

Attachment B



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TO: BOARD OF DIRECTORS

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SUBJECT: NEW CALIFORNIA STATE CLIMATE LAWS

ISSUE

At the close of the legislative session, the California Legislature passed several bills related to climate change that have broad implications for the State and will likely have impacts for Metro. This Board Box provides overview of two key statutes (SB 32 and AB 197) that will establish the big picture framework for climate related regulation and programming to follow.

DISCUSSION

A. Overview

On September 8, 2016, Governor Brown signed SB 32 and AB 197. Taken together these two laws extend and update California's policies on global climate change and set a framework for subsequent regulations and programming. This report provides a preliminary review of the two new laws and their significance for Metro.

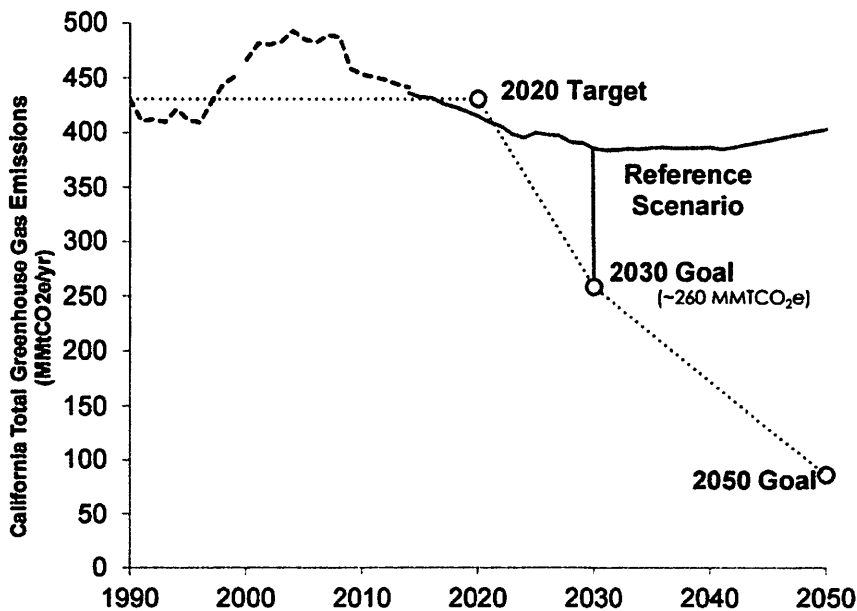
In summary, SB 32 (Pavley) extends AB 32 (2006, Nunez), by extending the horizon date from 2020 to 2030, and setting much deeper targets for greenhouse gas (GHG) emission reduction. AB 197 (Garcia) shapes climate change programs by creating new legislative oversight, and preferencing certain types of emission reductions over others. In addition, the Governor recently signed AB

1550 (Gomez) which increases the requirements for investments in disadvantaged communities.

SB 32 and AB 197 were co-joined meaning that they both needed to pass for the other to take effect. AB 197 helped to resolve key concerns relative to the authority granted to ARB. AB 197 adds two legislative appointees to ARB and requires additional reporting by ARB. In addition, the Legislature will also create a legislative oversight committee which will examine the implementation of this Legislation.

Metro will most likely be impacted by this new legislation and the rulemaking, programming, and legal decisions that will follow. These impacts can be summarized as generally positive as relates to Metro's mission, projects and programs insofar as improving transit, active transportation, and livable and connected communities are essential components of the State's climate policy. That said, the new law and deeper target signal the possibility of tighter regulation for fleets and fuels that may create challenges for Metro. Regulations offered by ARB could further result in a number of unfunded mandates on our region through efforts such as the Zero Emission Bus rule as well as regulations on the freight sector.

The scope and scale of the new target and the level of change necessary to meet it is best illustrated by the chart here, noting that the State is on track to exceed the 2020 goal, but must cut emissions nearly in half from the 2009 peak:



Source: California Air Resource Board, 2016

Climate policies and programs will continue to take shape over the next several months and beyond. Metro staff will continue to monitor and engage in these

issues and keep the Board up-to-date. Of note, there remains considerable uncertainty regarding cap-and-trade programs, as discussed below.

B. Context/Prior Law and Programming

California first passed a comprehensive climate change law in 2006 when AB 32 was enacted. As the first state-level climate policy in the United States that committed mandatory economy-wide emissions reductions, AB 32 was effectuated in a number of ways including:

- Created a mandatory cap on greenhouse gas emissions; requiring emissions to be reduced to 1990 levels by 2020;
- Empowered the California Air Resources Board (ARB) to regulate sources of emissions in all sectors including transportation along with energy, waste, agriculture, forestry and others;
- Directed ARB to develop and adopt a “Scoping Plan” to guide emissions reductions across sectors;
- Authorized market-based incentive programs that became the basis for cap-and-trade.

The first Scoping Plan was adopted by ARB in 2008 and updated in 2014. The plan outlines a set of programs to meet the statewide goal. Each program is then subject to its own rule-making and implementation process. Transportation makes up about 35% of the total emissions profile for California, and is subject to a substantial body of effort in 3 major categories:

- Accelerating turnover of vehicle fleets to cleaner technologies;
- Reducing the carbon intensity of vehicle fuels; and
- Reducing vehicle usage (or vehicle miles of travel, VMT).

AB 32, as passed in 2006, contained an emissions target only for the year 2020, and did not explicitly authorize any regulation or program beyond that year. The 2030 target was first put forward in the Governor’s Executive Order B-30-15 (2015), which prompted the current Scoping Plan update. Nevertheless, the lack of legislative action prior to SB 32, along with on-going litigation on cap-and-trade created uncertainty around the program. As such, recent cap-and-trade auctions have resulted in low proceeds.

The new laws do not fully address on-going uncertainty regarding the Low Carbon Fuel Standard. Metro has had some level of active participation in the Low Carbon Fuel Standard Carbon market by voluntarily opting in. Our participation has netted revenue that is being used to implement sustainability-related infrastructure throughout Metro. Staff is trying to determine the long-term implication of the new statutes to the LCFS program. There has been some concern that in the course of resolving the long-term viability of the State’s greenhouse gas reductions policies, the LCFS would be sacrificed in order to

develop broader support for the programs. While the LCFS was not eliminated in the current negotiations, the program could still face a threat through future actions.

C. New Law Provisions

SB 32 is notable for three reasons:

- extends State climate programs to 2030,
- sets a new, and *substantially deeper* target for emission reductions (40% below 1990 levels by 2030),
- specifically acknowledges Disadvantaged Communities (DACs) as an emphasis area for emission reduction efforts.

SB 32 was accompanied by companion legislation, AB 197, which has four major components:

- requires consideration of “social costs” of emissions in developing regulations, and links GHG reductions to other efforts targeting toxic air contaminants,
- provides for an oversight committee composed of members of the Legislature and dictates substantially greater public disclosure and reporting,
- provides direction to ARB preferencing direct emission controls over indirect measures,
- changes the composition of ARB to include ex-officio members from the Legislature.

As noted above, State climate policy impacts Metro in a number of ways including funding, potential direct regulation, as well as providing impetus and support for Metro sustainability policies. While these measures are supportive in principle and concept the fact still remains that the state is providing very little funding to actually address these priorities beyond whatever is available through the cap-and-trade program. Another challenge with the overall program structure is that while Metro makes significant investments in projects and programs that reduce emissions, we are not allowed to count those investments to offset the impacts of regulations such as in the Zero Emission Bus regulation. Specific impacts are not known at this time, but rather will be dictated by subsequent process, including but not limited to:

- **Scoping Plan** – the Scoping Plan will describe the range of measures used to meet the 2030 target. As such, it prefaces regulatory processes for specific sectors. The process to update the Scoping Plan is underway, with a public draft to be released in the fall of 2016 and adoption in 2017. Of note, the 2017 update will likely include significant GHG reductions

attributed to the freight sector, with the recently released Draft California Sustainable Freight Action Plan used as a framework.

- **Mobile Source Strategy.** ARB is also considering a State Implementation Plan as a part of its Mobile Source Strategy. This implementation plan includes a number of mechanisms which could impact Metro's projects and programs. Staff is monitoring the process of this document as it is being considered by ARB.
- **Transit regulation** – under the Scoping Plan, transit fleets are subject to ARB's Advanced Clean Transit program, which seeks to transition transit fleets to zero emissions by 2040. Previous versions of the rule have been based around incentives, tools, and pilots. Given the deeper target in SB 32, ARB is currently developing a proposed update to the regulation that may result in more direct regulation.
- **Subsequent legislation/litigation, especially related to cap-and-trade** – SB 32 and AB 197 do not specifically deal with cap-and-trade authorization. Further, the cap-and-trade program is currently being litigated with plaintiffs (California Chamber of Commerce) contending that it constitutes an illegal tax. At the same time, there is some concern that AB 197's direction to prioritize direct emission reduction may preface a move toward tightly controlled regulation in lieu of market-based programs, which may prompt renewed consideration in the next legislative term. Cap-and-trade will remain in flux until litigation is resolved and/or it is specifically treated by the Legislature. Metro has been successful in pursuing cap-and-trade funding for various transit capital and operations efforts, and will continue to monitor this issue.
- **SB 375 targets** – SB 375 directs ARB to adopt GHG reduction targets for Regional Transportation Plans/Sustainable Communities Strategies for 2020 and 2035. For the 2012 RTP/SCS prepared by the Southern California Association of Governments (SCAG), targets were set at 8% per capita for 2020 and 13% per capita for 2035. These targets remained unchanged for the 2016 RTP/SCS. In early discussions on the Scoping Plan, ARB has suggested that the SB 375 targets may be raised. Metro is indirectly responsible for SB 375 targets by inputting transportation projects to the RTP/SCS that, together with SCAG's growth and land use assumptions, must demonstrate achieving emission reductions. Further, Metro collaborates with SCAG in activities to implement the plan. Both the 2012 Countywide Sustainability Planning Policy and the on-going Joint Work Program with SCAG are linked to SB 375 implementation.
- **CalEnviroScreen update** – CalEPA develops the CalEnviroScreen tool which forms the basis for the designation of Disadvantaged Communities (DACs). The tool is currently undergoing an update to include new indicators and refresh data inputs.

D. Cap and Trade Expenditures

As mentioned in previous Legislative Alerts, separate legislation (AB 1613) allocated \$900 million to various cap-and-trade programs as part of the FY16/17 State budget, notably \$135 million to the Transit and Intercity Rail Capital Program (TIRCP) and \$10 million to the Active Transportation Program (the first time this program has been supported by cap-and-trade revenues). These allocations are to support the funding of projects awarded through prior TIRCP competitive grant cycles and augment funding available for awards in the pending Active Transportation Program (ATP) competitive grant cycle. Also note that the allocation to ATP, while precedent setting, is still insufficient for a Statewide competitive program that remains highly oversubscribed. The State also did not allocate the entirety of cap and trade funds that are available. Finally, AB 2722 creates a new program, Transformative Climate Communities, to be administered by the Strategic Growth Council, which calls for large multi-component projects that enhance sustainability at a neighborhood scale. This program is funded at \$140 million for FY 16/17, and Metro staff will monitor the development of program guidelines for potential opportunities. Metro will continue to provide the Board with regular updates on cap-and-trade expenditure programs, including more detailed reporting on these new allocations.

NEXT STEPS

As noted, SB 32 and AB 197 set a broad policy framework for subsequent action that could affect Metro. Staff will continue to monitor and engage in these statewide processes, and provide on-going updates to the Board. Further, staff will engage the Ad Hoc Sustainability Committee to update performance metrics and implementation actions in the Countywide Sustainability Planning Policy in light of new State-determined goals.

The Environmental Compliance and Sustainability staff will provide regular updates to the Metro Board on how these statutes will impact Metro's portfolio of responsibilities. Staff is developing an overall sustainability strategy to address greenhouse gas emissions impacts related to the Board's direction in the February 18, 2016 Board Item #57, including metrics.

Metro Government Relations continues to monitor all legislative activity related to greenhouse gas emissions, and its related regulatory, funding and implementation activity.