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March 22, 2021

The Honorable Gavin Newsom, Governor
State of California
State Capitol, Suite 1173
Sacramento, CA 95814

The Honorable Toni Atkins, President Pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Anthony Rendon, Speaker
California State Assembly
State Capitol, Room 209
Sacramento, CA 95814

RE: Statutory Relief Measures to Support Transit Agencies

Dear Governor Newsom, President pro Tem Atkins, and Speaker Rendon:

On behalf of the California Transit Association, I, again, want to thank you for steadfast support of California's transit agencies throughout the COVID-19 pandemic.

As you know well, the pandemic precipitated an existential crisis at transit agencies statewide as fare revenue and sales tax losses and the escalating cost of front-line efforts to maintain public health severely threatened agency fiscal solvency and operational capacity. With your support, California was able to capture significant new emergency funding in the federal Coronavirus Aid, Relief and Economic Security Act, Coronavirus Response and Relief Supplemental Appropriations Act of 2021, and American Rescue Plan Act of 2021 to help maintain transit service levels in the near-term, ensuring that essential workers, low-income people, people of color, seniors, and persons with disabilities throughout our state have the means to travel as needed. This success notwithstanding, transit agencies estimate that ridership will remain depressed through calendar year 2023 and that staff capacity will continue to be challenged by the ongoing pandemic.

To address these realities, **we respectfully commend to you a variety of near-term actions the Administration and the Legislature can take as part of the budget process that do not require additional state revenue** to ensure transit agencies direct their emergency funding and staff capacity to advancing public health as they maintain service still needed for Californians that must travel via public transit. These actions, which align with measures introduced by the Administration in trailer bill language, would also ensure that transit agencies are not penalized in state funding programs for ridership and farebox recovery data that reflect pandemic conditions and not the underlying performance of transit. Moreover, these actions largely extend relief measures authorized by the Legislature last year in AB 90 (Committee on Budget) [Chapter 17, Statutes of 2020] and AB 107 [Chapter 264, Statutes of 2020].

The attachment accompanying this transmittal letter includes more information on the specific statutory relief measures we are pursuing, which would:

- Create more flexibility in the use of Low Carbon Transit Operations Program funds and continue flexibility in the use of State Transit Assistance – State of Good Repair Program funds;
- Extend hold harmless provision for calculation and allocation of State Transit Assistance Program, STA-State of Good Repair and Low Carbon Transit Operations Program allocations (Local Revenue Basis Only);
- Extend the suspension of counterproductive financial penalties for non-compliance with transit funding efficiency measures in the Transportation Development Act and State Transit Assistance Program; and,
- Temporarily suspend the performance audit requirements in the Transportation Development Act.

Again, we thank you for your leadership through these uncertain times and welcome the opportunity to further discuss these proposed actions with you. Our paramount concern is preserving lifeline and essential mobility options during this crisis; and we look forward to working with you to restore public transportation in California to the national model it was before the pandemic.

If you have any questions, please contact me at 916-446-4656 x1034.

Sincerely



Michael Pimentel
Executive Director

cc: The Honorable Lena Gonzalez, Chair, Senate Transportation Committee
The Honorable Nancy Skinner, Chair, Senate Budget and Fiscal Review Committee
The Honorable Maria Elena Durazo, Chair, Senate Budget Subcommittee No. 5
The Honorable Laura Friedman, Chair, Assembly Transportation Committee
The Honorable Phil Ting, Chair, Assembly Budget Committee
The Honorable Richard Bloom, Chair, Assembly Budget Subcommittee No. 3
David Kim, Secretary, California State Transportation Agency
Members, Executive Committee, California Transit Association
Members, State Legislative Committee, California Transit Association
Members, COVID-19 Transit Crisis Relief Task Force, California Transit Association

State-Level COVID-19 Response: Statutory Relief Measures for Public Transportation Agencies

Extend hold harmless provision for calculation and allocation of State Transit Assistance Program, STA-State of Good Repair and Low Carbon Transit Operations Program allocations (Local Revenue Basis Only).

Proposed Amendment:

Section 99314.10 of the Public Utilities Code is amended to read:

(a) Notwithstanding any other law, for the 2020–21, ~~and 2021–2022,~~ **2022-23, and 2023-24** fiscal years, the Controller shall calculate and publish the allocation of funds made pursuant to Section 99314 to each transportation planning agency and county transportation commission, the San Diego Metropolitan Transit Development Board, the member agencies of the Altamont Commuter Express Authority, and the member agencies of the Southern California Regional Rail Authority based on the same individual operator ratios published by the Controller in its August 2020 State Transit Assistance Allocation transmittal memo, or as the Controller may subsequently revise that memo before June 30, 2022, to account for an STA-eligible operator's termination of transit operations during those fiscal years or for a new STA-eligible operator, as described in subdivision (c) of Section 99314, during those fiscal years.

(b) In calculating the individual operator ratios for the August 2020 State Transit Assistance Allocation transmittal memo described in subdivision (a), the Controller shall use the data from the most recent annual report submitted by each STA-eligible operator to the Controller pursuant to Section 99243, except that the Controller shall not use data from a fiscal year before the 2017–18 fiscal year. For a subsequent revision to the memo, as described in subdivision (a), the Controller shall incorporate the data from the most recent annual report submitted by a new STA-eligible operator pursuant to Section 99243 into the data used in the memo for existing STA-eligible operators.

(c) Upon allocation of funds pursuant to this section to each transportation planning agency and county transportation commission, the San Diego Metropolitan Transit Development Board, the member agencies of the Altamont Commuter Express Authority, and the member agencies of the Southern California Regional Rail Authority, the Controller shall publish the amount of funding allocated to each operator.

Extend the suspension of the financial penalties associated with the State Transit Assistance Program's requirement that transit agencies' operating cost per revenue vehicle hour may not exceed operating cost per revenue vehicle hour adjusted by regional CPI, year over year.

Proposed Amendment:

Section 99314.6 of the Public Utilities Code is amended to read:

(a) Except as provided in Section 99314.7 , the following eligibility standards apply:

(1) Except as provided in paragraph (3), funds shall be allocated for operating or capital purposes pursuant to Sections 99313 and 99314 to an operator if the operator meets either of the following efficiency standards:

(A) The operator shall receive its entire allocation, and any or all of this allocation may be used for operating purposes, if the operator's total operating cost per revenue vehicle hour in the latest year for which audited data are available does not exceed the sum of the preceding year's total operating cost per revenue vehicle hour and an amount equal to the product of the percentage change in the Consumer Price Index for the same period multiplied by the preceding year's total operating cost per revenue vehicle hour.

(B) The operator shall receive its entire allocation, and any or all of this allocation may be used for operating purposes, if the operator's average total operating cost per revenue vehicle hour in the latest three years for which audited data are available does not exceed the sum of the average of the total operating cost per revenue vehicle hour in the three years preceding the latest year for which audited data are available and an amount equal to the product of the average percentage change in the Consumer Price Index for the same period multiplied by the average total operating cost per revenue vehicle hour in the same three years.

...

(e) Notwithstanding subdivision (a), an operator shall be exempt from meeting either efficiency standard under paragraph (1) of subdivision (a) for the 2020-21, ~~and 2021-2022,~~ **2022-2023,** **and 2023-2024** fiscal years and may use the funds allocated pursuant to Sections 99313 and 99314 for operating or capital purposes during that period of time

Extend the suspension of the financial penalties associated with the Transportation Development Act's requirements that transit agencies obtain specified fixed percentages of their operating budgets from passenger fares.

Proposed Amendment:

Section 99268.9 of the Public Utilities Code is amended to read:

99268.9. (a) Except as otherwise provided in subdivision (b), if an operator was allocated funds under this article during a fiscal year in which it did not maintain the required ratio of fare revenues to operating cost, the operator's eligibility to receive moneys from the local transportation fund and allocations pursuant to Sections 99313.3 and 99314.3 shall be reduced during a subsequent penalty year by the amount of the difference between the required fare revenues and the actual fare revenues for the fiscal year that the required ratio was not maintained. The penalty year shall be the fiscal year that begins one year after the end of the fiscal year during which the required ratio was not maintained.

...

(c)(1) Notwithstanding subdivision (a), a transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board shall not impose the penalty described in subdivision (a) on an operator that does not maintain the required ratio of fare revenues to operating cost during the 2019-20, or 2020-21, 2021-22, 2022-23, or 2023-24 fiscal year.

(2) This subdivision shall become inoperative on January 1, ~~2022~~ 2025.

Postpone Transportation Development Act audit requirements.

Proposed Amendments:

Section 99244 of the Public Utilities Code is amended to read:

(a) Each transportation planning agency shall annually identify, analyze, and recommend potential productivity improvements which could lower the operating costs of those operators who operate at least 50 percent of their vehicle service miles, as defined in subdivision (i) of Section 99247, within the area under its jurisdiction. However, where a transit development board created pursuant to Division 11 (commencing with Section 120000) or a county transportation commission exists, the board or commission, as the case may be, shall have the responsibility of the transportation planning agency with respect to potential productivity improvements. The recommendations for improvements and productivity shall include, but not be limited to, those recommendations related to productivity made in the performance audit conducted pursuant to Section 99246.

A committee for the purpose of providing advice on productivity improvements may be formed by the responsible entity. The membership of this committee shall consist of representatives from the management of the operators, organizations of employees of the operators, and users of the transportation services of the operators located within the area under the jurisdiction of the responsible entity.

Prior to determining the allocation to an operator for the next fiscal year, the responsible entity shall review and evaluate the efforts made by the operator to implement such recommended improvements.

If the responsible entity determines that the operator has not made a reasonable effort to implement the recommended improvements, the responsible entity shall not approve the allocation to the operator for the support of its public transportation system for the next fiscal year which exceeds the allocation to the operator for such purposes for the current fiscal year.

(b) For the 2020-21, 2021-22, 2022-23, and 2023-24 fiscal years, each transportation planning agency, transportation development board, and county transportation commission, shall be exempt from the requirement described in subdivision (a).

Proposed Amendments:

Section 99245 of the Public Utilities Code is amended to read:

(a) Each transportation planning agency, transit development board created pursuant to Division 11 (commencing with Section 120000), and county transportation commission shall be responsible to ensure that all claimants to whom it directs the allocation of funds pursuant to this chapter shall submit to it an annual certified fiscal audit conducted by an entity other than the

claimant. A report on the audit shall be submitted to the transportation planning agency, transit development board, county transportation commission, and to the Controller within 180 days after the end of the fiscal year. However, the responsible entity may grant an extension of up to 90 days as it deems necessary. The report shall include a certification that the funds allocated to the claimant pursuant to this chapter were expended in conformance with applicable laws and rules and regulations. Except for the first report, the report shall also include the audited amounts for the fiscal year prior to the fiscal year audited.

(b) For the 2020-21, 2021-22, 2022-23, 2023-24 fiscal years, a transportation planning agency, transportation development board, or county transportation commission may allow a claimant to whom it directs allocation of funds pursuant to this chapter to forgo the annual certified fiscal audit described in subdivision (a). If a transportation planning agency, transportation development board, or county transportation commission requires the certified fiscal audit described in subdivision (a), it shall allow a claimant an additional 6 months to submit the certified fiscal audit in the 2020-21 and 2021-22 fiscal years.

Proposed Amendments:

Section 99246 of the Public Utilities Code is amended to read:

(a) The transportation planning agency shall designate entities other than itself, a county transportation commission, a transit development board, or an operator to make a performance audit of its activities and the activities of each operator to whom it allocates funds. The transportation planning agency shall consult with the entity to be audited prior to designating the entity to make the performance audit.

...

(f) Notwithstanding this section, no performance audit otherwise required to be prepared pursuant to this section and otherwise required to be submitted to the director as described in subdivision (c) and made available to the public as described in subdivision (e) in calendar year 2021 shall be required to be submitted to the director and made available to the public any earlier than June 30, 2022.

Continue flexibility in the use of State Transit Assistance – State of Good Repair dollars to support all operating and capital expenses.

Proposed Amendment:

Section 99312.1 of the Public Utilities Code is amended to read:

(a) Revenues transferred to the Public Transportation Account pursuant to Sections 6051.8 and 6201.8 of the Revenue and Taxation Code for the State Transit Assistance Program are hereby continuously appropriated to the Controller for allocation as follows:

(1) Fifty percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314.

(2) Fifty percent for allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313.

(b) For purposes of this chapter, the revenues allocated pursuant to this section shall be subject to the same requirements as revenues allocated pursuant to subdivisions (b) and (c), as applicable, of Section 99312.

(c) The revenues transferred to the Public Transportation Account for the State Transit Assistance Program that are attributable to subdivision (a) of Section 11053 of the Revenue and Taxation Code are hereby continuously appropriated to the Controller, and, upon allocation pursuant to Sections 99313 and 99314, shall only be expended on the following:

(1) Transit capital projects or services to maintain or repair a transit operator's existing transit vehicle fleet or existing transit facilities, including rehabilitation or modernization of existing vehicles or facilities.

(2) The design, acquisition, and construction of new vehicles or facilities that improve existing transit services.

(3) Transit services that complement local efforts for repair and improvement of local transportation infrastructure.

(d) (1) Prior to receiving an apportionment of funds pursuant to subdivision (c) from the Controller in a fiscal year, a recipient transit agency shall submit to the Department of Transportation a list of projects proposed to be funded with these funds. The list of projects proposed to be funded with these funds shall include a description and location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement. The project list shall not limit the flexibility of a recipient transit agency to fund projects in accordance with local needs and priorities so long as the projects are consistent with subdivision (c).

(2) The department shall report to the Controller the recipient transit agencies that have submitted a list of projects as described in this subdivision and that are therefore eligible to receive an apportionment of funds for the applicable fiscal year. The Controller, upon receipt of the report, shall apportion funds quarterly pursuant to Sections 99313 and 99314.

(e) For each fiscal year, each recipient transit agency receiving an apportionment of funds pursuant to subdivision (c) shall, upon expending those funds, submit documentation to the department that includes a description and location of each completed project, the amount of

funds expended on the project, the completion date, and the estimated useful life of the improvement.

(f) The audit of transit operator finances required pursuant to Section 99245 shall verify that the revenues identified in subdivision (c) have been expended in conformance with these specific requirements and all other generally applicable requirements.

(g) Notwithstanding any other law, the Controller shall allocate the funds made available in subdivision (c) in the 2020–21, ~~and 2021–22,~~ **2022-23, and 2023-24** fiscal years pursuant to Sections 99313 and 99314 and, for the funds allocated pursuant to Section 99314, shall allocate those funds in accordance with the individual operator ratios described in Section 99314.10.

(h) (1) Notwithstanding paragraphs (1), (2), and (3) of subdivision (c), a recipient transit agency may expend funds apportioned pursuant to subdivision (c) for the 2019–20 to ~~2021–22~~ **2023-24** fiscal years, inclusive, on any operating or capital costs to maintain transit service levels if the governing board of the recipient transit agency makes a declaration that the expenditure of those funds is necessary to prevent transit service levels from being reduced or eliminated.

(2) The requirements of subdivisions (d), (e), and (f) shall not apply to the receipt or expenditure of funds pursuant to paragraph (1).

Create flexibility in the use of Low Carbon Transit Operations Program dollars to support all operating and capital expenses.

Proposed Amendment:

Section 75230 of the Public Resources Code is amended to read:

- (a) The Low Carbon Transit Operations Program is hereby created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities.
- (b) Funding for the program is continuously appropriated pursuant to Section 39719 of the Health and Safety Code from the Greenhouse Gas Reduction Fund established pursuant to Section 16428.8 of the Government Code.
- (c) Funding shall be allocated by the Controller on a formula basis consistent with the requirements of this part and with Section 39719 of the Health and Safety Code, upon a determination by the Department of Transportation that the expenditures proposed by a recipient transit agency meet the requirements of this part and guidelines developed pursuant to this section, and that the amount of funding requested is currently available.
- (d) A recipient transit agency shall demonstrate that each expenditure of program moneys allocated to the agency reduces greenhouse gas emissions.
- (e) A recipient transit agency shall demonstrate that each expenditure of program moneys does not supplant another source of funds.
- (f) Moneys for the program shall be expended to provide transit operating or capital assistance that meets any of the following:
 - (1) Expenditures that directly enhance or expand transit service by supporting new or expanded bus or rail services, new or expanded water-borne transit, or expanded intermodal transit facilities, and may include equipment acquisition, fueling, and maintenance, and other costs to operate those services or facilities.
 - (2) Operational expenditures that increase transit mode share.
 - (3) Expenditures related to the purchase of zero-emission buses, including electric buses, and the installation of the necessary equipment and infrastructure to operate and support these zero-emission buses.
- (4) For Fiscal Years 2020-21 through 2023-24, a recipient transit agency may expend program moneys for operational and capital costs in order to maintain existing or reduced transit service levels if the agency's board makes a declaration that the service would otherwise be eliminated. The requirements of subsections (a), (b), and (g)(1), (l) and (s) of this section shall not apply during this period.**
- (g) (1) For recipient transit agencies whose service areas include disadvantaged communities, as identified pursuant to Section 39711 of the Health and Safety Code, at least 50 percent of the total moneys received pursuant to this chapter shall be expended on projects or services that meet the requirements of subdivisions (d), (e), and (f) and benefit the disadvantaged communities, as identified consistent with the guidance developed by the State Air Resources Board pursuant to Section 39715.

(2) The requirement of paragraph (1) is waived if the recipient transit agencies expend the funding provided pursuant to this section on any of the following:

(A) New or expanded transit service that connects with transit service serving disadvantaged communities, as identified in Section 39711 of, or in low-income communities, as defined in paragraph (2) of subdivision (d) of Section 39713 of, the Health and Safety Code.

(B) Transit fare subsidies and network and fare integration technology improvements, including, but not limited to, discounted or free student transit passes.

(C) The purchase of zero-emission transit buses and supporting infrastructure.

(3) Expenditures made pursuant to paragraph (2) shall be deemed to have met all applicable requirements established pursuant to Section 39713 of the Health and Safety Code.

(4) This section does not require a recipient transit agency to provide individual rider data to the Department of Transportation or the State Air Resources Board.

(h) The Department of Transportation, in coordination with the State Air Resources Board, shall develop guidelines that describe the methodologies that recipient transit agencies shall use to demonstrate that proposed expenditures will meet the criteria in subdivisions (d), (e), (f), and (g) and establish the reporting requirements for documenting ongoing compliance with those criteria.

(i) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development of guidelines for the program pursuant to this section.

(j) A recipient transit agency shall submit the following information to the Department of Transportation before seeking a disbursement of funds pursuant to this part:

(1) A list of proposed expense types for anticipated funding levels.

(2) The documentation required by the guidelines developed pursuant to this section to demonstrate compliance with subdivisions (d), (e), (f), and (g).

(k) For capital projects, the recipient transit agency shall also do all of the following:

(1) Specify the phases of work for which the agency is seeking an allocation of moneys from the program.

(2) Identify the sources and timing of all moneys required to undertake and complete any phase of a project for which the recipient agency is seeking an allocation of moneys from the program.

(3) Describe intended sources and timing of funding to complete any subsequent phases of the project, through construction or procurement.

(l) A recipient transit agency that has used program moneys for any type of operational assistance allowed by subdivision (f) in a previous fiscal year may use program moneys to continue the same service or program in any subsequent fiscal year if the agency can demonstrate that reductions in greenhouse gas emissions can be realized.

(m) Before authorizing the disbursement of funds, the Department of Transportation, in coordination with the State Air Resources Board, shall determine the eligibility, in whole or in

part, of the proposed list of expense types, based on the documentation provided by the recipient transit agency to ensure ongoing compliance with the guidelines developed pursuant to this section.

(n) The Department of Transportation shall notify the Controller of approved expenditures for each recipient transit agency, and the amount of the allocation for each agency determined to be available at that time of approval.

(o) A recipient transit agency that does not submit an expenditure for funding in a particular fiscal year may retain its funding share, and may accumulate and utilize that funding share in a subsequent fiscal year for a larger expenditure, including operating assistance. The recipient transit agency must first specify the number of fiscal years that it intends to retain its funding share and the expenditure for which the agency intends to use these moneys. A recipient transit agency may only retain its funding share for a maximum of four years.

(p) A recipient transit agency may, in any particular fiscal year, loan or transfer its funding share to another recipient transit agency within the same region for any identified eligible expenditure under the program, including operating assistance, in accordance with procedures incorporated by the Department of Transportation in the guidelines developed pursuant to this section, which procedures shall be consistent with the requirement in subdivision (g).

(q) A recipient transit agency may apply to the Department of Transportation to reassign any savings of surplus moneys allocated under this section to the agency for an expenditure that has been completed to another eligible expenditure under the program, including operating assistance. A recipient transit agency may also apply to the Department of Transportation to reassign to another eligible expenditure any moneys from the program previously allocated to the agency for an expenditure that the agency has determined is no longer a priority for the use of those moneys.

(r) The recipient transit agency shall provide annual reports to the Department of Transportation, in the format and manner prescribed by the department, consistent with the internal administrative procedures for the use of the fund proceeds developed by the State Air Resources Board.

(s) The Department of Transportation and recipient transit agencies shall comply with the guidelines developed by the State Air Resources Board pursuant to Section 39715 of the Health and Safety Code to ensure that the requirements of Section 39713 of the Health and Safety Code are met to maximize the benefits to disadvantaged communities as described in Section 39711 of the Health and Safety Code.

(t) A recipient transit agency shall comply with all applicable legal requirements, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)), and civil rights and environmental justice obligations under state and federal law. Nothing in this section shall be construed to expand or extend the applicability of those laws to recipient transit agencies.

(u) The audit of public transportation operator finances already required under the Transportation Development Act (Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code) pursuant to Section 99245 of that code shall be expanded to include verification of receipt and appropriate expenditure of moneys from the

program. Each recipient transit agency receiving moneys from the program in a fiscal year for which an audit is conducted shall transmit a copy of the audit to the Department of Transportation, and the department shall make the audits available to the Legislature and the Controller for review on request.

(v) Notwithstanding subdivision (c), the Controller shall allocate funding pursuant to this section for the 2020–21, ~~and 2021–22,~~ **2022-23, and 2023-24** fiscal years to recipient transit agencies pursuant to the individual operator ratios described in Section 99314.10 of the Public Utilities Code.