill will add references to bus transit in these policy objectives.

Program Management

The California State Transportation Agency (CalSTA) will develop and adopt Program guidelines, evaluate applications based on the established guidelines, and prepare a list of projects recommended for funding. The California Transportation Commission shall award grants to applicants using the list prepared by CalSTA (Page 37, Lines 24-30).

In evaluating applications, CalSTA will consider:

- The cobenefits of projects that support implementation of sustainable communities strategies through one or more of the following:
 - (A) Reducing auto vehicle miles traveled through growth in rail ridership.
 - (B) Promoting housing development in the vicinity of rail stations.
 - (C) Expanding existing rail and public transit systems.
 - (D) Implementing clean vehicle technology.
 - (E) Promoting active transportation.
 - (F) Improving public health.
- The project priorities developed through the collaboration of two or more rail operators and any memoranda of understanding between state agencies and local or regional rail operators (Page 38, Lines 13-31).

Eligible Projects

In order to be eligible for funding under the Program, a project must demonstrate that it will reduce greenhouse gas emissions (Page 38, Lines 6-8). The Program has a disadvantaged community investment goal of 25 percent (Page 38, Lines 9-12). Projects eligible for funding under the program currently include (Page 37, Lines 31-38 and Page 38, Lines 1-5):

- Rail capital projects, including acquisition of rail cars and locomotives, that expand, enhance, and improve existing rail systems and connectivity to existing and future rail systems, including the high-speed rail system;
- Intercity and commuter rail projects that increase service levels, improve reliability, and decrease travel times;
- Rail integration implementation, including integrated ticketing and scheduling systems, shared-use corridors, related planning efforts, and other service integration initiatives; and,
- Bus rapid transit and other bus transit investments to increase ridership and reduce greenhouse gas emissions.

We are attempting to ensure the technical clean-up bill will add additional references to bus transit in these descriptions of eligible projects (e.g., bus systems may want to apply for integrations funds, as well).

Eligible applicants under the program shall be public agencies, including joint powers agencies, that operate existing or planned regularly scheduled intercity or commuter passenger rail service or urban rail transit service (Page 38, Line 32).

We have already worked with legislative leadership staff and the Governor's Administration to obtain agreement on a technical clean-up bill that would add bus transit agencies to this list of eligible applicants.

Public Participation

The bill directs the California State Transportation Agency to conduct at least two public workshops on draft program guidelines containing selection criteria prior to adoption and directs the Agency to post the draft guidelines on its Internet Web site at least 30 days prior to the first public workshop (Page 39, Lines 8-14).

This gives us another opportunity to influence the implementation details, reduce administrative burden on our agencies, etc. We will be working with our Legislative and Executive Committees to determine the details of our advocacy efforts in this regard.

LOW CARBON TRANSIT OPERATIONS PROGRAM

Overview

The Trailer Bill (SB 862) continuously appropriates 5 percent of all Cap and Trade revenues throughout the life of the Cap and Trade program, beginning in 2015-16, to the Low Carbon Transit Operations Program (Page 17, Lines 35-40 and Page 18, Lines 1-2). The Program will provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility (Page 39, Lines 22-25). Funding would flow according to the State Transit Assistance program formula (Page 39, Lines 26-29, which reference Page 17, Lines 39-40 and Page 18, Lines 1-2 – a cross-reference to the existing STA program statutes).

Program Management

Caltrans, in coordination with the Air Resources Board (ARB), shall develop guidelines that describe the methodologies transit agencies shall use to demonstrate that proposed expenditures will meet specified criteria (see Eligible Projects, below), and establish the reporting requirements for documenting ongoing compliance (Page 40, Lines 18-23).

A transit agency shall submit the following information to Caltrans before seeking funds (Page 40, Lines 28-35):

- A list of proposed expenses based on anticipated funding levels; and,
- Documentation showing that Program criteria have been met.

Before funding is released by the Controller, Caltrans and ARB shall determine the eligibility, in whole or in part, of the proposed list of expenditures (Page 40, Lines 36-39 and Page 41, Lines 1-2). Once a determination has been made, Caltrans notifies the Controller of approved expenditures for each transit agency, and the amount of the allocation for each transit agency determined to be available at the time of approval (Page 41, Lines 3-6). The recipient transit agency shall provide annual reports to Caltrans (Page 41, Lines 7-11).

Eligible Projects

Funding in the Program must be expended to provide transit operating or capital assistance that meets all of the following criteria (Page 39, Lines 37-39):

- Supports new or expanded bus or rail services, or expanded intermodal transit facilities, and may include equipment acquisition, fueling, and maintenance, and other costs to operate those services or facilities (Page 40, Lines 1-4); and,
- A transit operator must demonstrate that each expenditure directly enhances or expands transit service to increase mode share and that each expenditure reduces greenhouse gas emissions (Page 40, Lines 5-9).

For transit agencies whose service areas include disadvantaged communities at least 50 percent of the total funding must be used for projects or services that meet the above requirements and benefit the disadvantaged communities (Page 40, Lines 10-17).

Public Participation

The bill does not direct Caltrans or the California State Transportation Agency to conduct any sort of public participation process on the development of the guidelines overseeing this program.

We will be requesting clear statutory direction that such a public process must be undertaken.

AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM

Overview

The Trailer Bill (SB 862) continuously appropriates 20 percent of all Cap and Trade revenues throughout the life of the Cap and Trade program, beginning in 2015-16, to the Affordable Housing and Sustainable Communities Program (Page 18, Lines 3-10). The Program will reduce greenhouse gas emissions through projects that implement land use, housing, transportation & agricultural land preservation practices to support infill and compact development, and that support related and coordinated public policy objectives, including the following (Page 34, Lines 16-36):

- Reduce air pollution;
- Improve conditions in disadvantaged communities;
- Support or improve public health and other cobenefits;
- Improve connectivity and accessibility to jobs, housing, and services;
- Increase options for mobility, including the implementation of the Active Transportation Program;
- Increase transit ridership;
- Preserve and developing affordable housing for lower income households; and,
- Protect agricultural lands to support infill development.

Program Management

The Strategic Growth Council (Council) is responsible for the development and administration of the Program (Page 34, Lines 16-22). Prior to awarding funds, in coordination with ARB, the Council must develop guidelines and selection criteria for the Program (Page 36, Lines 11-15). The Council shall incorporate comments from local governments and regional agencies (Page 36, Lines 24-28). The Council is required to coordinate with the metropolitan planning organizations and other regional agencies to identify and recommend projects for funding (Page 37, Lines 4-7).

Eligible Projects

In order to receive funding from the Program, a project must demonstrate that it will achieve a reduction in greenhouse gas emissions, support implementation of an adopted or draft sustainable communities strategy or a regional plan that includes policies & programs to reduce greenhouse gas emissions, and is consistent with the state planning priorities. Projects eligible for funding pursuant to the program include (Page 34, Lines 37-40 and Page 35, Lines 1-37):

- Intermodal, affordable housing projects that support infill and compact development;
- Transit capital projects and programs supporting transit ridership;
- Active transportation capital projects that qualify under the Active Transportation Program, including pedestrian and bicycle facilities and supportive infrastructure, including connectivity to transit stations;
- Noninfrastructure-related active transportation projects that qualify under the Active Transportation Program, including activities that encourage active transportation goals;
- Transit-oriented development projects, including affordable housing and infrastructure at or near transit stations or connecting those developments to transit stations;
- Capital projects that implement local complete streets programs;
- Other projects or programs designed to reduce greenhouse gas emissions and other criteria air pollutants by reducing automobile trips and vehicle miles traveled within a community;
- Acquisition of easements or other approaches or tools that protect agricultural lands that are under pressure of being converted to nonagricultural uses;
- Planning to support implementation of a sustainable communities strategy.

The bill sets a goal for the Program of spending 50 percent of available revenues in disadvantaged communities (Page 36, Lines 4-10). Also, no less than half of the funding available must be spent on affordable housing projects (Page 18, Lines 7-10).

Public Participation

The bill directs the Council, prior to adoption of the guidelines and the selection criteria, to conduct at least two public workshops to receive and consider public comments. One workshop shall be held at a location in northern California and one workshop shall be held at a location in southern California (Page 36, Lines 16-20).

This gives us another opportunity to influence the implementation details, reduce administrative burden on our agencies, etc. We will be working with our Legislative and Executive Committees to determine the details of our advocacy efforts in this regard.

This analysis was prepared by the California Transit Association, on June 17, 2014.

Please contact Executive Director Joshua W. Shaw (josh@caltransit.org) or Legislative Advocate Matt Robinson (matt@caltransit.org) if you have any questions, or call 916-446-4656.