

**Bay Area Air Quality Management District**  
939 Ellis Street  
San Francisco, CA 94109

**BAAQMD Regulation 14, Rule 1:  
BAY AREA COMMUTER BENEFITS PROGRAM**

In Cooperation with the Metropolitan Transportation Commission



METROPOLITAN  
TRANSPORTATION  
COMMISSION

**Staff Report**  
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**STAFF REPORT**  
**Regulation 14, Rule 1: Bay Area Commuter Benefits Program**

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# 1. Executive Summary

Senate Bill 1339, signed into law in fall 2012, authorizes the Bay Area Air Quality Management District (Air District) and the Metropolitan Transportation Commission (MTC) to adopt and implement a Bay Area Commuter Benefits Program (Program) on a pilot basis through the end of year 2016. The bill is modeled on local commuter benefit ordinances that have already been adopted by several Bay Area cities in recent years, including the cities of Berkeley, Richmond, and San Francisco (as well as San Francisco International Airport). In response to Senate Bill 1339, the Air District is proposing adoption of Regulation 14, Rule 1: *Mobile Source Emissions Reduction Measures, Bay Area Commuter Benefits Program*. The proposed rule will be presented to the governing board of the Air District for adoption and to the MTC Commission for concurrence in March 2014.

The proposed rule will serve as the foundation for the Bay Area Commuter Benefits Program (Program).<sup>1</sup> The Program would require employers with 50 or more full-time employees in the Bay Area<sup>2</sup> to select one of four commuter benefit options to offer their employees. The Program will be designed to provide flexibility to employers and to minimize reporting and administrative requirements. The Program will neither establish numerical performance targets for employers, nor will it require any employee to change his/her commute mode.

The primary objective of the Program is to reduce emissions of greenhouse gases (GHGs) and criteria air pollutants. The Program would accomplish this by expanding the number of employers who provide commuter benefits to their employees. In particular, the Program seeks to increase the number of employers who allow their employees to exclude the dollars used to commute by transit or vanpool from taxable wages, as permitted by the federal tax code.

The Program is expected to provide a variety of positive outcomes, as discussed in Section 5, including reduced emissions of air pollutants and greenhouse gases, financial savings to employers and employees, decreased traffic congestion, and improved employee productivity. By encouraging Bay Area commuters to choose alternative transportation modes instead of driving alone to work, the Program would improve air quality and reduce traffic congestion, especially during periods of peak demand. The Program would help to implement the Transportation Control Measures in the *Bay Area 2010 Clean Air Plan*, and help the Bay Area to achieve GHG reduction goals in the regional “sustainable communities’ strategy” known as *Plan Bay Area* (adopted in July 2013) and the climate protection resolution adopted by the Air District Board in November 2013. In addition, by expanding the use of federal commuter tax benefits, the Program would put more dollars in the pockets of Bay Area businesses and residents and thus stimulate the regional economy.

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<sup>1</sup> The rule, complementary supporting materials, and administrative procedures, are collectively referred to as “the Program” in this Staff Report.

<sup>2</sup> For employers with multiple worksites in the region, the employee count would be based on the combined total of full-time employees at all Bay Area worksites.

The Program would be implemented as a collaboration between the Air District and MTC. The agencies will focus on educating employers and employees about the financial and environmental benefits of the Program as the most effective means to ensure employer participation in the Program. The agencies are committed to working with Bay Area employers to make the Program easy to implement. Guidelines and educational materials will be provided to help employers understand the Program and to comply with the rule by developing effective commuter benefit programs for their employees. Employer assistance will be provided through MTC's 511 Regional Rideshare Program (511 RRP).

In working to develop the Program described in this report, Air District staff met with many business groups and other stakeholders, including Chambers of Commerce and economic development associations in cities and counties throughout the region. The Air District issued documents describing the draft Program for public review and comment in late August 2013. Air District and MTC staff held public workshops to solicit input on the draft Program in all nine counties in October 2013. The comments received in response to the draft Program were reviewed and considered in preparing the proposed Program.

A socio-economic analysis prepared by BAE Urban Economics (see Appendix B) found that the proposed Program would not impose significant costs to Bay Area employers. In fact, the analysis found that tax savings to employers and employees could provide economic benefits on the order of \$115 million per year (direct, indirect, and induced impacts combined). The analysis estimates that this economic stimulus would result in the creation of 800 new jobs per year.

An analysis by Air District staff found the proposed rule would create no adverse environmental impacts. Air District staff is inviting comment on a California Environmental Quality Act (CEQA) Initial Study and Negative Declaration (see Appendix C).

If the proposed Program is approved by the governing boards of the Air District and MTC, employers subject to the Program will have six months to select a commuter benefit, register with the Program, notify their employees about their commuter benefit, and implement their commuter benefit.

## **2. BACKGROUND**

### **A. Rationale for the Program**

An effective transportation system is crucial to the economic and social vitality of the Bay Area. Year after year, however, the Bay Area experiences some of the worst traffic congestion in the nation. During peak periods, travel volume frequently exceeds roadway capacity in key Bay Area corridors. A recent study found that the Bay Area freeway system is congested 79 percent of the time on average during peak travel periods.<sup>3</sup> Traffic congestion increases emissions of air pollutants and greenhouse gases, and also imposes significant economic costs on the region. Since many Bay Area roadways are already congested

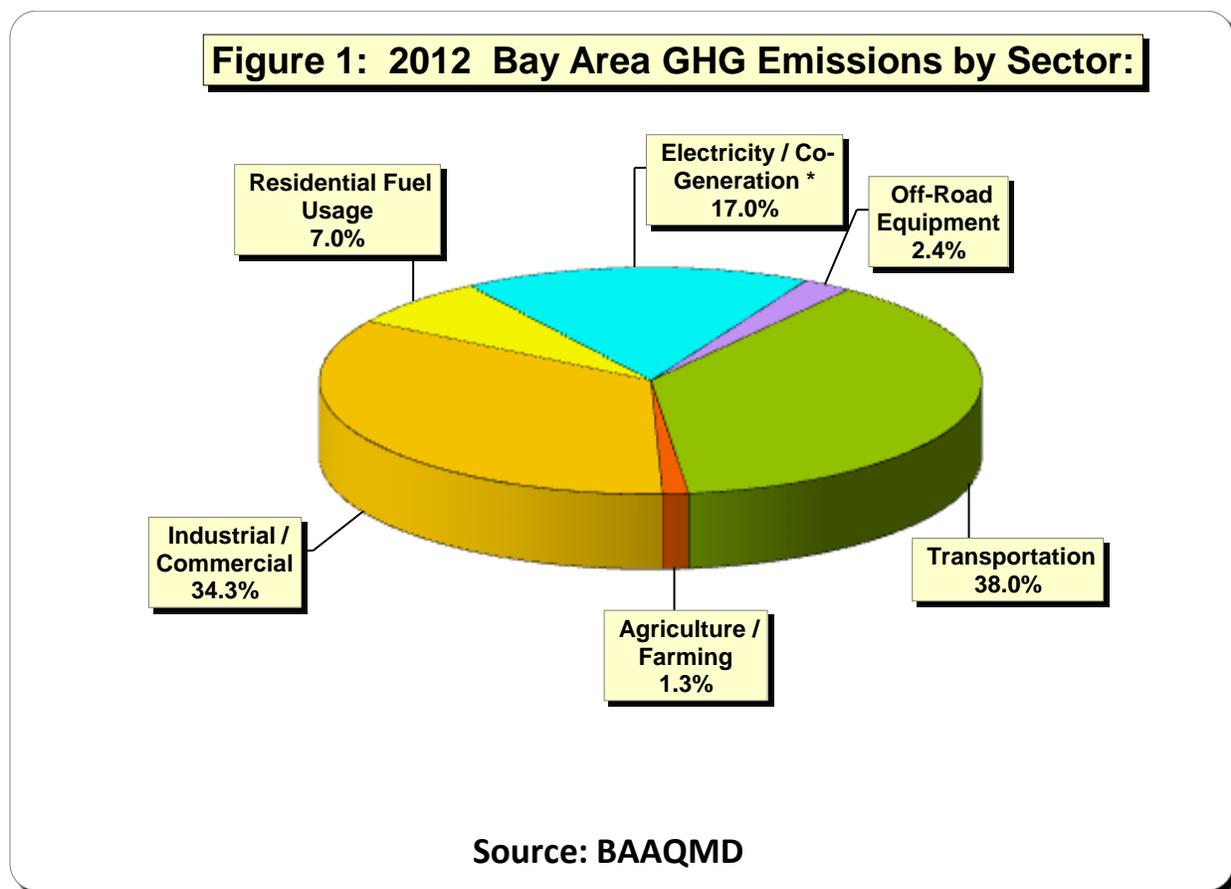
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<sup>3</sup> 2012 *Urban Mobility Report*, Texas Transportation Institute. <http://mobility.tamu.edu/ums/report>

during peak periods, even a modest increase in economic activity and/or population may push the region's roadways further toward gridlock, with associated increases in emissions of air pollutants.

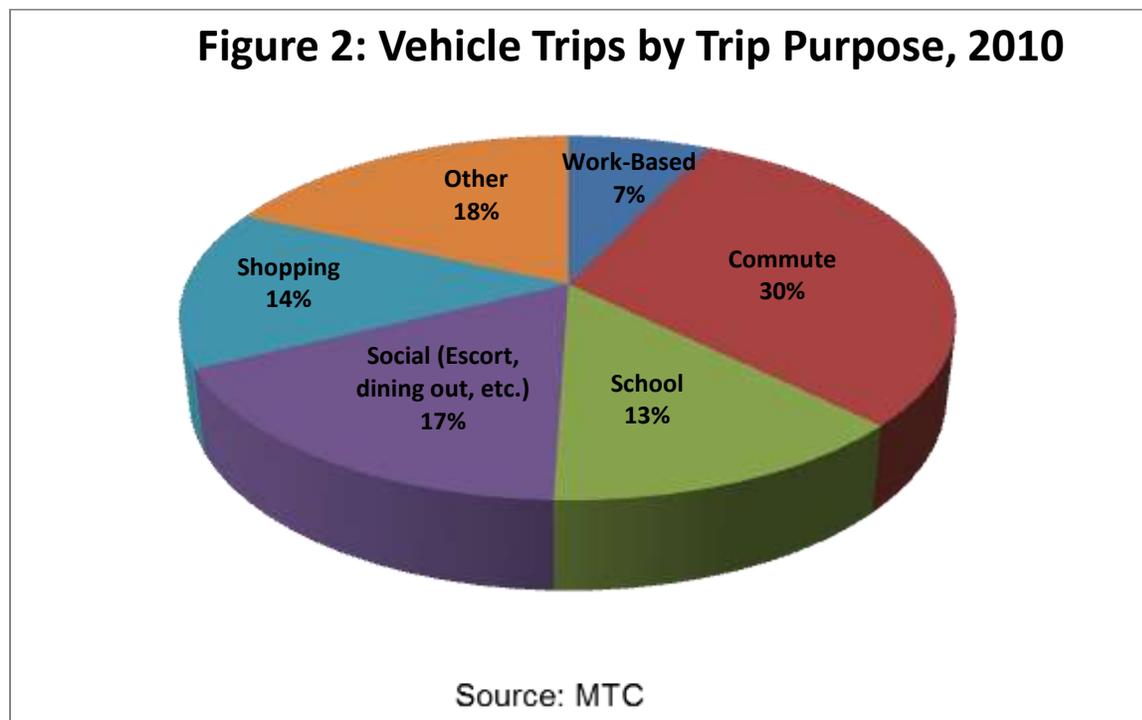
The existing stress on the Bay Area transportation system will increase as the Bay Area recovers from the recent economic recession and as regional population grows in coming decades. Because there are major physical and financial constraints on expanding the transportation system, the region needs to develop policies and programs to maximize the efficient operation of the existing system and to minimize the negative impacts of the transportation system on air quality, climate and the environment. The Bay Area Commuter Benefits Program can provide both economic and environmental benefits through encouraging employers to extend commuter benefits to their employees.

On-road motor vehicle trips are a major contributor to emissions of criteria air pollutants and greenhouse gases in the Bay Area. According to the Air District's Bay Area emissions inventory for year 2012, on-road motor vehicles account for 30 percent of emissions of reactive organic gases (ROG), 53 percent of oxides of nitrogen (NOx),<sup>4</sup> and 15 percent of directly-emitted fine particulate matter (PM2.5). The transportation sector is one of the largest sources of greenhouse gas (GHG) emissions in the Bay Area, accounting for 38 percent of total GHG emissions on a CO<sub>2</sub>-equivalent basis, as shown in Figure 1.



<sup>4</sup> ROG and NOx are precursor gases that contribute to formation of ozone and particulate matter in the atmosphere.

There are several reasons to focus on reducing commute trips as part of a broader strategy to reduce emissions from the on-road motor vehicle sector as a whole.<sup>5</sup> Commute trips represent a significant portion of motor vehicle travel. On a typical weekday, as shown in Figure 2, commute trips account for approximately 30 percent of vehicle trips, while another 7 percent of trips are work-based trips such as employee errands during lunch periods. In addition, because commute trips are concentrated during the morning and evening peak travel periods, they are the major cause of weekday rush-hour traffic congestion.

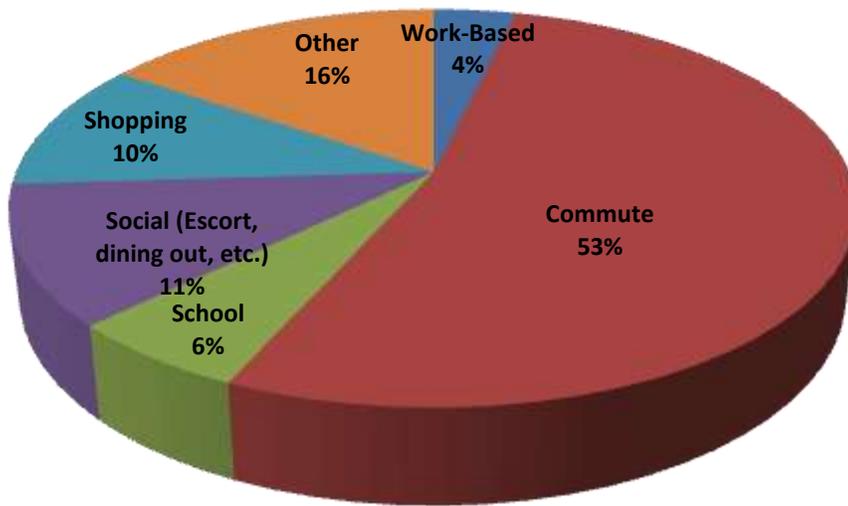


On average, commute trips are also longer in distance than other types of trips. Therefore, they account for an even greater proportion of total vehicle miles of travel than vehicle trips. As shown in Figure 3, commute travel accounts for just over half (53 percent) of weekday vehicle miles of travel (VMT) in the Bay Area.<sup>6</sup>

<sup>5</sup> The comprehensive strategy to reduce emissions from motor vehicle travel is defined in the Bay Area 2010 Clean Air Plan. [www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx)

<sup>6</sup> The commute VMT shown in Figure 3 includes errands and stops made en route between home and work, such as stopping at the grocery store or to pick up children at day care. The VMT data in Figure 3 excludes commercial travel, as well as travel on the part of non-residents passing through the Bay Area.

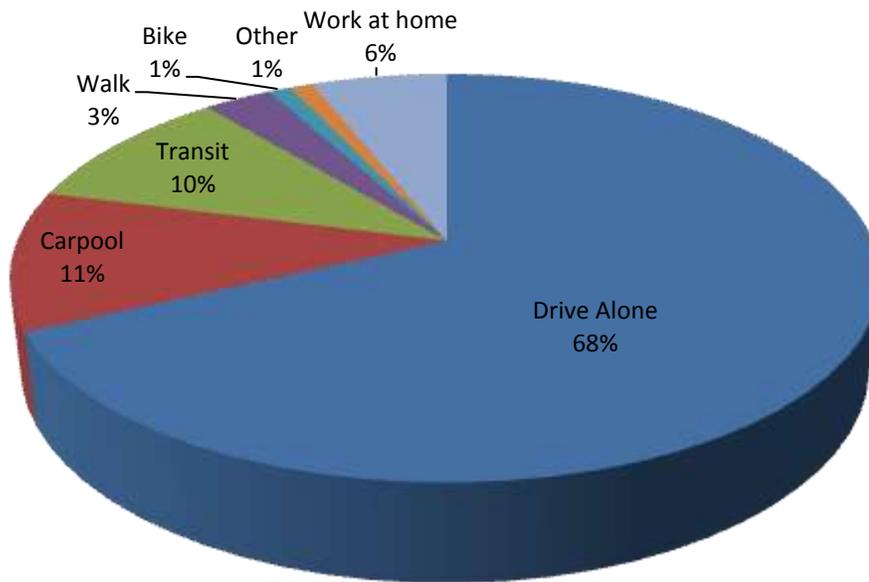
**Figure 3: VMT by Trip Purpose, 2010**



**Source: MTC**

The average vehicle occupancy rate (number of passengers per vehicle) for commute trips is lower than for other types of trips. As shown in Figure 4, two-thirds of Bay Area employees currently drive to work alone. The large number of single-occupant vehicles on the road for commute purposes is a major cause of peak period congestion.

**Figure 4: Bay Area Commute Modes, 2010**



Source: MTC

Fortunately, individual mode choice can be more readily influenced in the case of commute trips compared to other trip types. Commute trips occur on a regular basis, and more transit service is available during the morning and evening peak periods when most commute trips occur. Although individual employees choose their commute mode, a solid body of research demonstrates that employers can influence an employee’s commute mode choice by offering information and services to encourage the use of alternative modes.

## **B. Nexus to Regional Plans and Climate Protection Resolution**

The Bay Area Commuter Benefits Program would help to implement the *Bay Area 2010 Clean Air Plan* (2010 CAP). The 2010 CAP sets forth a multi-pollutant control strategy to help the Bay Area attain and maintain State and national air quality standards, protect public health, and protect the climate. The control strategy includes a comprehensive set of Transportation Control Measures (TCMs) to reduce motor vehicle travel and vehicle emissions. The concept of developing a regional commuter benefits program is included in TCM C-1 (Voluntary Employer-Based Trip Reduction Programs). In addition, the Program will help the Bay Area to achieve GHG reduction goals in the regional “sustainable communities’ strategy” known as *Plan Bay Area* (adopted in July 2013) and the climate protection resolution adopted by the Air District Board in November 2013.

## C. Commuter Benefits Provisions in the Federal Tax Code

There are many ways that employers can influence employee commute mode choice. Certain measures, such as providing free or subsidized parking at or near the worksite, serve as an incentive for employees to drive to work. However, employers can also offer services and incentives to promote the use of alternative commute modes by their employees, such as subsidies for transit use or ridesharing, preferential parking for carpools, shuttles to the worksite from nearby transit stations, lockers and showers for bicycle commuters, and on-site amenities that reduce the need to drive to work.

Historically, federal tax policies related to commuting focused on parking. By treating employer-paid parking as a tax-free benefit to the employee, section 132 of the Internal Revenue Code may act as an incentive for employees to drive to work.<sup>7</sup> However, more recent federal legislation has amended the Internal Revenue Code to broaden the federal commuter tax benefits to encourage the use of alternative commute modes, such as transit, vanpool, and bicycling. IRS Code section 132 defines employer-provided benefits for transit, vanpool, and bicycling as “qualified transportation fringe benefits” that are not subject to taxation up to a specified amount per year. These federal tax benefits can result in significant tax savings to both employers and employees, as described in Section 5.

Although many employers already make the federal commuter tax benefits available to their employees, available evidence indicates that most employers still do not.<sup>8</sup> Not surprisingly, employer size and worksite location both have a bearing on the percentage of employers who offer commuter benefits. Large employers, as well as employers located in central business districts that are well-served by transit, are more likely to offer commuter benefits.<sup>9</sup> A key objective of the proposed Program is to expand the number of Bay Area employers who make the federal commuter tax benefits available to their employees. In particular, the Program seeks to increase the number of employers who allow their employees to exclude their transit or vanpool costs from taxable wages.

## D. Results from Existing Employer Commuter Benefits Programs

Employers provide commuter benefits in many metropolitan areas throughout the United States. Research indicates that employer-provided commuter benefit programs are effective in increasing the use of alternative commute modes among employees at companies that offer these programs. The *2010*

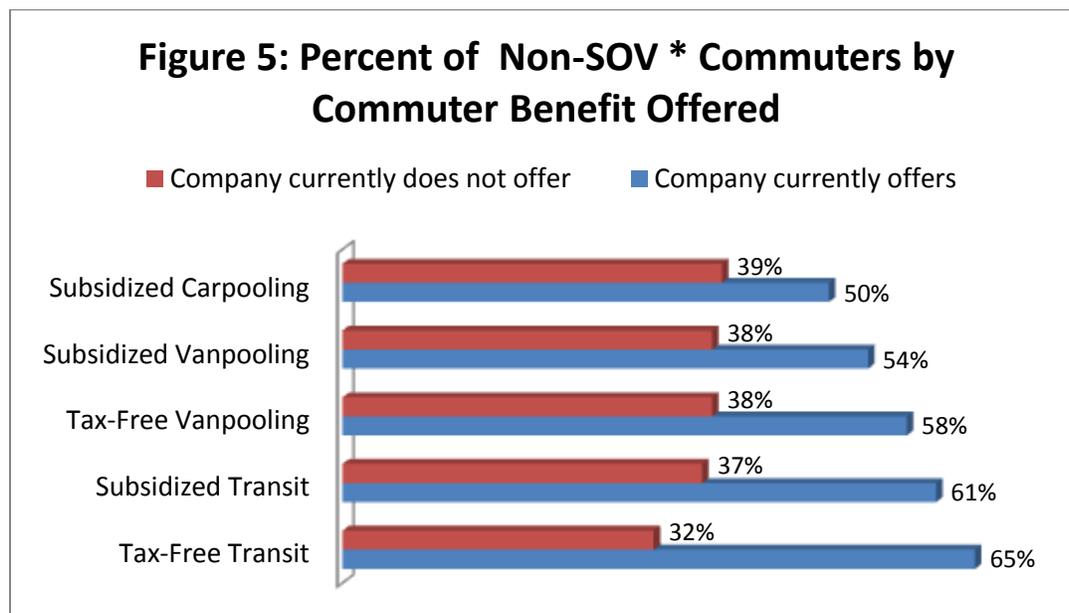
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<sup>7</sup> Internal Revenue Code section 132(f) allows employers to provide up to \$245 per month to employees for qualified parking expenses; this includes parking at the worksite or near the location from which the employee commutes to work (such as at a park-and-ride lot or at a transit station).

<sup>8</sup> The *2010 Commuter Benefit Impact Survey* found that 21% of the 1,500 employers surveyed in the New York, Chicago, and San Francisco metropolitan areas were offering the pre-tax transit benefit in 2010. According to the March 2012 Employer Benefits Survey performed by the US Bureau of Labor Statistics, 11% of employers (all sizes) in the Pacific region currently offer commuter subsidies to their employees. Larger employers, especially those with 500 or more employees, are most likely to offer commuter subsidies. See <http://www.bls.gov/ncs/ebs/benefits/2012/ownership/civilian/table24a.htm>.

<sup>9</sup> See *2010 Commuter Benefit Impact Survey*. <http://www.transitcenter.org/images/CBIS.pdf>

*Commuter Benefit Impact Survey*, which analyzed the effectiveness of commuter benefits among 1,500 employers in the New York, Chicago, and San Francisco areas, found that the percentage of employees who use an alternative commute mode is much greater when employers offer commuter benefits, as shown in Figure 5. For example, the use of alternative modes was twice as likely (65 percent versus 32 percent) at employers who provide tax-free transit (i.e., the pre-tax transit, which corresponds to Option 1 in the proposed Bay Area Commuter Benefits Program).



\* SOV = single-occupant vehicle

The *2010 Commuter Benefit Impact Survey* also found that among employers who offer commuter benefits, 72% believe that this increases employee job satisfaction, 64% see the benefits as helpful in retaining their current employees, and 61% see the benefits as useful in recruiting new employees.

A report by the Transit Cooperative Research Program (TCRP) synthesized the findings of various studies that analyzed the effectiveness of commuter benefit programs in various regions throughout the U.S.<sup>10</sup> Key findings from the TCRP report include the following:

- Transit ridership generally increases 10 percent or more when employers provide commuter benefits. However, the percentage increase varied greatly among the surveys. The increase in transit mode varied from 2 percent to 17 percent compared to the initial baseline.
- The effectiveness of commuter benefit programs in changing commute mode depends upon various factors, including transit availability, the level (if any) of subsidy provided by the employer, and supporting programs such as a guaranteed-ride-home program.

<sup>10</sup> Transit Cooperative Research Program, Report # 107, *Analyzing the Effectiveness of Commuter Benefit Programs*. 2005

- Existing transit riders are also able to take advantage of transit benefit programs. Typically 10 to 40 percent of transit benefits recipients were new to transit, while the remainder of commuters who take advantage of the benefits had already been riding transit.
- A significant portion (up to 35 percent) of transit benefit recipients reported that they increased their use of transit for both commute and non-commute trips.
- Most commuters who switched to transit in response to commuter benefit programs were previously driving alone to work.
- Employers who complement their commuter benefits with supporting measures, such as marketing and guaranteed-ride-home programs, see greater increases in transit ridership than those who simply implement the commuter benefit by itself.

## **E. Senate Bill 1339**

Senate Bill 1339 (Yee), which was signed by the Governor in fall 2012 and codified as Section 65081 of the California Government Code, authorizes the Bay Area Commuter Benefits Program. SB 1339 won support from a wide range of stakeholders, including a variety of business groups, organized labor, environmental groups, public health organizations, transit agencies, and several Bay Area cities. The bill authorizes the Air District and MTC to require employers with 50 or more full-time employees in the Bay Area to offer commuter benefits to their employees. Employers can choose from several options that are described in Section 3D: Commuter Benefit Options.

The legislation authorizes the Air District and MTC to jointly adopt and implement a pilot commuter benefits program for the Bay Area during the period from January 1, 2013 through December 31, 2016. The Air District and MTC are required to submit a report to the Legislature by July 1, 2016 describing the results of the Program in terms of increasing the number of employers that offer commuter benefits, reducing drive-alone commute trips to Bay Area worksites, and decreasing emissions of greenhouse gases.

## **F. Current Bay Area Context**

Many Bay Area employers, especially large companies and organizations, already offer various services and incentives to encourage the use of alternative commute modes. Various employer assistance programs and services exist to help Bay Area employers develop and implement effective programs. In designing the Bay Area Commuter Benefits Program, the Air District and MTC intend to complement and build upon these existing programs. A brief summary of current programs and services to promote commuter alternatives is provided below.

**Employer Assistance Programs:** At the regional scale, MTC administers the 511 program. The Rideshare component of the 511 program provides information and assistance to employers and to individual

commuters to promote ridesharing and other commute alternatives throughout the region. In addition, five Bay Area counties offer local programs to serve employers and individual commuters within their areas. These local programs include a program administered by the San Francisco Department of the Environment; the Peninsula Traffic Congestion Relief Alliance, serving San Mateo County; the Solano-Napa Commuter Information Program; as well as the 511 Contra Costa program serving Contra Costa County. These programs provide a variety of services to promote the use of alternative commute modes, including rideshare matching, vanpool formation assistance, incentives to commuters to try alternative commute modes, and guaranteed ride programs. These existing programs would be available to assist employers in complying with this proposed Program, for example by helping employers evaluate the commuter benefit options and select and implement an appropriate commuter benefits option.

### **Employers with Existing Commuter Benefit Programs**

Many Bay Area employers already provide information, services, or benefits to encourage their employees to use alternative commute modes. However, the scope of these efforts varies greatly. For example, some employers offer relatively modest commuter benefits based on the federal tax code provisions described in Section 2C. At the other end of the spectrum, a small number of large employers operate their own transportation services providing door-to-door bus service (for example, from San Francisco to corporate sites in Silicon Valley), vanpool programs, and/or shuttle services to provide a link between a nearby transit station and their worksite. Employers who already offer commuter benefits may be motivated to provide these programs by a variety of factors, including a recognition that commuter benefits can be an important factor in employee recruitment and retention; the need to address specific issues at their worksites, such as insufficient parking, or a desire to use land currently dedicated to employee parking for other purposes; and a recognition of their environmental benefits.

**Transportation Management Associations (TMAs):** In addition to commuter programs offered by individual employers, a number of TMAs have been established in the Bay Area. TMAs typically provide commuter information and services to multiple employers in a specific office park or geographic area. TMAs are particularly well-suited to multi-tenant business parks that have a number of individual employers in a single complex. Pursuant to SB 1339, the proposed rule provides that an employer may comply with Program requirements by participating in a TMA that offers one (or more) of the specified commute benefit options to its employees.

### **Local Commuter Benefit Ordinances**

In recent years, several Bay Area cities have adopted local ordinances that require employers to offer commuter benefits, as shown in Table 1. These ordinances, which served as the model for SB 1339, allow the employer to select from several commuter benefit options. While their substantive requirements are very similar to the requirements of SB 1339, the local ordinances have more stringent applicability thresholds, as they apply to employers with either 10 or 20 employees nationwide that have a worksite in the relevant city. The Air District and MTC are working with the Bay Area cities that already have adopted

commuter benefit ordinances to coordinate the implementation of the regional Program with the local ordinances in order to simplify reporting for Bay Area employers, especially those with worksites in multiple jurisdictions. The preferred concept can be summarized as follows: All employers that are subject to the regional Program by virtue of having 50 or more full-time employees in the Bay Area would report to the regional agencies. The regional agencies would share information with the local cities regarding the worksites within their respective jurisdictions. The cities would continue to implement their local ordinances for smaller employers that are not subject to the regional Program. The Air District and MTC expect to reach agreement with the local cities to implement this concept prior to launching the regional Program.

**Table 1: Commuter Benefits Ordinances Adopted by Bay Area Cities**

| Jurisdiction                        | Applicability Threshold         | Effective Date of Ordinance |
|-------------------------------------|---------------------------------|-----------------------------|
| City & County of San Francisco      | 20 or more employees nationwide | January 19, 2009            |
| San Francisco International Airport | 20 or more employees nationwide | July 7, 2009                |
| City of Berkeley                    | 10 or more employees nationwide | December 2009               |
| City of Richmond                    | 10 or more employees nationwide | December 8, 2009            |

### 3. KEY PROVISIONS OF THE PROPOSED PROGRAM

This section describes key provisions of the proposed Program, including applicability, definitions of key terms, and basic requirements.

#### A. Applicability

As defined in SB 1339, the Bay Area Commuter Benefits Program would apply to all employers (private sector, public sector, and non-profit) with 50 or more full-time employees within the jurisdiction of the Air District.<sup>11</sup> This threshold is based on the total number of employees at all Bay Area worksites combined for each respective employer. An employer with 50 or more full-time employees in the Bay Area would be subject to the Program, regardless of how the employees are distributed among worksites. For example, an employer with 10 full-time employees at each of five Bay Area worksites, for a total of 50 Bay Area full-time employees, would be subject to the Program. Data provided by the California Employment Development Department (EDD) indicate that there are approximately 10,000 employers in the Bay Area with 50 or more employees. The EDD data also show that employers with 50 or more employees account for approximately 60 percent of total employment in the region.<sup>12</sup>

<sup>11</sup> The District’s jurisdiction consists of nine counties, including all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties, as well as the western portion of Solano County and the southern portion of Sonoma County. See [https://mapsengine.google.com/map/edit?mid=zEtIldN2taQk.kBcuja\\_KVQNU](https://mapsengine.google.com/map/edit?mid=zEtIldN2taQk.kBcuja_KVQNU)

<sup>12</sup> EDD data for 3<sup>rd</sup> quarter 2011.

## B. Key Definitions

**Employee:** For purposes of the Program, the proposed rule defines an employee as anyone who is treated as an employee for tax purposes; i.e., anyone who receives a W-2 form from the employer. Independent contractors would not be counted as employees.

**Full-time employee:** SB 1339 bases the applicability threshold upon the number of “full-time employees”, but the bill does not define this term. The proposed rule defines “full-time employee” as an employee who worked an average of at least 30 hours per week during the previous calendar month, excluding a seasonal/temporary employee.<sup>13</sup>

**Covered employee:** Consistent with SB 1339, the proposed rule defines a “covered employee” as an employee who worked an average of 20 or more hours per week within the previous calendar month excluding a seasonal/temporary employee. Employers that are subject to the Program because they have 50 or more full-time employees in the Bay Area would be required to make their commuter benefits available to all covered employees (i.e., any employee who works an average of 20 hours or more per week).

**Seasonal/temporary employee:** The proposed rule proposes to exclude seasonal and temporary employees. A “seasonal/temporary employee” is defined as an employee who works for the employer 120 days or less within the calendar year.

## C. Key Requirements of the Proposed Program

The Program would require employers to do the following:

- Designate a Commuter Benefits Coordinator (as defined in Sections 14-1-204 and 14-1-403) to implement the employer’s commuter benefits program and comply with the requirements of the Program. (It is anticipated that this role will typically be assigned to an employee already handling payroll and benefits).
- Select one of the commuter benefit options defined in Section 14-1-300 or 14-1-301 (see below).
- Submit a registration form to the Air District/MTC specifying which commuter benefit option the employer will provide.
- Notify employees of the commuter benefit option selected and make the benefit available to all eligible employees.
- Update their registration information on an annual basis.
- Maintain records to document implementation of the commuter benefit.
- Provide information requested by the Air District/MTC for Program evaluation purposes.

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<sup>13</sup> This is consistent with the IRS definition of “full-time employee” for purposes of health insurance coverage. See IRS Notice 2012-58: *Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage*.

Pursuant to SB 1339, if an employer participates in a Transportation Management Association (TMA) that provides commuter benefits that comply with the Program, the TMA may represent the employer for purposes of fulfilling the requirements defined in the rule.

## **D. Commuter Benefit Options**

Consistent with the provisions of SB 1339, the proposed Program defines three basic commuter benefit options, as well as the option for an employer to implement an alternative benefit (Section 14-1-300 of the proposed rule). These four options are described below.<sup>14</sup>

**Option 1: Pre-Tax Option:** The employer allows employees to exclude their transit or vanpool expenses from taxable income, up to the maximum amount allowed by federal law. This option is based upon Section 132(f) of the Internal Revenue Code.<sup>15</sup> The maximum amount that may be excluded from taxable income is currently \$130 per month.

**Option 2: Employer-Provided Subsidy:** The employer provides a subsidy to cover the employee's monthly transit or vanpool cost. For purposes of the Program, if the employee's monthly cost is greater than \$75 per month, then the maximum required subsidy for Option 2 is \$75 per month. For future years, this maximum required subsidy amount will be indexed to inflation on an annual basis consistent with the California Consumer Price index. An employer may choose to offer a higher subsidy amount (i.e., more than \$75 per month) on a voluntary basis. An employer may also elect to provide a subsidy for bicycle commuting costs in addition to subsidies for transit and vanpool costs.

**Option 3: Employer-Provided Transportation:** The employer provides free or low-cost commuter transportation service for its employees. This could include any or all of the following: bus or vanpool service from the employee's home community to the worksite, or a shuttle service from a nearby transit station(s) to the worksite. The transportation service can be provided for use strictly by employees at a single employer, or shared by multiple employers. SB 1339 calls for the Air District and MTC to define "low cost" for purposes of Option 3. The agencies will define "low cost" for purposes of Option 3 in guidance materials, based on average transit fares in the region.

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<sup>14</sup> An employer may choose to offer more than one of the benefits, or to offer more generous benefits than the minimum specified in the rule. For example, an employer may elect to provide a transit/vanpool subsidy greater than \$75 per month. Or an employer who provides a subsidy of up to \$75 per month for transit and vanpools (Option 2) may also allow employees whose transit or vanpool fares exceed \$75 per month to pay the remaining portion of their cost using pre-tax dollars (Option 1).

<sup>15</sup> Senate Bill 1339 also references bicycle commuting in regard to the pre-tax option. IRS Code 132(f) allows employers to provide a tax-free subsidy of up to \$20 per month (\$240 per year) to offset an employee's bicycle commuting expenses (the purchase of a bicycle, and bicycle maintenance or storage). However, the IRS Code does not allow employees to use pre-tax dollars to pay for bicycle commuting expenses. Therefore, bicycle commuting is not included in Option 1 for purposes of the proposed rule. However, an employer may choose to offer a subsidy for bicycle commuters either as an element of an alternative commute benefit pursuant to Option 4, or as a voluntary measure in addition to offering Option 1, 2, or 3.

**Option 4: Alternative Commuter Benefit:** SB 1339 states that, in lieu of choosing one of the three options described above, an employer may propose an alternative commuter benefit that would provide at least the same result in reducing single-occupant vehicle trips as any of the three options defined in SB 1339. The Air District and MTC will provide guidance to define the evaluation criteria and the review process for Option 4. To facilitate Option 4, the Air District and MTC will identify several “pre-approved” alternative options. This will expand the menu of options available to employers, assist employers who are interested in pursuing an alternative approach, streamline the Option 4 review and approval process, and provide clarity as to the type of alternative benefits that will be deemed equivalent to the three options defined in SB 1339 in reducing single-occupant vehicle trips to worksites. In addition to any “pre-approved” alternatives, employers will have the flexibility to submit their own proposed alternative benefit for review and approval by the agencies.

The Air District and MTC believe that Option 4 may be appropriate for certain employers and worksites. The three options defined in SB 1339 focus on promoting transit and vanpooling, because the federal commuter tax benefits primarily address these modes. However, many Bay Area commutes are not well served by transit, and vanpool programs, which are most viable at large worksites with a common work schedule, may not be appropriate in all contexts. Therefore, other alternative commute modes may be more effective in reducing single-occupant vehicle trips at certain worksites. For example, carpooling can be viable in a wide range of worksite sizes and geographic settings, and bicycling is an increasingly popular commute mode throughout the region. Telecommuting and compressed work week schedules may also be effective means to reducing commute trips, especially at worksites that are not well served by transit.

#### **4. PROGRAM IMPLEMENTATION**

The Bay Area Commuter Benefits Program will apply to a large and diverse set of employers, many of whom do not yet offer any of the commuter benefit options defined in the rule. Therefore, the Air District and MTC will provide information and assistance to help employers understand and comply with the requirements of the Program. Air District and MTC staff are working together to lay the groundwork for successful implementation of the Program. Key tasks include developing a database that will be used to notify employers about the Program and its requirements, creating an on-line registration system, and preparing employer assistance materials to help employers select an appropriate commuter benefit that meets the needs of their employees. The agencies plan to use the 511.org website to house the home page for Program information and implementation.

## **Guidance Documents**

The Air District and MTC will develop guidance documents to complement the rule. The guidance documents will provide additional detail to explain key provisions of the rule. Some of the topics that will be addressed in guidance documents include the following:

- Calculating the number of full-time employees at a business (for purposes of determining whether an employer is subject to the rule).
- Defining the term “low cost” for purposes of Option 3 (employer-provided transportation).
- Defining the process for an employer to propose an alternative commute benefit (Option 4), and the criteria that will be used to evaluate such proposals. The guidelines will also describe “pre-approved” alternatives that have been evaluated and approved in advance by Program staff.

## **Employer Assistance**

The 511 Regional Rideshare program will provide information and assistance to help employers understand Program requirements and implement effective commuter benefit programs, including web-based materials to:

- Describe basic Program requirements and the various commuter benefit options.
- Help employers evaluate the commuter benefit options and select an appropriate option for the employer’s worksite(s) and work force.
- Define the key steps required to implement the three basic options, or the alternative commute benefit option (Option 4).

## **Registration Process**

The employer registration process will be web-based. The employer will access the registration web page and input the required information. Employers will be required to register at the outset of the Program and indicate which commute benefit option they will provide, and then to update their registration information on an annual basis. In addition to the on-line registration system, the agencies may make alternative means of registration available for employers that do not have the capacity to register on-line.

## **Compliance**

The Air District and MTC will encourage compliance by means of outreach, education, and assistance to employers. Assistance will be provided to help those employers that do not already have commuter benefits programs (see above). Enforcement will be pursued only in the event that an employer refuses to implement any of the commuter benefit options. Failure to comply with Program requirements may result in enforcement action by the Air District using the civil enforcement powers granted to it by California Health & Safety Code section 42402.

## 5. ANTICIPATED OUTCOMES

Section 5 describes the anticipated costs and benefits of the proposed Program, including compliance costs to employers; potential savings to employers and employees; socio-economic impacts; emission reductions; and cost-effectiveness; as well as the potential environmental, social, and economic benefits to all Bay Area residents.

### A. Compliance Costs and Potential Savings for Employers

This section describes the costs and savings associated with the various commuter benefit options. As discussed in Section 3D, employers can choose among four commuter benefit options. The potential costs and the potential savings to employers will both depend upon which commuter benefit option the employer selects, and the number of employees who choose to utilize the benefit.

Many Bay Area employers already offer commuter benefits programs that would meet the requirements of the proposed Program; these employers would experience only very modest costs to register and provide basic information about their existing program. Employers that do not already provide commuter benefits programs would experience compliance costs to evaluate the commuter benefit options, set up their programs, register, notify their employees about the commuter benefits, and administer the program on an on-going basis. The Air District and MTC will endeavor to minimize these costs by providing employer assistance, and by streamlining reporting processes.

Employers may experience both direct and indirect savings in response to the Program. Employers can experience direct savings based on the commuter benefit provisions or other applicable provisions in the federal tax code.<sup>16</sup> In addition to the potential payroll tax savings, employers may experience a variety of indirect benefits such as the following:

- Enhanced employee recruitment and retention
- Enhanced employee productivity (due to reduced commute stress and time savings)
- Reduced health care costs in response to better air quality
- Reduced goods movement costs (due to reduced traffic congestion)

The potential costs and savings for each of the four commuter benefit options are described below.

**Option 1 (pre-tax commuter benefit):** Employers that choose Option 1 would comply with the Program by allowing employees to exclude their transit or vanpool costs from taxable wages. Employers would incur only modest costs to administer Option 1. The employer could administer the pre-tax benefit in-house, or use an outside vendor that specializes in administering commuter benefits for employers.

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<sup>16</sup> The information provided in this document regarding potential tax savings to employers or individual commuters is based upon Air District staff's understanding of relevant provisions of the tax code. However, since circumstances may vary, employers should consult an attorney or professional tax advisor for tax advice.

Available information indicates that these vendors generally charge approximately \$3-\$5 per employee per month for each participating employee (i.e., those employees who choose to set aside a portion of their pre-tax salary to cover transit or vanpool costs). However, at least one vendor provides vouchers that can be used to administer Option 1 at zero cost to the employer, so some employers may be able to entirely avoid administrative costs for Option 1.

The employer's payroll tax savings will typically exceed the administrative costs to implement Option 1. The employer pays no Social Security (6.2%) or Medicare tax (1.45%) on the portion of salary that employees use to purchase their transit or vanpool fare; this represents a savings of 7.65% multiplied by the value of the transit or vanpool fare. In addition, the employer may also experience savings on its state and city payroll taxes (if applicable), which include the State Unemployment Insurance (SUI) and State Disability Insurance (SDI) taxes. When taking into account state and /or city payroll taxes, employers can save approximately 9% on the portion of their employee's salary which is used to purchase transit or vanpool fares. The monthly savings to the employer would range from approximately \$6.75 per month per participating employee (based on a transit or vanpool fare of \$75 per month) to \$11.70 per month (based on the \$130 per month contribution limit that is expected to apply in year 2014). It should be noted that the employer would experience a reduction in payroll taxes not only for employees who switch commute mode in response to the Program, but also for employees who were already commuting by transit or vanpool before the employer made the pre-tax commuter benefit available.

When payroll tax savings are compared to administrative costs, most employers who select Option 1 should experience a net savings as a result of the Program.<sup>17</sup> However, an employer may experience a cost to implement Option 1, rather than a net savings, in the event that no (or very few) employees choose to take advantage of the pre-tax option. In such a case, the employer would experience modest costs to review the commuter benefit options and register with the Program, but might not realize sufficient payroll tax savings to offset its compliance costs.

**Option 2 (employer-provided transit/vanpool subsidy):** For employers that choose Option 2, the amount of the employer-provided subsidy will be based on the employee's monthly transit or vanpool fare. Pursuant to SB 1339, the required subsidy amount will be capped at a maximum of \$75 per month (in 2013 dollars). The cost for Option 2 will depend primarily on the number of employees who choose to commute by transit or vanpool. An employer that offers Option 2 would incur costs of approximately \$9,600 per year (including administrative costs) for every ten employees who receive a \$75 monthly subsidy for commuting by transit or vanpool. The employer does not pay payroll taxes on the transit/vanpool subsidy.

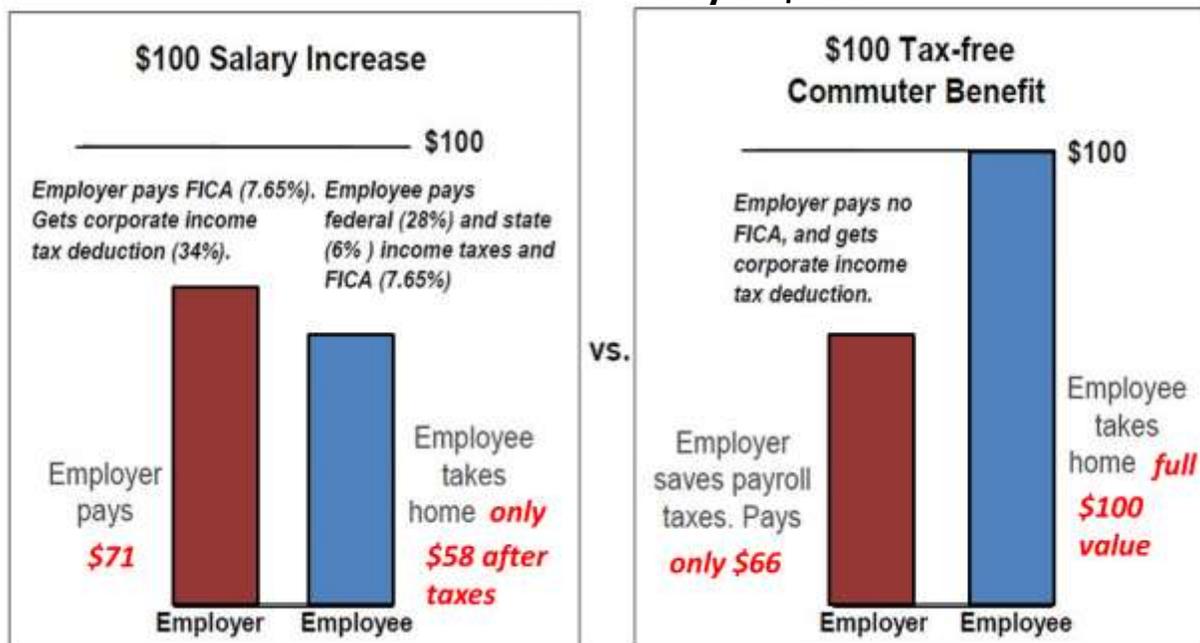
Although the cost to implement Option 2 will be higher than Option 1, some employers may choose to offer Option 2 because it provides a very tax-efficient way to improve an employee compensation package. Providing a transit/vanpool subsidy is more cost-effective than providing a salary increase of the

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<sup>17</sup> Employers that do not pay Social Security taxes, such as some public agencies in the Bay Area, would still save by not paying Medicare taxes, but these employers would not experience the full payroll tax savings described above.

same amount. As shown in Figure 6, comparing the after-tax value of a \$100 per month transit subsidy versus a \$100 per month pay increase, the employer and the employee both come out ahead with the transit subsidy. The employee receives the full \$100 value of the transit subsidy, compared to only \$58 in the case of the pay increase. The employer also comes out ahead in this scenario because it does not incur payroll taxes on the transit/vanpool subsidy.

**Figure 6: Comparison of Taxable Salary Increase to Employer-Paid Tax-Free Subsidy of \$100**



Source: Transit Cooperative Research Program, Report # 87, *Strategies for Increasing the Effectiveness of Commuter Benefits Programs*. 2003. [http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp\\_rpt\\_87.pdf](http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_87.pdf)

**Option 3 (employer-provided transportation):** Employers who select Option 3 could choose to provide any or all of the following: bus service from the employee’s home community to the worksite, a vanpool program, or a shuttle service from one or more transit stations to the worksite. The cost to offer employer-provided transportation as defined in Option 3 will vary significantly depending upon a variety of factors, including the size of the employer; the number of employees participating; the specific transportation services provided; the number of routes, vehicles and hours of service provided; the location(s) of residential areas served; whether employees pay part of the cost, etc.

Providing door-to-door bus service or shuttle service from a transit station can be expensive. Research by Air District staff indicates that providing bus service in comfortable, well-appointed buses costs in the range of \$10 to \$20 per employee per day. Providing a commuter bus service of modest scale would cost on the order of \$200,000 per year; an employer that operates a large-scale commuter bus program could easily incur costs of several million dollars per year or more. Shuttle services generally cover relatively short distances, using vehicles with capacity in the range of 20-25 passengers. Shuttle operating costs are

in the range order of \$50 to \$80 per vehicle per hour. A modest shuttle program could cost in the range of \$125,000 to \$150,000 per year; costs would increase as the number of vehicles or routes expands.

Although employer-provided transportation can be an expensive proposition, employers that choose Option 3 may be able to reduce or defray their costs. Employers may be able to deduct the costs of their commuter transportation programs as a business expense for tax purposes. Employers may also be able to reduce their costs by providing a shared bus or shuttle service in collaboration with other nearby businesses, or by purchasing seats on an existing transportation service for employees. In addition, employers that select Option 3 could recoup a portion of their costs by charging employees a modest user fee to employees who use the bus or shuttle.<sup>18</sup> However, available information indicates that among employers who currently provide bus or shuttle service for their employees, very few currently charge a fee to users.

Per IRS Code Section 132(f), employer-provided transportation in a “commuter highway vehicle” (such as a bus, shuttle vehicle, or vanpool) is treated as a “qualified transportation fringe benefit.” This means that the employee does not pay taxes on the value of the employer-provided transportation, nor does the employer have to pay payroll taxes on the value of this benefit.

**Option 4 (alternative commuter benefit):** This option allows an employer to propose an alternative commuter benefit that would be as effective as Options 1, 2, or 3 in reducing vehicle trips to the worksite. In response to input from employers, the Air District and MTC will define several “pre-approved” alternatives for Option 4 in the guidance documents that complement the rule. The “pre-approved” alternatives will focus on low-cost measures to promote the use of carpools, biking, walking, telecommuting, compressed work week schedules, and electric vehicles at worksites that may not be well served by public transit. In addition, employers will have the option to propose their own alternative benefit, including combining various elements of the “pre-approved” alternatives.

There are many potential alternative commuter benefits, and various ways that specific measures can be combined or packaged to craft a program suited to a specific worksite. Therefore, it is difficult to estimate the cost and/or savings for employers that choose Option 4 at this time. Some measures that an employer provides pursuant to Option 4 may qualify for tax savings as “qualified transportation fringe benefits.” But because the federal commuter tax benefits are focused primarily on transit and vanpooling, employers who choose Option 4 may not qualify for direct tax savings pursuant to IRS Code Section 132(f). However, at a minimum, employers may be able to deduct costs of an alternative commuter benefit as a business expense for tax purposes.

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<sup>18</sup> Any such fee would need to be “low cost” as defined by the Air District and MTC. A definition of “low cost” will be provided in the guidance materials that the Air District and MTC issue to complement the rule.

## **B. Which Options will Employers Choose?**

The Program allows employers to choose among several commuter benefit options that have a range of potential costs (and savings) to the employer. Because the Program provides options, employers can exercise significant control over their compliance costs. It is unlikely that any employer would choose to implement one of the higher-cost options if this would endanger its profitability or competitiveness.

Option 1 should provide net savings for most employers, whereas employers that choose Option 2 or Option 3 would typically incur higher costs. In addition to costs (or savings), employers may consider a variety of factors in choosing a commuter benefit option. For example, some employers may consider factors such as parking constraints at the worksite, or the value of commuter benefits in recruiting and retaining employees in a competitive job market. However, basic economic principles suggest that for purposes of complying with a regulatory requirement, employers will generally choose the lowest cost option, unless they have business reasons of their own for choosing a higher cost alternative.

Therefore, for the purposes of analyzing both the potential emissions reductions and the socioeconomic impacts of the Program, this analysis assumes that employers will choose Option 1 (the pre-tax option). This assumption is based upon the fact that (1) Option 1 has the lowest cost to employers, (2) many employers may actually realize a net savings when their tax savings are compared to administration costs, and (3) Option 1 is relatively easy to set up and administer. Very few employers are expected to select a relatively costly option, such as Option 3, merely to comply with the requirements of the Program. Empirical information from the San Francisco program supports this assumption. Most employers (84%) of the employers who comply with the City of San Francisco commuter benefits ordinance choose to offer the pre-tax benefit.<sup>19</sup> Only 2% of San Francisco employers choose Option 3. The few employers that do choose to comply by means of Option 3 were already providing transportation to their employees for their own business reasons before the San Francisco ordinance was adopted.<sup>20</sup> The employers that currently provide direct transportation services for their employees are typically large corporations or institutions which offer these services to address specific needs or problems (e.g. lack of parking at the worksite), or because they view their transportation program as an important tool for purposes of employee recruitment, productivity, and retention.

## **C. Positive Outcomes for Employees**

Bay Area commuters should benefit greatly from the Program. The Program is expected to provide economic benefits to both (1) employees who switch from driving alone to transit or vanpool in response to the Program and (2) employees who already commute by transit or vanpool, but work for employers

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<sup>19</sup> 79% of San Francisco employers offer Option 1, with another 5% offering Option 1 in combination with Option 2.

<sup>20</sup> Staff in local cities that implement the commuter benefit ordinances (San Francisco, Berkeley, Richmond, and San Francisco International Airport) indicate that they are not aware that any employers have established employer-provided transportation programs strictly for purposes of complying with their local ordinances.

that do not yet offer a commuter benefit. Employees working at Bay Area employers that do not yet offer any of the commuter benefit options defined in the Program will gain parity with their fellow commuters who already enjoy these benefits.

The savings to employees will depend upon which option the employer offers to its employees, the commute mode chosen by the employee, the monthly cost of the commute mode, and the employee's tax bracket. Employees who become eligible to use pre-tax dollars to pay for transit or vanpool fares (Option 1) can save \$600 or more per year, based on a cap of \$130 per month. Employees of companies that elect to offer a direct subsidy (Option 2) can receive \$900 (12 X \$75 per month) tax-free per year. The employee may save even more if the employer chooses to offer Option 1 as well as Option 2. In addition to the tax savings that reduce employees' transit or vanpool costs, commuters who switch from driving alone may realize considerable savings in terms of reduced vehicle operating costs.<sup>21</sup>

In addition to reducing commute trips, the Program may have indirect benefits by reducing motor vehicle use for other types of trips as well. Employees who switch to transit may increase their use of transit for other trip purposes, as they become more familiar with transit options.<sup>22</sup> Commuter benefits may even enable some employees to forego ownership of a personal vehicle. This could yield significant cost savings to the employee (by eliminating the cost of vehicle ownership, insurance, maintenance, registration and fuel costs) and additional reductions in emissions of air pollutants and greenhouse gases. Employees may also experience a variety of non-monetary benefits from the Program. For example, they may experience reduced commute stress, and enjoy the flexibility to work or relax while riding transit.

## **D. Positive Outcomes for Bay Area Residents**

The Program will provide positive outcomes for Bay Area residents. By improving air quality (as discussed in Section 5F), the Program will protect public health, reduce health care costs, improve productivity, and enhance the overall quality of life in the region. Studies show that emissions of air pollutants from motor vehicles cause or exacerbate a wide range of health effects, including respiratory disease such as asthma, bronchitis, and emphysema, as well as cardiovascular disease that are linked to premature mortality, such as atherosclerosis, strokes, and heart attacks. Analyses find that the health-related costs of air pollution exceed \$10 billion per year in the Bay Area, including direct medical costs, lost productivity, and "willingness to pay" to avoid premature mortality.<sup>23</sup> By decreasing commute trips and motor vehicle emissions, the Program will reduce the negative health effects from air pollution. In the long run, this may reduce health costs and health insurance premiums for employers, as well as health care expenses to

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<sup>21</sup> A drive-alone commuter with an average trip length of 15 miles one-way will drive 7,500 miles per year for commute purposes. Based on the current IRS mileage rate of \$0.56 per mile, a drive-alone commuter who switches to an alternative mode can potentially save \$4,200 per year on average in driving expenses previously incurred for commute purposes.

<sup>22</sup> Transit Cooperative Research Program Report #107 found that a significant portion (up to 35 percent) of transit benefits recipients reported increasing their use of transit for both commute and non-commute trips.

<sup>23</sup> See the health burden analysis in Volume I, Appendix A of the *Bay Area 2010 Clean Air Plan*. Also, see *Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area* (Sept 2011).

employees and their families. Also, the Program will reduce emissions of greenhouse gases in the Bay Area, a region which is highly vulnerable to the impacts of climate change.

Traffic congestion and air pollution both impose major economic and social costs on the Bay Area. Therefore, the modest reductions in traffic congestion and air pollution expected from the Program should provide substantial economic benefit to the region. According to the *2012 Urban Mobility Report* issued by the Texas Transportation Institute, the annual cost of congestion to the Bay Area (including auto delays, truck delays, and excess fuel consumption) is \$4.25 billion. On an individual basis, traffic congestion costs the average Bay Area commuter \$1,266 per year.<sup>24</sup> Because commute trips account for a major share of rush-hour traffic, and even a modest reduction in traffic volumes can provide substantial reductions in congestion,<sup>25</sup> the Program may provide savings in time and money for all Bay Area residents. Finally, as noted in the socio-economic analysis (see below), the Program is likely to benefit the regional economy by putting more dollars back into the pockets of Bay Area employers and employees.

## **E. Socio-Economic Impacts**

The Air District commissioned a socio-economic analysis of the proposed commuter benefits rule, as required by Section 40728.5 of the California Health and Safety Code. The report was prepared by BAE Urban Economics of Emeryville, California, and is attached as Appendix B of this staff report. One of the main purposes of the socio-economic analysis is to determine whether a rule would impose a substantial economic burden on the business community as a whole, or on any specific company or industry. The socio-economic analysis examined the potential impacts of the rule on small businesses; specific industries categorized into 19 sectors; the employer community as a whole; and the overall Bay Area economy. As noted above, the analysis was based on the assumption that employers will comply by choosing Option 1. Key findings from the analysis are as follows:

- Employer tax savings would exceed employer compliance costs in 17 of 19 sectors. Compliance costs would not exceed 0.1% of annual profit in any business sector.
- The Program would not have a significant impact on profits among small employers. Even in a “worst case” scenario (in which a small business incurs compliance costs, but receives no tax benefit because no employees take advantage of the pre-tax benefit), the Program would not cause a significant impact on employer profits.
- The Program would result in direct savings of \$3.8 million per year due to the tax savings that would accrue to Bay Area employers. The direct savings to employers would provide economic

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<sup>24</sup> This includes \$3.38 billion for the San Francisco-Oakland area, plus \$970 million for the San Jose area. Texas Transportation Institute, *2012 Urban Mobility Report*.

<sup>25</sup> For information on the relationship between traffic volume and congestion, see the “Congestion Reduction Strategies” page on the Victoria Transportation Policy Institute website: <http://www.vtppi.org/tm/tm96.htm>.

benefits of approximately \$30 million per year to the Bay Area (direct, indirect, and induced impacts combined), resulting in creation of 200 new jobs per year.

- The tax savings that accrue to employees who change commute mode as a result of the Program would provide economic benefit to the Bay Area on the order of \$84 million per year (direct, indirect, and induced impacts combined), resulting in creation of approximately 610 new jobs per year.

The figures provided above are based only on the tax savings that would accrue to employers and employees when employees change commute mode in response to the Program. However, by increasing the number of employers who make the commuter tax benefits available, many employees who already commute by transit or vanpool would also be able to exclude their transit or vanpool costs from taxable wages. Therefore, the actual tax savings and economic benefits may be greater.

## F. Emission Reductions

By expanding the number of employers who offer commuter benefits, the proposed Program will reduce motor vehicle trips and emissions in the Bay Area. An analysis performed by ICF International (*Commuter Benefits Sketch Analysis*, June 25, 2013) provides an estimate of the potential emission reductions from the Program, based on the assumption that employers will choose to comply by offering Option 1. The analysis estimates that the Program would increase transit ridership by 7% among employees at worksites covered by the Program in year 2015. This would translate to a 2% reduction in the single-occupant vehicle (SOV) commute trips to worksites covered by the Program.<sup>26</sup> Table 2 and Table 3 show the estimated reduction in SOV commute trips, vehicle miles of travel (VMT) for commute trips, CO<sub>2</sub> (the leading greenhouse gas), and key criteria air pollutants for year 2015 and year 2035 at the regional scale. The percentage reductions in SOV trips and commute VMT are expressed in comparison to commute trips to all Bay Area worksites, including smaller employers that would not be covered by the Program.

**Table 2: Year 2015 Region-wide Reductions in Daily SOV trips & VMT, and Annual Emissions (in metric tons) as a result of the Commuter Benefits Program**

| Daily SOV Commute Trips | Daily Commute VMT | CO <sub>2</sub> Annual (MT) | ROG Annual (MT) | NO <sub>x</sub> Annual (MT) | PM <sub>10</sub> Annual (MT) | PM <sub>2.5</sub> Annual (MT) | CO Annual (MT) |
|-------------------------|-------------------|-----------------------------|-----------------|-----------------------------|------------------------------|-------------------------------|----------------|
| -0.6%                   | -0.3%             | -12,714                     | -2.8            | -5.9                        | -0.1                         | -0.1                          | -62.4          |

<sup>26</sup> The ICF analysis estimates that the effectiveness of the Program would increase over time. Assuming the Program is still in place in year 2035, the share of employees using transit would increase by 20% compared to the current baseline. This would translate to a 7% reduction in SOV commute trips to worksites covered by the Program in 2035.

**Table 3: Year 2035 Region-wide Reductions in Daily SOV trips & VMT, and Annual Emissions (in metric tons) as a result of the Commuter Benefits Program**

| Daily SOV Commute Trips | Daily Commute VMT | CO <sub>2</sub> Annual (MT) | ROG Annual (MT) | NO <sub>x</sub> Annual (MT) | PM <sub>10</sub> Annual (MT) | PM <sub>2.5</sub> Annual (MT) | CO Annual (MT) |
|-------------------------|-------------------|-----------------------------|-----------------|-----------------------------|------------------------------|-------------------------------|----------------|
| -2.5%                   | -1.1%             | -47,957                     | -4.6            | -8.9                        | -0.3                         | -0.3                          | -100.5         |

The estimated emission reductions described above are based on direct reduction in motor vehicle travel only. However, by decreasing traffic congestion, the Program may provide additional emissions reductions which are not quantified in these estimates. Emissions of CO<sub>2</sub> and other tailpipe pollutants are substantially higher when vehicles are idling in traffic. Since commute trips account for a large percentage of vehicle traffic during weekday peak periods, and even a small reduction in traffic volumes can provide a significant reduction in congestion, the Program may yield additional emission reductions that are not captured in these estimates.

The benefit in reducing emissions related to traffic congestion should also be considered from a preventative perspective. Many Bay Area corridors are already highly congested during peak periods. As economic recovery creates job growth, the related increase in vehicle traffic could lead to increased congestion on major Bay Area commute routes. By helping to shift commute trips to alternative modes, the Program may help to mitigate the increase in traffic congestion and emissions that may otherwise result from future economic growth.

## **G. Cost-Effectiveness**

Based on reasonable assumptions, the Bay Area Commuter Benefits Program is expected to reduce emissions of criteria pollutants and greenhouse gases, while providing financial benefits to Bay Area employers and employees, and a modest boost to the Bay Area economy as a whole. As discussed above, compliance costs are expected to be low for most employers; in fact, many employers may realize a net savings due to reductions in payroll taxes. Therefore, the Program appears to offer a cost-effective means to reduce emissions of air pollutants by taking advantage of the federal commuter tax benefits that are available to employers and employees.

## **H. California Environmental Quality Act**

Pursuant to the California Environmental Quality Act, the Air District has prepared an Initial Study for the proposed commuter benefits rule. The Initial Study concludes that there are no potential significant adverse environmental impacts associated with the proposed rule. A negative declaration will be proposed for adoption by the Air District Board of Directors. The initial study and negative declaration were circulated for public comment prior to the public hearing for this rule. No comments were received. A copy of the Initial Study and Negative Declaration is attached to this report as Appendix C.

## **6. PROGRAM DEVELOPMENT/PUBLIC PARTICIPATION PROCESS**

In the course of developing the proposed Program described in this report, Air District staff met with many business groups and employer organizations, including multiple Chambers of Commerce and economic development associations in cities and counties throughout the region. Staff also engaged with other stakeholders, including Congestion Management Agencies, Transportation Management Associations, the staff of local cities with commuter benefit ordinances, vendors that administer commuter benefit programs for employers, and Bay Area transit agencies.

The Air District issued documents to describe the draft Program in late August 2013, inviting public review and comment. Air District and MTC staff held public workshops to solicit input on the draft Program in all nine counties in October 2013. Written comments were also submitted on the draft Bay Area Commuter Benefits Program. The comments received through the workshop process were generally supportive of the objectives of the Program, as well as the approach that the Air District and MTC have followed in developing the Program. Questions and comments focused on several issues:

- The applicability of the Program; i.e., which employers and employees should be covered;
- Clarification regarding the potential tax savings or costs of the four commuter benefit options;
- Questions as to whether specific measures that employers currently provide would qualify under the various options;
- The alternative commuter benefits provision (Option 4) and the criteria that will be used to evaluate Option 4 proposals. There was considerable interest in Option 4 among employers with worksites located in areas that are not well served by public transit.

Staff carefully considered the input received in preparing the proposed Program, and revised the staff report and the proposed rule as appropriate.

The final proposed rule and staff report were posted for public review on January 21, 2014. Staff received nine written comments on the proposed rule. The comments and staff responses are provided in Appendix A.

## **7. CONCLUSION**

Pursuant to Section 40727 of the California Health and Safety Code, in order for the Board of Directors to adopt, amend, or repeal a rule, the proposed rule must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. These required findings are provided below.

- **Necessity:** The proposed rule is necessary to protect public health by reducing emissions of criteria air pollutants and greenhouse gases from motor vehicles. The rule would help to implement Transportation Control Measure C-1 in the Bay Area 2010 Clean Air Plan. It would also help to achieve GHG reduction targets pursuant to Plan Bay Area and to the GHG reduction resolution adopted by the Air District Board of Directors in November 2013.
- **Authority:** Government Code Section 65081 authorizes the Bay Area Air Quality Management District and the Metropolitan Transportation Commission to jointly adopt a commuter benefits

ordinance within their common area of jurisdiction.

- **Clarity:** The proposed rule clearly delineates the affected industries, compliance options, and administrative requirements for employers subject to this rule, so that its meaning can be easily understood by the parties directly affected by it.
- **Consistency:** The proposed rule is in harmony, and does not conflict, with existing state and federal statutes and regulations, and existing court decisions.
- **Non-duplication:** The proposed rule does not duplicate existing state or federal statutes, rules, or regulations. As noted in Section 2F, the Air District and MTC are working with the Bay Area cities that have existing local commuter benefit ordinances to avoid duplication of requirements.
- **Reference:** The proposed rule is based upon authorizing legislation (Senate Bill 1339 - Yee, 2012) codified in Government Code Section 65081.

A socioeconomic analysis prepared by BAE Urban Economics (see Appendix B) found that the proposed Program would not have a negative economic impact nor cause regional job loss. A California Environmental Quality Act (CEQA) analysis (see Appendix C) prepared by Air District staff concludes that the proposed rule would not result in adverse environmental impacts.

The proposed Program and rule have met all legal noticing requirements, have been discussed with the impacted community, and reflect the input and comments of affected and interested parties. Staff recommends adoption of proposed Regulation 14, Rule 1 and of the California Environmental Quality Act Negative Declaration.

## 8. SOURCE DOCUMENTS

Bay Area 2010 Clean Air Plan. [www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx)

Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area (Sept 2011)  
[www.baaqmd.gov/Divisions/Planning-and-Research/Research-and-Modeling/Publications/Reports.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Research-and-Modeling/Publications/Reports.aspx)

2012 Urban Mobility Report, Texas Transportation Institute. <http://mobility.tamu.edu/ums/report>

### **Explanations of Commuter Benefits**

Publication 15b, *Employer's Tax Guide to Fringe Benefits—Transportation (Commuting) Benefits*  
<http://www.irs.gov/pub/irs-pdf/p15b.pdf>

Taxable Fringe Benefits Guide [http://www.irs.gov/pub/irs-tege/fringe\\_benefit\\_fslq.pdf](http://www.irs.gov/pub/irs-tege/fringe_benefit_fslq.pdf)

Final IRS Regulation Concerning Qualified Transportation Fringe Benefits  
<http://www.gpo.gov/fdsys/pkg/FR-2001-01-11/pdf/01-294.pdf>

### **Effectiveness of Commuter Benefit Programs**

Transit Cooperative Research Program (TCRP) Report 87:  
*Strategies for Increasing the Effectiveness of Commuter Benefits Programs* (2002)  
[http://www.trb.org/publications/tcrp/tcrp\\_rpt\\_87](http://www.trb.org/publications/tcrp/tcrp_rpt_87)

Transit Cooperative Research Program (TCRP) Report 107:  
*Analyzing the Effectiveness of Commuter Benefits Programs* (2005)  
[http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp\\_rpt\\_107.pdf](http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_107.pdf)

Transit Center, *2010 Commuter Benefit Impact Survey*. <http://www.transitcenter.org/images/CBIS.pdf>

ICF International, *Commuter Benefits Sketch Analysis*, June 25, 2013.  
[www.baaqmd.gov/commuterbenefits](http://www.baaqmd.gov/commuterbenefits)