The California Fuel Tax Swap

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GLOSSARY

BOE **Board of Equalization**
COG **Council of Governments**
GO **General Obligation**
LAO **Legislative Analyst's Office**
TPA **Transportation Planning Agency**

Transportation Programs

SHOPP **State Highway Operations and Protection Program**
Supports rehabilitation and reconstruction of highway system without increases in capacity, funded by fuel excise taxes.

STA **State Transportation Assistance program**
Supports local transit operators, funded (now) by diesel sales taxes.

STIP **State Transportation Improvement Program**
Primary program for highway and rail construction, 25 percent to DOT for interregional projects and 75 percent to regional planning agencies for regional transportation improvements to expand capacity. Funded from SHA, PTA, and some Federal funds.

TRCP **Traffic Congestion Relief Program**
Funded 141 specific projects to relieve congestion TCRF and other sources. Also supported the STIP, PTA, and local streets and roads.

Transportation Accounts and Funds

HUTA **Highway Users Tax Account** (in the Transportation Tax Fund)
Funded from gasoline and diesel excise taxes and weight fees. Funds allocated to SHA, counties and cities.

MTF **Mass Transportation Fund**
Discontinued. Received funds from a portion of gasoline sales tax revenues to be transferred to the TDSF to reimburse the General Fund for debt service payments

MVFA **Motor Vehicle Fuel Account** (in State Transportation Fund)
Receives gasoline and diesel excise taxes for distribution to HUTA and various other accounts

PTA **Public Transportation Account** (in the State Transportation Fund)
Primary source of funding for transit. Funded by diesel sales taxes and (previously) a portion of gasoline sales taxes. Dedicated to interregional rail projects and the State Transit Assistance (STA) program.

SHA **State Highway Account** (in the State Transportation Fund)
Funded by two-thirds of gasoline and diesel excise taxes and truck weight fees. Supports capital improvements to the State Highway System and highway rehabilitation, safety and maintenance projects.

TCRF **Traffic Congestion Relief Fund**
Originally funded from general revenues and a portion of gasoline sales tax revenues. Funds supported specified highway and mass transportation projects.

TDIF **Transportation Deferred Investment Fund**
For repayment of Proposition 42 loans from the TIF to the General Fund.

TDSF **Transportation Debt Service Fund**
For repayment of various state highway and rail bonds.

TIF **Transportation Investment Fund**
To be discontinued as of June 2016. Funds came from portion of gasoline sales taxes and were allocated to TCRF, remainder to STIP (40 percent), local streets and roads (40 percent), and PTA (20 percent)

Entertainers may be taxed; public houses may be taxed; racehorses may be taxed…and the yield devoted to general revenue. But motorists are to be privileged for all time to have the whole yield of the tax on motors devoted to roads? Obviously this is all nonsense…such contentions are absurd, and constitute an outrage upon the sovereignty of Parliament and on common sense.[1]

Winston Churchill

I. INTRODUCTION

In early 2010, California faced another of its seemingly routine budget crises, this time mostly the result of outstanding debt due on state general obligation (GO) highway and rail bonds.[2] For several years, the Legislature had been "diverting" gasoline sales tax revenues that had been earmarked for mass transportation purposes to pay debt service on those highway and rail bonds and for other transportation-related purposes to relieve the fiscal pressures on the state's General Fund. That practice was, however, ruled invalid in the case of *Shaw v. Chiang*. In response, Governor Schwarzenegger declared a fiscal emergency and called the state Legislature into special session to propose a novel solution. To close a roughly $1 billion deficit, he recommended that the State exempt 6 percent of the sales taxes on gasoline and diesel fuel and replace foregone revenues with the proceeds of an increase in the motor fuel excise tax, that could legally be used to reimburse the state treasury for past and future transportation bond payments. As adopted, the legislation eliminated 6 percent of the gasoline sales tax, and substituted—or swapped—for it a variable per-gallon excise tax that would generate the same amount of revenue. At the same time, the legislation raised the sales tax on diesel fuel by 1.75 percentage points and lowered the diesel excise tax, which was also adjusted annually to maintain revenue neutrality. While this "Fuel Tax Swap" legislation was originally devised to relieve the General Fund by allowing fuel tax revenues to make payments due for general obligation bonds and other transportation-related costs, voter opposition forced the Legislature to revise and readopt these measures using an alternative source of transportation revenues—truck weight fees rather than fuel taxes—to meet the state's debt obligations. Still, the new fuel tax provisions remain in effect and are having unexpected but significant repercussions on state transportation programs, particularly funding for mass transportation, such that Governor Brown recently proposed ending the "swap" altogether, raising the gasoline excise tax to 36 cents per gallon, and indexing it to the rate of inflation.

The tax swap introduced a degree of complexity and uncertainty into the transportation planning process that did not previously exist. While some uncertainty would have also existed under the sales tax, the process adopted by the Swap to ensure revenue neutrality (of the excise tax with the foregone sales tax revenues) has magnified revenue stream volatility. It also reignited a debate over how automobile-related tax revenues should be distributed and what they should pay for. The legislation raised serious policy questions concerning the proper role of user fees in transportation finance, as well as the state's obligation to fund local transportation programs, including mass transportation operations, versus its obligation to fund other important programs and services that are clearly core state responsibilities.

At the start of 2016, the Swap remains controversial, and the issue is compounded by the State's current need to finance some $59 billion worth of backlogged highway maintenance projects. Even before the Governor made his proposal, there were several bills pending in the Legislature to modify, revise, or completely undo the Swap. There were also efforts to entirely change the way transportation programs in the state are funded, driven in part by serious and substantial existing

deficiencies in the state's street and highway infrastructure. This report attempts to both shed light on the circumstances leading up to the Fuel Tax Swap of 2010 and assess the consequences of its adoption on the state's ongoing battles over transportation funding.

Basics of California Highway Finance

To see why these complicated measures were necessary requires delving into the arcane world of California highway finance. To begin, as mentioned above, the State collects several types of automobile-related revenues that are, for the most part, dedicated to meeting transportation needs, including two different taxes on purchases of gasoline and diesel fuel used in trucks and automobiles: excise and sales taxes. Excise taxes are flat-rate taxes pegged to the quantity sold, while sales taxes are calculated as a set percentage of the pre-tax sales price. Prior to the Swap the State charged an 18-cent per gallon "base" excise tax on most fuel sales.[3] Excise taxes are a type of user fee since they are paid by drivers in rough proportion to their use of the roads and increase as miles travelled rise. They are easy to collect, but since they are charged on a per gallon basis, the amount collected does not increase with the fuel price and therefore may not keep up with inflation. In addition, they generate less revenue as fuel economy increases and drivers shift to alternative fuels. However, fuel consumption tends to be fairly stable over time and changes have been relatively predictable, making future revenue projections reasonably accurate, at least in the short run. This is especially valuable when it comes to transportation planning, which often involves multi-year projects.

Revenues from both the gasoline and diesel excise taxes are deposited into the Motor Vehicle Fuel Account (MVFA). After some minor deductions, they are then transferred into the Highway Users Tax Account (HUTA), a trust fund in the State Transportation Tax Fund (STF). Here, they are constitutionally restricted to transportation purposes by Article XIX of the state Constitution (see **Figure 1**).[4] Importantly as one of the primary motivating factors behind the Gas Tax Swap, Article XIX permitted gasoline excise taxes to be used to pay debt service on highway bonds, while Article XIX A prohibits the use of sales taxes for this purpose. About two-thirds of the gasoline excise tax funds in the HUTA are apportioned to the State Highway Account (SHA) in the STF to support various state highway and mass transportation programs, including transportation capital projects in the State Transportation Improvement Program (STIP)[5] and the State Highway Operations and Protection Program (SHOPP), which fund highway repair and reconstruction. The remaining third goes to cities and counties for road maintenance and rehabilitation projects. Six cents of the diesel excise tax is allocated to local governments for street and road projects, and the rest is deposited into the SHA for highway maintenance, the SHOPP, and State Department of Transportation (Caltrans) administration.[6] Since 1973, a portion of the revenues in the SHA has been appropriated for mass transportation purposes funded by the Public Transportation Account (PTA).

Since 1972 the State has also collected sales taxes on gasoline purchases.[7] The base sales tax rate is 4.75 percent on the gross receipts of any retailer, but it is currently being supplemented by an additional 0.25 percent.[8] The state also collects various additional special purpose sales taxes.[9] Altogether, the overall rate is 7.5 percent, though in the past it has been as high as 8.25 percent (see Table 1). In addition, localities can impose local option Transaction and Use Taxes (TUTs) up to 2 percent that can be used for transportation purposes.[10] Sales tax revenues are collected by the State Board of Equalization (BOE) and deposited into the Retail Sales Tax Fund in the State Treasury for distribution to the General Fund and other specified funds and accounts (see **Table 1**). Prior to the Swap, a portion of gasoline sales taxes and all sales taxes from diesel purchases were placed in the PTA to support rail planning and interregional and regional transit development. Due to the Swap, the base (4.75 percent)

and additional sales taxes (0.25 percent) are no longer collected on gasoline purchases, but special purpose and local sales taxes on gasoline, and sales tax on diesel fuel, are still collected. Diesel sales taxes (both fixed and variable) are still deposited to the PTA.

In addition to these sales and excise taxes, the State also levies a graduated tax on commercial trucks based on the number of axles and the unladen weight of the vehicle. Until the Swap, these taxes had been used mainly for traffic law enforcement and road maintenance; they are now used to reimburse the General Fund for highway and rail bond debt service payments and are deposited directly into the SHA. The state also assesses drivers' license and vehicle license and registration fees collected in the Motor Vehicle License Fee Account in the STF. Beyond covering administrative costs, these funds are primarily expended for traffic law enforcement and public safety purposes.

Sales taxes generally better keep up with inflation than do excise taxes, but unlike excise taxes, sales tax revenues also decrease when prices fall. Moreover, sales taxes on gasoline tend to be volatile since the price of fuel fluctuates more than prices in general, making advance financial planning more difficult. At first, gasoline sales tax revenues were considered general revenues, though a portion of these funds known as the "spillover" was reserved to support mass transportation. These spillover monies represented the amount by which revenues collected each year from the 4.75 percent base gasoline sales tax exceeded the revenues raised by 0.25 percentage points of the sales tax on all other goods. (Part II of this report provides an explanation of the reasoning behind this).[11] The amount of spillover in any given year, and whether it was generated at all, depended on the price of gasoline and the level of fuel consumption compared to other goods. Prior to the Swap, these monies, when available, were deposited into the Public Transportation Account (PTA) in the STF to support local bus and transit operations and interregional rail services. The PTA also receives miscellaneous non-Article XIX revenues from the SHA as well as funding through the state budget process.[12]

Table 1. California State Sales and Use Tax Rates

Operative Date	Base Sales Tax Rate[a]	Disaster Relief Fund[b]	Local Revenue Fund[c]	Additional Sales Tax for Economic Uncertainty[d]	Fiscal Recovery Fund[e]	Public Safety Fund[f,g]	Additional Tax[h]	Education Protection Account[i]	Bradley-Burns Tax[j,k]	Total
August, 1, 1933	2.5%									2.5%
June 30, 1935	3.0%									3.0%
July 1, 1943	2.5%									2.5%
July 1, 1949	3.0%									3.0%
April 1, 1956	3.0%								1.0%	4.0%
August 1, 1967	4.0%								1.0%	5.0%
July 1, 1972	3.75%								1.0%	4.75%
July 1, 1973	4.75%								1.0%	5.75%
October 1, 1973	3.75%								1.0%	4.75%
January 1, 1974	3.75%								1.25%	5.0%
April 1, 1974	4.75%								1.25%	6.0%
December 1, 1989	4.75%	0.25%							1.25%	6.25%
January 1, 1991	4.75%								1.25%	6.0%
July 15, 1991	4.75%		0.5%	0.25%+0.5%					1.25%	7.25%
July 1, 1993	4.75%		0.5%	0.25%		0.5%			1.25%	7.25%
July 1, 2004	4.75%		0.5%	0.25%	0.25%	0.5%			1.0%	7.25%
April 1, 2009	4.75%		0.5%	0.25%	0.25%	0.5%	1.0%		1.0%	8.25%
July 1, 2011	4.75%		0.5%	0.25%	0.25%	0.5%			1.0%	7.25%
January 1, 2013	4.75%		0.5%	0.25%	0.25%	0.5%		0.25%	1.0%	7.5%

Note: The Bradley-Burns Uniform Local Sales and Use Tax taxes retail sellers of tangible personal property and its purchasers under certain circumstances. See p. 16 and 60 for additional information.

[a] Cal. Rev. & Tax. Code §6051, §6201 (1933)

[b] Cal. Rev. & Tax. Code §6051.1, §6021.1 (1989)

[c] Cal. Rev. & Tax. Code §6051.2, §6201.2 (1991)

[d] Cal. Rev. & Tax. Code §6051.3, §6201.3 (1991); former Cal. Rev. & Tax. Code §6051.5, 6201.5 (1991)

[e] Cal. Rev. & Tax. Code §6051.5, §6201.5 (2003)

[f] Cal. Rev. & Tax. Code §6051.6, §6201.6 (1993)

[g] Proposition 172 (1993), Cal. Const. Art. XIII, §35

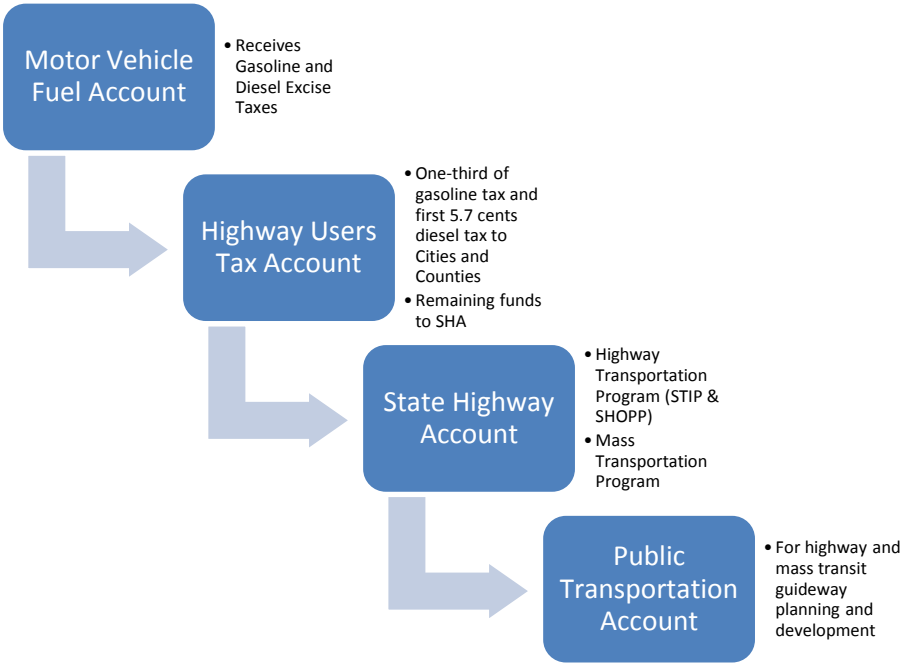
[h] Cal. Rev. & Tax. Code §6051.7, §6201.7 (2009)

[i] Proposition 30 (2012), Cal. Const. Art. XIII, §36

[j] Cal. Rev. & Tax. Code §7202, §7203

[k] Cal. Rev. & Tax. Code §7203

Figure 1. State Transportation Funds



A few years after the gasoline sales tax was imposed, sales tax revenues from purchases of diesel fuel were also dedicated to the PTA along with the part of the gasoline sales tax collected on one-half of the gasoline excise tax, known as the "Proposition 111 Delta" (named after the initiative measure that doubled the base excise tax from 9 cents to the current 18 cents). Given the volatility in the spillover, this provided a more stable source of funding for transit. In addition, as part of the State's overall program to reduce traffic congestion, the remaining state gasoline sales tax revenues that would otherwise have gone to the State's General Fund (GF)—as shown in red in Figure 2—were instead allocated to mass transportation (20 percent), the STIP (40 percent), and local street and road improvement (40 percent) after the year 2000. With the elimination of gasoline sales taxes due to the Swap, funding for mass transportation from the PTA now depends entirely on diesel sales taxes (though additional support is also available from Article XIX fuel excise tax revenues in the STIP and miscellaneous non-Article XIX revenues). This originally temporary arrangement was soon made permanent, and the gasoline sales taxes became seen by some as "dedicated" to transportation purposes in the way excise taxes already were.

Over the years, the revenues generated by each of these finance mechanisms was dedicated, and in some cases legislatively or constitutionally restricted, to specific transportation-related uses. During times of fiscal distress, however, some of these monies also became prime targets for addressing budget shortfalls through borrowing or by simply diverting them from transportation funds to meet more immediate needs.

As noted above, the Swap exempted gasoline from six percent of the then current sales tax rate,[13] but it also increased the gasoline excise tax by 17.3 cents per gallon to compensate for the resulting loss of revenues. The portion of this tax is "price-based", in the sense that its rate varies annually according to the determination of the BOE, based on projected gasoline prices and consumption for the subsequent year, so that the State still receives the same level of revenues that would have been collected without the Swap. The rate for 2015-16 is 12 cents per gallon (see Figure 3).

These funds were initially used to reimburse the General Fund for debt service payments made on highway bonds and for other transportation programs that could no longer legally be paid for out of gasoline sales taxes. This freed up monies for public health, safety, education and other important non-transportation purposes.

Figure 2. Distribution of California Sales Tax Components (7.5-9.5 percent)

Note: Text in red refers to sales taxes collected on gasoline prior to swap.

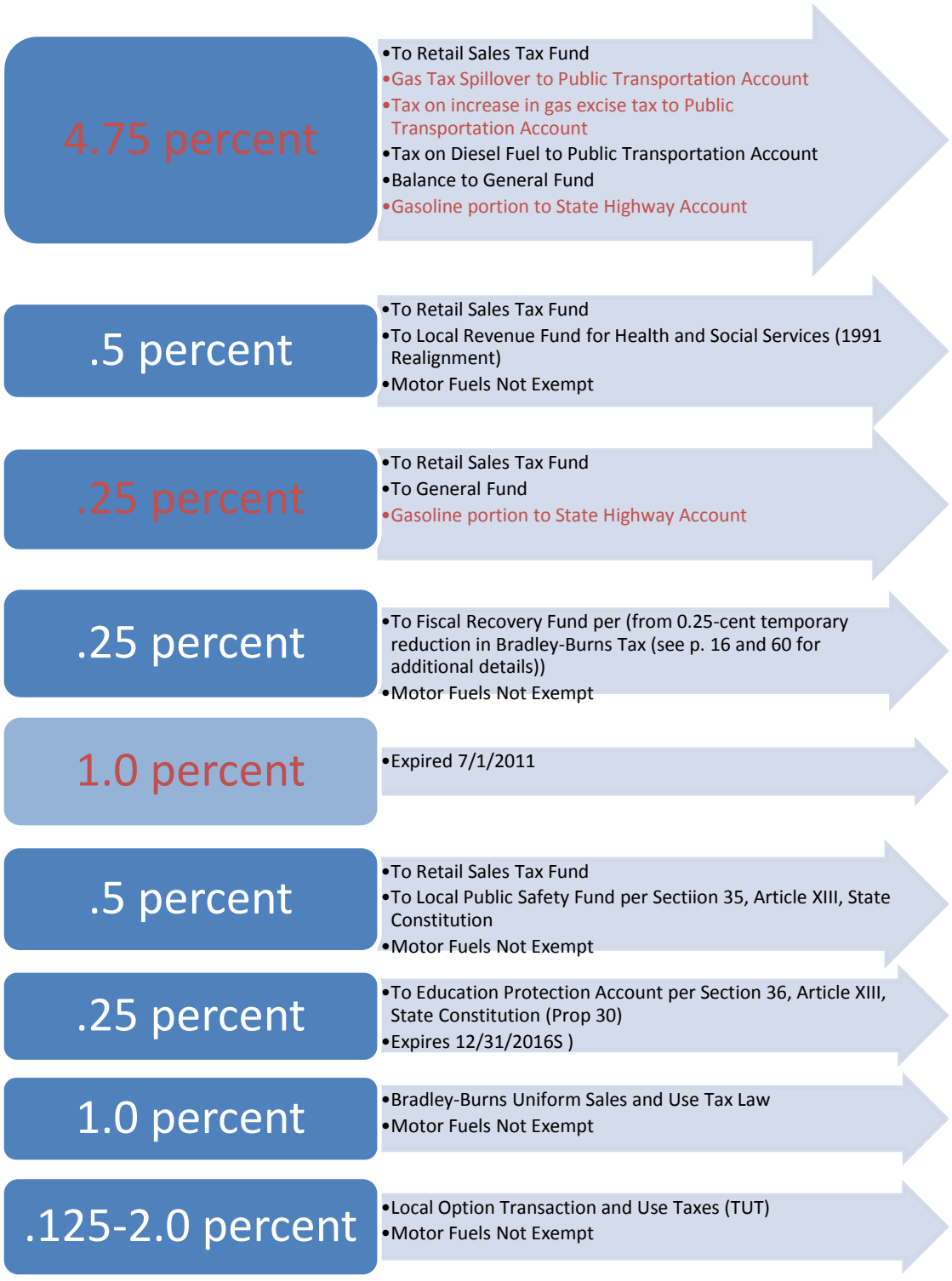
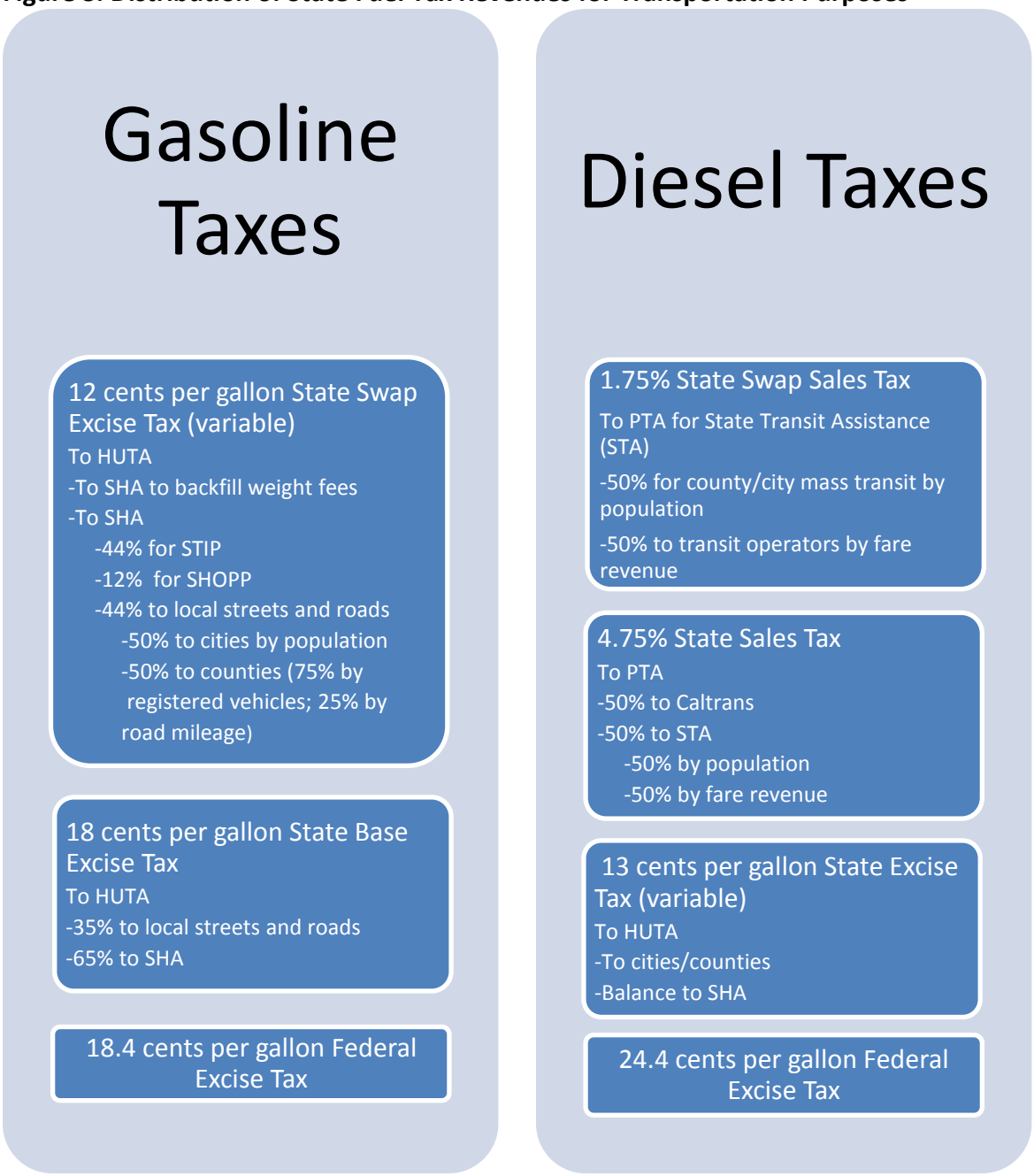


Figure 3. Distribution of State Fuel Tax Revenues for Transportation Purposes



The Swap also increased the diesel sales tax by 1.75 percentage points to a total of 9.25 percent, and reduced the base excise tax on diesel fuels to avoid any overall increase in tax collections. All diesel sales tax revenues were placed in the PTA to be used by Caltrans to pay debt service on rail bonds, to support interregional rail projects, and to allocate monies to local transportation entities. Like the "price-based" portion of the excise tax collected on gasoline sales, the amount of the diesel excise tax, is adjusted each year to maintain revenue neutrality. It is set at 13 cents per gallon through June 2016. As a result of voter-initiated changes to the state Constitution, all current transportation bond payments—about $1 billion each year—are now made from truck weight fees, and the additional gasoline excise tax revenues are first used to backfill those funds in the SHA and then distributed to the STIP (44 percent), the SHOPP (12 percent) and to local streets and roads (44 percent). The new diesel sales taxes cover the loss of gasoline sales tax revenues that had supported the PTA. Any unused weight fees are loaned to the General Fund for any authorized use until needed to make additional transportation loan payments.[14]

As we discuss later in this report, the need to project future fuel prices and levels of consumption to set each subsequent year's fuel excise tax rates has made funding for future transportation needs less certain. Moreover, the Swap has effectively frozen the amount of revenue that can be collected in line with those projections, which makes it more difficult for the state to address its growing infrastructure crisis.

Part II of this report details the early history of transportation finance in the state to 2000. Part III covers the succeeding decade and describes the circumstances leading up to the Fuel Tax Swap. Part IV discusses the legislative struggles to enact the Swap and its present status. Part V assesses the impacts and implications of the Swap for current California finance and for transportation policy.

For if the tax burden is to be distributed in proportion to benefits, the thought arises that transport benefits are by no means confined to users but are rather widely distributed. Does it not follow that all beneficiaries should be required to pay their "fair share" of the costs? In essence, this is the argument underlying efforts to allocate costs between users and nonusers which have preoccupied students of highway finance for close to half a century.[14]

Richard M. Zettel

II. HISTORY OF CALIFORNIA TRANSPORTATION FINANCE

Understanding the Swap requires a bit of background history. In the early horse and buggy years, streets and roads were traditionally funded through local property taxes on the theory that property owners were the principal beneficiaries. By the early 1920s California depended on general revenues to finance highways between population centers as families acquired their first automobiles and commercial travel was also growing impressively. Spending a large share of its revenue to pay off long-term bonds for road construction and highway maintenance while falling further behind on these debts, the state emulated Oregon and decided to tax motor fuel as a "user fee." This tax was somewhat akin to tolls but less expensive to administer because it did not require building and staffing toll booths. The more one drove, the more one paid in fuel taxes, similar to tolls. At the time, car-owning households and truckers were a minority of all households and businesses, so it seemed fair to charge vehicle users more than the general public. These fuel taxes were supplemented by fixed license and registration charges, as well as variable weight fees and business taxes on commercial trucks that helped spread some of the costs of road maintenance and repair associated with more intensive road usage.

This "pay as you go" approach served the State well for decades because motor vehicle travel continued to increase and this source of revenue grew naturally with travel; growth in revenue paralleled the growth in the need for roads. Motor fuel taxes were also administratively simple, inexpensive to collect, relatively fraud-proof, and practically invisible to taxpayers. They were collected by the State at a small number of wholesale fuel distribution facilities and passed along to the motorist. With slight modifications this system financed the mass construction of freeways in the postwar period, as well as the shift toward more multimodal transportation planning beginning in the 1970s. Despite their early success, the effectiveness of motor fuel taxes is declining at an accelerating rate, which has contributed to the present funding crisis. This results from several interacting factors:

- The price of fuel has risen, making legislators reluctant to increase per gallon tax rates;
- Vehicles have become more fuel efficient and produce less revenue per mile of driving;
- Transit alternatives are expensive, and there is a desire that auto travelers contribute to their costs;
- Inflation has lowered the fuel tax's purchasing power over time; and
- The cost of highway maintenance is rising faster than other costs because road repair consumes a great deal of increasingly expensive energy, and roads in California are aging and in need of replacement or upgrading.

Faced with the inability to rely on current motor fuel revenues to meet growing transportation needs and unwilling to raise motor fuel tax rates, the State again began to borrow to address the problem. Voters approved $35 billion in highway and rail construction bonds between 1990 and 2008, despite declining state revenues. The fiscal crisis of the last decade accentuated this funding gap and made the public increasingly aware of it. California also saw a huge decrease in other revenue streams

and faced expanding fiscal obligations outside of transportation, so the State sought to use transportation revenue that was not "earmarked" or otherwise "protected" to cover other ongoing expenses. Transportation interests had become over many decades dependent on protected or earmarked support and raised objections to this "diversion" of transportation revenues derived ostensibly from user fees. There have been numerous attempts over the years to increase transportation revenue, to continue the State's reliance on user financing, and to protect transportation revenue from any use for purposes other than transportation. The fuel tax swap was the latest in this long-running struggle for control over transportation funding in the state. A brief timeline of California's transportation finance history is presented in **Appendix A**.

The current debate over how to pay for the state's transportation is hardly new. Throughout its history, the state has faced periodic highway funding crises and been forced to confront questions of how to supply needed transportation improvements in ways that are effective and fair to both road users and taxpayers. The chief concerns have historically involved a) the geographic distribution of burdens among the state, counties, and cities, as well as between urban and rural areas, b) the distribution of burdens among property owners, roadway users who directly benefit from new roadway construction, and the public at large, and c) the distribution among different classes of road users including private and commercial automobiles and trucks. Over time, drivers have borne an increasing portion of the costs of road construction and maintenance, and many of those charges have become legally restricted to transportation purposes.

As costs have soared, priorities have shifted, and the negative impacts of automobile use have become more apparent (including the increasing costs to accommodate more and more vehicles), the question of who should pay for streets and highways has expanded to address the funding of alternatives to automobile use, such as mass transportation. This has pitted those who believe that road user fees should be used solely for road purposes against those they accuse of wanting to "divert" those funds to broader transportation purposes and even non-transportation uses. The seesaw battles between the various sides in this ongoing war over transportation finance is reflected in the history of California's continuing struggles to accommodate all these conflicting interests.

Early California Highway Finance

Early efforts to construct highways in California relied on bond financing. In 1909, state voters approved a 34-route, 3,000-mile State Highway System financed by $18 million in road construction bonds to be redeemed out of general revenues primarily from property and corporate taxes.[15] Additional highway bond measures in 1915 and 1919 increased the state debt to $73 million, but in each case no specific funds were earmarked to pay the principal and interest on the bonds.[16] At this time, highway finance was seen as a public obligation and little thought was given to financing road improvements from user fees. It soon became apparent, though, that additional sources of revenue would be required for maintenance and upkeep of the newly improved roadways. This created a tension between those who favored sharing the costs among all taxpayers and others who felt that those using the roadways should be primarily responsible for their construction and repair. Among those supporting greater reliance on user fees, there were also differences over whether some users, such as heavy commercial truck operators, should pay more than owners of private automobiles. Amidst already heavy debt, the State began to move toward "pay as you go" funding for highway improvements by adopting various user fees to support ongoing maintenance and road repair.

Largely due to the impact of heavier trucks using roadways originally designed for lighter loads, California began collecting weight-based vehicle registration fees on commercial vehicles in 1915. Half of

these registration fees, after deduction for administrative expenses, were split between counties in proportion to the number of registered vehicles in each county.[17] The funds were to be used for local road construction, maintenance and repair. Each county was required to establish a road fund in order to receive its share of distributions. The balance was used by the predecessor to the Department of Transportation (Caltrans) for maintenance, repair, widening, resurfacing, and reconstruction of state roads and highways, but not for bond payments. Fees were increased in 1923 as part of legislation that introduced the state gasoline tax and commercial carrier business taxes.[18]

As noted, Oregon became the first state to enact a gasoline excise tax in 1919, and California followed suit in 1923.[19] Originally, the tax was set at 2 cents per gallon[20] and devoted solely to roadway maintenance, split 50-50 between the State Highway System and county thoroughfares.[21] In 1927, the State increased the gasoline excise tax by 1 cent with the additional revenue set aside for new road construction on state-designated primary and secondary highways.[22] To partly address complaints by urbanizing counties, which complained that a disproportionate amount (64 percent) of highway funds were being spent in rural areas, the Breed Act allocated 75 percent of gasoline tax funds for primary highways among the state's northern (Group 1) and southern counties (Group 2) based on road mileage. The Act distributed the remaining 25 percent of funds for secondary roads on the basis of a 50-50 split between each group (see Figure 4).[23] Over time, this resulted in greater geographic equity as 42 percent of collected taxes were directed to the Group 2 counties and 58 percent to Group 1 counties, although 58 percent of revenues were collected from southern counties and 42 percent from northern ones.[24] The first priority for the use of funds was to maintain and repair existing roads and remaining resources were then used to widen, resurface or reconstruct state highways.[25]

By 1933, the 3-cents-per-gallon gasoline tax was being shared,[26] after refunds and biennial appropriations for expenses of the state Controller and Board of Equalization, between counties and the State. One-third of the tax was distributed to county road improvement funds for maintenance of roads, bridges and culverts, including those within incorporated cities or outside county corporate boundaries. The remaining two-thirds was allocated to the State Highway Fund, now known as the State Highway Account (SHA), for construction, maintenance, repair, and other improvements to state highways.[27] However, an attempt to use those highway funds to pay the interest and principal of highway bonds was rejected by voters.[28] The same year, California adopted a 2.5 percent general sales tax but specifically exempted gasoline sales[29] because gasoline was already subject to the excise tax.

The gasoline tax was followed in 1937 by a 3-cents-per-gallon excise tax on diesel fuel, the same tax rate as on gasoline.[30] Significantly, the Legislature acted to prevent any diesel fuel excise tax revenues from being used for non-highway purposes by proposing Senate Constitutional Amendment No. 28, which added Article XXVI (now Article XIX) to the State Constitution. Voters approved the measure on November 8, 1938, restricting the use of fuel tax funds to the construction, improvement, repair and maintenance of public streets, highways, and purchase of rights of way. However, the article prohibited fuel taxes from paying to retire state or local highway construction bonds.[31] Beyond covering costs of collection, other transportation-related fees—such as administration and traffic law enforcement, motor vehicle registration, licenses—also had to be used for highway purposes.

Since commercial vehicles tend to cause proportionately more damage to road surfaces compared to passenger vehicles, the Legislature also enacted a 4 percent tax on the gross receipts from the operation of commercial trucks on public roads outside cities in 1923. The tax aimed to exact additional compensation from businesses, which profited from the privilege of operating on the highways more than private vehicles.[32] To some degree it moderates the need for higher weight fees

that would discriminate against low-mileage commercial vehicles compared to high-mileage ones. The tax was assessed on covered business by the Board of Equalization and collected by the State Controller. Like registration and weight fees, half of the funds amassed in the Motor Vehicle Fund went to the State for maintenance and repair of public highways, and half to counties for highway maintenance based on the total number of all registered vehicles in each county. Common carriers were exempted from the tax by constitutional amendment in 1925,[33] leaving only for-hire carriers subject to the tax. In place, a separate gross receipts tax of 5 percent on freight charges was imposed on common carriers in lieu of all other taxes and fees (similar to the tax treatment of public utilities). While the proceeds were placed in the General Fund, they were to be used exclusively for state highway and county road purposes.[34] The original 4 percent gross receipts tax was later repealed in 1927,[35] this time leaving only common carriers subject to the tax until a new 3 percent gross receipts tax on for-hire carriers was enacted in 1933. The same tax later applied to common carriers when the constitutionally imposed tax was repealed in 1935.[36] Initially, those proceeds were deposited in the General Fund and earmarked for paying highway bonds, but the provisions were eliminated two years later in 1935.[37] In place, the state used part of the motor vehicle license fee—1.75 percent of each vehicle's market value—to pay balances due on the 1909, 1915, and 1919 Highway Act bonds.[38] This fee is also known as the "in-lieu" fee as it is levied in place of taxing vehicles as personal property as is done in some states.

Collectively, these three measures—the gasoline excise tax, the increased weight-based vehicle registration fees, and the gross receipts tax—represented a comprehensive, if imprecise, system of user finance designed to shift the fiscal burdens for maintenance and improvement of state and county highways away from property owners and businesses, and to allocate costs in proportion to road usage and wear and tear.[39] Other than periodic changes in tax rates and vehicle weight fees (including replacing a gross weight surcharge with a fee schedule based on the unladen weight and number of truck axles), this "pay-as-you-go" approach remained the basic system of highway and road finance in California until the 1990s.

Figure 4. California Groups 1 and 2

Source: California Streets and Highways Code Section 187.

Post-War Highway Program

Following World War II, the state faced a serious backlog of deferred highway maintenance coupled with added wear and tear on state roads from wartime military activity, while projected revenues fell nearly $1 billion short of what was needed. Governor Earl Warren called a special session of the Legislature to consider a new highway bill. Although there was general agreement that there was a need for additional spending, there was considerable controversy over how to pay for it. After several months of difficult negotiations, the Legislature finally adopted the Collier-Burns Act Highway Act of 1947.[40]

Staff for the joint legislative committee established by the Legislature, and chaired by veteran Senator Randolph Collier, was charged with examining the problem and recommending appropriate legislation. The group advised the State to employ highway-user funds to pay for state highways and contribute to the cost of constructing county roads and major streets, while charging local taxpayers for

road maintenance.[41] As for allocating expenses among road users, based on the staff reports, the committee concluded that trucks were primarily responsible for congestion and were not paying their fair share of road costs.[42]

Senate Bill 5 (SB 5), which formed the basis for the Act, originally proposed taxing diesel fuel at a rate 50 percent higher than gasoline on the grounds that diesel is more efficient and thus diesel-powered vehicles paid less than gasoline-powered ones while imposing similar road maintenance costs. It also proposed replacing the existing gross receipts tax and unladen weight fees with a ton-mile tax based on gross vehicle weight. These steps were designed to redistribute the financial burden to more closely reflect both the costs imposed by heavy commercial vehicles on the highway system and the greater benefits received. Naturally, opposition from the trucking industry was strong, particularly over the ton-mile tax (which was viewed as involving particularly burdensome record keeping requirements), but the bill also encountered opposition from the automobile lobby and others. Rural interests argued that the ton-mile tax would be passed on to farmers by commercial truckers and force them out of business, costing the state a valuable export market for its produce.[43]

The committee staff considered the relationship between gasoline sales and excise taxes. Proponents of exempting gasoline from sales taxes typically contend that the excise taxes are enacted in place of general sales taxes.[44] However, the committee's economist argued that the gasoline excise tax was essentially a special fee for the use of the roadway and not a substitute for general revenues:

> If this charge [the excise tax] is presumably well adjusted to costs of special benefits, its payment does not in any way exonerate the motorist from sharing the cost of non-highway functions of government.[45]

The Legislature took no action regarding sales taxes. Still, the notion that fuel sales should not only be taxed but also be treated as dedicated user fees, akin to excise taxes, arose again when the State extended the sales tax to gasoline purchases in the 1970s.

Although it passed the Senate, the Assembly stripped SB 5 of all its finance provisions before returning it to the conference committee, ending any hope of passage at that time. Under pressure from the Governor and others to do something about the condition of California's highways, assemblyman Michael J. Burns introduced Assembly Bill 46, which avoided the more controversial aspects of SB 5 and generally provided for across the board increases in existing fuel taxes and vehicle fees.[46]

The final legislation, named for both Collier and Burns, raised the gasoline tax to 4.5 cents per gallon and also established the nation's first highway trust fund,[47] now known as the Highway Users Tax Account (HUTA), to further protect gasoline and diesel taxes from being diverted to non-highway purposes beyond the existing state constitutional guarantees. Fuel tax revenues collected in the Motor Vehicle Fund (MVF)[48] and deposited to the HUTA were, at the time, limited to funding right-of-way acquisition, construction, reconstruction, improvement, and maintenance of public streets and highways.[49] Two cents went to counties and cities for local road construction and maintenance.[50] The remaining 2.5 cents were deposited in the State Highway Fund for construction of state highways[51] and provided increased funding to urbanized counties by splitting the funds with 45 percent for northern counties (Group 1) and 55 percent for southern counties (Group 2).[52] Minimum allocations to each county were also established.[53] The rate was gradually raised to 7 cents per gallon by 1963 and 9 cents in 1983, with about 51 percent of revenues going to the state and 49 percent to counties.[54]

While the Act succeeded in increasing funding for highways, protecting highway user fees from diversion, and improving geographic equity between urbanized and rural areas, it failed to improve equity between different classes of road users. Nor did it consider providing any support for alternatives to automobile travel, such as mass transportation, and many local transit companies declined throughout the 1950s and 1960s even as the state mass-produced freeways. By the 1970s, however, growing public dissatisfaction with some of the negative aspects of federal and state highway programs combined with increased awareness of the environmental impacts of private automobiles, led to efforts in California and elsewhere to support alternative modes of travel and promote mass transportation in urban areas. California chose to finally extend its sales tax to gasoline purchases to finance these efforts.

Local Transportation Funds

Part of the TDA known as the Mills-Alquist-Deddeh Act established a Local Transportation Fund (LTF) in each county treasury to receive local sales and use tax revenues from an authorized ¼ percent increase in the 1 percent local sales tax authorized by the Bradley-Burns Uniform Local Sales and Use Tax Law, to be used for transportation purposes. The funds are distributed to Regional Transportation Planning Agencies (RTPAs), the Council of Governments (COG) for counties not within an RPTA, or the local Transportation Commission in counties without a COG.

Transportation Development Act

To provide funding for state and local commuter rail and mass transportation, the Legislature passed the Transportation Development Act (TDA)[55] in 1971. The TDA marked the beginning of measures to make road users shoulder an increasing share of transportation-related expenditures. The Act authorized local governments to increase the Bradley-Burns local sales taxes by 0.25 percentage point (to 1.25 percent) to support transit operations (see sidebar).[56] At the same time, it kept the overall sales tax rate constant by lowering the state sales tax rate on all purchases by 0.25 percentage points (from 4 percent to 3.75 percent), but extended the state sales tax to gasoline purchases to broaden the base to increase the total amount of revenues collected.[57] The gasoline sales tax revenues collected in the Retail Sales Tax Fund were deposited into the General Fund to cover losses from reducing the state tax rate; any amount over and above that, called the "spillover," was to be estimated quarterly by the Board of Equalization (BOE), and that amount placed in the State Transportation Fund (STF) to pay for mass transportation programs.[58] Specifically, the spillover consisted of the amount by which gasoline sales tax revenues from the 3.75 percent tax on motor vehicle fuels exceeded 0.25 percent of the revenue collected from sales taxes on all other goods.[59]

Taxpayers in general were protected from a tax increase to support transit by treating part of the yield from the gasoline sales tax as general revenue. On the other hand, excess sales taxes collected over the amount needed to make the General Fund whole could be treated as user fees designed to mitigate the economic externalities from automobile use that should properly be charged to drivers. Those amounts were not guaranteed, but to the extent that automobile use grew faster than the economy in general, it would produce extra tax revenues that would be available to support mass transportation alternatives.[60] These funds are currently divided between interregional and local transit programs (see **Appendix C** for additional information on the State's Mass Transportation Program).

Environmental concerns were also manifested in 1973 when the Legislature proposed a constitutional amendment (SCA 15) to then Article XXVI that expanded the permitted uses of motor fuel

excise taxes. In related hopes of increasing transit use and reducing driving and its environmental impacts, Proposition 5 extended fuel excise tax revenues to building and maintaining exclusive mass transportation guideways and some forms of maintenance.[61] The proposal also authorized funds to be used for environmental mitigation of highway and transit projects. From the viewpoint of some, such as those in the highway lobby, this represented a further diversion of highway revenues to non-highway purposes. Voters, however, approved the measure in the June 1974 state primary election, and these changes have been carried forward in the current provisions of Article XIX.

The level of financial support for transit, however, depended on the size of the spillover from year to year, which, in turn, was governed by the price and amount of gasoline sales compared to sales of all other goods. Through the mid-1980s, the annual amount generated annually was between $2 million and $159 million, a highly variable and unpredictable source of funding. There was also still ambiguity between whether the spillover funds were general revenues that the Legislature had only temporarily reserved for transit purposes or monies permanently committed to transit. Over time, these spillover funds, as well as the remaining gasoline and diesel sales tax revenues, would begin to look more and more like the latter, but they also sometimes were treated like the former.

As part of legislation in 1979, spillover transfers were limited to $110 million with the balance directed to the General Fund[62] though some additional funding was made available through 1985-86.[63] The funds were placed in a special account known as the Transportation Planning and Development Account (TPDA) in the STF, the predecessor to the PTA.[64] After 1985-86, at least $110 million of spillover revenue was dedicated annually for transit, but In the following years substantial amounts of spillover funds were "diverted" to the General Fund, at least from the viewpoint of transit advocates who saw those gasoline sales taxes as now "belonging" to mass transportation.

Blueprint Transportation Program

In 1989, the state not only faced a $1.6 billion shortfall in the state budget ($666 million of that in the highway program), it again confronted the challenge of upgrading its aging transportation system; the Legislature responded by passing the Blueprint for the Twenty-First Century.[65] This legislative program provided $18.5 billion over ten years to address shortfalls in the State Transportation Improvement Program (STIP), which supports capital street and highway improvements as well as intercity and interregional rail projects. The law proposed increasing truck weight fees by 55 percent and doubling the state gasoline and diesel excise tax rates over five years from 9 cents per gallon (which had been the rate since 1983[66]) to 18 cents per gallon by 1994.[67] Since the tax increases required voter approval, the legislation also included a state constitutional amendment, enacted by passage of Proposition 111, to authorize the excise tax increases. The fuel tax revenues would, as before, be split between allocations to cities and counties and to funding the state highway program, but the state share of gasoline tax revenues was increased from 51 percent to 64 percent, where it has since remained (see Figure 5).[68]

The Blueprint also dedicated more fuel sales tax revenues to local and state mass transportation. In addition to the "spillover" funds, all revenues collected on diesel sales at the 4.75 percent rate, as well as revenues (known as the Proposition 111 Delta) generated from applying the base 4.75 percent sales tax (which had been increased by 1 percentage point in 1974) to the 9-cent increase in the gasoline excise tax (a sales tax on an excise tax[69]), were to be transferred to the TPDA and used for interregional bus and passenger rail projects and local transit[70] (see Figure 6). This guaranteed that even in years when there was no spillover, these programs would still receive some funding, further blurring the line between using fuel sales taxes as general revenue and using them as a dedicated user fee to fund transportation projects.[71] Half of all the fuel sales taxes were allocated to

Caltrans to provide interregional bus and passenger rail service. The remainder was distributed to transportation planning agencies to support local transit operations and capital improvements; revenues were allocated fifty-fifty based population and transit operator fare revenues.

One principle of finance equity is that user fees should be levied on those whose behavior imposes costs on others, the transportation system, or the environment. It can be argued that it is appropriate to treat some taxes on gasoline sales (in particular the spillover and the Proposition 111 Delta) as dedicated user fees because automobile drivers contribute to traffic congestion and should bear some of the cost to provide alternative modes. Taxes on diesel fuel, however, fall primarily on the trucking industry. The trucking industry arguably does not contribute directly to the need for mass transportation, but does contribute to congestion and may benefit from transit investments where they encourage travelers to use other modes. While there was no agreement to permanently dedicate these revenues to mass transportation, transit agencies welcomed the additional funds when they could get them. They were not assured specific amounts from year to year, because fuel prices and consumption fluctuated. As time passed and competing needs arose, the Legislature committed these funds to other purposes. Over the years mass transportation lost millions of dollars in potential revenues and industry spokespeople complained.

Figure 5. Blueprint (1989) Allocation of Proceeds of Base Excise Tax

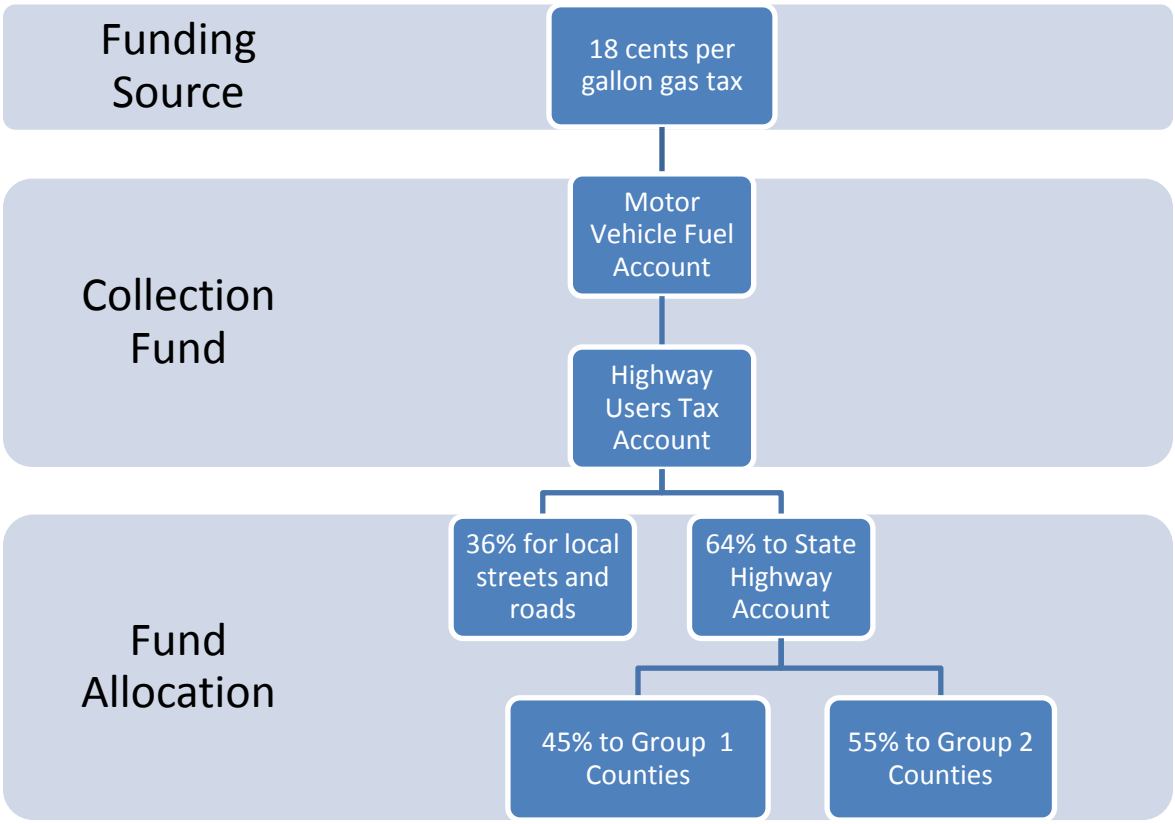
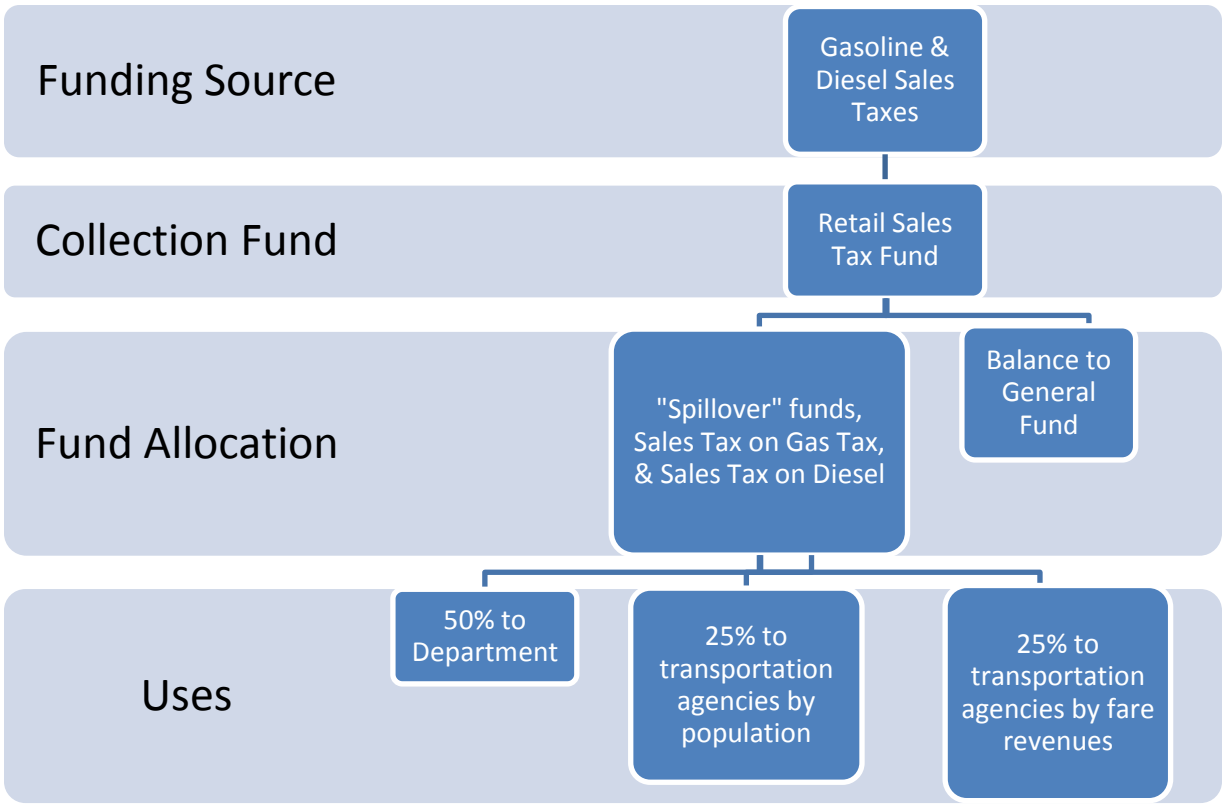


Figure 6. Blueprint (1989) Allocation of Proceeds of Fuel Sales Tax



Returning to Bonds to Finance Transportation

A centerpiece of the Blueprint was raising $1 billion from the sale of GO bonds authorized in Proposition 108 – the Passenger Rail and Clean Air Bond Act of 1990.[72] Voters approved this measure, along with Proposition 111, in the June 1990 election. Proposition 108 was the first part of a legislative plan to raise a total of $3 billion for intercity rail, commuter rail, and rail transit programs. However, voters rejected two subsequent bond measures, Proposition 156 and Proposition 181, which would have authorized an additional $1 billion each. As a result, the costs of these programs were borne by the SHA.[73]

Voters also approved an independently-sponsored initiative measure, Proposition 116 – the Clean Air and Transportation Improvement Act of 1990 – which authorized nearly $2 billion in additional bonds for intercity and commuter rail facilities. Proposition 116 also amended state law to limit the use of TPDA funds to "transportation planning and mass transportation" purposes[74] and required a two-thirds vote of the Legislature for any changes to the law governing these monies, which had to be "consistent with" and "further" the purpose of the initiative. This measure provided a source of funds for mass transportation; however, it also committed the State to long-term debt whether or not payments to retire that debt reduced revenues available for other programs. Unfortunately, the recession of the early 1990s resulted in a reduction of nearly $1 billion in revenue collected from fuel taxes and truck weight fees, and forced delays in the completion of projects that were underway and fewer new projects added to the STIP.[75]

The Blueprint increased transportation's share of total state expenses, but the State soon faced a $5.9 billion shortfall to complete projects in the 1992 STIP, in part because of the defeat of Propositions 156 and 181 and in part because of expenses caused by extensive damage done by the

Northridge earthquake.[76] In the 1994-95 and 1995-96 fiscal years the Legislature used a total of $150 million and $77 million, respectively, from the SHA to reimburse the General Fund for debt service payments on the two voter-approved rail measures.[77] In response to layoffs at Caltrans, two state employee organizations challenged the transfers as violating the terms of the bond measures and Article XIX of the state Constitution. In the case of *Professional Employees v. Wilson*, the state Court of Appeals upheld most of the transfer, reasoning that voters had intended the State to increase transit funding from other sources including fuel excise and sales taxes. However, it ruled that the portion of the SHA funds derived from gasoline excise taxes could not be used to pay rail bonds without the approval of voters in the county where the bond proceeds were to be spent.[78]

After defeating Proposition 1A following the Northridge Earthquake, in 1996 voters approved Proposition 192 – the Seismic Retrofit Bond Act – which provided another $2 billion in bonds for needed bridge and road repair.[79] No new projects were added to the 1994 or 1996 STIP, and some $500 million worth of projects which had been programmed in the 1992 STIP were either delayed or deleted. Proposition 192 highway funds (about $1.35 billion) made up part of the deficit in the STIP, but these gains were eroded by higher Caltrans support costs and increased expenses for local assistance.[80] The defeat of Proposition 1A and of Proposition 181 in 1994 put pressure on the SHA, further restricting monies for projects in the STIP.[81] Cash needed for priority road and bridge maintenance and repair expenses also pushed funding back for new projects to relieve traffic congestion. The Legislature turned to transit monies and authorized the use of $130 million in TPDA funds for seismic repairs.[82]

Despite the defeat of two rail bond measures, the approval of Proposition 108, Proposition 116, and Proposition 192 marked an end to sole reliance on the "pay as you go" approach and a return to bond financing to pay for needed transportation improvements. These monies helped to jump-start some important projects but, as in the early 1900s, they also imposed long-term obligations on the State Treasury. As debt service costs mounted, the Legislature eyed additional transit and highway dollars to cover these costs.

Two years later in 1998, the State's access to transportation resources was impeded when voters approved another legislative initiative, Proposition 2, that added Article XIX A to the State Constitution. It required loans to the General Fund from transportation-related revenues (including gasoline excise tax revenues, fees and taxes on motor vehicles and their use, and fuel sales taxes) to be repaid within the same fiscal year or, if the Governor declared a fiscal emergency, within three years.[83] Article XIX A also designated all local transportation funds (the 0.25 percent local tax for transportation) as trust funds that could not be abolished and limited their use to the purposes stated in existing law. This further prevented the Legislature from borrowing any of the funds or diverting transportation revenues to any other purpose. The measure garnered support from over 75 percent of voters, a clear indication that the public strongly favored protecting existing transportation spending.

Growing Shortages in Transportation Funding

Despite enactment of the Blueprint, by the time the program was due to be completed, lower than anticipated revenues and higher expenses (including required seismic repair work) meant there were fewer funds available to meet highway needs generated by population growth and increased automobile usage.[84] The Legislature revised the STIP process and consolidated the individual Blueprint programs into two – the Regional Improvement Program (RIP) and the Interregional Improvement Program (IIP) – to improve the program's flexibility and increase local control. It provided that 75 percent of STIP funds be allocated to the RIP to be used for local and regional transportation projects selected and scheduled by TPAs and 25 percent to the IIP for statewide projects, including those

providing connections between regions.[85] The statute shortened the basic STIP funding period from seven years to four, with a six-year transition period for the 1998 STIP (through FY 2003-04).[86] The Legislative Analyst's Office (LAO) urged the Legislature to go further and look for ways to reduce transportation demand, rather than merely attempting to increase capacity.[87]

Higher gasoline and diesel fuel sales meant the six-year 1998 STIP could include new highway projects. According to the 1998 Fund Estimate prepared by the CTC, $4.6 million was available for new projects, but added costs from the aging highway system and needed rehab projects might draw down those funds. On the other hand, by the end of 1998-99, the Public Transportation Account (PTA, formerly the TPDA) had $65 million in outstanding obligations on a projected balance of just $27 million, and was expected to face shortfalls over the entire period of the 1998 STIP. As a result, no PTA funds for new transit capital improvement projects were programmed beyond FY 1997-98.[88] Although the outlook for highway spending continued to improve, funds for transit were slowly drying up.

By FY 1999-00, the SHA had a projected $1 billion surplus in part from Proposition 192 freeing up funds that had been slated for seismic work. However, there was no spillover that year (the PTA received 65 percent of its funds from the diesel sales tax and 35 percent from the Proposition 111 Delta) and overall PTA funds were declining due to falling diesel sales prices and lower gasoline sales compared to purchases of other goods along with increasing costs for providing intercity rail service.[89] The Governor proposed transferring another $28 million from the SHA, which would still have left a $38 million deficit in the PTA.[90] Fiscal pressures gradually began to crowd out monies for transit capital improvements.[91] New projects would have to wait at least until the 2002 STIP. The LAO recommended either depositing more gasoline and diesel sales tax revenues in the PTA or reducing funding for transit operating assistance, capital acquisition and improvement, and community transit.[92] It also suggested that the State reexamine its overall approach to funding mass transportation, including commitments to funding local transit, intercity rail service, and transit capital improvements.[93]

Funding for highways also suffered as the decade progressed. During the 1990s, inflation-adjusted fuel tax revenues had generally kept pace with the 20 percent growth in vehicle miles travelled (VMT) mainly due to the 9-cent increase in the excise tax. However, by the end of the decade, real revenues began to decline even as the total number of vehicle miles travelled continued to grow due to inflation and rising fuel efficiencies. Falling gasoline prices (which reduced sales tax revenues), more efficient engines, and increasing use of alternative fuels that were either not taxed or taxed at a lower rate than gasoline or diesel, contributed to the decline, putting pressure on the State to sustain necessary levels of maintenance and repair while still meeting other transportation needs.[94] The first decade of the 21st century brought some relief as transportation proponents managed to capture all remaining fuel sales tax revenues for transportation purposes, including mass transportation. But the crisis in transportation funding was far from over.

Transportation and its finance have typically been taken for granted—and therefore disappeared from the legislative and public policy agenda—except when perceived to be in crisis.[95]

Jeffrey Brown

III. DEDICATION VERSUS DIVERSION: THE BATTLE OVER USER FEES FOR TRANSPORTATION

California has a long tradition of responding to crises in transportation finance with short-term fixes that do not fully address its structural financial problems. With the new century, initially optimistic projections of large surpluses in the SHA, the main source of funding for highway maintenance and repair, began to fade. By 2000, legislators were aware that the state faced growing traffic congestion and sought to advance projects designed to address the most pressing requirements. Senate Resolution 8 required the California Transportation Commission (CTC) to make a ten-year assessment of funding needs. The CTC's SR 8 Report estimated there was a $100 billion shortfall in unfunded but necessary transportation improvements, including a $700 million deficit in transit operating revenues.[96] Clearly something had to be done. The solution to the problem appeared to be using uncommitted fuel sales tax revenues to fund critical highway and transit projects. However, as fiscal pressures continued to mount, the state began to redirect these monies instead to General Fund relief, triggering a conflict with those who wanted to devote those revenues exclusively to specific current transportation needs.

Traffic Congestion Relief Program

Governor Gray Davis responded to these challenges with a five-year, $5.4 billion Transportation Congestion Relief Program (TCRP), that proposed using $2 billion in state general funds, and temporarily tapping additional non-spillover gasoline sales tax revenues that normally went to the General Fund, to complete a long list of deferred maintenance and road improvement projects.[97] The Legislature enacted the Governor's program as the Traffic Congestion Relief Act of 2000.[98] The legislative findings and declarations took note of the projected four-year deficit in the PTA of $53 million (through FY 2003-04) and a six-year shortfall of $158 million (through FY 2005-06),[99] as well as the 50 percent growth in the state population over the past 20 years and the growing problem of traffic delay that allegedly was costing the state upwards of $2.8 million per day.[100] The declared purpose of the bill was to relieve traffic congestion, provide additional funding for local street and road deferred maintenance, and provide additional transportation capacity in high growth areas of the state.[101] Compared to the Governor's plan, the Act included additional funds for highway and rail programs. Two billion dollars would be provided up front from available State funds. Over the next five years, gasoline sales tax revenues not already committed to the PTA would be dedicated to the congestion relief program. In all, a total of $8.2 billion was projected to be available from fuel sales tax revenues from 2001-02 through 2005-06 to fund the TCRP (as shown in Table 2; program years in bold).[102] At the time opposition from the highway lobby appears to have been muted, perhaps because these funds were not traditionally associated with transportation use and their temporary earmarking for some transit purposes did not directly affect existing highway programs; in fact, they provided some additional support.

Table 2. Transportation Congestion Relief Program Planned Funding and Allocations by Fiscal Year, FY 2000-01 to 2005-06

$ millions	2000-01	**2001-02**	**2002-03**	**2003-04**	**2004-05**	**2005-06**	6-Year Total
TCRP Funding Sources							
General Fund	$1,500						$1,500
Gasoline Sales Taxes (est.)	500	$1,105	$1,276	$1,276	$1,276	$1,276	6,710
Total	$2,000	$1,105	$1,276	$1,276	$1,276	$1,276	$8,210
TCRP Allocations							
TCRF	$1,600	$678	$678	$678	$678	$678	$4,990
Local Streets and Roads	400	171	239	239	239	239	1,528
STIP		171	239	239	239	239	1,128
PTA		85	120	120	120	120	564
Total	$2,000	$1,105	$1,276	$1,276	$1,276	$1,276	$8,210

Source: LAO, 2001-02 Budget Analysis, Transportation, A-15, Figure 1 & A-16, Figure 2.

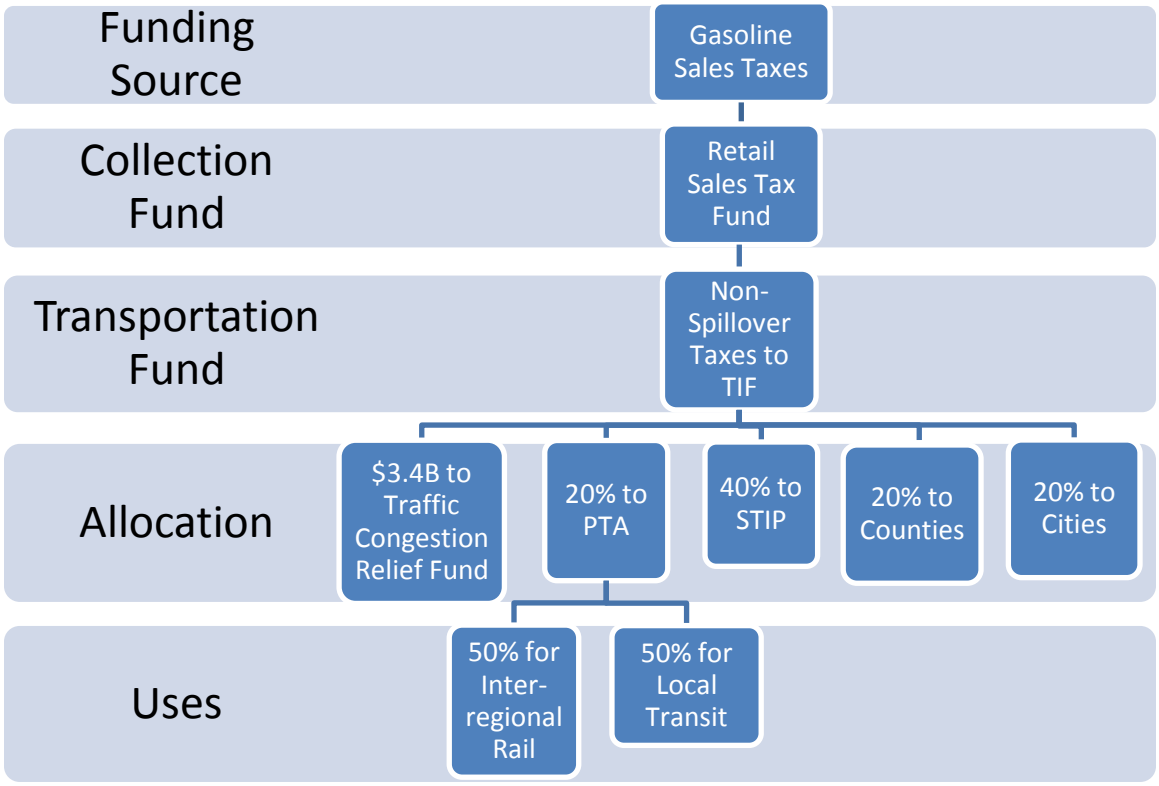
The Act committed the state to providing $5 billion to complete 141 priority projects that would otherwise have been in competition for STIP funding, some of which required long-term commitments since the costs exceeded amounts that would normally have been available in a single year to the county in which they were located.[103] Monies for the program would be placed in the Traffic Congestion Relief Fund (TCRF).[104] Of the committed $5 billion, $2 billion were appropriated initially: $1.5 billion from the General Fund[105] and $500 million in gasoline sales tax revenues.[106] Of this $2 billion, $1.6 billion was set aside in the TCRF for the specified congestion relief projects. The remaining $400 million was allotted to cities and counties for deferred road maintenance.[107] These funds could only be used, however, for street and highway maintenance, rehabilitation, reconstruction and storm damage repair, and local governments had to maintain their current street and highway expenditures in order to remain eligible.[108] In other words, the funds were intended to supplement existing sources of revenue and could not be used to replace them. The first year of the program got off to a slow start as only $340 million was allocated for 57 TCRP projects.[109]

The bill also created a Transportation Investment Fund (TIF) in the State Treasury to collect and distribute uncommitted gasoline sales tax revenues for highways and neighborhood streets and roads, to fund transit operations and intercity rail, and to supplement the TCRF. A total of $3.4 billion ($678 million annually) would be allocated from the TIF to the TCRF as in the Governor's original plan. The balance would be divided in the following manner:

- 20 percent to the PTA for transit (50 percent for Caltrans for interregional rail projects and 50 percent for local transit);
- 40 percent to the Department of Transportation for STIP projects;
- 20 percent to counties based 75 percent on the number of registered vehicles in each county compared to those in the state and 25 percent on the number of miles of maintained county roads to those in the state; and
- 20 percent to cities based on population (see Figure 7).[110]

Together, the PTA and the TIF provided the majority of the state's mass transportation funding. However, the substantial size of these accounts and the fact that, unlike fuel excise taxes, they were not constitutionally committed to transportation purposes also made them prime targets in times of fiscal distress. Monies borrowed from these accounts could improve the state's immediate financial picture, but any loans that had to be repaid in accordance with Proposition 2 would also potentially contribute to future budget shortfalls.

Figure 7. Proceeds of Gasoline Sales Taxes (Congestion Relief Program & Proposition 42)



The Legislature delayed funding the TCRP for two years to use the uncommitted gasoline sales tax receipts for other purposes.[111] The program would now run from 2003-04 to 2007-08 (as shown in bold in Table 3). Cities and counties would, however, receive promised funding for road repairs from the SHA as scheduled.[112] To soften the impact, the Legislature permitted the TCRF to borrow $120 million in SHA funds[113] to prevent TCRP project delays or cancellations through FY 2001-02. In addition, the PTA supplied the TCRF with $180 million and $95 million in FY 2001-02 and 2002-03 respectively (see Table 3). Those loans and the delay in funding the TCRP, along with lower than expected fuel tax revenues, resulted in substantially reduced funding for the PTA, and according to the LAO, no money for transit capital improvements until the loans to the TCRF were repaid.[114]

With only a few projects actually underway, for FY 2002-03, the Governor planned to borrow back $238 million from the TCRF in the current year and another $672 million in the budget year in part to make debt payments on Propositions 108, 116 and 192 bonds, and to cover some of the diverted funds with an additional loan of $474 million from the SHA.[115] Since TCRF expenditures for the year were also expected to be lower than projected,[116] the Legislature actually approved a larger $1.1 billion budget-year loan bringing the total amount transferred to the General Fund to roughly $1.4 billion, to be

repaid by June 30, 2006.[117] In turn, the TCRF would have to repay $275 million to the PTA and $594 million to the SHA (see Table 3). Despite the shaky start to the TCRP, the public embraced the idea of earmarking fuel sales taxes for transportation as the Legislature moved to extend the TIF program and permanently commit fuel sales tax revenues to transportation, including mass transportation. Funding for the program would, however, be repeatedly diverted to other transportation-related uses, as the state's financial picture continued to darken.

Table 3. Traffic Congestion Relief Fund Loan Balance, FY 2000-01 to FY 2007-08

$ millions	2000 -01	2001 -02	2002 -03	**2003 -04**	**2004 -05**	**2005 -06**	**2006 -07**	**2007 -08**	Total
TCRF Loans									
Loans to GF		-$238	-$1,145			DUE			-$1,383
Repayment					$183				183
subtotal									-1,200
Gaming Revenues						151	100	100	351
Balance Due									-$849
Loans from PTA		180	95					DUE	275
Repayments							-10		-10
Balance Due									$265
Loans from SHA	60	60	474				DUE		594
Repayments				-100	-20				-120
Gaming Revenues						-151	-90	-100	-341
Balance Due									$133

Source: FY 2000-01 to FY 2007-08 Transportation Fund Condition Statements

Traffic Congestion Improvement Act (Proposition 42)

Proposition 42, the Traffic Congestion Improvement Act, was a legislatively-referred constitutional amendment, backed by the AAA, which was enacted by voters in March 2002. The Act extended the TCRP and made permanent the previously temporary allocation of gasoline sales tax revenues to the TIF while requiring that the funds be used for specified transportation purposes.[118] The measure proposed an addition to the state Constitution, Article XIX B, which provided that non-spillover gasoline sales tax revenues continue being distributed as described above and which prohibited any alteration or suspension of those transfers without a two-thirds vote of the Legislature. The TIF was designated a trust fund, and borrowing from the fund was prohibited except under specific circumstances. Beyond funding the identified transportation projects, monies in the TIF could only be used for mass transportation, transportation capital projects funded through the STIP, and city, county, street and highway maintenance, repair and rehabilitation projects. In adopting Proposition 42, voters recognized the need for more secure transportation funding. Voters affirmed that at least some fuel sales taxes should be treated as dedicated user fees. But while the limited exceptions in the Act gave the Legislature some flexibility to respond to fiscal crises, they also created uncertainty for future capital projects that depended on a reliable source of continuing financial support.

Less than a year after the passage of Proposition 42, as a result of growing budget concerns, including a record $34.6 billion budget shortfall, Governor Davis declared a fiscal emergency and proposed using $1.7 billion in TCRP revenues for General Fund relief[119] primarily by delaying the transfer

of gasoline sales tax revenues to the TIF.[120] TCRP project sponsors would need to find replacement funding, possibly through the STIP process or await funding in the following year. The LAO estimated at least $200 million in bridge financing would be needed to complete all existing construction contracts even if no new projects were added. In response to concerns over future TIF appropriations (and the possibility the TCRP might even be cancelled) along with continuing fiscal pressures on the SHA,[121] the CTC had already stopped funding new capital projects in the TCRP, STIP and SHOPP by December of 2002.[122] This decision led to a growing backlog of projects that threatened efforts to relieve traffic congestion and stem economic losses during the recession by moving transportation projects forward. The Legislature nevertheless agreed to suspend all but $289 million of the roughly $1.2 billion in Proposition 42 funds due to be transferred to the TIF in FY 2003-04.[123] Of the amount received by the TIF, $189 million would be used to complete already programmed congestion relief projects, while $100 million was to be used to pay down previous loans from the SHA (see Table 4). Through the end of FY 2003-04, the TCRP only received $906 million of the $5.2 billion originally planned.[124]

This temporary solution to the immediate budget concerns also raised the question of whether dedicating sales tax revenues to specific projects was good policy when the funds could rather easily be diverted for other purposes, increasing the possibility that identified projects might have to either be delayed or even cancelled. The LAO urged the Legislature to commit to fully repaying all TCRF loans from the General Fund or to consider ending its commitment to the TCRP altogether and finding alternative ways to finance large, multiyear projects. One suggested option to provide a steadier stream of revenue was to temporarily increase the gasoline excise tax by 3 cents to cover the existing $2.1 billion shortfall over four years. A permanent tax increase would also address the state's $100 billion ten-year funding shortfall previously identified by the CTC.[125]

Table 4. Traffic Congestion Relief Program Revenue Sources, FY 2001-02 to 2007-08

$ millions	2001-02	2002-03	**2003-04**	**2004-05**	**2005-06**	**2006-07**	**2007-08**	Total
TIF Funds								
Total Revenues			$1,156	$1,258	$1,358	$1,414	$1,416	$6,602
Proposition 42 Suspensions			-867	-1,258				-2,125
Receipts			$289	$0	$1,358	$1,414	$1,416	$4,477
TDIF Funds								
Loan Pre-Payments					$720	$200	$495	$1,415
Spillover Funds							$82	$82
Total								$1,497
TCRF Funds								
General Fund[b]								$1,600
TIF Transfers			$289		$678	$678	$602	2,247
TDIF payments						319	79	398
SHA Loan Payment			-100					-100
Total Receipts			$189		$678	$997	$681	$4,145

[a] From Gasoline Sales Taxes (see Table **6**)

[b] Before loans and transfers (see Table 2 & Table 3)

Source: FY 2000-01 to FY 2007-08 Transportation Fund Condition Statements

In his mid-year 2003-04 budget, Governor Arnold Schwarzenegger proposed a $920 million package of additional current-year transportation cuts that included transferring the previously budgeted $189 million from the TCRF back to the General Fund.[126] In addition, the General Fund would receive $108 million of miscellaneous income that would typically be transferred to the PTA, and retain $17.5 million in additional spillover funds originally pledged to the account.[127]

From FY 1998-99 through FY 2000-01, transportation spending had increased due to programmed highway improvements and seismic repairs, with help of the $400 million boost from the TCRF. Spending stayed flat through FY 2003-04, however, largely due to the Proposition 42 transfer suspensions. The backlog of STIP and SHOPP projects continued to grow, and no new TCRP projects were being programmed in the 2004 STIP. In fact, the Governor proposed repealing the statutory authority for the 141 TCRP projects, requiring them to compete with other projects for state funding through the STIP process, and rescinding promises made to local agencies to reimburse them for advancing their own money on local projects. In response, the LAO urged an end to "stop-and-go" transportation funding and suggested a number of short term and long term options. The Legislature could repeal the TCRP as proposed, fund projects with existing allocations, or fund new allocations in the budget. More critically, though, the LAO also noted that over the long run, transportation funding was not keeping pace with need.

Inflation-adjusted revenues from FY 1998-99 to FY 2004-05 were down 8 percent while vehicle miles travelled (VMT) were up 16 percent. If Proposition 42 could not be relied on to support TCRP projects that could address the state's unmet transportation needs, the LAO recommended the Legislature: 1) remove the Legislature's suspension authority; 2) ask voters to repeal Proposition 42

entirely and save about $1 billion per year, which would provide more fiscal certainty (but TCRP projects could crowd out some STIP projects that might otherwise be funded); or 3) raise the gasoline excise tax by 6 cents per gallon and index the tax rate to the rate of inflation. In the end, the Legislature agreed to suspend the entire $1.26 billion Proposition 42 transfer for FY 2004-05 (see Table 4), bringing the total amount that the General Fund owed the TCRF to $3.5 billion.[128] A Transportation Deferred Investment Fund (TDIF) was set up to facilitate repayment of the Proposition 42 monies to the TIF, but meanwhile local highway and transit projects lost funding.[129] The Legislature also directed that a $183 payment be made on the loan due to the TCRF from the General Fund, bringing the amount due to $1.2 billion (see Table 3).

While diversions of transportation funds helped restore the General Fund, it also made funding for transportation projects less predictable. Many projects require long-term funding commitments or other sponsors, without which they may face delays or even cancellation. Some projects need state monies as matching funds and could risk losing federal funding unless sponsors can secure other revenue sources. Cancelling projects can incur additional close-out costs. The uncertainty of loan repayments to the TCRF and the possibility of additional TIF suspensions not only jeopardized some projects, but also raised the prospect of future budget shortfalls when those loans came due. Although a significant portion of TCRP funds were diverted to the General Fund from FY 2001-02 through FY 2004-05, as noted above the Legislature did provide some "bridge" funding to allow some previously programmed projects to proceed.

Governor Schwarzenegger's $7.8 billion FY 2005-06 transportation budget initially proposed using $1.5 billion in transportation funds ($1.3 billion in additional Proposition 42 TIF suspensions plus $216 million in spillover funds[130]) to balance the state budget.[131] On the other hand, Schwarzenegger also sought to prohibit any further diversions of transportation funds beginning in FY 2007-08, while spreading all reimbursement payments (including those due from the proposed FY 2005-06 suspensions and any in FY 2006-07) over the next fifteen years. While this was meant to increase stability for transportation funding, it would also delay project funding well into the future as dollars for TCRP projects trickled in over many years. Noting that the growing fiscal pressure on the General Fund "called into question future scheduled transfers and makes long-term planning based on this funding source impossible,"[132] the LAO again recommended ending the TCRP and requiring those projects to compete for funding with other projects in the STIP, as suggested by the Governor, even though some lower priority STIP projects could lose funding as a result.[133] Fortunately the fiscal picture improved somewhat during the year. No Proposition 42 suspensions were enacted in FY 2005-06,[134] and Congress passed the Safe Accountable Flexible Efficient Transportation Equity Act - A Legacy for Users after the previous transportation funding bill—the Transportation Equity Act for the 21st Century—lapsed in 2003. From then on, transportation spending in the state began to grow significantly, though the PTA would still face increased fiscal pressure.

To pay off the $1.2 million balance still owed to the TCRF by July 2006 and relieve the General Fund of further liability, the Governor had planned to use the net proceeds from the sale of bonds by the California Infrastructure and Economic Development Bank secured by revenues from Indian tribal gaming compacts.[135] The restored TCRF funds would in turn be applied to repay $275 million to the PTA and $443 million to the SHA.[136] A total of $290 million would be set aside for TCRP projects, with any balance to go to the TDIF to be used to pay back the TIF for suspended Proposition 42 transfers in prior years.[137] Pending lawsuits from several tribes and others contesting the legality of issuing bonds backed by tribal gaming revenue delayed sales, however, and a $151 million down payment was instead made directly from tribal gaming revenues, all of which was used to pay down the loan from the SHA.[138] As the

litigation dragged on the Governor eventually requested another $200 million in gaming revenues to be paid toward the balance due to the TCRF through FY 2007-08 (see Table 3).[139] Again, these funds would be used in turn to pay down the SHA loan to the TCRF. Subsequent legislation provided that if bonds could not be issued, then in the future about $100 million in annual tribal revenues would be used to repay the SHA and PTA loans according to the order of priorities set in state law.[140] The TCRF would over time receive $482 million under the plan, but would not see any payments until FY 2009-10.

> By the end of 2006 only 26 of the 141 projects in the TCRP had been completed (mostly small projects and studies amounting to just $304 million of the total $1.7 billion that had been spent out of the $2.6 billion allocated from the original $4.9 billion program). The slow rate of project delivery was related not only to funding delays caused by the diversion of TIF transfers but also to the fact that many projects were earmarked without assurances of required additional local or federal funding. In a number of cases, local agencies had used their own monies to advance projects ahead of additional state funding.
>
> LAO 2007-08 Budget Analysis, Transportation, February 21, 2007

All remaining Proposition 42 transfers were completed as planned. The $1.4 billion transfer to the TIF authorized in the Governor's $11.5 billion FY 2006-07 Budget supported the $678 million yearly payment due to the TCRF, along with $146 million for the PTA, and $582 million for the STIP but (as provided by law) no funding for streets and roads.[141] The Governor also proposed prepaying $920 million of the $1.25 billion in Proposition 42 suspensions due by July 2008 in accordance with state law (see Table 4).[142] The Governor intended to repay $720 million in the current year from the General Fund with the balance paid in the budget year from spillover revenues (though in fact the entire payment to the TDIF was actually made in FY 2007-08). The Legislature, in line with the Governor's request, authorized a total of $1.4 billion (the $920 million originally requested plus $495 million in additional funds) to restore the Proposition 42 suspensions, leaving about $750 million still due with payments to continue at $83 million per year through FY 2015-16.[143] Even with these funds, the TCRP would only receive $3.8 billion of the originally approved funding by the end of FY 2007-08 when the program was supposed to have been completed.[144] As a result of the delayed repayment schedule the CTC decided to limit TCRP project allocations to the minimum annual levels of loan repayments, which meant delaying some projects even further.[145]

Strategic Growth Plan

The Governor's FY 2006-07 budget also set forth a ten year, $233 billion Strategic Growth Plan to improve the state's infrastructure, including $107 billion for transportation, which proposed a mix of new revenue and general obligation bonds to support the State Highway System and intercity rail services.[146] The plan called for issuing $12 billion in general obligation (GO) bonds to address the unfunded upgrades that were to have been carried out under the TCRP and Proposition 42.[147] In addition, it proposed a $14 billion interregional rail program funded from revenue bonds backed by gasoline excise taxes and truck weight fees (up to $1.025 billion per year over 2015-2040), which would be protected from borrowing or other diversion by constitutional amendment. The LAO raised concerns that this proposal could, however, have had a negative impact on highway maintenance and rehabilitation since these revenues are the sole source of monies for those programs and that without

increases in these taxes and fees, there would be little left for projects to increase highway and road capacity.[148]

Following the Governor's budget proposal, the Legislature proposed and voters approved Proposition 1B—the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006—authorizing nearly $20 billion in new GO bonds for various capital improvements to state highways, local roads, mass transportation, and intercity rail projects, as well as to ports, harbors, and ferry terminals. This provided a one-time boost in capital spending, including $750 million in funds for SHOPP highway repair and rehabilitation. A portion of Proposition 1B funds ($3.6 billion) was made available for transit capital improvements by counties and cities and $275 million was set aside for interregional rail.

At the same November 2006 election, voters also approved Proposition 1A (2006)—the Transportation Funding Protection Act—a constitutional amendment designed to further protect transportation-related sales tax revenues from diversion. While this measure did not entirely secure the only source available to expand local transit, it did amend Article XIX B to require that any future Proposition 42 transfers be treated as loans that had to be repaid from the state's General Fund within three years, limited future suspensions to twice in any ten year period and only after the current balance had been repaid in full, and mandated that this repayment occur no later than by 2016.[149] Minimum payments of at least ten percent had to be made each year over the next ten years until then.[150] The measure passed overwhelmingly with 77 percent of the vote. As the LAO noted, it improved the stability of transportation funding but also limited the State's ability to balance its budget in times of need. To address that issue, the Office called for an 8-cent increase in the gasoline excise tax to replace the Proposition 42 transfers and provide relief to the General Fund.[151]

With the availability of substantial new bond revenues, transportation spending began to increase. The Governor's proposed $12.8 billion FY 2007-08 Caltrans budget was about $1.5 billion higher than expenditures in the previous year. The $1.5 billion in TIF funds included $602 million for the final payment to the TCRF, $698 million for the STIP, and $175 million for the PTA, but again no funds for local streets and roads.[152] Together, the restored TIF funds and the TCRF repayments permitted the state to catch up on some of its backlog of delayed transportation projects. Overall spending on transportation jumped due to $4.6 billion in appropriations from Proposition 1B bonds— $523 million to be spent on existing state programs in the current year and $2.8 billion in the budget year, including $600 million for transit capital projects.[153] These added revenues improved transportation funding, especially for street and highways programs, but also committed the state General Fund to making future bond principal and interest payments even as continuing fiscal pressures jeopardized ongoing funding for transit programs.

Highway Maintenance Needs Continue to Grow

Despite the improving financial picture, fiscal issues also continued to affect necessary highway programs. While the State's Five-Year Maintenance Plan recommended an annual increase of $147 million to a) eliminate a backlog of preventative pavement maintenance projects ($85 million), b) reduce by half the number of structures needing major maintenance ($41 million), and c) keep pace with the backlog of drainage repairs ($21 million), only the funds for preventative maintenance ended up in the budget. The report also estimated that an additional $589 million was needed each year to fully eliminate all identified backlogged projects.

The CTC concluded that another $2 billion a year was needed for highway maintenance and rehabilitation.[154] Along with preventative maintenance funds, the new budget did include some funds

for the SHOPP program funded through Proposition 1B bonds: $141 million in the current fiscal year and $403 million in the upcoming budget year. But according to the LAO these were insufficient to meet the state's long-term needs.[155] The 2007 ten-year SHOPP plan identified a total of $55 billion in project development and capital needs through FY 2017-18. Of the $5.5 billion a year needed for these infrastructure improvements, only $2.1 billion was currently being set aside.[156] Many highways had already surpassed their design life, and the costs of remediation were growing faster than revenues. Gasoline excise taxes and truck weight fees were the primary source of funds for capacity expansion, but the gasoline excise tax had not been increased since 1994 even though highway travel increased by 28 percent from 1991 to 2007, while tax revenues per VMT fell by over 20 percent. Only half of the state's needs were being met from these sources.[157]

The LAO estimated that the 18 cent per gallon tax enacted in 1994 was only worth only about 13 cents in year 2007 dollars. Although some federal funds could be used for rehabilitation, the funds in the SHA represented the sole source of state support for highway preventative maintenance. According to Caltrans' Five Year Maintenance Plan, the state needed to spend an additional $3 billion annually over several years to address highway maintenance and rehabilitation needs (costs that would not be covered by existing revenues). The LAO recommended raising the gasoline excise tax by at least 10 cents per gallon and that it be indexed to the rate of inflation. It also suggested that the Legislature consider mileage-based fees and tolls, which would not be affected by improved fuel economy or the shift to alternative fuels, but would more closely match the extent of motorists' use of the roads.[158] As costs mounted the State also began to look to fuel sales taxes for relief.

Legislature "Raids" the PTA

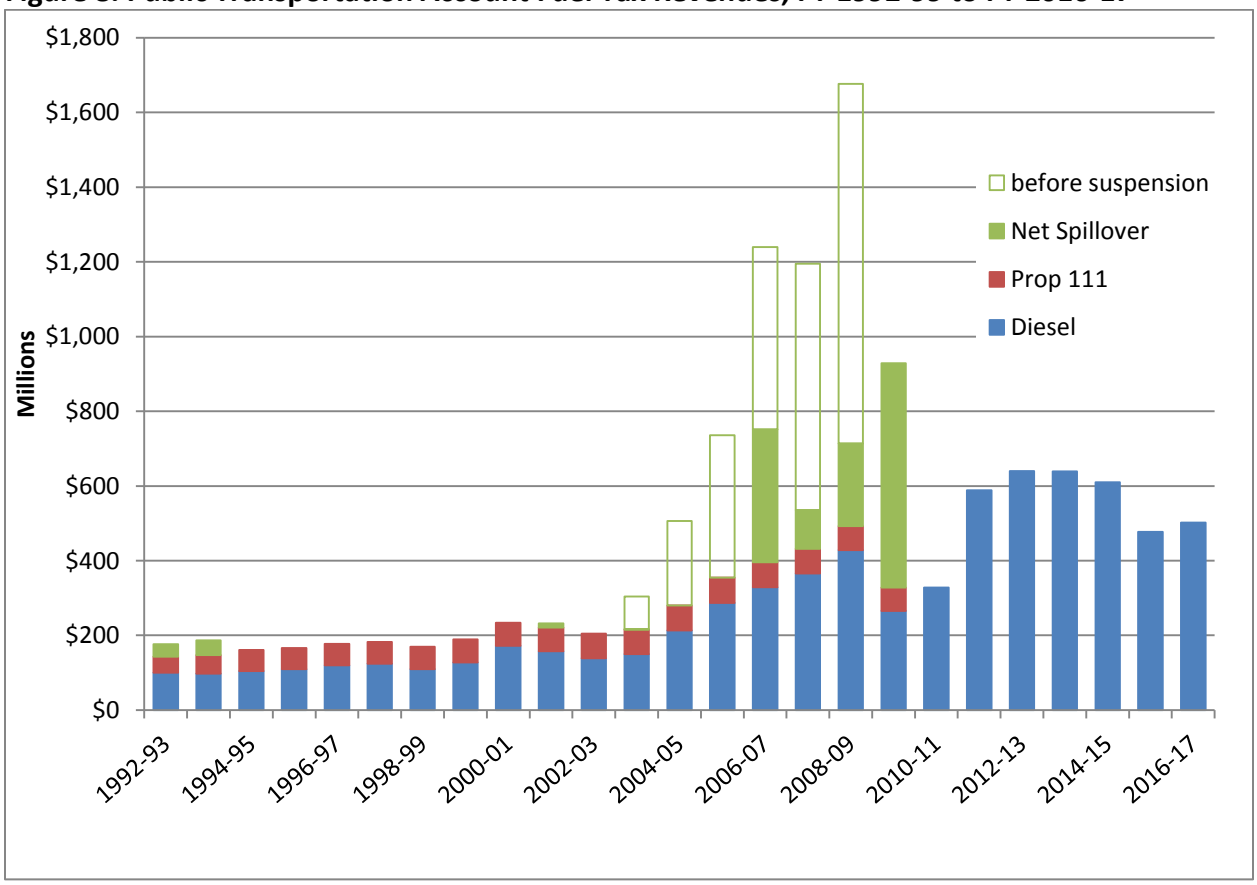
Throughout the early 2000s, the General Fund continued to suffer from declining revenues needed to, among other things, make principal and interest payments on outstanding transportation bonds. Although Proposition 1A put greater limits on the use of non-spillover gasoline sales tax revenues in the TIF, those restrictions did not apply to the spillover funds placed in the PTA. Because the size of the spillover depends on the amount of gasoline sales compared to sales of other goods, over the period from 1985 to 2000 these funds fluctuated but produced little additional revenue for transportation.[159] Funding for the PTA from diesel sales taxes and from the Proposition 111 Delta was far more predictable and substantial over this time period, as shown in Figure 8. After 2000, gasoline sales began to climb and the state anticipated significant increases in spillover revenues. The Legislature responded first by limiting the transfer of spillover revenues to the PTA in both FY 2000-01 and FY 2001-02.[160] In any case, only minimal spillovers were generated for those years.

Beginning in FY 2003-04, as gasoline sales began to grow substantially, the amount of net spillover revenues available (total spillovers less the guaranteed Proposition 111 Delta) also increased. From then on the Legislature conducted what could be considered annual "raids" on the PTA[161] to relieve the General Fund by suspending some of the projected spillover transfers that would have otherwise been made through FY 2006-07, as shown in Figure 8:

- FY 2003-04: No transfers except for any excess above $87,450,000[162]
- FY 2004-05: No transfers, but $140 million was diverted to the Traffic Congestion Relief Fund to repay part of the General Fund loan[163]
- FY 2005-06: No transfers
- FY 2006-07: No transfers except for any excess over $325 million.[164]

In all, a total of about $900 million in spillover transfers were suspended from FY 2003-04 through FY 2006-07, leaving PTA programs to be largely funded with diesel sales taxes (see Table 5**)**.[165] On the positive side, the PTA received its full share of the TIF funds in FYs 2005-06 and 2006-07, and most of the suspended Proposition 42 transfer reimbursements ($214 million) from the TDIF (see Table **6**).[166] While these budgetary actions clearly resulted in significant funding reductions for mass transportation over those years, especially projects in the TCRP,[167] they went legally unchallenged at the time.[168]

Figure 8. Public Transportation Account Fuel Tax Revenues, FY 1992-99 to FY 2016-17



Source: Department of Finance Annual PTA Funding Summaries

Table 5. Distribution of Fuel Sales Taxes, FY 2000-01 to FY 2008-09

$ millions	2000 -01	2001 -02	2002 -03	2003 -04	2004 -05	2005 -06	2006 -07	2007 -08	2008 -09
Fuel Sales Tax Revenues									
Gasoline Sales Taxes									
Proposition 111	$61	63	65	65	67	67	66	66	63
Net Spillover		11		88	225	381	555	725	1,026
Subtotal	$61	74	65	154	292	448	622	792	1,090
Suspensions				-$87	-225	-380	-200[a]		
Subtotal	$61	74	65	67	67	68	422	792	1,090
Diesel Sales Taxes	$172	157	138	150	213	287	328	365	428
Total	$233	233	203	215	280	354	749	1,157	1,518
Retail Sales Tax Fund									
MTF Transfer								$622	805
PTA Transfer	$233	233	203	215	280	354	749	535	713

[a] $325 million suspension less $125 million payment to Bay Area Toll Authority transferred first to PTA

Source: Department of Finance Annual PTA Summaries

For FY 2007-08, the Governor planned to use $1.1 billion in PTA funds to relieve various General Fund obligations, including $340 million for debt service on transportation bonds and $771 million to fund other transportation-related programs typically paid out of general revenues.[169] The Legislature responded to the Governor's plan by establishing a new Mass Transportation Fund (MTF) and authorizing the transfer of $622 million in spillover revenues for FY 2007-08 directly to the MTF instead of the PTA (see

Table **6**),[170] and providing that from then on half of all annual spillover revenues would go to the MTF for transfer to the Transportation Debt Service Fund (TDSF).[171] The TDSF funds would primarily be used to make payments on various transportation bonds though a portion of the monies that would also be used to repay the General Fund for making the required minimum Article XIX B payments.[172] A total of $339 million would be used for *current* debt service payments:

- $124 million for Proposition 116 (1990) rail bonds
- $71 million for Proposition 108 (1990) rail bonds
- $144 million for Proposition 192 (1996) seismic retrofit bonds).

Another $200 million in the MTF was to reimburse *prior* debt service payments on Proposition 108 bonds, while the remaining $83 million was transferred to the General Fund to repay suspended Proposition 42 transfers. In effect, the Legislature used dedicated gasoline sales tax revenues rather than general revenues to pay off transportation bonds and restore TIF funds.

Table 6. Mass Transportation Fund and Public Transportation Account Funds, FY 2000-01 to FY 2008-09

$ millions	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Retail Sales Tax Fund									
Gasoline Revenues	$1,145	1,110	1,118	1,310	1,550	1,806	2,036	2,208	2,422
Transfers to PTA[a]	-$61	-74	-65	-154	-292	-448	-622	-792	-1,090
Revenues Remaining For Highway Use	$1,084	1,035	1,052	1,156	1,257	1,358	1,414	1,416	1,332
Distributions									
TCRF payment						-$678	-678	-602	
TIF Transfer						-$680	-736	-814	-1,332
20% Share to PTA						(-$136)	(-147)	(-162)	(-266)
MTF									
Spillover Revenues								$622	804
Disbursements									
To TDSF								-$539	-308
Proposition 1A Reimbursement								-$82	-82
Dept. of Ed.									-$420
PTA									
Revenues									
Sales Taxes[b]	$233	232	204	216	280	354	750	535	713
TIF 20% Share						$136	147	162	266
TDIF							$214	3	
TCRF loan repayment							$10		
Loan from TCRF									$60
Distributions									
TCRF loan		-$180	-95						
Transfers									
GF Loans								-$409	
DOE								-$99	-201
DDS								-$134	-138
Subtotal								-$637	339

[a] See Table 5, Gasoline Sales Taxes Subtotal

[b] See Table 5, PTA Transfer

Note: Values in parentheses indicate its inclusion in the above value not in parentheses.

Source: FY 2000-01 to FY 2009-10 Transportation Fund Condition Statements

In addition to diverting PTA funds to the MTF, the Budget Act of 2007 appropriated a total of $637 million directly from PTA reserves to fund programs that were traditionally supported by the General Fund:

- $409 million to reimburse the General Fund for *past* debt service on Proposition 108 bonds;
- $99 million to the Department of Education (DOE) for home-to-school transportation services; and
- $129 million to the Department of Developmental Services (DDS) to transport developmentally disabled persons to Regional Centers for vocational training.[173]

Transportation Bond Finance Measures

Proposition 116 – Clean Air Transportation Improvement Act of 1990
$2 Billion

Proposition 108 – Passenger Rail and Clean Air Bond Act of 1990
$1 Billion

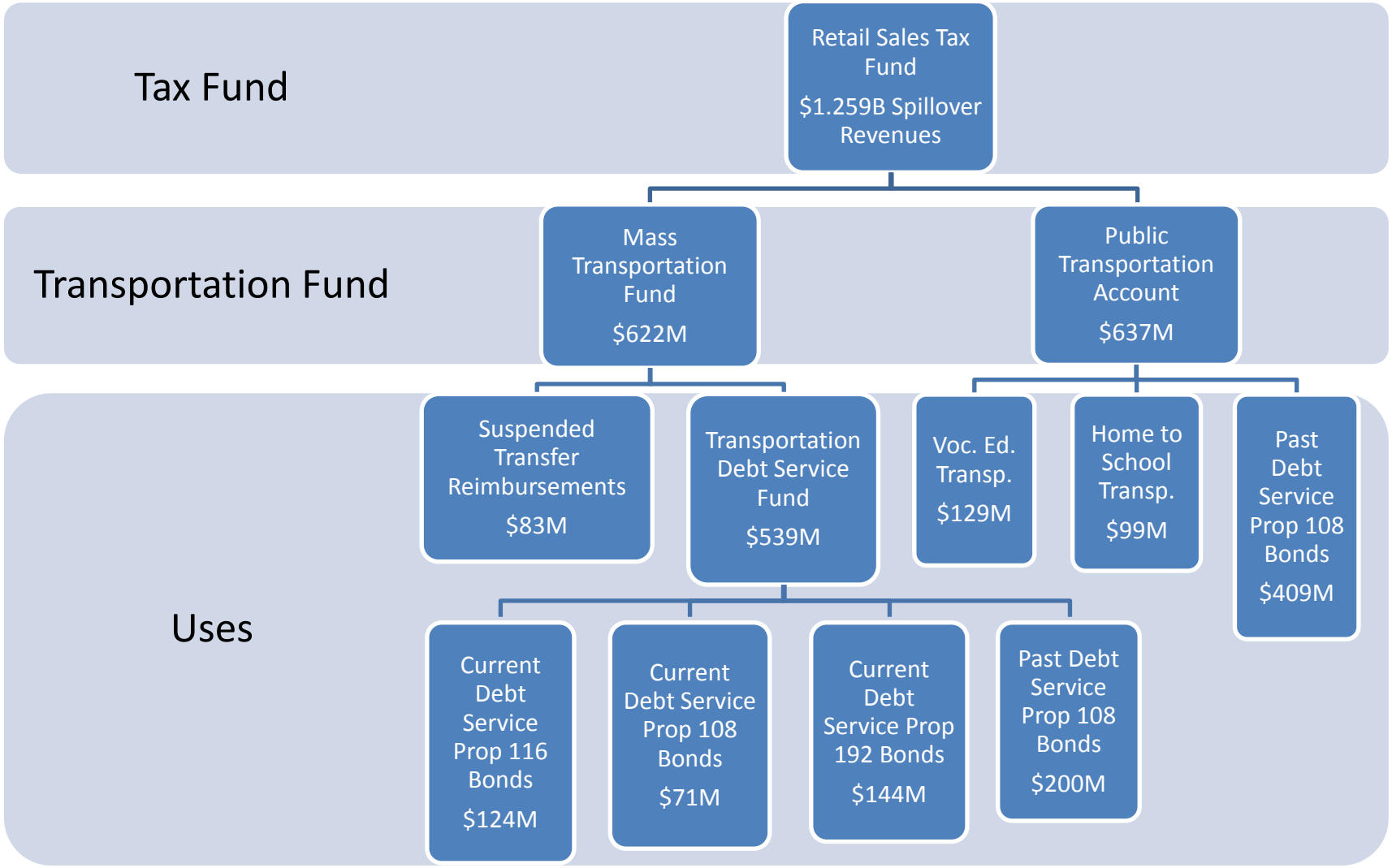
Proposition 192 – Seismic Retrofit Bond Act of 1996
$2 Billion

Proposition 1B – Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006
$20 Billion

Proposition 1A – Safe, Reliable, High-Speed Passenger Train Bond Act for the 21st Century (2008)
$9.95 Billion

In all, a total of $1.3 billion in transit funds were diverted to provide General Fund relief (see Figure 9). The California Transit Association, the state's professional transit association, challenged the transfers in state court as unconstitutional and for violating the legislative provisions governing the PTA, which limited the use of those funds to "transportation planning or mass transportation purposes." However, the trial court in *Shaw v. Chiang* upheld the actions, with the exception of the $409 million General Fund reimbursement from the PTA, with respect to which the court found that offsetting *past* debts that had already been paid out of the General Fund did not serve either purpose.[174] The court did hold that PTA funds could be used for transporting school children and job trainees since they did represent mass transportation services. It also ruled that the Legislature was free to transfer gasoline sales tax funds from the Retail Sales Account to the MTF and then use those funds to make payments on current highway bond debt and suspended Proposition 42 transfer reimbursements without violating either Proposition 116 or Proposition 1A (Article XIX B). As a result, for FY 2008-09, the Legislature directed all $940 million in estimated spillover revenues to the MTF to accommodate remaking the court-nullified transfer of $409 million to the General Fund,[175] while both sides appealed the trial court decision.[176] The eventual outcome of the case (which prompted the Swap) is discussed further below. In addition, the Legislature directed that $201 million in PTA funds be used for student transportation and $138 million for transporting people to Regional Centers.[177]

Figure 9. Diversion of Spillover Sales Tax Revenues, FY 2007-08



The Governor's budget proposals over the next two years continued to use spillover funds for school bus services ($623 million in FY 2008-09 and $402 million in FY 2009-10) and Regional Center transportation ($138 million in both FY 2008-09 and FY 2009-10)[178] to relieve pressure on the General Fund. Even with its share of the growing diesel sales tax revenues and the restored Proposition 42 payments, the PTA would still need a $60 million loan from the TCRF in FY 2008-09 to remain solvent (see

Table **6**).[179]

The deepening recession also jeopardized full funding of the TCRP as the Governor planned to redirect to the General Fund $200 million from tribal gaming revenues for FY 2008-09 and 2009-10 that would have funded congestion relief projects and the SHOPP program through repayments to the SHA. Even though suspending repayments to the TCRF would further delay highway capital projects, the LAO endorsed the action to close the state's budget shortfall. No further repayments beyond the initial $351 million (shown in Table 3) have since been made, leaving a total of $265 million and $133 million still due to the PTA and SHA, respectively. Governor Brown has recently proposed legislation to repay the outstanding loan to the TCRF and to repay the amounts due to the PTA and the SHA.[180]

Meanwhile, voters approved Proposition 1A (2008)—The High Speed Passenger Train Bond Fund—which authorized the sale of $9.95 billion in GO Bonds for a high speed rail system from San Francisco to Los Angeles and Anaheim, further extending the state's debt obligations. The passage of Proposition s 108, 116, 192, 1B and 1A combined to constitute the largest commitment to transportation bond financing since the early 1900s.

As the economy was slowing dramatically, gasoline prices were spiking; this caused sales tax revenue from fuel sales to rise. The Legislature had tried to take advantage of the situation by using these additional monies to replace general revenues for servicing growing bond debts and funding transportation programs for schools and Regional Centers. Unfortunately, while this promised to relieve some of the stress on the General Fund, it would soon be undone by the California courts and voters as transit advocates were able, through litigation and the initiative process, to limit use of these funds to transit and prevent any further diversions. Those successful efforts would eventually force the Governor and the Legislature to end the state gasoline sales tax altogether by enacting the fuel tax swap legislation and utilize truck weight fees instead of fuel excise taxes to service the State's transportation bond debt. The trigger came when the California Court of Appeals reviewed the trial court opinion in the *Shaw v. Chiang* case, discussed above, and voided any transfer of PTA monies to the MTF on the grounds that it was not "consistent with" nor did it "further" Proposition 116's provisions requiring gasoline sales taxes to support mass transportation.[181]

Shaw v. Chiang

As noted above, transit advocates challenged the FY 2007-08 budget appropriations, arguing that the diversion of about $1.2 billion in spillover revenues to the General Fund was inconsistent with the purposes of the PTA as established in Proposition 116. As noted above, with one exception, the trial court approved the fund transfers from the PTA to the MTF and the use of PTA funds for bond payments and other transportation programs. However, since the funds deposited into the MTF could be used for non-transportation purposes, the California Court of Appeals ruled that the Legislature lacked the authority to enact the disputed provisions. Here the appellate court disagreed with the trial court that spillover revenues only became dedicated to mass transportation purposes after they were deposited in

the PTA, ruling that the voters intended that *all* such funds be used to establish a continuing source of support for mass transportation:

> [W]e conclude the voters in adopting Proposition 116 intended…to convert the PTA to a trust fund dedicated to supporting transportation planning and mass transportation projects, and to preserve the funding of the PTA for such projects with spillover gas tax revenue according to the formula specified in [the Government Code]. A consistent amount of spillover gas tax revenue is not guaranteed, but if the formula results in there being spillover gas tax revenue it must be transferred to the PTA for use in accordance with [the Public Utilities Code].[182]

As a result of the decision, the Legislature discontinued the MTF[183] and transferred all its funds to the PTA.[184]

Although the court acknowledged that (at the time) spillover funds could be used to pay current debt service on mass transportation bonds,[185] it held that paying Proposition 192 seismic retrofit bonds for road and bridge repair did not qualify as supporting any mass transportation purpose. As to the Proposition 116 rail bonds, the court concluded the voters had specifically intended that these funds be used to increase spending on public mass transportation, not displace it, a goal which would be defeated if monies that were already intended and otherwise available for that purpose were instead used to retire those bonds.

The court also agreed with the CTA that using PTA funds directly to pay for transporting disabled persons and students did not further the purposes spelled out in Proposition 116 since those activities did not qualify as mass transportation, which it concluded meant common-carriers like public bus and rail transit services. Furthermore, reimbursing the General Fund for past rail bond payments was improper since those obligations had already been satisfied, and the transfers simply amounted to trading funds that could be used for mass transportation purposes for monies that could then be used for any non-transportation purposes. [186] Finally, using spillover funds to, in effect, restore TIF funds, was likewise prohibited because they could then be used for purposes unrelated to mass transportation.[187] The California Supreme Court declined to review the appellate court's decision so the ruling became final.[188] The decision left open the question of how the State was going to meet these obligations.

Bond Financing Displaces Pay-As-You-Go Funding

Fully funding the TIF after FY 2004-05 and the partial repayment of TCRF loans increased transportation spending, but bond financing was clearly beginning to take up a larger share of expenditures. A key part of efforts to balance the state budget relied on using bond proceeds to avoid spending general tax revenues on transportation projects. Bond-financed projects started increasing after FY 2006-07 while non-bond projects declined, due mainly to redirecting resources for General Fund relief. A total of $9.9 billion in Proposition 1B funds were appropriated in FY 2007-08 and 2008-09.[189] In all, bonds made up 30 percent of all state expenditures for transportation in the FY 2008-09 budget, while non-bond expenditures dropped by 8 percent over current year spending.[190] Another $1.7 billion was set aside in the second year for highways, transit, and local streets and roads (including $800 million for transit capital projects), and $3.5 billion in additional spending was proposed for FY 2009-10 as part of the Governor's economic stimulus package. Of the $9 billion in Proposition 1A funds available for High Speed Rail, $125 million was budgeted for initial planning.[191]

To summarize, although the availability of bond proceeds had helped to jump start some much needed transportation improvements, it also forced the state to tap into alternative sources of revenues

to service its mounting debt obligations. Understandably reluctant to raise fuel excise taxes, it seemed reasonable for the Legislature to turn instead to existing sales tax revenues, even if it meant displacing or delaying some rail and highway projects or limiting funding for local transportation services.

Before and during the Great Recession, gasoline prices spiked and caused sales tax revenue to rise, exactly the situation the spillover was designed for, at least under normal circumstances. As discussed above, the rationale for the spillover was that if automobile use increases relative to other spending, it is defensible to treat that increment as a user fee rather than general revenue. While the Legislature initially allocated those funds for specific rail and bus transit purposes, those now had other sources of funding, including the TIF, and other transportation needs were pressing. Inasmuch as these spillover funds were still going to be used for transportation purposes (funding school and vocational education bus services and paying rail transit and highway repair bonds), that seemed to proponents a fair tradeoff. Nevertheless, it unleashed a battle with transit supporters who wanted to see those funds used solely as originally intended.

In siding with the transit interests and treating spillover gasoline sales taxes as dedicated user fees, the *Shaw* court specifically rejected the State's arguments that it needed flexibility to address fluctuations in revenues and spending needs. But in a severe economic downturn, this meant a significant amount of state revenue was being spent on mass transportation when the state budget was seriously out of balance and other important state programs were desperate for funding. Unable to beg, borrow, or steal any more PTA funds once the appellate court had voided the Legislature's efforts to divert spillover revenues to other transportation-related uses, a new means for bailing out the General Fund became a top priority. Legislators hoped to at least capture some of the value of higher gasoline prices for state highway and road projects. The key to that lay in finding a source of more flexible revenues in place of gasoline sales taxes. Perhaps surprisingly, they turned again to fuel excise taxes as we discuss in the next section.

But the [Schwarzenegger] scheme eviscerates Proposition 42, a 2002 voter initiative designed to put an end to transportation fund raids, and wipes out funding for public transit.[192]

Los Angeles Times

IV. THE CALIFORNIA GAS TAX SWAP

In the aftermath of the appellate court ruling, Governor Schwarzenegger proposed eliminating a portion of state fuel sales tax (totaling $2.8 billion annually) and "swapping" it for a new excise tax (amounting to $1.9 billion) that would save purchasers roughly 6 cents per gallon overall.[193] Unlike the limits placed on the use of gasoline sales taxes in *Shaw*, at the time Article XIX permitted gasoline excise taxes to be used to pay debt service on highway bonds. The Governor's proposed plan promised to save the state treasury close to a billion dollars and allow the State to balance its budget by replacing the now more-restricted sales tax funds with an additional 10.8 cent per gallon fuel excise tax (with annual increases through 2019-20). Besides reducing the immediate tax burden on automobile drivers, the state could use those more flexible revenues to pay for highways ($629 million) and local streets and roads ($629 million), service the state's bond debt ($603 million).[194]

The Governor's $18 billion transportation budget would have used $583 million in Proposition 1A bonds to develop a high-speed rail system and $350 million in Proposition 1B bonds for transit capital improvements. However, it would have ended funding for transit operations. A total of $311 million would have been shifted from the PTA, and $72 million from the SHA, to pay debt service on transportation bonds. Under this budget, expenditures from the General Fund would have decreased by $1.4 billion due to elimination of sales tax revenues, while spending from other state funds would increase by $1.6 billion.[195] While the plan would maintain funding for the STIP and SHOPP programs, it would have eliminated a significant source of funding for rail projects and local transit operations previously supported by gasoline sales tax revenues. Moreover, in the opinion of the LAO, it did not adequately address the need for major highway repairs. Since the Governor's proposal represented a net $1 billion loss to the state Treasury, the LAO suggested either (a) increasing the proposed gasoline excise tax by 6 cents per gallon to fund highway maintenance and repair, or (b) instead of eliminating all fuel excise taxes, retain the diesel sales tax and use it to subsidize transit or pay debt service on rail bonds. The second option would increase the gasoline excise tax by 2 cents to offset the revenue loss from not increasing the diesel excise tax.[196] The Legislature eventually adopted a variation of the second idea.

Opponents of the Governor's proposal promised to place an initiative on the upcoming ballot to block the proposal and to prevent any such future diversion of fuel tax revenues from current transportation projects to pay off old debts. In the meantime, Senate Democrats responded with a revenue neutral proposal to add 5-cents to the Governor's proposed gasoline excise tax to maintain transportation funding. The legislative compromise, which emerged from the special session of the Legislature in the form of Assembly Bills 6 and 9, along with Senate Bill 70, became known as the California Fuel Tax Swap of 2010.

New Gasoline Excise Tax

Assembly Bill 6 (AB 6) exempted gasoline sales from the 5 percent state sales tax (the base state sales tax rate had been increased 0.25 percentage points in 1991).[197] This eliminated a portion of the funding for the PTA and all the funding for the TIF; therefore, as of July 1, 2010, all remaining obligations of the

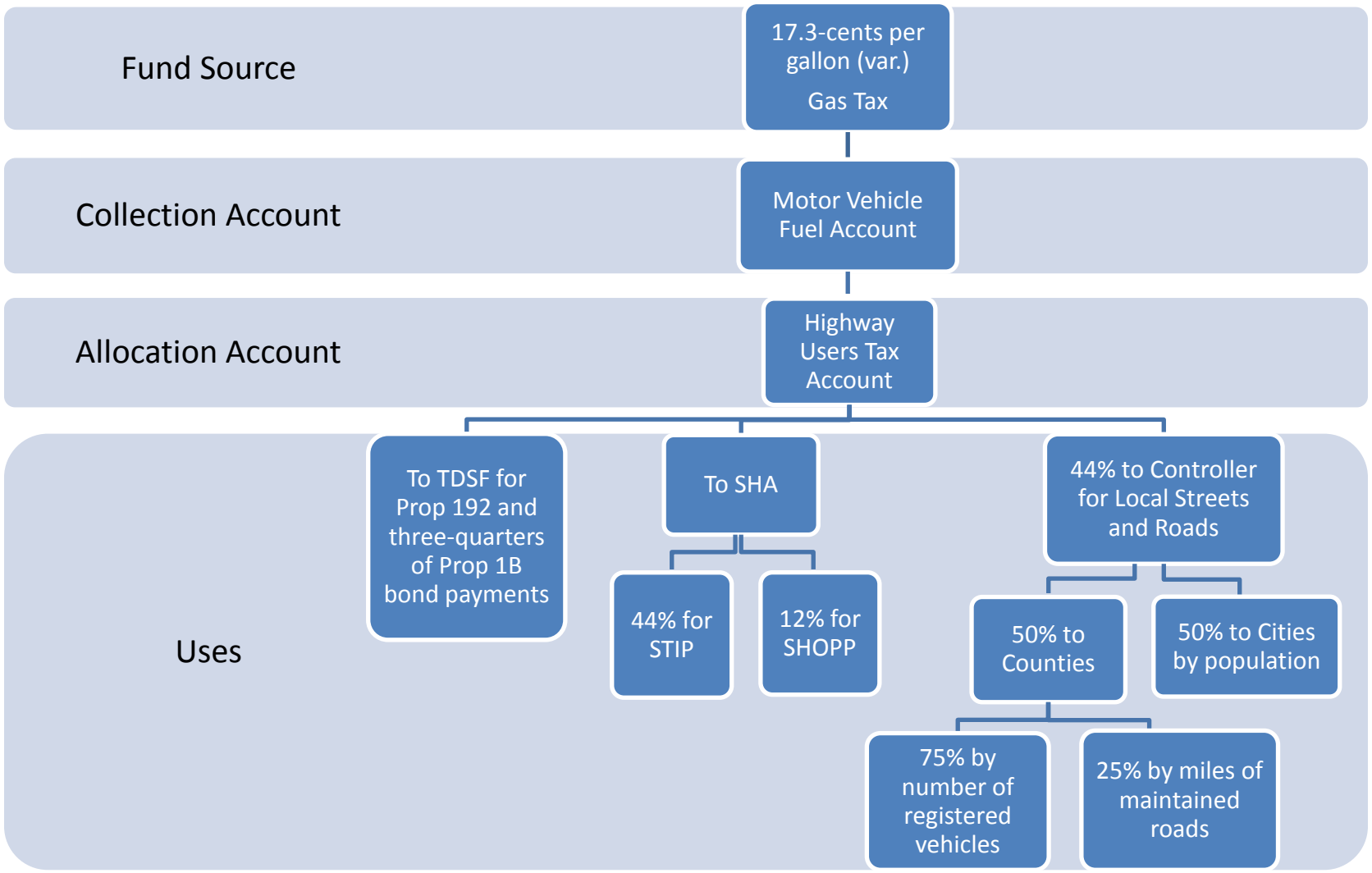
TIF were assumed by the SHA, and all assets and liabilities of the fund slated to be transferred to the SHA by July 2016.[198]

In place of the gasoline sales tax, the Legislature imposed an additional 17.3-cent per gallon excise tax on top of the existing 18 cents. In order to maintain the then current revenue stream but avoid any increase that would trigger a supermajority vote requirement under the state Constitution, the Board of Equalization was directed to estimate the amount of revenue that would have been collected without the Swap in each upcoming fiscal year and to adjust the tax rate to maintain revenue neutrality. The BOE was also required to "true-up" the adjusted tax rate in each succeeding fiscal year, by increasing or decreasing it to account for any over- or under-collection from using the prior year's estimated rate, based on actual sales data for the current fiscal year.

Assembly Bill 9 provided that the additional gasoline excise tax revenues would be used to reimburse the general fund for payments on Proposition 192 (seismic retrofit) bonds and three-quarters of Proposition 1B bond funds (those used for highway projects; see Figure 10).[199] After these debt service payments, the remainder of excise tax revenues could be used to backfill highway and road funds lost due to eliminating the gasoline sales tax revenues. Funding allocations were as follows: 44 percent for the STIP, 12 percent for SHOPP, and 44 percent for local streets and roads. For one year (FY 2010-11), $54 million a month ($650 million in total) was to be held in the HUTA after debt reimbursement for future appropriation by the Legislature and was loaned to the General Fund.[200]

All miscellaneous tax revenues in the State Highway Account that were not dedicated to transportation purposes under Article XIX and that would have been allotted to the PTA in FY 2010-11 (plus a portion from the prior fiscal year allotment) would instead be diverted to the TDSF to reimburse the General Fund for payments on Proposition 116 bonds.[201] In following years, with the exception of certain authorized transfers to local transit assistance, all such funds would be transferred to the PTA to be used exclusively for interregional rail projects.[202]

Figure 10. Proceeds of Price-Based Gasoline Excise Tax (AB X8 9)

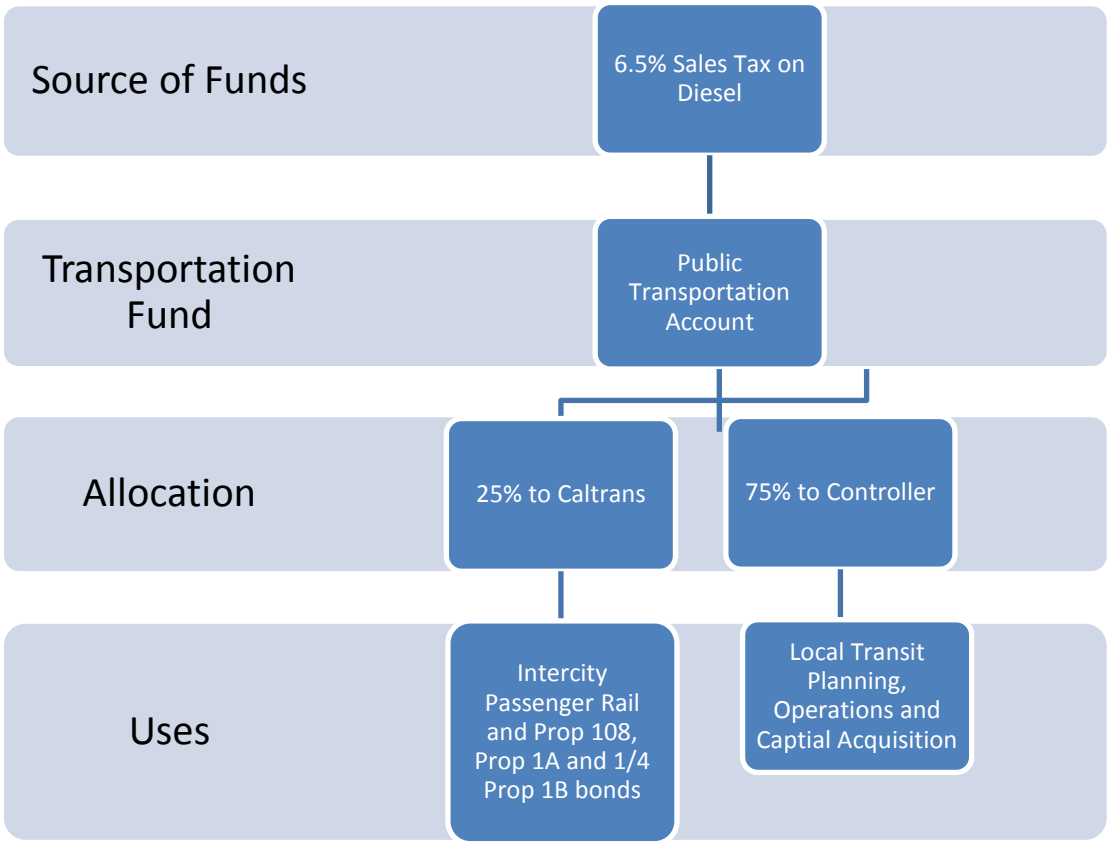


New Diesel Sales Tax

Elimination of the sales tax on gasoline meant the loss of a significant source of revenue for transit, as well as local street and road programs. To replace some of those revenues, AB 6 imposed an additional 1.75 percent tax on sales of diesel fuel (which was not covered by Article XIX or Article XIX B and could be used to pay rail bonds).[203] The rate was selected to generate an amount of revenue that would put mass transportation finance back on a par with where it would have been had the State not diverted spillover revenues over the years. To maintain revenue neutrality, though, it was necessary to reduce the excise tax on diesel sales from 18 cents per gallon to 13.6 cents. As with the gasoline tax swap, the diesel excise tax would be adjusted annually so as not to produce net revenue gains or losses. From these revenues, 75 percent would be allocated to the State Controller to provide for local transit assistance and 25 percent would be placed in the PTA (see Figure 11).[204] These latter funds would be used for interregional rail and other purposes, including transfer to the TDSF to reimburse the General Fund up to $254 million in FY 2010-11 for payments made on Prop 108 and Prop 1A (2008) bonds and one-quarter of Prop 1B bonds (covering amounts for rail projects only).[205]

Finally, Senate Bill 70 addressed some of the Governor's concerns by exempting specific diesel fuel sales from the sales tax imposed by AB 6 and excluding sales of aviation gasoline[206] from the increase in gasoline excise taxes. With these amendments, the Governor signed the legislation on March 22, 2010.

Figure 11. Proceeds of Diesel Sales Tax (AB X8 9)



Impact of Fuel Tax Swap

In effect, the fuel tax swap allowed a portion of the state debt incurred for transportation programs to be placed "off-budget" and paid from fuel-based revenues that would otherwise have gone to current transportation planning and mass transportation projects. The Swap thus freed general funds for other non-transportation purposes. The Swap set aside $400 million for transit operators for FY 2009-10 and 2010-11, and guaranteed local transit a larger share of PTA funds (from the now-increased diesel sales taxes) thereafter. This would help stabilize transit funding inasmuch as spillover revenue was always uncertain and the Proposition 111 Delta typically generated only about a third of PTA revenues. Intercity rail projects would receive 25 percent of diesel sales taxes and about $72 million a year in non-Article XIX transportation funds (those funds other than from taxes on gasoline or diesel purchases, including monies raised from document sales, charges for miscellaneous services to the public, condemnation deposits, fund investments, rental of state property, or any other miscellaneous uses of property or money).[207] (Figure 8 shows the impact of the elimination of the gasoline sales tax and increase in the diesel sales tax on PTA revenues.) Highway and road funds lost due to eliminating the gasoline sales tax were replaced by revenues from the new gasoline excise tax with an additional $650 million set aside in FY 2010-11 as a loan to the General Fund.[208]

As summarized by the LAO, in the first budget year (FY 2009-10), the plan would augment the General Fund by providing some $219 million ($142 million from PTA funds and $79 million in non-Article XIX funds). The next year (FY 2010-11) a total of $929 million would be saved beginning with $254

million in PTA monies and $72 million from non-Article XIX revenues. In addition, the new gasoline excise tax would generate $603 million to reimburse the General Fund for transportation bond payments. In subsequent years the Swap was expected to produce over $700 million a year for General Fund relief.[209] Meanwhile, however, the SHOPP faced a growing funding deficit and only a limited amount of recommended routine highway maintenance and repaving work was being performed (about 2,700 lane miles a year, compared to the recommended 7-10,000[210]).

The political compromise that resulted in the Swap resolved the tension, referenced in the opening quote from Churchill in the Introduction to this report, that has long existed in the state between the view that gasoline sales taxes should be treated as general revenues (which had only temporarily been drawn into the transportation world) and the position of many in the transportation field that sales and excise taxes on fuels should be treated as user fees and devoted strictly to transportation purposes. The resolution was only partial, since the decision to retain and increase sales taxes on diesel fuel meant that a greater burden for funding mass transportation operations now falls on the commercial trucking industry, which is responsible for most diesel fuel purchases. There is a tenuous connection between the degree of road use by trucks and the need for increased mass transportation. Despite this logical shortcoming, the legislation did provide a more stable source of funding for local transit operations compared to the situation prior to the fuel tax swap, although diesel sales have performed poorly compared to the general increase in prices and future revenues may not keep pace with inflation.

The commitment to revenue neutrality locked in spending on city and county streets and roads to what would have been collected had the Swap not gone into effect. These revenues are based on projections of future gasoline prices and consumption – estimates that may be extremely volatile from year to year and perhaps insufficient to meet the state's infrastructure needs, particularly in light of the unanticipated global collapse in crude oil prices.

Voter Pushback

Opponents of the legislation, including representatives of cities, police and fire organizations, mass transportation interests and the California Transit Association, which had successfully challenged the earlier PTA fund diversions, placed an initiative measure on the November 2010 ballot to undo the Swap and restore funding for the various mass transportation and other local street and highway programs that had been eliminated. Hoping to capitalize on the opportunity to secure a continuing source of funds for local transit, proponents alleged that state borrowing from local government and transportation funds had resulted in deep cuts to vital local services, including road repairs and transportation improvements, and asserted that that Proposition 22—the Local Taxpayer, Public Safety, and Transportation Protection Act of 2010—would ensure that local tax dollars could not be taken away by "politicians in Sacramento" and that gasoline taxes could no longer be diverted for "non-transportation purposes."[211]

The measure, which amended Articles XIII, XIX, XIX A and XIX B of the state Constitution, affirmed that the HUTA, the PTA, and the TIF were all trust accounts or funds and that the Legislature could neither change their status nor borrow any monies from them (except under certain limited conditions). Among other things, it tightened the requirements for modifying the statutory allocations to cities, counties and areas of the state.[212] It effectively precluded the use of fuel excise tax revenues to pay outstanding bond obligations.[213] Moreover, it provided that if any excise taxes are reduced or repealed, any replacement revenue has to go into the HUTA for the same purposes and be distributed

under the present allocation formulas.[214] These limits do not, however, apply to sales and use taxes or vehicle license fees.[215] Importantly, they also did not restrict the uses of truck weight fees.

In addition, Proposition 22 required that all spillover gasoline tax revenues, sales taxes on Proposition 111 gasoline excise taxes, and sales taxes on diesel fuel be deposited quarterly into the PTA, and prohibited the Legislature from diverting these funds or using them for purposes other than transportation planning and mass transportation. The measure also provided a definition for "mass transportation" to avoid the problems raised by the *Shaw* case.[216] Generally speaking, it must be a fixed route, demand response, or otherwise regularly available surface transportation or paratransit service provided to the general public at a fixed fare by a transit district or municipal operator.

Finally, any gasoline sales tax funds collected in the TIF had to be distributed according to the voter-endorsed formulas: 20 percent for mass transportation, 40 percent for the STIP, and 40 percent for city and county street and highway maintenance and repair.[217] Should the Legislature reduce or repeal those taxes and replace the monies with an alternative source of revenue, these must be deposited in the TIF, used for the same purposes, and distributed in the same manner.[218]

Along with Proposition 22, voters also approved Proposition 26, which nullified the Fuel Tax Swap legislation and made it harder for the Legislature to pass certain fees, levies, charges and, according to supporters, other "hidden taxes" in the future, even those like the Swap adjustments that do not result in a net increase in revenue. As a consequence, the Legislature was forced to reenact the entire tax swap, with some modifications, by a two-thirds vote of both houses, to avoid the state having to spend a large share of its budget on mass transportation instead of General Fund relief.

The Legislature Responds

Proposition 22 passed with over 60 percent of the vote, but the Legislature again faced the prospect of a state budget default. Within a few months, members were able to re-enact the entire Fuel Tax Swap, but the changes made to the state Constitution by the initiative caused them to substitute truck weight fee revenues for fuel tax-based funds to satisfy the state's debt obligations.[219]

The new measure, Assembly Bill 105, restored the changes to gasoline charges but reduced the increase in diesel excise taxes slightly to 13 cents per gallon after July 2011, while temporarily increasing the sales tax on diesel fuel to 1.87 percent beginning July 2010, 2.17 percent in July 2012, 1.94 percent in July 2013, and returning it to 1.75 percent as of July 2014, in order to address the requirements of Proposition 22 and subsequent changes in the forecasts of quantity and price of diesel fuel.[220] Again, the base diesel excise tax is adjusted each year to maintain revenue neutrality.

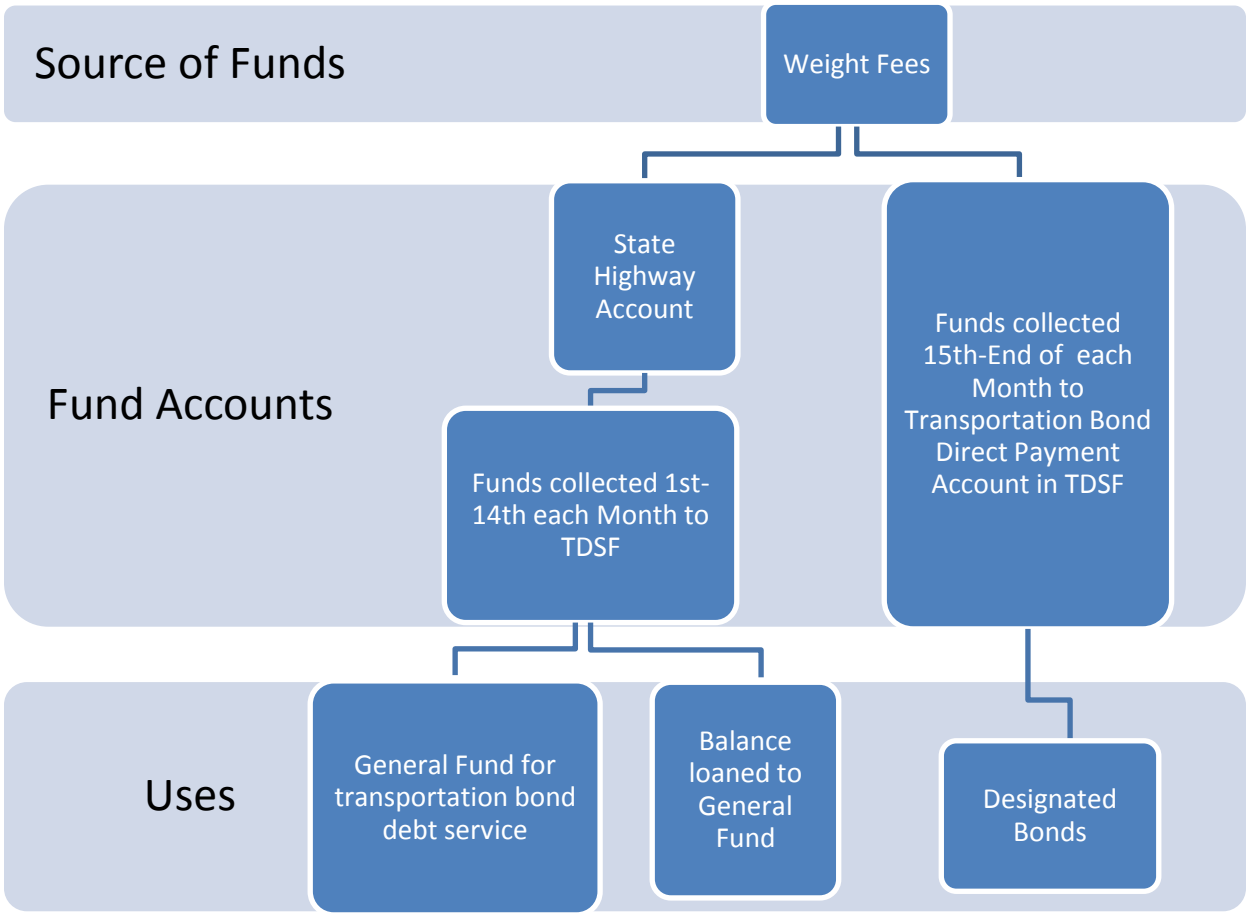
With the limitations now placed on the use of gasoline and diesel fuel tax revenues by voters, the Legislature needed a new way to achieve its goal of balancing the state budget, and raising the billions of dollars owed on state transportation bonds. The Governor proposed a plan to use truck weight fees from the SHA instead of fuel taxes for bond debt service, and the Legislature concurred.[221] After November 2, 2010, any funds in the HUTA from the additional gasoline excise taxes were transferred to the SHA, and the bond debt service reimbursements were instead made from vehicle weight fees (up to the annual revenue from weight fees), including monthly payments left on the $650 million loan made from the SHA to the General Fund.[222]

Under the current legislation, weight fees—which range from $8 to $539 annually for commercial vehicles weighing less than 10,000 lbs. and from $332 to $2064 for those over 10,000 lbs.— are all deposited into the TDSF and can be used to reimburse the General Fund for payments due on Proposition 116 (1990), Proposition 108 (1990), Proposition 192 (1996), Proposition 1B (2006) and Proposition 1A (2008) bonds, as well as early redemption or retirement of bonds maturing in subsequent fiscal years (see **Figure 12**).[223] And to assure that any TCRF funds repaid to the SHA could be used for debt reimbursement, the Legislature adopted legislation that characterized the money used to make the original loans as having come from vehicle weight fees deposited in the SHA.[224] It should be noted that any use of truck weight fees for bond repayment is strongly opposed by the AAA and by the trucking industry.

Proposition 1B Priority Bonds

The state Treasurer is authorized to designate certain Proposition 1B bonds to be paid directly from weight fee revenues and once these bonds are issued, all weight fees collected from the 15th calendar day through the end of the month are deposited directly into the Transportation Bond Direct Payment Account (TBDPA) in the TDSF and can only be used to make principal and interest payments on the designated bonds. The state covenants with bondholders not to restrict the transfer of funds to the TBDPA or reduce any weight fees. The additional security provided to bondholders is intended to produce a higher bond rating for the designated bonds and facilitate their sale, as well as reducing the total amount of unsecured general obligation bonds the state carries.

Figure 12. Proceeds of Weight Fees (AB 105)



The additional gasoline tax revenues are used to replace the revenue lost from using weight fees to pay transportation bonds (about $1 billion per year),[225] and the rest is divided as before between the STIP (44 percent), the SHOPP (12 percent), and local road projects (44 percent).[226] All additional diesel sales taxes are used to backfill the lost gasoline sales tax revenues that had supported programs funded out of the PTA. According to the LAO, the plan offered similar short-term savings but less long-term relief than the original swap.[227]

Recent legislation created a priority system for payment of designated Proposition 1B bonds that is similar in some respect to the Governor's proposal to issue revenue bonds contained in his Strategic Growth Plan and the LAO's own earlier recommendations (see sidebar). Any funds remaining in the TDSF at the end of each month are loaned to the General Fund, though they must be repaid to the SHA if needed to reimburse any payments on other outstanding transportation bonds whenever eligible debt service exceeds the available weight fee revenues.[228] Additional information concerning the subsequent use of weight fees to service state transportation bonds is contained in **Appendix C**. With the revised Swap, even though excise taxes no longer pay debt service, they are still being collected as before, and the variable portions must be adjusted annually to maintain revenue neutrality.

Managing & Setting the Variable Excise Tax

Two primary factors are involved in setting and adjusting California's variable excise taxes. California Assembly Bill 6 tasks the State Board of Equalization (BOE) with setting and adjusting the tax on or before March 1 of each fiscal year.[229] The BOE relies heavily on forecasts of both gasoline and diesel sales and prices—estimated by the California Department of Finance—to set the variable excise tax. The methodology for adjusting the variable excise tax consists of three primary steps aimed at ensuring revenue neutrality.

Table **7** outlines this three-step methodology and illustrates its use with the calculations for the FY 2014-15 variable gasoline excise tax.

First, the BOE must forecast the foregone sales tax revenue, that is, the sales tax revenue that would have been generated had the sales tax remained in effect. The BOE uses projections for the coming FY of both gallons sold (

Table **7**(A)) and cost per gallon (B), which are both estimated by the Department of Finance. The BOE then multiplies this estimate by the eliminated sales tax rate (C) to calculate the total foregone revenues (D) that would have been generated under the sales tax.

Second, to arrive at revenue neutrality, the BOE calculates a per gallon excise tax that would be equivalent to the foregone sales tax. It calculates this by dividing estimated foregone sales tax revenues by gallons forecast to be sold (E).

Forecasts, however, are imprecise and errors arise that can only be determined after the passage of time. In this case, the over- or under-prediction of either gallons sold or—more commonly—gasoline prices, results in the state collecting either more or less excise tax revenue than it would have collected under the sales tax. This means that the variable excise tax is no longer revenue neutral and instead could be interpreted as a tax increase or decrease. To correct for deviations between the variable excise tax and what would have been collected under the (eliminated) sales tax—thus ensuring revenue neutrality—the BOE must take a final step: a "true-up" step. In the true-up, the BOE adjusts the variable excise tax based on previous fiscal years' revenues to balance revenues from the variable excise tax with the foregone sales tax. For example, to offset a $188 million revenue shortfall during FY 2012-13,[230] an extra $0.01 tax would need to be levied per each forecast gallon of gasoline in FY 2014-15 (

Table **7**(G)). The BOE then subtracts the calculated true-up cost (G) from the newly set excise tax rate (E) to calculate a final adjusted variable excise tax rate (H). The Board is required to pass proposed changes by a majority vote on or before March 1 of the current fiscal year. The newly established rate is effective beginning July 1 of the new fiscal year.

Table 7. Three-step Methodology to Adjust the Variable Gasoline Excise Tax, Example from FY 2014-15

Step 1. Forecast Foregone Sales Tax

Forecast gallons sold (millions)	Price per gallon excluding tax	Eliminated Sales Tax Rate	Foregone Sales Tax (millions of dollars)
(A)	*(B)*	*(C)*	*(D) = (A) * (B) * (C)*
14,151	$3.37	5%	$2,384

Step 2. Calculate Replacement Excise Tax

Per Gallon Excise Tax to Offset Foregone Sales Tax
(E) = (D) / (A)
$0.17

Step 3. True Up: Adjust Excise Based on Previous Revenue

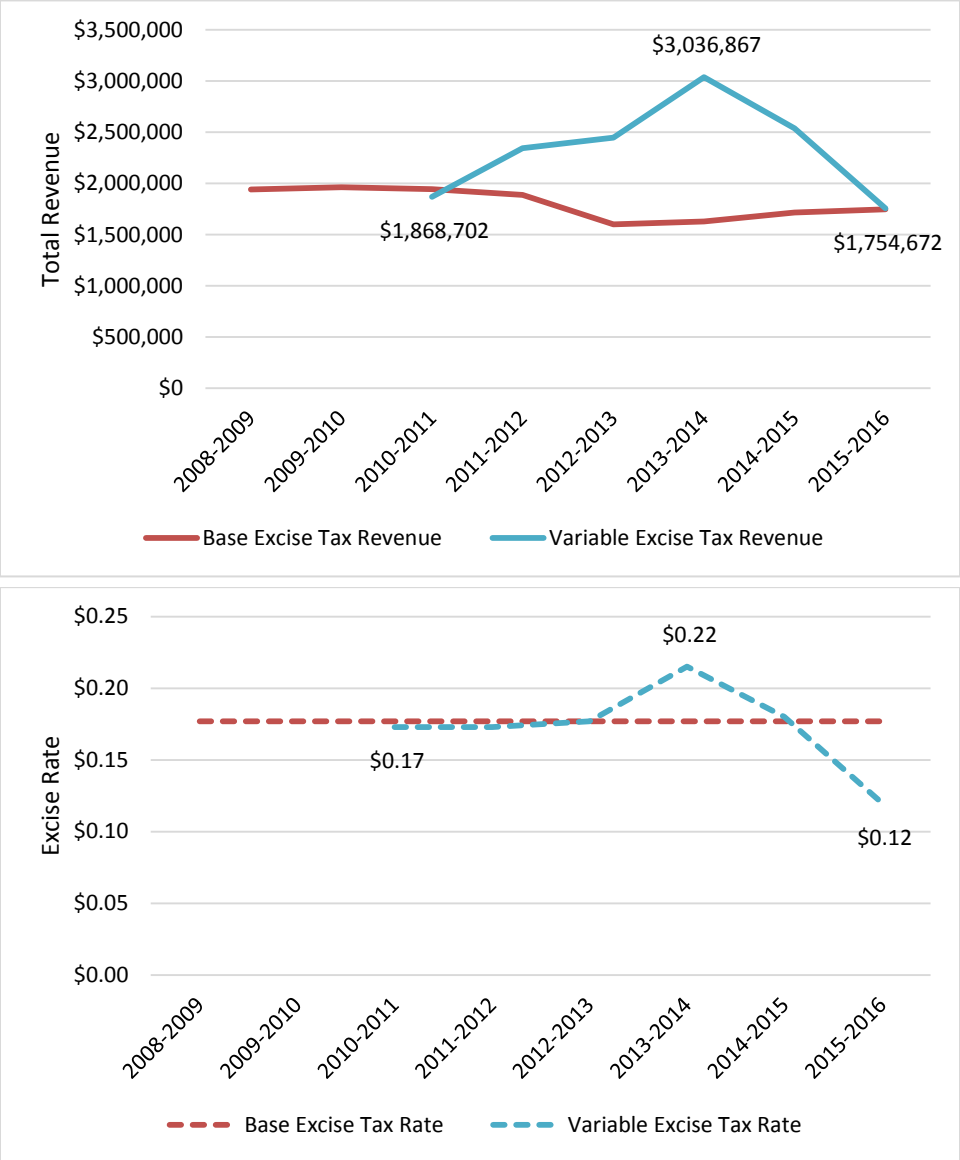
Revenue Balance from FY12-13 (millions of dollars)	Per Gallon Surplus	Adjusted Excise Rate
(F)	*(G) = (F) / (A)*	*(H) = (E) - (G)*
-$188	-$0.01	$0.18

Source: Capitol Matrix Consulting[231]

Revenues under the Gas Tax Swap

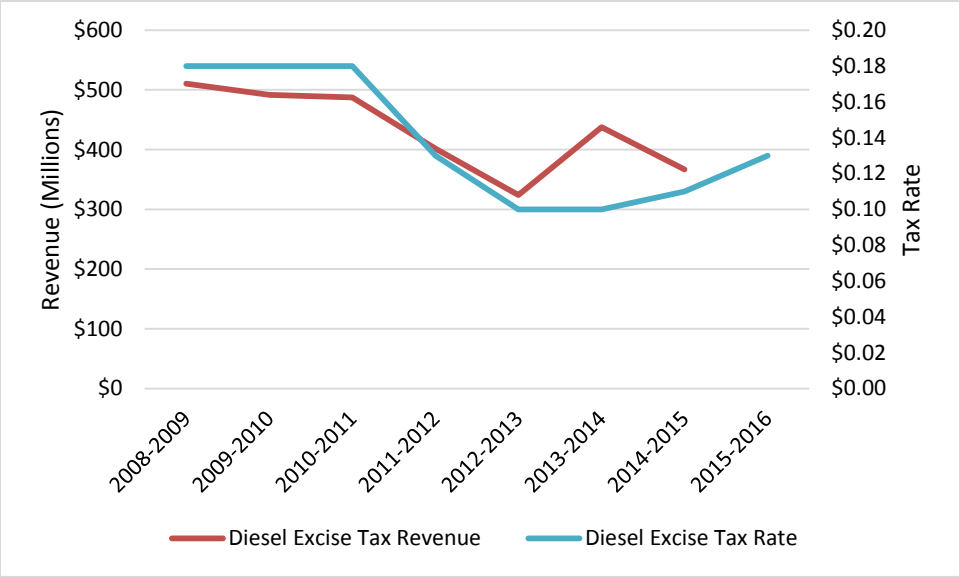
While BOE methodologies to determine the variable gas tax are sound in the long run, they result in short-term revenue swings that have proven extremely problematic for transportation planning and operations. Figure 13 compares the variable excise tax rate and revenue since the Gas Tax Swap to the base gasoline excise tax, which remained at 18 cents throughout this time period. Evident in these graphs are both the relative stability in base excise tax revenue, and the large variation in variable gasoline excise tax revenues. A similar story of revenue volatility emerges in the diesel variable excise tax (see Figure 14). While the gasoline and diesel sales taxes were a percentage of price, the base excise tax is a flat tax per gallon. Because the price of fuel has changed far more dramatically than has the quantity consumed, both variable excise taxes are more volatile than base excise taxes.

Figure 13. Base and Variable Gasoline Excise Tax Rates and Revenues



Source: Governor's Revised Budget, FY 2010-11 to FY2015-16[232]
Reported in thousands of real dollars.

Figure 14. Diesel Excise Tax Rate and Revenues



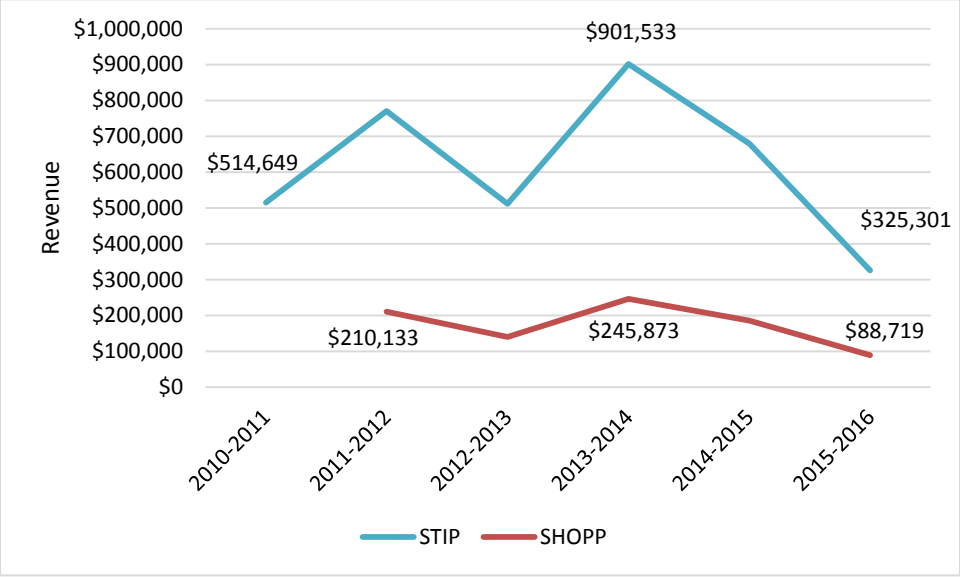
Source: California State Controller's Office, 2016[233]
Note: FY 2015-16 in progress; revenue estimates not yet available.

Large revenue swings play out at the program and agency levels. For example, the STIP, which funds capital improvements, and SHOPP, which funds maintenance, both rely on variable excise tax revenues. Under the Gas Tax Swap, revenues for each of these programs diverged widely between FY 2010-11 and FY 2015-16 (see Figure 15), which impeded local agencies' ability to establish dependable revenue streams to finance multi-year projects. The variation in STIP and SHOPP revenues were exacerbated by the variable gasoline excise tax allocation structure, which dedicates the first $1 billion of revenue to debt service[234] and divides the remaining funds between the STIP (44 percent), cities and counties (44 percent), and the SHOPP (12 percent). For example, in FY 2014-15, the variable excise tax generated about $2.5 billion, which left about $1.5 billion to be divided between the STIP, cities, and the SHOPP. However, projected revenue fell to about $1.7 billion in FY 2015-16 and effectively halved the amount that each of the three groups received (see Figure 16). Operations funded by the SHOPP, in particular, suffered from dramatic revenue swings ranging from a high of about $246 million in FY 2013-14 to only $88 million in FY 2015-16. Substantial drops in SHOPP revenue are particularly problematic given the state's backlog of maintenance needs. As of 2015, 68 percent of the state's roads were deemed to be in "poor" or "mediocre" condition, ranking California as 43rd among all states with respect to road conditions. In addition, nearly one-quarter of its bridges are structurally deficient. Without maintenance, the conditions will continue to worsen, and rehabilitation and reconstruction costs will continue to rise.[235] If the state prioritizes funding road maintenance, it would have to draw on general revenues to backfill reduced SHOPP revenues.

According to Department of Finance staff, revenue volatility stems primarily from uncertainty associated with gasoline prices, which are difficult to forecast because they are often erratic. As a result, variable revenue streams would have similarly occurred in the absence of the Swap because the sales tax is inherently dependent on price. The Swap was not motivated by volatility in the sales tax revenue stream, and did not correct for it. Figure 17 compares foregone gasoline sales taxes with collected variable gasoline excise taxes; the figure shows that while the variable excise tax mirrors the sales tax, it is more peaked.

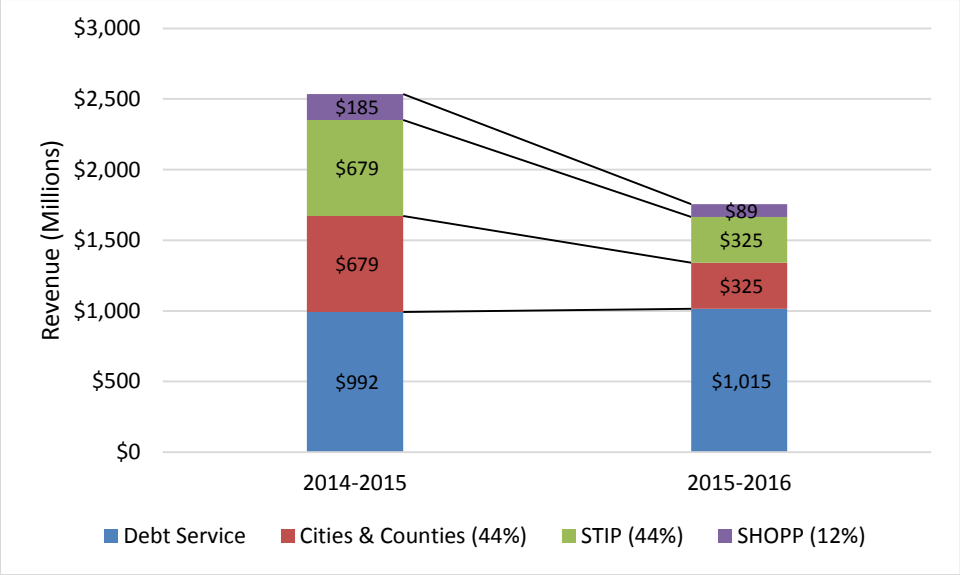
In theory, the true-up process can either smooth or exacerbate revenue spikes and drops that would have occurred under the sales tax. For example, if more variable excise tax revenues were collected than would have been under the sales tax in one year and gas prices were expected to rise (meaning that the variable excise tax would need to be adjusted upward to make up for the overcharge) in the next year, then the resulting variable excise tax rate adjustment would not be as great. If, however, more variable excise tax revenues were collected than would have been under the sales tax and gas prices are projected to drop (meaning the variable excise tax rate should be lowered to reflect lower sales tax collections), then an even greater downward adjustment of the variable excise tax would occur. In the years following the Gas Tax Swap, the latter scenario has proven problematic as dramatic changes resulted from both changes in the global economy (reflected by gasoline prices), and how far off previous predictions were. This is what happened, for example, between FY 2013-14 and FY 2015-16, when the BOE lowered the per gallon variable excise tax from 18 cents to 12 cents. Under the Gas Tax Swap, an especially volatile revenue stream for transportation in California has emerged, which inhibits agencies, states, and cities from predicting future revenues, a necessity given the multi-year nature of many transportation projects. While Department of Finance staff estimate that different stakeholders have received funding similar to what they would have received under the sales tax, the revenue volatility remains problematic for planning for future investments.

Figure 15. STIP and SHOPP Revenues under the Gas Tax Swap



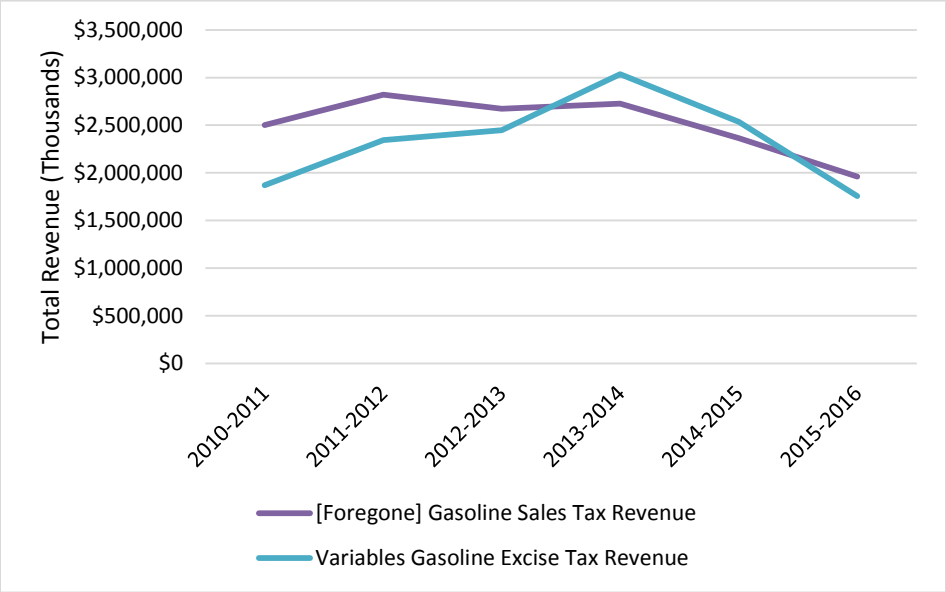
Source: Governor's Revised Budget, FY 2010-11 to FY 2015-16[236]

Figure 16. Revenue Allocations



Source: Governor's Revised Budget, FY 2010-11 to FY 2015-16[237]

Figure 17. Eliminated Sales Tax vs. Variable Gasoline Excise Tax Revenues



Source: California Board of Equalization, 2016; Capitol Matrix Consulting, 2014; Energy Almanac, 2016[238]

Forecasting Future Revenues under the Current Gas Tax Swap, 2016-2040

How much variable gasoline excise tax revenue can California expect to collect under the existing Gas Tax Swap taxation structure? In this section, we outline three potential revenue streams based on consumption estimates by the U.S. Energy Information Administration and gasoline cost scenarios. These forecasts demonstrate the inherent uncertainty in basing revenue projections on ever-changing prices.

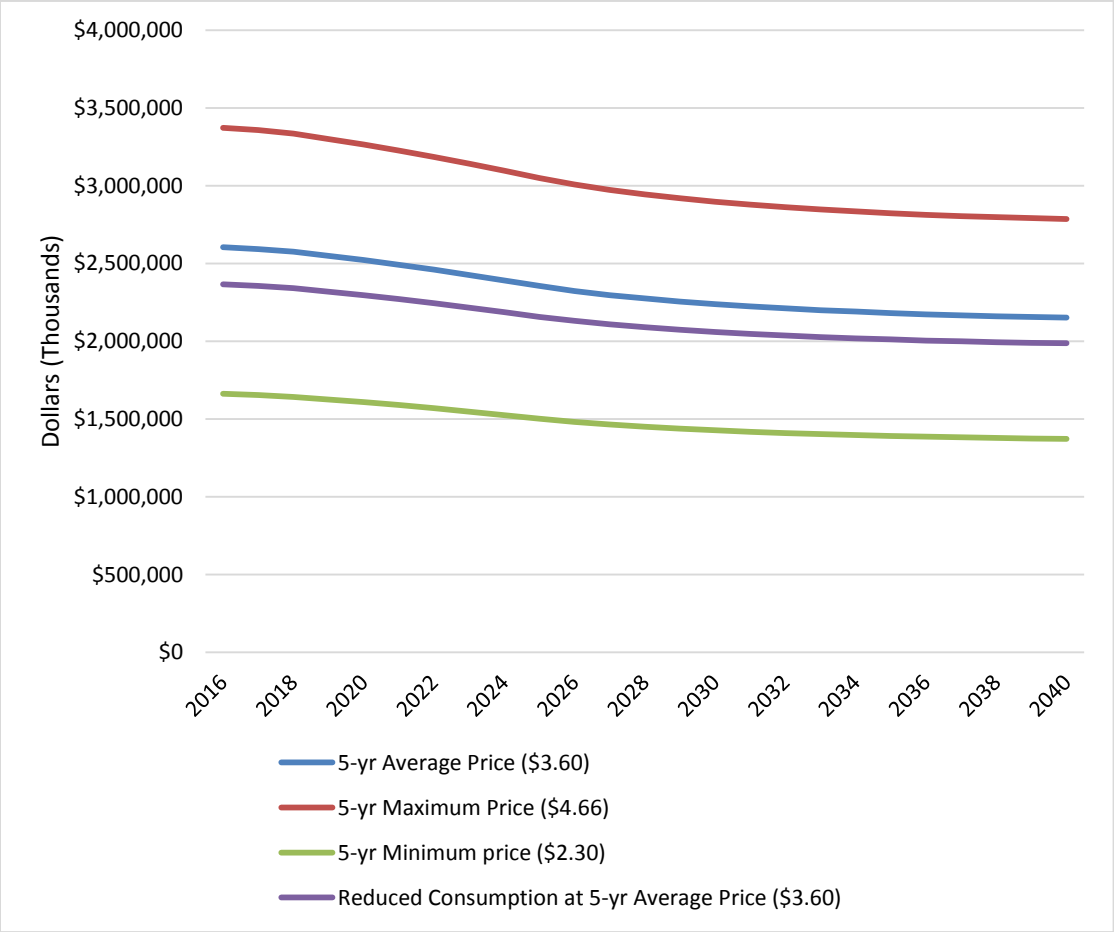
To understand how much revenue California could expect to collect under the variable gasoline excise tax, we first calculate how much it would have generated under the sales tax. Because the variable gasoline excise tax must legally raise the same amount of revenue that the sales tax would have, the sales tax revenues will equal the variable gasoline excise tax revenues.

In this exercise, we consider three gasoline price scenarios. While consumption changes more gradually and is relatively predictable, price varies much more widely. The U.S. Energy Information Administration forecasts national gasoline consumption between 2016 and 2040. The Administration also reported that California consumed 344 million barrels of oil in 2014, or 10.7 percent of national consumption.[239] Assuming that its consumption proportion remains relatively constant over the next 25 years, and that gasoline consumption is inelastic to price, we calculate how many barrels of gasoline California is expected to consume in the coming years. We multiply estimated barrels consumed by 42, the number of gallons of gasoline per barrel.[240]

We consider four alternative scenarios, including three pricing and one consumption scenario: average, maximum, and minimum gasoline prices, and reduced consumption at average price. For each scenario, we considered state-wide California gasoline prices following the Gas Tax Swap (July 2010 to February 2016). We used the maximum and minimum prices across those years to calculate prices for the respective years. The average price of gasoline since the Gas Tax Swap is $3.60 per gallon, with a maximum price (in October, 2012) of $4.66 per gallon and a minimum of $2.30 per gallon (in February, 2016).[241] Because California is adopting alternative fuels and establishing high fuel efficiency standards faster than other states, the state could reduce its gasoline consumption in the future. To reflect this, we also test a reduced gasoline consumption scenario, which assumes that California's fuel consumption decreases 10 percent from that of the nation as a whole. To generate the four forecast scenarios, we multiplied projected gallons of gasoline consumed by each of the three prices.

Figure 18 shows the results of the four forecast scenarios. While the smooth revenue lines project an image of constancy, great uncertainty exists based on price assumptions. For example, if we assume that gasoline prices are $4.66 per gallon (maximum price scenario), the gasoline sales tax would generate about $3.3 billion in 2016. However, under the minimum price scenario—which better reflects today's reality—the tax would only generate $1.6 billion in revenue, about half that under the maximum scenario. While revenues decline gradually over time due to projected declines in consumption, the intrinsic uncertainty in revenue owing to price remains. In other words, we may predict the revenue generated by the gas tax to fall somewhere between the minimum and maximum price scenarios. However, the difference between these two represents a high level of uncertainty that makes transportation planning and project budgeting difficult. These forecasts reinforce that the revenue volatility revealed under the Gas Tax Swap was not necessarily a byproduct of the policy change, but rather an inherent difficulty in forecasting any price-based tax. However, the Swap added to this inherent uncertainty through the true-up process, which exacerbated the revenue spikes and drops that would have also occurred under the sales tax.

Figure 18. Forecast Variable Gasoline Excise Tax Revenues



Source: Energy Almanac, 2016; U.S. Energy Information Administration, 2014, 2015a[242]

[I]t's time for Gov. Jerry Brown and the Legislature to undo the 2010 gas-tax swap and to honor the intentions of state voters by devoting a much bigger chunk of gasoline taxes to their intended use of road repairs and transportation projects. . . . Had the diversion not happened, California's infrastructure would be in much better shape today.[243]

San Diego Union-Tribune

V. LOOKING AHEAD: THE FUTURE OF THE GAS TAX SWAP AND CALIFORNIA TRANSPORTATION FINANCE

Staff from the Legislative Analyst's Office, the Department of Finance, and Caltrans all agree: revenue streams under the Gas Tax Swap are impossible to predict accurately. Under the variable excise tax, it is difficult to predict revenues for the following year, let alone five or ten years in the future.[244] As a result, volatile transportation revenues have exacerbated difficulties planning continuity in transportation programs around the state, which are typically multi-year programs that rely on steady and predictable funding streams. While similar uncertainty would have existed under the sales tax, the true-up process exacerbates unpredictability in revenue streams. In addition, the BOE announced a further 2-cent reduction to the gasoline excise tax in February 2016.[245] While some will undoubtedly rejoice at lower pump prices, decreased revenue for state transportation and maintenance will nevertheless be harmful to transportation in California.

In response to revenue volatility under the Gas Tax Swap, efforts are underway to "stabilize" revenue from diesel, and especially gasoline, excise taxes. One suggestion is to have the Director of Finance rather than the Board of Equalization conduct the annual fuel tax adjustments. Senate Bill 321, introduced by Senator Beall, proposes to reduce revenue volatility from frequent and unanticipated changes in gasoline price by using a four-year price average to project revenues for the next fiscal year. The bill also proposes to increase the frequency of both the price-based adjustment and the true-up.[246] Additional bills are pending in the state Legislature that would stop the diversion of truck weight fee revenue to the General Fund[247] or reimburse the HUTA with general funds for lost weight fee revenues, a change which would essentially bring the entire gas tax swap full circle. Proponents of undoing the Swap believe that the fiscal crisis has subsided and that it is time to restore the state's traditional transportation finance arrangements. Other proposals have been floated to accelerate repayment of transportation loans, establish new road user charges,[248] and increase fuel taxes, license and vehicle registration fees,[249] or to index fuel taxes to inflation. If adopted, these proposals could drastically alter the state's transportation finance program but could result in a more stable system.

Most recently, in January 2016, Governor Brown proposed replacing the current variable excise tax on gasoline with a flat inflation-adjusted excise tax in 2017.[250] While revenue shortfalls would remain problematic under the proposed flat tax, removal of the variable tax aims to correct for the unpredictability of revenue under the current system and provide greater assurances of future funding streams to enable better planning. Replacing the variable excise tax with a flat one will help to smooth the volatile revenue streams experienced since the Gas Tax Swap. The proposed FY 2017-18 budget suggests replacing the variable gasoline excise tax with an 18-cent flat excise tax, a return to the historical gasoline excise tax average.[251] No new sales tax would accompany this new excise tax. The diesel variable excise tax would likewise be converted to a flat inflation-adjusted tax, although an 11-cent increase would accompany the change.

The Governor's proposed budget would effectively bring California's Gas Tax Swap experiment to an end. While the experiment arose from political motivations in a time of budget crisis, it addressed only one of two issues surrounding its predecessor, gasoline sales tax:

1. Unlike the sales tax, the Swap protected gasoline tax revenues under Article XIX and, although excise taxes could be used to pay highway bonds and reimburse weight fees, they were sheltered from being diverted directly to the General Fund.
2. However, the Swap did not consider a second problem with the sales tax: potentially volatile revenue. As a result, variable excise tax revenues under the Swap proved very unpredictable, which negatively affected agencies', cities', and programs' ability to plan for the future.

Legislators express the need to increase transportation revenue to fund aging infrastructure and services;[252] however, a consensus on how to do so has yet to be reached. While more—and more predictable—transportation revenue is desirable, some doubt that Governor Brown's proposal will pass unchanged.[253]

APPENDIX A: CALIFORNIA TRANSPORTATION TIMELINE

1895 Bureau of Highways formed
1897 Department of Highways succeeds Bureau
1905 First vehicle registration fee ($2)
1907 State Department of Engineering succeeds Department of Highways
1909 State Highway Act establishes State Highway System financed by $18 million bond issue
1910 State ad valorem property tax replaced by gross receipts tax on utilities, banks and insurance companies "in lieu" of local property taxes.
1911 State Highway Commission formed
1912 Construction of State Highway System begun
1913 State Aid Highway Act enacted to support county roads
Motor Vehicle Act enacted – requires annual vehicle registration fees
1915 Vehicle Act of 1915
First vehicle weight fees adopted
Motor Vehicle Department created
State Highway Act of 1915 – authorized $15 million in bonds to complete and extend SHS
1923 Highway Program enacted
2 cents per gallon gas tax (Motor Vehicle Fuel License Tax Act)
Increased vehicle registration fees (Motor Vehicle Act of 1923)
4 percent gross receipts tax for commercial vehicle operators (California Vehicle Act)
1927 Additional 1-cent gas tax enacted for highway construction; funds split between northern and southern counties
1933 State Sales Tax enacted (2.5 percent)
1935 State Use Tax enacted
Motor Vehicle License Fee adopted (1.75 percent of market value)
1937 Diesel Fuel Tax adopted (2 cents per gallon)
1938 Anti-Diversion measure– Senate Constitutional Amendment No. 28 – adopted (Cal. Const. Art. XXVI)
1941 Gas tax increased to 3 cents per gallon
1947 Collier-Burns Highway Act of 1947 (gas tax increased to 4.5 cents per gallon)
1953 Gas tax increased to 6 cents per gallon
1955 Bradley-Burns Uniform Sales and Use Tax Law enacted
1963 Gas tax increased to 7 cents per gallon
1969 Transactions and Use Tax (TUT) Law enacted to fund BART
1971 Transportation Development Act adopted
State sales tax applied to gasoline and diesel sales
Bradley-Burns local taxes increased by 0.25 percentage points for transportation purposes
1977 Counties can adopt 1 cent per gallon gas tax by public vote for mass transportation guideways and exclusive bus lanes
California Transportation Commission succeeds Highway Commission
1978 Proposition 13 adopted by initiative
1979 Localities may impose a TUT tax for transportation purposes
1981 Counties authorized to enact gas taxes by public vote for transportation purposes
1983 Gas tax raised to 9 cents
1989 Kopp-Katz-Baker Transportation Blueprint for the Twenty-First Century enacted

Gas tax raised to 14 cents per gallon in 1990 and to 18 cents per gallon by 1994

1990 Proposition 111 – The Traffic Congestion Relief and Spending Act of 1990 – approves hike in gas taxes

Proposition 108 – Passenger Rail and Clean Air Bond Act of 1990 -- approved ($1 billion in bonds for rail systems)

Proposition 116 – The Clean Air and Transportation Improvement Act of 1990 – approved ($2 billion in bonds for intercity and commuter rail)

1997 Metropolitan Transportation Commissions authorized to adopt tax up to 10¢ per gal on motor vehicle fuels with preparation of regional transportation expenditure plan

1998 Proposition 2 – Transportation Funding, Legislative Constitutional Amendment – amends state Constitution to require loans of state transportation funds to the General Fund to be repaid within 1 year, or 3 years if a fiscal emergency is declared

2000 Transportation Congestion Relief Program enacted as 5 year project to use sales tax revenues from gasoline purchases for transportation purposes

2002 Proposition 42 – Traffic Congestion Improvement Act – approved in March 5, 2002 primary election to prevent "raids" on the gasoline sales tax revenues; places Transportation Congestion Relief Program into Constitution

2006 Proposition 1A – Transportation Funding Protection Act – approved limiting loans of gasoline sales tax revenues to General Fund to twice in any 10 year period, requires repayment within 3 years plus interest, and requires all prior loans to first be paid in full

Proposition 1B – The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 – approved authorizing $19.9 billion in bonds for transportation projects

2008 Proposition 1A – The High Speed Passenger Train Bond Fund – approved authorizing $9.95 B in bonds for a high speed train from San Francisco to Los Angeles and Anaheim

2009 State Supreme Court rules against Legislature borrowing transit funds

2010 Legislature enacts Fuel Tax Swap exempting gasoline sales from portion of state sales tax and imposing a new excise tax on gasoline sales, increasing state tax on sales of diesel fuel, and authorizing Board of Equalization to adjust new gas tax and diesel excise tax annually to achieve revenue neutrality

Proposition 22 – Local Taxpayer, Public Safety, and Transportation Protection Act of 2010 – amends state Constitution to restrict Legislature from borrowing from the Highway Users Tax Account and Public Transportation Account and restricting uses of fuel tax revenues

Proposition 26 adopted requiring two-thirds vote of Legislature to pass taxes, and tax-like fees and charges

2011 Legislature re-enacts Fuel Tax Swap to comply with Proposition 26; sets gas excise tax rate at 17.3-cents

APPENDIX B: MASS TRANSIT IMPACTS

The fiscal crisis leading up to the Governor's FY 2007-08 budget generated enormous pressure to relieve the burden on the General Fund by taking advantage of growing fuel tax revenues. Not only did that generate conflicts over using dedicated transportation funding for other transportation-related and even non-transportation purposes, but it also led to disagreements over how to spend existing transportation funds.

Following enactment of the 1971 Transportation Development Act (TDA)[i] discussed in the main text, fuel sales tax revenues devoted to mass transportation purposes funded three programs: intercity passenger rail services (Amtrak); transit capital improvements (track, transit vehicles and related facilities), and assistance to local transit operators though the State Transportation Assistance (STA) program. While there have been numerous changes in the legislation since then the basic arrangement has continued.

State Transit Assistance Program

The STA program was initiated to support local transportation planning including community transit services. The original purpose was to provide assistance to operators outside the normal transit financing system to meet rapidly rising diesel fuel prices for transit vehicles and increases in rider demand due to higher automotive fuel prices. Up until the Swap legislation, half of the revenues deposited in the Public Transportation Account (PTA) were made available to the State Controller to allocate to transportation planning agencies (TPAs) who in turn distributed them to local transit operators and cities and counties under the STA for public transportation purposes. Half of these funds are allocated to TPAs based on operator fare revenues and the remaining half by area population.[ii] The TPAs redistribute the funds on a discretionary basis to eligible transit operators for capital projects and operating assistance, with priority given to paying for unanticipated fuel costs, enhancing public transit service, and meeting high-priority regional and local public transit needs.[iii]

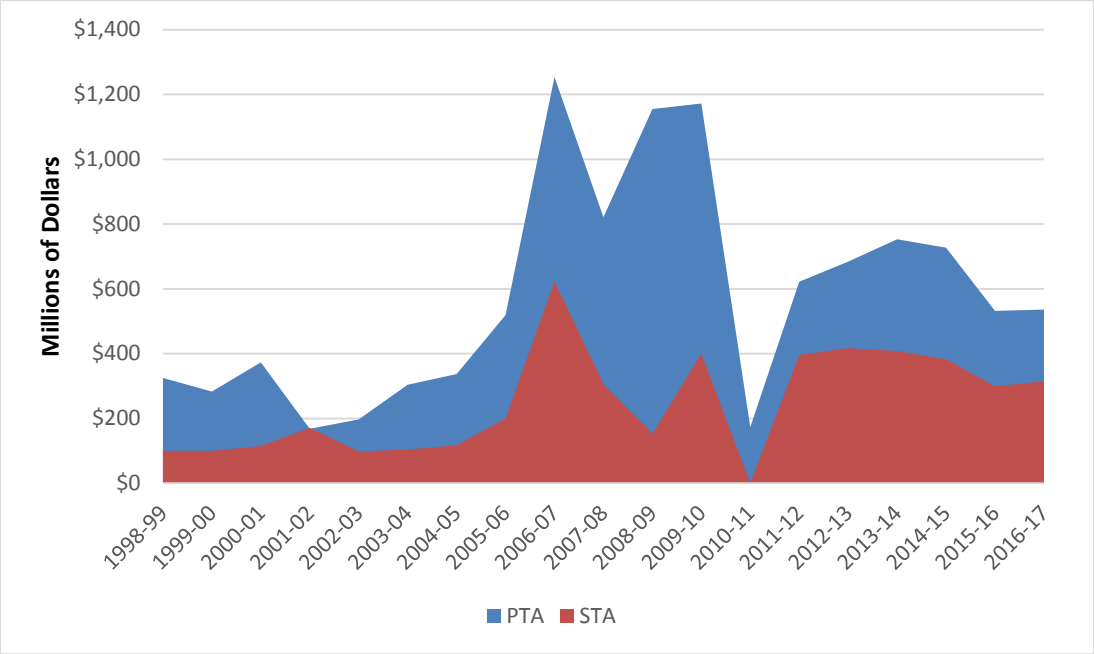
Each transportation agency has to establish a fund[iv] to receive allocations and, in turn, to distribute them to eligible transit operators for up to 50 percent of operating and maintenance expenses, capital and debt service.[v] Operators may apply for STA funds to (a) support public transit systems, (b) for research and demonstration projects, and (c) to construct grade separation projects.[vi] Cities and counties can also apply for funding for local streets and roads, including facilities for use by bicycles and pedestrians, and payments to providers of special needs transportation services.[vii] Because of constitutional restrictions on permitted uses of fuel excise taxes, the PTA is the only source of funds

[i] Stats. 1971, c. 1400 (S.B. 325).
[ii] Cal. Pub. Util. Code §99312 (West 2013). The funds available to Caltrans can be used for (a) bus and passenger rail service, (b) funding for capital improvement projects in the STIP, (c) planning, (d) research, (e) activities of the CTC and the PUC. Pub. Util. Code §99315 (West 2013). Most of the funds go to pay AMTRAK to supply intercity rail services.
[iii] Cal. Pub. Util. Code § 99314.5(c) (West 2013).
[iv] Cal. Pub. Util. Code §99313.6(a) (West 2013).
[v] Cal. Pub. Util. Code §99268 (West 2013).
[vi] Cal. Pub. Util. Code §99260 et seq. (West 2013).
[vii] Cal. Pub. Util. Code §99400 (West 2013).

for maintenance and acquisition of rolling stock (buses and railcars).[viii] STA funds are the only source for local transit operating costs.

The statutory funding formula for the STA has not always been followed. At times the Legislature has funded the STA above the statutory limits, but it also has diverted STA funds to increase support for Interregional Rail and Transit Capital Improvement programs as well as other purposes. Figure B1 compares the PTA and STA funding levels from FY 1998-99 to the present.

Figure B1. PTA and STA Funds (FY 1998-99 to FY 2016-17)



Source: Transportation Budget Fund Condition Statements. FY 2000-01 to 2016-17.

For FY 2007-08, the PTA received $821 million in sales tax revenues, the TIF and various miscellaneous funds, reimbursements, and transfers. As discussed in the main text, to address the fiscal crisis, the Governor's FY 2007-08 Budget planned to use $1.1 billion in transportation funds to relieve the General Fund including $642 million from the PTA for bond reimbursements, and home-to-school and Regional Center transportation. As part of that budget package, the Governor proposed eliminating any new funding for local transit capital projects[ix] and reducing projected budget-year STA funding for transit operations by $410 million[x] (from $595 million to $185 million) while ending all support for the

[viii] While gasoline excise tax revenues may be used for mass transit guideways, they cannot be used to acquire rolling stock. Cal. Const. Article XIX. These restrictions do not apply to sales taxes. Therefore, the TPDA is the primary source of state funds for improving and purchasing new buses and rail cars and to pay for maintenance and operations.

[ix] The Governor's proposed to allocate only $69 million in his FY 2007-08 Budget for the PTA represented a cut of $502 million from $571 million in the previous year's budget allocation. Of those prior funds the CTC was expected to spend $362 million in the current year and $210 million in later years, leaving no funds for transit projects in FY 2007-2008. The CTC decided that when it ran out of PTA funding it would instead fund transit projects with Prop 1B revenues.

[x] Consisting of $309 million in anticipated spillover funds (one half of $618 million) and $102 million to offset prior year overpayments due to overly high projected gasoline prices used for the BOE estimate.

STA from the spillover in future years.[xi] While this represented a $439 million cut in funding for the STA over the previous year (from $623 million), the program would receive the first installment of Proposition 1B funds totaling $600 million for transit capital expenditures, which would make its funding more predictable (see Table B1).

The LAO concluded that the plan to use PTA funds to support school bus transport on an ongoing basis would divert $627 million annually and that the PTA would need $230 million in spillover revenue yearly in order to balance its accounts (the receipt of which seemed unlikely given their historical volatility), even if no funds were used for the STA as the Governor had proposed.

Table B1. State Transportation Assistance Program Funds, FY 2007-08 to FY 2016-17

$ millions	2007 -08	2008 -09	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16	2016 -17
STA Program Fund Sources										
Proposed Budget										
PTA Funds	$184	742	0	0	329	420	391	373	387	315
GHG Bonds	-	-	-	-	-	-	-	-	50	99
Proposition 1B Bonds	$600	350	350	350	500	829	479	823	150	44
Actual Expenditures										
PTA Funds	$306	153	400	0	396	417	408	383	299*	n.a.
GHG Bonds	-	-	-	-	-	-	-	24	119*	n.a.
Proposition 1B Bonds	$530	255	63	78	766	752	278	668	154*	n.a.

*Estimated

Source: FY 2007-08 to FY 2016-17 Transportation Fund Condition Statements

Given continuing uncertainty in transportation funding, along with the volatility of gasoline sales tax revenues, and the fact that when there had been spillovers in the past the Legislature had often appropriated the funds for other purposes, the LAO agreed with the Governor's proposal to end funding for the STA. The LAO further recommended permanently repealing the spillover provisions even though it might decrease STA funding in some years. This action would increase stability and predictability in annual program funding from diesel sales taxes, the Proposition 11 Delta, and the 20 percent portion of TIF gasoline sales taxes. The LAO noted that the spillover allocation mechanism was based on an "anachronistic and arcane" formula that was originally intended to protect general fund revenues but that since post-Proposition 42 all gasoline sales tax revenues were now being used for transportation purposes it was no longer necessary to segregate the funds. Moreover, the additional funds would be available for a wider variety of transportation uses under the Proposition 42 allocation formula, including the 20 percent TIF share to the PTA with half of that available for the STA.[xii] The LAO estimated

[xi] The LAO projected that revenues would fall by as much as $100 million due to lower fuel prices, however, actual net spillover receipts were about $725 million. LAO 1007-08 Budget Analysis, Transportation, Crosscutting Issues, February 21, 2007, A-15 to A-54.

[xii] Under the LAO proposal, the spillover revenues would simply be included in the monies transferred to the TIF and a guaranteed 20 percent would be distributed to the PTA while the rest could be used for broader transportation purposes. LAO 2007-08 Budget Analysis, Crosscutting Issues, February 21, 2007, A-25 to A-28.

that with rising fuel sales, the STA would still receive substantial allocations, over $350 million each year, from these funding sources.[xiii]

As noted in the main text, the Legislature transferred $621 million in TIF funds to the Mass Transportation Fund (MTF) for FY 2007-08, leaving only $535 million in spillover revenues (plus $162 million from the TIF) in the PTA for interregional and local transit. Of these remaining revenues, $637 million was used to pay for public school transportation and transporting clients to Regional Centers and for debt service on rail bonds. This $1.3 billion diversion reduced the funds available for transit, including funding for transit projects in the STIP and for the STA program. Despite the Governor's request to further reduce monies for local transit operations the Legislature appropriated $306 million for the STA in the budget (or about $290 million less than called for under the statute); the proceeds of bond sales added another $530 million.[xiv]

Rather than ending STA funding from spillover funds, the Legislature allocated a larger share of future PTA monies to local transit, in part to compensate for previous cuts to the STA and the plan to divert 50 percent of spillover funds to the MTF for bond repayments starting in FY 2008-09.[xv] It also addressed the fact that transit agencies had been cutting back on services since the mid-2000s, while increasingly relying on local sources such as Local Option Sales Taxes. Beginning in FY 2008-09, the share of the remaining PTA spillover funds allocated to the STA program was increased from one-half to two-thirds.[xvi] In addition, legislation authored by Senator Perata increased to 75 percent the portion of TIF revenues in the PTA available to city and county transit (see sidebar).[xvii]

Revised Allocation of PTA Funds (2007)

Spillover	33% to STA 17% to Non-STA 50% to MTF
20% TIF funds	75% to STA 25% to Non-STA
Diesel Sales Tax/ Prop 111 Delta	50% to STA 50% to Non-STA

[xiii] LAO 2007-08 Budget Analysis, Transportation, Departmental Issues, State Transit Assistance, February 21, 2007, A-59 to A-62.

[xiv] Stats. 2007, c. 171 (S.B. 79, Committee on Budget and Fiscal Review), §2, eff. Aug. 24, 2007 (amending Pub. Util. Code §99312 to add subpara. (d)). The legislation originally provided $200 million in net spillover funds for STA programs in FY 2007-08 but the Governor reduced the appropriation by half explaining that "the total appropriations made in this account exceed projected resources and would put the account into a deficit. The revenues funding this appropriation are from the spillover calculation, which has proven to be very unpredictable and volatile in the past. To protect the viability of the other appropriations from the account, in particular those for [STIP] projects, a prudent reserve is necessary." Governor's Message to the California State Senate. Prop 111 monies amounted to about $66 million and diesel sales taxes to $365 million of which the STA received half by statute, less the excess amounts overpaid to the STA in FY 2006-07.

[xv] Stats. 2008, c. 756 (AB 268), §11, eff. 9-30-2008 (adding subpar. (H) to Rev. & Tax. Code §7102(a)(1)).

[xvi] Stats. 2007, c. 171 (S.B. 79, Committee on Budget and Fiscal Review), §2, eff. Aug. 24, 2007 (amending Pub. Util. Code §99312 to add subpara. (e)). In his message to the Senate the Governor sustained this language in the bill but reserved the right to review future year appropriations to the STA based on budgetary needs.

[xvii] Stats. 2007, c. 733 (S.B. 717, Perata), §1, eff. Oct. 14, 2007 (adding Rev. & Tax. Code §7104.2).

While all this meant a short-term reduction of funding, in the long run the STA would receive a more stable and potentially larger portion of gasoline sales tax revenues. Funding for the STA was now more complicated, however, since its share of revenues would depend on their source: the STA would receive two-thirds of the halved spillover, half of the Proposition 111 Delta and diesel excise taxes, and three-quarters of the Proposition 42 non-spillover gasoline sales taxes from the TIF. The LAO was critical of making funding allocations depend on which portion of the gasoline sales tax the monies were drawn from, suggesting instead that a fixed portion of the PTA revenues be set aside for local transit operations.

Under the new legislation, the remaining 25 percent of non-spillover revenues from the TIF was allocated to Caltrans for interregional rail. Since rail projects cannot be easily scaled back, the loss of non-STA funds meant that transit capital projects in the 2006 STIP (through FY 2010-11) had to rely on alternative financing. This created a $1 billion backlog of transit capital projects that could not be completed through 2009-10 would have to be funded from additional revenues in the last 2 years of the 2008 STIP (through FY 2012-13). With the loss of PTA monies the CTC decided to let some transit STIP projects normally funded from the PTA draw on other TIF funds normally reserved for highway projects and to use some of the $3.6 billion in Proposition 1B funds set aside for transit purposes while also encouraging local transportation agencies to advance their own funds to keep projects on track.[xviii]

The Great Recession

The Great Recession had a significant impact on mass transportation by reducing state revenues. At the same time, the Governor and the Legislature sought to raise spending on transportation generally from new bond proceeds to stimulate the economy. The $13.8 billion 2008-09 Department of Transportation budget proposed appropriating $4.7 billion in Proposition 1B funds, including $423 million for local transit and intercity rail projects. The LAO recommended that the Legislature consider providing funding to local transit on a multiyear basis and to allow project sponsors to bank funds to reduce funding uncertainty.[xix] In all, proceeds from the issuance of bonds made up 30 percent of all state expenditures for transportation in the FY 2008-09 budget; a $1.9 billion increase in spending from bond proceeds over the previous year. In contrast, non-bond expenditures dropped by $850 million or 8 percent over current year spending.[xx]

Despite the failing economy, gasoline and diesel sales outpaced other sales, increasing funds for the PTA and the STA from spillover revenues, which made them attractive targets for diversion to other uses. Although Governor Schwarzenegger initially proposed to fully fund the TIF in FY 2008-09—to the tune of $1.5 billion ($594 million for the STIP, $594 million for local streets and roads, and $297 million for the PTA)—and provide a total of $1.2 billion to the PTA from all sources, he also proposed using $371 million of the $455 million MTF share of projected spillover revenues for debt service and $83 million to reimburse the Proposition 42 suspensions. He also planned to continue using PTA funds for busing school students and transporting clients with disabilities to vocational training at Regional Centers.

[xviii] LAO, 2008-09 Budget Analysis, Transportation, February 20, 2008. The CTC was already using $275 million of Prop 1B revenues in place of STIP funds for interregional rail.

[xix] LAO, 2008-09 Budget Analysis, Transportation, Crosscutting Issues, Implementation of Proposition 1B, February 20, 2008, A-40 to A-58

[xx] LAO 2008-09 Budget Analysis, Transportation, Overview, February 20, 2008, A-7 et seq.

Despite the 50 percent diversion of PTA funds to the MTF, as the LAO had projected higher fuel prices led to increased revenues for the PTA and the FY 2008-09 budget proposed funding the STA at $743 million according to the statutory formula, an increase of $439 million, due in part to the now larger share of PTA funds being received. In addition, the STA would receive $350 million in Proposition 1B funds.[xxi] Still, the promised $743 million was $80 million less than called for under the original statutory formula due to the diversion of PTA revenues. In the end, the Legislature actually directed all $940 million in estimated spillover revenues to the MTF,[xxii] and kept STA funding at the 2007-08 level of $306 million.[xxiii] While higher tax revenues had promised to bolster mass transit spending somewhat with the added STA funding, higher expenses for interregional rail ($106 million) and regional center transportation ($141 million) meant that the PTA would still need to borrow $60 million from the TCRF[xxiv] to remain solvent for the year (see Table 6 in main text)[xxv] despite no funding for STIP transit projects.

Economic Stimulus Program

Continuing fiscal problems as a result of the Great Recession led the Governor to propose additional mid-year cuts in the FY 2008-09 budget and to further reduce transportation program expenditures in FY 2009-10 in order to increase spending on capital projects as part of his economic stimulus package. He sent the Legislature a $13 billion budget[xxvi] for FY 2009-10 which included $800 million from Proposition 1B bonds for transit capital projects in 2008-09 (an increase from $350 million to $1.15 billion) and $350 million in FY 2009-10, along with $125 million in Proposition 1A funds to continue planning and development of a high speed rail system.[xxvii] He also proposed a temporary sales tax increase of 1.5 percent for three years that would generate $1.7 billion in new Proposition 42 revenues. The LAO concluded that without the tax increase as proposed by the Governor the PTA would face a shortfall in the following year.

Amid the worsening financial situation, the Governor's transportation budget package promised a total of $192 million in current year assistance to the General Fund (on top of the $1.6 billion in the 2008-09 budget) and $1 billion in FY 2009-10. Altogether this amounted to $1.2 billion in transportation funds being diverted to budget relief. His February 2009 plan included using $541 million in transportation funds to cover certain General Fund obligations:

- $402 million in PTA funds for the Home to School program;
- $138 million in PTA funds for Regional Center transportation.

To free PTA transit funds for these purposes, the Governor proposed cutting in half current year funding for the STA (from $306 million to $153 million) and eliminating all support for transit operations

[xxi] LAO 2008-09 Budget Analysis, Transportation, Overview, February 20, 2008, A-7 to A-14.
[xxii] Stats. 2008, c. 756 (A.B. 268), §11, eff. Sept. 30, 2008 (amending Cal. Rev. & Tax. Code §7102(a)(1) by adding subpart (H)).
[xxiii] LAO 2009-10 Budget Analysis Series, Transportation, February 3, 2009, TR-8.
[xxiv] Stats. 2008, c. 756 (A.B. 268), §8, eff. Aug. 30, 2008 (adding Gov't Code §14556.85). The loan was to be repaid in 2011-12. Other revenue saving proposals included delays in spending $1.1 billion from gasoline excise taxes on local streets and roads to provide $500 million in short-term cash flow relief.
[xxv] LAO 2008-09 Budget Analysis, Transportation, Crosscutting Issues, February 23, 2006, A-15 to A-35.
[xxvi] This represented $1.3 billion less in actual state spending for 2009-10 compared to the prior year (2008-09) due to requested increases in current year expenditures.
[xxvii] LAO 2009-10 Budget Analysis, Transportation, Background, February 3, 2009, TR 5 to TR9.

in FY 2009-10 and future years. Given the fiscal situation, the LAO agreed with the Governor's proposal to reduce funding for the STA, and addressed the issues involved in eliminating the STA program. By paying for debt service and other transportation-related uses, PTA funds were being stretched to the point that no funds were available to fund the STA.

Moreover, the STA's role in funding local transit had been diminishing compared to TDA funding (from the 0.25 percent local transportation sales tax). About 70 percent of transit operating revenues was coming from local sources, 16 percent from TDA funds, and 10 percent from federal funds; only about 3 percent on average was being supplied by the STA. Nearly all of the STA funds (about 90 percent) went to the 25 largest transit operators, though generally these funds were more important to small operators, particularly those in rural areas.

While the LAO agreed with temporarily suspending STA payments, it also recommended that the state consider adopting a more rational funding formula for local transit, possibly using the limited amount of STA funding to offer incentives for transit operators to improve performance by providing specific types of service or achieving specific transit goals, rather than just meeting required fare ratios. The Office was also concerned that the various formulas for allocating tax revenues to the STA was making funding availability less predictable and future planning more difficult. It recommended that the Legislature consider enacting a formula that would result in a more predictable stream of funding, such as one based on an average of the previous years' funding amounts or as a set percentage of total PTA revenues as in prior years. [xxviii]

Noting that the PTA would not have enough funds to fulfill its expanding obligations, STA funds were limited, and increased bond financing was now available for transit programs, the LAO also suggested that the Legislature consider permanently ending the STA program on the grounds that public transit should be considered primarily a local and regional responsibility.

Proposition 1B had provided $3.6 billion in bond funds for transit capital. Despite the large sums of money generated, bond finance does not necessarily speed up project delivery or increase transit service. The LAO questioned whether there were sufficient construction-ready projects available for these funds, especially in light of a lack of short-term loans to pay project expenses until bonds could be sold and funds made available, and whether the expenditures would have much of an economic impact in any case. The Office also pointed out that the "uneven and uncertain disbursal" of bond funds could result in low priority projects being funded.[xxix]

According to the LAO's analysis, of the $600 million of the Proposition 1B funds appropriated in FY 2007-08 and the $350 million in FY 2008-09, only about half had been allocated to transit operators and TPAs, in part because of the year-to-year uncertainly in whether funds would be available and the small size of some annual allocations. This hindered sponsors from proposing larger projects that require a predictable source of annual funding and resulted in some proposing lower priority projects such as bus stop and station improvements, which did not increase capacity, only because they met the available funding criteria. The LAO recommended that the Legislature establish an allocation formula that defined how much each transit agency would receive over time, and permit banking of funds.

[xxviii] LAO 2009-10 Budget Analysis Series, Transportation, Other Issues, State Transit Assistance, February 3, 2009, TR 30-34.

[xxix] LAO 2009-10 Budget Analysis Series, Transportation, Other Issues, Governor's Transportation Economic Stimulus Proposal, February 3, 2009, TR 18-22.

Proposition 1B also provided $400 million for intercity rail improvements; however, by the middle of FY 2008-09, only about $64 million of the $258 million pledged to various rail improvement projects had actually been spent to meet the growing demand. The FY 2009-10 budget requested an additional $125 million for various intercity rail projects.[xxx]

In response to the deepening fiscal emergency, the Legislature eliminated the transfer of any spillover revenues to the PTA for four years (FY 2009-10 to FY 2012-13) and directed all these funds to the MTF.[xxxi] For that period of time, PTA funds could only be used for state-level mass transportation purposes.[xxxii] The funds would be transferred to the TDSF to be used as needed to offset any past or present transportation bond payments made from the General Fund during any fiscal year.[xxxiii] It also suspended the transfer of any funds in the PTA to the local STA funds over the same four-year period[xxxiv] and instead authorized them to be used for transporting disabled persons to Regional Centers and for home-to-school transportation.[xxxv] PTA funds could only be used to support interregional rail service and transit capital projects over that period. While no additional funds were requested for debt service, for the first year a total of $225 million left in the PTA (in FY 2009-10) could be used to reimburse the General Fund for current debt service payments on non-Proposition 116 transit-related GO bonds.[xxxvi] The STA would get no contribution from the PTA, but it would receive $350 million in bond funds.

In his May 2009 revision, the Governor sought to free up another $1.1 billion for the General Fund by using additional projected spillover monies for debt service ($337 million) and permanently diverting 25 percent of the gasoline tax revenues (about $750 million per year) that would normally be subvented to cities and counties for streets and roads (the one-third share of gasoline excise taxes). The LAO recommended several additional ways to provide General Fund relief from transportation revenues:

- Using all spillover revenues for debt service;
- Reducing school transportation funds to pay debt service and for Regional Center transportation;
- Suspending gasoline tax subventions to local governments for 1 year (backfilled with $1 billion in Proposition 1B funds);
- Using $135 million in SHA funds for Proposition 192 debt service in FY 2009-10;
- Suspending $1.2 billion of Proposition 42 transfers to the TCRF in FY 2009-10;
- Transferring $70 million of non-Article XIX transportation funds to the General Fund for FY 2009-10; and

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[xxx] LAO 2009-10 Budget Analysis Series, Transportation, Other Issues, Improving Proposition 1B Implementation and Accountability, February 3, 2009, TR 22-30.

[xxxi] Stats. 2009, 3rd Ex. Sess., c. 14 (S.B. X3 7, Ducheny), §6, eff. Feb. 20, 2009 (adding subpar. (I) to Rev. & Tax. Code §7102(a)(1)).

[xxxii] Stats. 2009, 3rd Ex. Sess., c. 14 (S.B. X3 7, Ducheny), §3, eff. Feb. 20, 2009 (adding subpar. (f) to Pub. Util. Code §99315).

[xxxiii] Stats. 2009-2010, 4th Ex. Sess., c. 10 (A.B. X4 10, Committee on the Budget), §7, eff. July 28, 2009 (adding subdiv. (d) to Rev. & Tax. Code §7103).

[xxxiv] Stats. 2009, 3rd Ex. Sess., c. 14 (S.B. X3 7, Ducheny), §3 (amending Pub. Util. Code §99312 by adding subd. (f)).

[xxxv] Stats. 2009, 3rd Ex. Sess., c. 14 (S.B. X3 7, Ducheny), §5 (amending Pub. Util. Code §99315 by adding subd. (g) & (h)).

[xxxvi] Stats. 2009-2010, 4th Ex. Sess., c. 10 (A.B. X4 10, Committee on the Budget), §5, eff. July 28, 2009 (amending Pub. Util. Code §99315 by adding subd. (i)).

- Raising gasoline and diesel taxes.[xxxvii]

With the decision in the *Shaw* case eliminating the option of using PTA funds for debt relief and other General Fund obligations, the Governor's FY 2010-11 budget proposed the fuel tax swap described in the main text which would have completely eliminated a dedicated source of funding for transit operations and capital improvements. The budget again proposed using $350 million in Proposition 1B funds for transit capital improvements in the STA but no funding from other sources for transit operations. In addition, the Governor planned to take $311 million in PTA funds and $72 million from the SHA to pay debt service on transportation bonds. Together with the revenue from the new gasoline tax about $1 billion would be made available for General Fund relief.[xxxviii]

As discussed in the main text, the Legislature chose to eliminate only the state gasoline sales tax and to retain and increase the sales tax on diesel fuel to support public transit. Assembly Bill X8 9 (AB 9) restored funding for the PTA. The four-year suspension of funding to the STA was also lifted and a total of $400 million made available for FY 2009-10 to support two years of transit operations, but the following fiscal year no funds would go to the STA.[xxxix]

Summary of Bond Payments Under AB 9

Budget Act monies or other statutory funds from SHA to reimburse the GF for any transportation GO bond payment consistent with Article XIX.

Funds from the increase in gasoline excise tax and weight fees to reimburse current year debt service payments of any Prop 192 bonds and ¾ of any Prop 1B bonds.

Non-Article XIX funds to reimburse current year debt service on Prop 116 bonds. Department PTA funds and weight fees to reimburse current year debt service on Prop 108, Prop 1A bonds and ¼ of Prop 1B bonds

As result of the Swap, funding for mass transportation programs from the PTA and local bus and rail operations from the STA was severely impacted from the loss of gasoline tax revenues. The PTA was partially compensated by the 1.75 percent increase in the diesel sales tax, however to make up for some of the lost funding to local public transit over the years, AB 9 increased the share of PTA funds allocated to the STA to 75 percent leaving only 25 percent for state rail programs (as shown in Figure B2).[xl] The net effect was intended to provide a larger subsidy to the STA, about $300 million each year, than it had typically received.[xli]

As we have described, passage of Proposition 22 (2010) undid the Swap and attempted to protect funding for highways and mass transportation from any further diversions. To maintain state support for interregional rail projects, voters also restored the fifty-fifty allocation of PTA funds between

[xxxvii] LAO, May Revision Overview: Transportation, May 28, 2009.
[xxxviii] LAO, 2010-11 Budget: Transportation, Background, March 2, 2010, TR-5 to TR-10.
[xxxix] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §2, eff. Mar. 22, 2010 (amending Pub. Util. Code §99312).
[xl] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §2, eff. Mar, 22, 2010 (amending Pub. Util. Code §99312).
[xli] LAO Policy Brief, The 2011-12 Budget: Achieving General Funds Relief From Transportation Funds, January 25, 2011.

Caltrans and the STA program.[xlii] When the Legislature reenacted the entire fuel swap legislation to restore the tax provisions, the new legislation attempted to retain the same level of General Fund relief, while maintaining promised funding for the STA. To compensate for Proposition 22 changing the portion of base diesel sales taxes devoted to interregional rail from 25 percent back to 50 percent and reducing the local transit share from 75 percent down to 50 percent, AB 105 provided that *all* revenues from the additional 1.75 percent sales tax on diesel would go toward funding local transit operations through the STA (see Figure B3).

[xlii] Cal. Const. Art. 19A, Sec. 1 (as amended by Prop 22, Section 6). Under the present Article 19A, the state share of PTA funds can only be used for the purposes specified in PUC §99315(a)-(f) as that section read on July 30, 2009; state funds in the PTA may not be used for the purposes of debt service authorized in subsection (g). The section was subsequently amended to provide that after October 2010 the bond payments were to be made from weight fee revenues in the SHA. Stats. 2011, c. 6 (A.B. 105), §10, eff. March 24, 2011. See now, Cal. Pub. Util. Code §99315 (West 2013).

Figure B2. Proceeds of Diesel Sales Tax (AB X8 9)

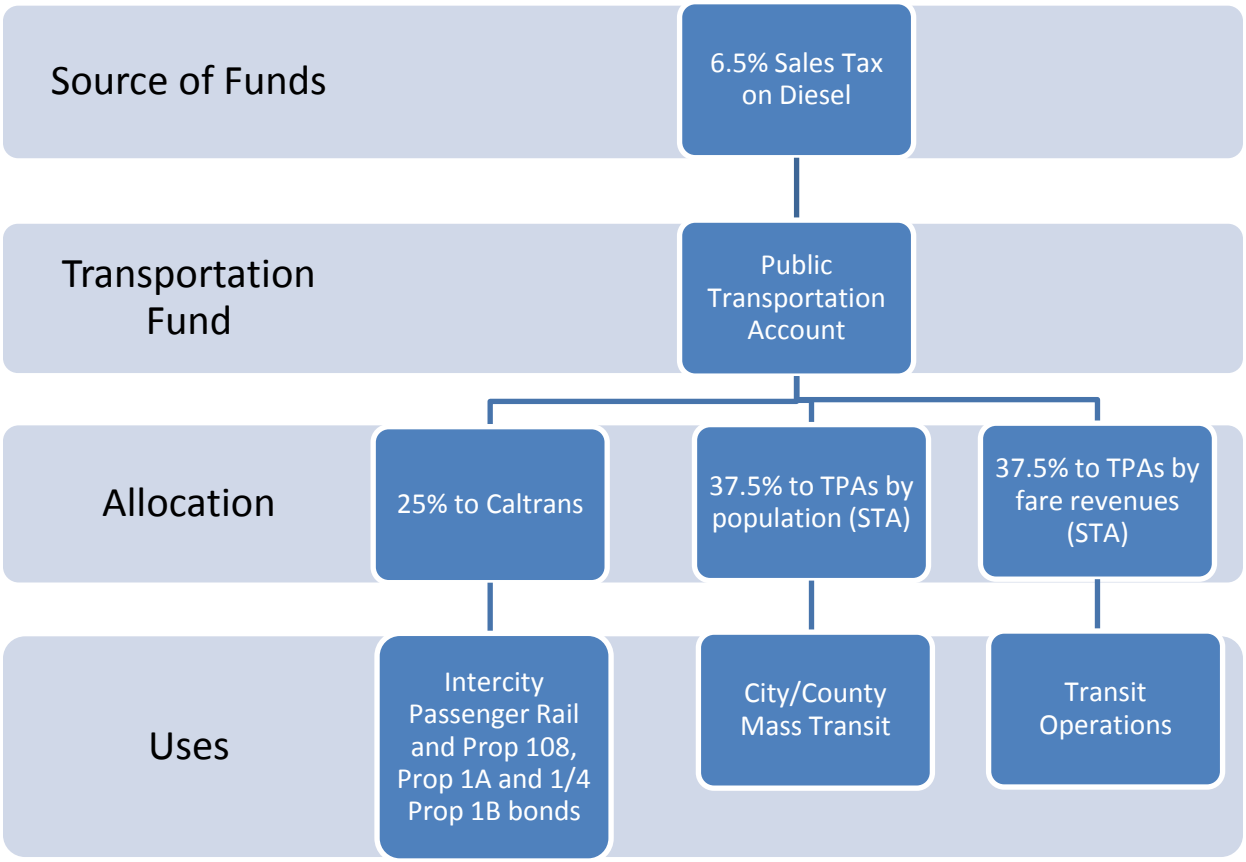


Figure B3. Proceeds of Diesel Sales Tax (AB 105)

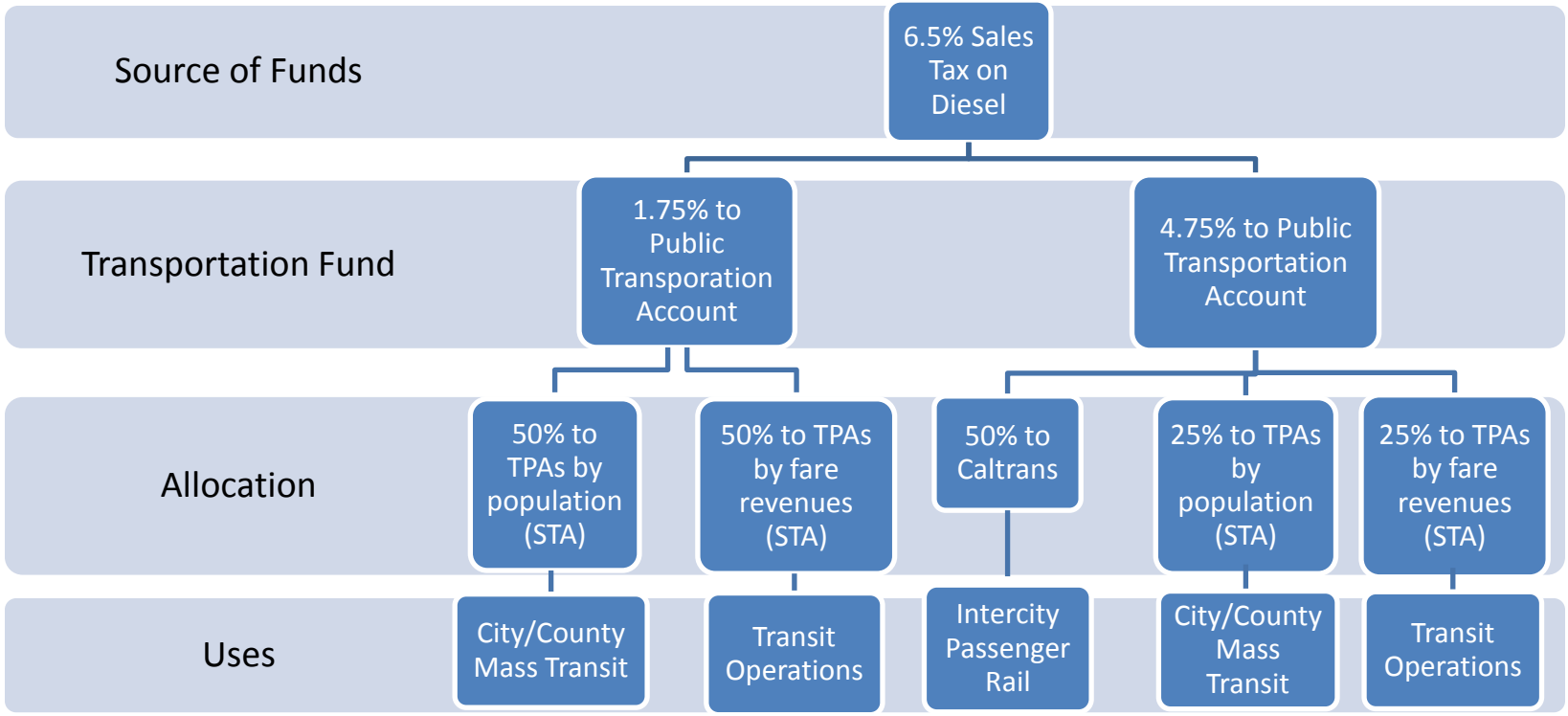
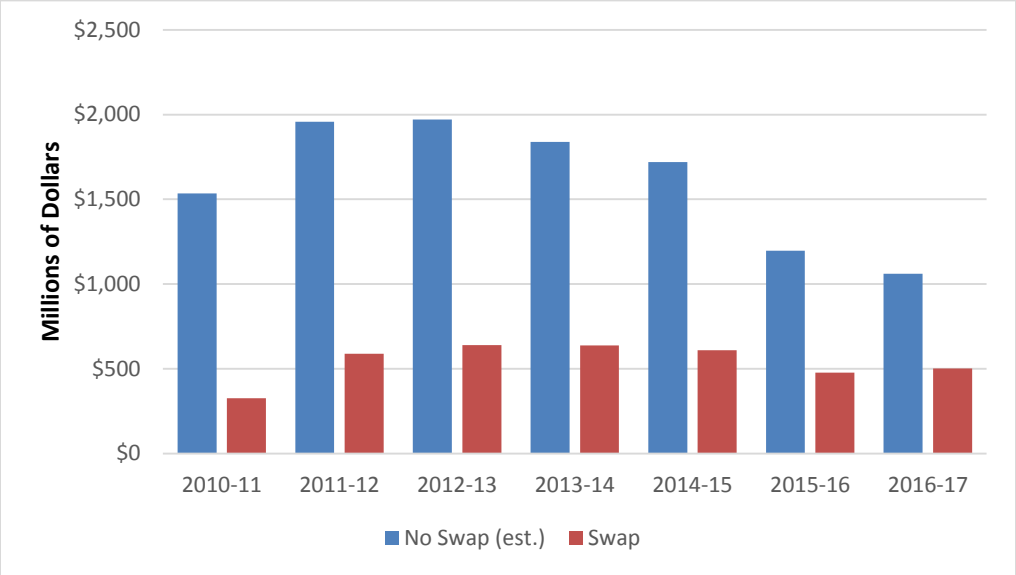


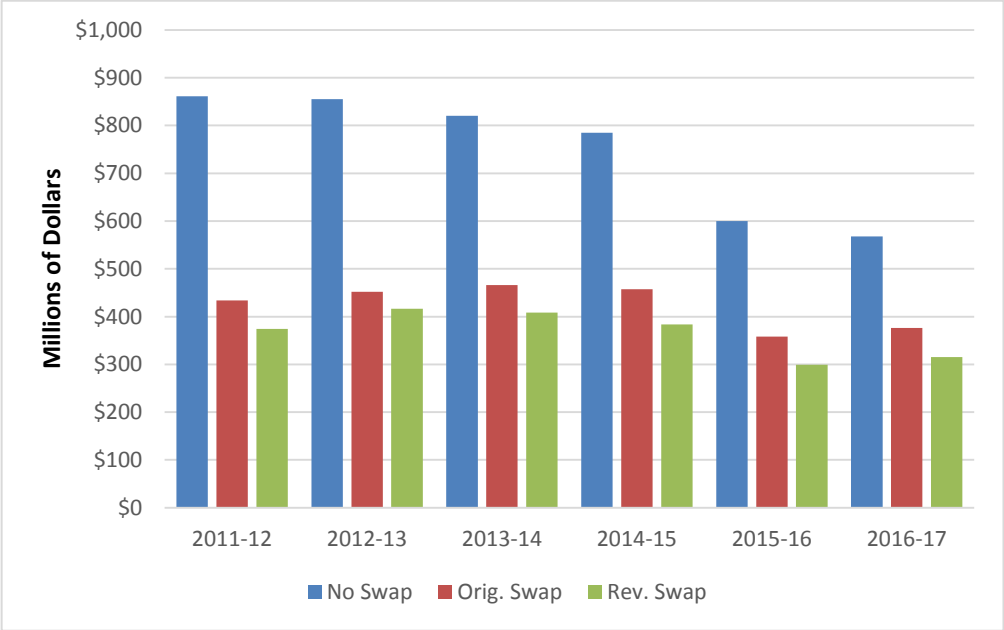
Figure B4 compares the actual revenues generated under the Swap for the PTA from the base and variable diesel sales tax to the hypothetical revenues that would have been collected in the absence of the Swap. The hypothetical amounts are based on Department of Finance estimates of gasoline sales tax revenues that would have been collected from FY 2010-11 to FY 2016-17. The diesel sales tax revenues have been adjusted to remove the revenue impact from the variable diesel sales tax. The loss of spillover funds, the Proposition 111 Delta, and the 20 percent of TIF revenues clearly had a significant impact on the level of funding for the PTA, only partly offset by the increase in the diesel sales tax. Figure B5 similarly shows the impact on the STA funds from the SWAP for both the original Swap and as reenacted after Proposition 26. Given the larger share of PTA funds being allocated to them, STA funds fared proportionately better than non-STA funds. Had there been no Swap, the STA would have received from 43 to 53 percent of PTA revenues over the seven-year period. With the original Swap that figure would have been 75 percent but under AB 105 the net result is that STA funds received about 63 percent of PTA revenues, or about 83 percent of what the Legislature had originally intended.

Figure B4. Impact of Swap on PTA



Source: Department of Finance Annual PTA Funding Summaries

Figure B5. Impact of Swap on STA



Source: Department of Finance Annual PTA Funding Summaries

APPENDIX C: USE OF WEIGHT FEES TO SERVICE STATE TRANSPORTATION BONDS

For the first two fiscal years following the reenacted swap, loans were to be made to the General Fund from weight fees. A total of $54 million per month was to be held in the HUTA for future appropriation. The $650 million from the loan authorized prior to Proposition 22 that was to be repaid by June 30, 2013 is instead due by June 30, 2021.[i] No additional loans were to be made from gasoline excise taxes after October 2010 and these loans would instead be made from weight fees. For FY 2010-11, a total of $756.4 million was appropriated from weight fee revenues in the SHA (per Vehicle Code Sections 9400.1 and 42205) to be transferred to the General Fund as debt service reimbursement for all qualified bonds (per Gov't Code Section 16965) with the rest being loaned to the General Fund with $205 million due June 30, 2014 and $144 million due June 30, 2015 and any remainder by June 30, 2016.[ii]

For FY 2011-12, a total of $866.3 million was initially appropriated from weight fees in the SHA to reimburse the GF for all qualifying bond payments (per GC Section 16965) with the balance loaned to the GF to be repaid by June 30, 2015.[iii] The repayment dates were later extended to June 30, 2021.[iv] This provision was subsequently changed to transfer all weight fees to the SHA other than a $43.7 million loan to the General Fund, with any amounts remaining after debt costs have been reimbursed to be loaned to the General Fund, with $42 million to be transferred by July 1, 2012.[v] The Controller was directed to transfer excise tax revenues to the SHA in an amount equal to the weight fees revenues transferred to the TDSF including the $43.7 million loan to the GF and any additional amounts loaned to the GF.[vi]

From FY 2012-13 on, all weight fees in the SHA are transferred to the TDSF to reimburse the GF for its transportation debt service costs (including prepaying outstanding bonds) up to the amount of weight fees deposited in the SHA each year.[vii] Once those costs have been reimbursed any remaining weight fee revenues are transferred to the General Fund as a loan.[viii] For FY 2013-14 the Governor proposed using all $946 million in weight fees for General Fund relief with $907 million for debt service payments and $39 million in loans to the General Fund to be set aside for future debt service.[ix]

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[i] Stats. 2011, c. 38 (AB 115), §5, eff. June 30, 2011 (amending Sts. & High. Code §2103(a)(2)(B)).
[ii] Stats. 2011, c. 6 (A.B. 105, Committee on Budget), §35, eff. March 24, 2011, (adding Cal. Veh. Code §9400.4(a)).
[iii] Stats. 2011, c. 6 (A.B. 105, Committee on Budget), §35, eff. March 24, 2011, (adding Cal. Veh. Code §9400.4(b)).
[iv] Stats. 2011, c. 38 (A.B. 115, Committee on Budget), §7, eff. June 30, 2011. Stats. 2011, c. 38 (A.B. 115), §7, eff. June 30, 2011 (amending Vehicle Code Section 9400.4(a)(2) & (b)(2).
[v] Stats. 2012, c. 22 (A.B. 1465, Committee on Budget), §7, eff. June 27, 2012 (amending Veh. Code §9400.4(b)).
[vi] Stats. 2012, c. 22 (A.B. 1465, Committee on Budget), §6, eff. June 27, 2012 (amending Sts. & High. Code §2103(a)(1)(C)).
[viivii] Stats. 2011, c. 38 (A.B. 115), §7, eff. June 30, 2011 (amending Veh. Code §9400.4(c)). Any amounts that cannot be transferred in one month due to insufficient funds are to be transferred in following month, prior to any additional transfers.
[viii] Stats. 2012, c. 22 (A.B. 1465, Committee on Budget), §7, eff. June 27, 2011 (amending Cal. Veh. Code §9400.4(c)(1)).
[ix] LAO, The 2013-14 Budget: Transportation Proposals, February 9, 2013, p. 9.

ENDNOTES

[1] Owen D. Gutfreund, *Twentieth Century Sprawl: How Highways Transformed America* (New York: Oxford University Press, 2005), 34; also quoted in Stephen Goddard, *Getting There: The Epic Struggle Between Road and Rail in the American Century* (Chicago: University of Chicago Press, 1996), 110; James A. Dunn, Jr., *Miles to Go: European and American Transportation Policies* (Cambridge, Mass.: MIT Press, 1981); Kenneth Richardson, *The British motor industry, 1896-1939* (London: Archon, 1977).

[2] General obligation (GO) bonds are backed by the state's general revenues, which, in California, mostly come from personal and corporate income taxes, general sales and use taxes, and miscellaneous fees, which are all deposited in the state's General Fund. Monies in the fund are allocated by the state Legislature to specified purposes through the annual state budget process.

[3] The gasoline excise tax is governed by the Motor Vehicle Fuel Tax Law, Part 2 of Division 2 of the Revenue and Taxation Code (§§7301-8402). The diesel excise tax is contained in the Diesel Fuel Tax Law, Part 31 of Division 2 of the Revenue and Taxation Code (§60001 et seq.). A third category of fuels, known as "use fuels," are covered by the Use Fuel Tax Law, Part 3 of Division 2 of the Revenue and Taxation Code (§8601 et seq.), which applies to fuels other than gasoline or diesel, such as liquefied natural gas, ethanol and methanol. Some fuels, such as racing fuel, are not taxed. Prior to 1994, diesel fuel was taxed as a use fuel.

[4] Article XIX permits excise tax revenues to be used for "planning, construction, improvement, maintenance, and operation" of public streets and highways, as well as exclusive public mass transportation guideways. They cannot be used for mass transportation operations or acquisition of rolling stock. Cal. Const. Art. XIX, Sec. 2.

[5] The California Transportation Commission (CTC) programs new projects in the STIP for a five year period and the list is revised every other year. Caltrans is permitted to spend 25 percent on interregional transportation improvements, while the remaining 75 percent goes to designated regional transportation planning agencies to regional transportation projects.

[6] Cal. Sts. & High. Code §§ 2104, 2105, 2107 (West Supp. 2016). The actual total amount is 5.67 cents.

[7] The state collects both a sales tax and a use tax on all three categories of fuel. A use tax is imposed on the storage, use, or other consumption of a good based on the sales price. It serves as a backup tax to prevent tax avoidance, for example, on goods purchased out of state but used in state. For convenience, both will simply be referred to together as the state sales tax.

[8] Cal. Rev. & Tax. Code §§ 6051.3, 6201.3 (West 1998).The 0.25 percent additional tax is operative as of January 1 in any calendar year unless the amount in the Special Fund for Economic Uncertainties as of June 30 of the prior fiscal year exceeded 4 percent of General Fund revenues for that prior fiscal year, and as of June 30 of the current fiscal year the estimated amount in the fund (without inclusion of any revenue derived from the additional tax on and after January 1 of the current fiscal year) exceeds 4 percent of General Fund revenues for the current fiscal year.

[9] These include amounts for local revenue (0.5 percent), public safety (0.5 percent), and education (0.25 percent). State law also permits local counties to charge a sales tax of up to 1.25 percent, a portion of which (0.25 percent) is dedicated to transportation. Currently, part of that tax (0.25 percent) is being temporarily diverted to the State's Fiscal Recovery Fund.

[10] These are a form of special purpose city or county Local Option Sales Tax (LOST) that is popular in many states and is collected on top of the state sales tax. In California, a county or a city may enact local sales taxes in 0.125 percent increments for general purposes if approved by two-thirds of the governing body and majority vote of qualified voters. Cal. Rev. & Tax. Code §7285 (authority for counties) (West Supp. 2016); Cal. Rev. & Tax. Code §7285.9 (authority for cities) (West Supp. 2016). Local sales taxes can be enacted for specific purposes with two-thirds vote of the governing body and two-thirds of qualified electors of the county voting in an election on the issue. Cal. Rev. & Tax. Code §7285.5 (counties) (West Supp. 2016); Cal. Rev. & Tax. Code §7285.91 (cities) (West Supp. 2016). The combined tax rate is limited to 2 percent. Cal. Rev. & Tax. Code §7251.1 (West 2010). See Stats. 1969, c. 24 for original TUT law.

[11] The present formula, which reflects a 1 percent increase in the base sales tax in 1974, reads as follows: "All revenues, less refunds, derived under this part at the 4.75 percent rate [including gasoline sales] which would not have been received if sales or use taxes had remained at the 5 percent rate and if [gasoline] had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department

of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund…" Cal. Rev. & Tax. Code §7102(a)(1) (West 2010).

[12] Article XIX applies to gasoline and diesel excise taxes, as well as vehicle registration fees. Non-Article XIX revenues include fuel sales taxes, vehicle weight fees, and miscellaneous other state fees and charges.

[13] At the time the State also imposed a 1 percent tax on retail sales to provide funds for the Contingency Reserve for Economic Uncertainties and the Special Reserve Account, in addition to the 4.75 percent base plus 0.25 percent additional tax. See former Cal. Rev. & Tax. Code §§6051.7, 6201.7, added by Stats. 1983, 1st Ex. Sess., c. 10, §§ 8,9,11,12; repealed by Stats. 1986, c. 308, §§ 6,7,12,13. The tax expired on July 1, 2011.

[14] Several bills have been introduced in the Legislature to prevent weight fees from being used to pay debt service or to be loaned to the General Fund. See e.g., A.B. 2728 (Perea), February 21, 2014; A.B. 2651 (Linder), February 21, 2014; S.B. 1418 (DeSaulnier), February 21, 2014.

[14] Richard M. Zettel, *State Transportation Financing in the 1970s: Theory and Practice* (Berkeley, CA: Institute of Transportation Studies Library, University of California, Berkeley, 1979), 2-5.

[15] State Highway Act, Stats. 1909, c. 383, p. 647, adopted March 22, 1909, approved by voters on November 8, 1910.

[16] State Highway Act of 1915, Stats. 1915, c. 404, p. 650; Senate Constitutional Amendment (S.C.A.) No. 27, Stats. 1919, c. 46, p. 1518. See Cal. Const. Art. XVI, Sec. 2, Stats. 1919, approved July 1, 1919.

[17] Vehicle Act of 1915, Stats. 1915, c. 188, p. 397, adopted May 10, 1915, approved by voters November 7, 1916. The funds were deposited in the Motor Vehicle Fund. Id., §34

[18] Vehicle Act of 1923, Stats. 1923, c. 266, p. 517, approved May 30, 1923, eff. August, 31, 1923.

[19] Motor Vehicle Fuel License Tax Act, Stats. 1923, c. 267, p. 571, approved May 30, 1923, operative September 30, 1923; amended by Stats. 1925, c. 359, p. 659: Stats. 1927, c. 795, p. 1565; repealed by Stats. 1941, c. 37, p. 578, §2 (adding R&T § 50007 which repealed Motor Vehicle Fuel License Tax Act), as amended by Stats. 1943, c. 874, p. 2705, §48 (savings clause for amounts due and payable July 1, 1943). See now Rev. & Tax Code §7301 et seq. (West 2010). The Act defined "motor vehicle fuel" as "any gasoline, distillate, benzene, naphtha, liberty fuel and other volatile and inflammable liquids produced or compounded for the purposes of, or which may be used in, operating or propelling motor vehicles except kerosene and except unfinished products …[not used or sold for use in motor vehicles]." Stats. 1923, c. 267, p. 571, §1(b).

[20] Stats. 1923, c. 267, p. 572, §3 (setting rate at 2-cents per gallon).

[21] The funds were placed in the Motor Vehicle Fuel Fund; one-half was distributed to counties in proportion to the number of registered vehicles for construction and maintenance of roads, bridges and culverts, while the remaining one-half was distributed to the State Highway Maintenance Fund for maintenance, repair, widening, resurfacing, and reconstruction of state highways as requested by the State Highway Commission. Stats. 1923, c. 267, p. 575, §13.

[22] Stats. 1927, c. 795, p. 1566, §1. The tax revenues went to the State Highway Construction Fund for acquisition of ROW for construction and improvement of state roads and highways. Id., §2.

[23] Stats. 1927, c. 794, pp. 1562, 1564, §§ 2, 3. All monies went first to the Highway Commission for administration, maintenance, and repair of existing roads, and then for widening, resurfacing or reconstruction of state highways in each of the first three groups in proportion to the number of miles of primary state highways in each group to the total mileage in the state. Id., p. 1564, §5

[24] Richard M. Zettel, *An Analysis of Taxation for Highway Purposes in California, 1895-1946* (Sacramento, CA: State Printing Office, 1946); Nelson C. Price, *Digest of Testimony and Reports Considered in Enacting the Collier-Burns Highway Act of 1947, Preliminary and Supplement to the Committee Report, No. 1.* (Sacramento, CA: Assembly Fact-Finding Committee on Highways, Streets and Bridges, 1949).

[25] Stats. 1927, c. 794, p. 1564, §5.

[26] Stats. 1933, c. 631, p. 1636, §3 (amending Stats. 1923, c. 267, p. 572, §3); amended by Stats. 1937, c. 776, p. 2218, §2, repealed by Stats. 1941, c. 37, p. 578, §2.

[27] Stats. 1933, c. 631, p. 1640, §9 (amending Stats. 1923, c. 267, §13). Each county received $5000 quarterly and the balance was distributed based on the number of registered vehicles.

[28] Zettel, *An Analysis of Taxation for Highway Purposes in California*, p. 32.

[29] Stats. 1933, c. 1020, p. 2601, §6 (specifically exempting gasoline sales from the Retail Sales Tax Act of 1933); Stats. 1941, c. 36, p. 558, §2 (adding Rev. & Tax. Code § 50006 which repealed the Retail Sales Tax Act of 1933 and Use Tax Act of 1935 as of July 1, 1943). See now Rev. & Tax. Code §6001 et seq. (West 2010 & West 2016). See also Stats. 1935, c. 361, p. 1299, §4(f) (exempting gasoline sales from the Use Tax Act of 1935); amended by Stats. 1937, c. 671, p. 1875, §1; Stats. 1939, c. 677, p. 2156, §2. Stats. 1941, c. 247, p. 1335, §16.

[30] Use Fuel Tax Act of 1937, Stats. 1937, c. 352, p. 763, repealed by Stats. 1941, c. 38, p. 589, §2 (adding former Rev. & Tax. Code §50009). See now Revenue and Tax Code §8601 et seq. (West 2010 & West Supp. 2015). The Act defined "fuel" as "any combustible gas or liquid … of any kind if used in an internal combustion engine for the generation of power to propel a motor vehicle on the highways, except such fuel as is subject to the tax imposed by the Motor Vehicle Fuel License Tax Act (c. 267, Statutes of 1933, as amended)." Stats. 1937, c. 352, p. 763, §2(b). Diesel fuel was covered by the Use Fuel tax law until 1994 when a separate Diesel Fuel Tax law was enacted. Stats. 1994, c. 912 (S.B. 840). Diesel fuel is now defined in Rev, & Tax Code §60022 as fuel suitable for use in diesel-powered highway vehicles, not including gasoline, kerosene, liquid petroleum gas, natural gas in liquid or gaseous form, or alcohol. The gasoline and diesel excise taxes are often referred to collectively simply as the "gas tax."

[31] Stats. 1937, p. 3055, res. c. 141, filed June 11, 1937. Approved by voters Nov. 8, 1938.

[32] Stats. 1923, c. 341, p. 706. The law was replaced without substantial change in 1925. Stats. 1925, c. 412; repealed by Stats. 1927, c. 843.

[33] Assembly Constitutional Amendment 37, Stats. 1925, c. 60.

[34] Stats. 1927, c. 19

[35] Stats. 1927, c. 843, eff. Jan. 1, 1928. This resulted in different treatment of for-hire carriers and common carriers that were still subject to tax on their gross receipts. The Legislature increased truck and bus registration and weight fees (Stats. 1927, c. 844) but this did not equalize the disparity. Zettel, *An Analysis of Taxation for Highway Purposes in California*, p. 42.

[36] Stats. 1933, c. 339.

[37] Stats. 1935, c. 780.

[38] Stats. 1935, c. 362, p. 1312, repealed by Stats. 1941, c. 40, p. 610, §2 (adding Rev. & Tax. Code §50011 repealing the Motor Vehicle License Fee Fund Act of June 25, 1935). See now Rev. & Tax. Code §§ 9601-10501 (West 2010 & West 2015). Up to 1 percent of the tax went to the Department of Motor Vehicles for administrative expenses with 25 percent of the remainder going to cities and 12.5 percent to counties. Any remainder could be used for debt service. Later, after administrative expenses and highway bond payments, 40 percent had to be spent in counties and 40 percent in cities, with the balance to the General Fund. Stats. 1941, c. 40, §1 (adding Rev. & Tax. Code §11005).

[39] These finance provisions were all codified in 1941. See Motor Vehicle Fuel License Tax, Stats. 1941, c. 37, p. 558; The Use Fuel Tax, Stats. 1941, c. 38, p. 578; The Motor Vehicle Transportation License Tax, Stats. 1941, c. 39, p. 590; The Vehicle License Fee, Stats. 1941, c. 40, p. 605.

[40] Collier-Burns Act Highway Act of 1947. Stats. 1947, 1st Ex. Sess., c. 11, p. 3788.

[41] Bertram H. Lindman, , A Proposed System of Highway Financing for the State of California, California Legislature, November 14, 1946, pp. 46-47.

[42] Price, *Digest of Testimony.*

[43] Ibid.

[44] Zettel, *State Transportation Financing in the 1970s*, 3-13. Zettel suggests that a portion of the gasoline excise tax should be treated as a substitute for the unwarranted exemption and considered part of a state's general funds.

[45] Zettel (1946), p. 110 (quoting U.S. Board of Investigation and Research, 1945. Carrier Taxation. U.S. House Document. 79th Congress. 1st Session. no. 160).

[46] Jeffrey Brown et al., *The Future of California Highway Finance* (Berkeley, CA: Berkeley Research Policy Center, 1999), 25-32.

[47] Stats. 1947, 1st Ex. Sess., c. 11, p. 3790, §1 (adding Cal. Sts. & High. Code §2100)

[48] Stats. 1947, 1st Ex. Sess., c. 11, p. 3806, §19 (amending Cal. Rev. & Tax. Code §8352).

[49] Stats. 1947, 1st Ex. Sess., c. 11, p. 3790, §1 (adding former Sts. & High. Code §2101).

[50] Stats. 1947, 1st Ex. Sess., c. 11, §1 (adding former Sts. & High. Code §§ 2104, 2105, 2106 and 2107). First, $5.4 million was distributed to counties based on numbers of registered vehicles (§2104); 1 cent to counties for

engineering costs (§2015); three-eighths cent to counties by various formulas (§2016); five-eighths cent to cities by population (former §2107) of which three-fifths was for construction of major streets and two-fifths for maintenance of major and secondary streets.

[51] Stats. 1947, 1st Ex. Sess., c. 11, p. 3791, §1 (adding Sts. & High. Code §2108).

[52] Stats. 1947, 1st Ex. Sess., c. 11, p. 3801, §4 (adding former Sts. & High. Code §188). The initial formula proposed in S.B. 5 was that after deductions for administration and maintenance, one-third of the remainder would be allocated equally to counties in Group 1 and Group 2, and the other two-thirds would be divided 45 percent for the Group 1 counties and 55 percent for the Group 2 counties, resulting in about 53⅓ percent for the south and 46⅔ percent for the north. Price, *Digest of Testimony*, 66-67.

[53] Stats. 1947, 1st Ex. Sess., c. 11, p. 3802, §6 (adding former Sts. & High Code §188.4); amended by Stats. 1951, c. 938, p. 2542, §3; Stats. 1953, c. 1200, p. 2720, §11.

[54] After passage of the Collier-Burns Act, the gasoline excise tax rose incrementally over the years to $0.07 per gallon by 1963. Stats. 1963, c. 1852, p. 3806, §1 (amending Rev. & Tax. Code §7351). At this time, these funds were distributed by formula with $0.34 (49.4 percent) going to counties to pay for local street and highway maintenance and $0.36 (51.6 percent) going to the State for repair and construction of the freeway system. Stats. 1963, c. 1852, p. 3818, §26 (adding former Sts. & High. Code §2104 allotting 1.625¢ of tax to counties); Stats. 1963, c. 1852, p. 3811, §10.2 (adding former §186.1 allotting 1.04¢ of tax to counties); amended by Stats. 1965, c. 747, p. p. 2161, §1. Stats. 1967, c. 1621, p. 3871, §1.5 (renumbering former §186.1 as §2106 and amending same); Stats. 1963, c. 1852, p. 3819, §29.5 (amending §2107 allotting 0.725¢ of tax to counties); repealed by Stats. 1967, c. 1621, p. 3879, §21. The rate increase to $0.09 per gallon took effect in 1983 with 1 cent of the increase going to the state and 1 cent to counties, but the allocation remained basically unchanged (49.6 percent/51.3 percent). Stats. 1981, c. 541 (SB 215), p. 2177, §18, eff. Sept. 17, 1981; amended by Stats. 1981, c. 1053, p. 4065, §2, operative July 1, 1983 (adding new Sts. & High. Code §2104 allotting 2.035¢ from gas tax and 1.80¢ from diesel tax to counties); Stats. 1981, c. 541 (SB 215), p. 2178, §19, eff. Sept. 17, 1981 (adding new Sts. & High. Code §2106 allotting 1.04¢ of tax to counties); Stats. 1981, c. 541 (SB 215), p. 2179, §21, eff. Sept. 17, 1981; amended by Stats. 1981, c. 1053. p. 4067, §4; operative July 1, 1983 (adding new Sts. & High. Code §2107 allotting 1.315¢ of tax to counties).

[55] Transportation Development Act, Stats. 1971, c. 1400 (S.B. 325), p. 2753.

[56] Stats. 1971, c. 1400, p. 2785, §10 (amending Rev. & Tax. Code §7202 to authorize a 0.25 percent increase in the Bradley-Burns local sales tax for transportation purposes); repealed Stats. 1972, c. 1406, §22.07, eff. Dec. 26, 1972, operative Jan. 1, 1974. Stats. 1971, c. 1400, p. 2788, §11 (amending Rev. & Tax. Code §7203 to authorize a 0.25 percent increase in local use tax); repealed by Stats. 1972, c. 1406, §22.19, eff. Dec. 26, 1972, operative Jan. 1, 1974.

[57] Stats. 1971, c. 1400 (S.B. 325), p. 2783, §6 (amending Rev. & Tax. Code §6051 relating to sales taxes). Id., §8 (amending Rev. & Tax. Code §6201 relating to use taxes). Id., p. 2785, §9 (amending Rev. & Tax. Code §6357 relating to exemptions from the tax).

[58] Stats. 1971, c. 1400, p. 2785, §9.5 (amending Rev. & Tax. Code §7102); repealed by Stats. 1972, c. 1406, §21.9, eff Dec. 26, 1972, operative June 1, 1973; reenacted by Stats. 1972, c. 1406, §22-05 (reflecting 1 percent increase to 4.75 percent operative June 1, 1973).

[59] Stats. 1971, c. 1400, p. 2785, §9.5 (amending Rev. & Tax. Code §7102); amended by Stats. 1972, c. 1408, p. 3060, §65, eff. Dec. 26, 1972, operative July 1, 1973; repealed by Stats. 1972, c. 1406, §21.9, eff. Dec. 26, 1972, operative June 1, 1973. See now Rev. & Tax. Code §7102 (West 2010).

[60] Sales taxes on diesel fuel used primarily in trucks continued to be treated as general tax revenues.

[61] Stats. 1973, reso. c. 145, S.C.A. 15, filed Sept. 13, 1973 (submitted as Proposition 5, repealing and amending Art. XXVI). Approved by voters June 4, 1974.

[62] Stats. 1979, c. 161, p. 374, §58 (amending Rev. & Tax. Code §7102(a)). In subsequent years the amount could include changes in the Consumer Price Index (CPI), but is not to exceed the change in per capital state personal income and population from the FY 1979-80 base year.

[63] Stats. 1981, c. 541, p. 2171, §6 (amending Rev. & Tax. Code § 7102). The statutory allocations to the General Fund from the estimated spillover were: $127 million in FY 1981-82, $141 million in FY 1982-83; $106 million in FY 1983-84; $71M in FY 1984-85; and $35 million in FY 1985-86. Id., at §7102(a)(2). Whatever balance remained of the estimated spillover revenues was divided evenly between the SHA and Caltrans. Id., at §7102(a)(3).

[64] The funds were initially placed into the Transportation Planning and Research Account (TPRA) in the State Transportation Fund (STF). TPRA was created in STF to take the spillover funds. Stats. 1972, c. 1408, p. 3056, §49 (amending Pub. Util. Code §99305); amended by Stats. 1972, c. 1408, p. 2056, §49; repealed by Stats. 1976, c. 1349, p. 6153, §3. Stats. 1976, c. 1349, p. 6153, §4 (adding Pub. Util. Code §99310 continuing TPRA fund created by Sec. 99305 as Transportation Planning and Research Account in the STF). The TPRA became the Transportation Development and Research Account (TDRA). Stats. 1979, c. 161, p. 367, §32 (amending PUC §99310(a)); repealed by Stats. 1982, c. 321, p. 1021, §2, eff. June 29, 1982, operative July 1, 1982; Stats. 1982, c. 322, p. 1028, §2, eff. June 29, 1982, operative July 1, 1982. The TDRA then became the Public Transportation Account (PTA). Stats. 1982, c. 321, p. 1028, §3 (adding new Pub. Util. Code §99310), operative July 1, 1982; Stats. 1982, c. 322, p. 1028, §3, eff. June 29, 1982, operative July 1, 1982; amended by Stats. 1997, c. 622 (S.B. 45), §32.

[65] Kopp-Katz-Baker Transportation Blueprint for the Twenty-First Century, Stats. 1989, c. 105 (S.B. 300); Katz-Kopp-Baker-Campbell Transportation Planning Blueprint for the 21st Century, Stats. 1989, c. 106 (A.B. 471).

[66] Stats. 1981, c. 541 (S.B. 215, Foran), p. 2167, §8, eff. Sept. 17, 1981 (amending Rev. & Tax. Code §7351 to raise the rate to 9 cents). The local-state apportionment was retained as 4.4 cents local (49 percent) and 4.6 cents state (51 percent). See former Sts. & High. Code §§ 2104 (2.035 cents), 2106 (1.04 cents); and 2107 (1.315 cents), Stats. 1981, c. 541, p. 2177, §18, eff. Sept. 17, 1981; amended by Stats. 1981, c. 1053, p. 4065, §2, operative July 1, 1983 (amending Sts. & High. Code §2104); Stats. 1981, c. 541, p. 2178, §19, eff. Sept 17, 1981 (amending Sts. & High. Code §2106); Stats. 1981, c. 541, p. 2179, §19, eff. Sept. 17, 1981; amended Stats. 1981, c. 1053, p. 4067, §4, operative July 1, 1983 (amending Sts. & High. Code §2107).

[67] Stats. 1989, c. 105, §38, eff. July 10, 1989, operative Aug. 1, 1990 on approval of S.C.A. No. 1 (Proposition 111) at the June 5, 1990 election (adding former Rev. & Tax. Code §7351); amended by Stats. 1990, c. 627 (S.B. 2829), §4.50, repealed Stats. 2000, c. 1053 (A.B. 2114), §3, operative Jan. 1, 2002. See now Rev. & Tax. Code §7360 (West 2010).

[68] The local apportionment of 6.46 cents (35.9 percent) is governed by Sts. & High. Code §§ 2104 (2.035¢), 2105(a) (1.035¢), 2105(b) (1.035¢), 2106 (1.04¢); and 2107 (1.315¢) (West Supp. 2016). The remaining state apportionment is 11.54¢ (64.1 percent). By law 40 percent of the state and federal highway funds in the STIP are set aside for the 45 northern counties (Group 1) and 60 percent for the 13 southern counties (Group 2). This is known as the Barnes-Mills-Walsh formula. Cal. Sts. & High. Code §188 (West 2005).

[69] For purposes of taxation, the sales price of gasoline includes any tax imposed by the US government and the amount of any tax imposed by the state Motor Vehicle Fuel Tax Law. Cal. Rev. & Tax. Code §6011(a)(3) (West Supp. 2015).

[70] Stats. 1989, c. 105 (S.B. 300), §36 (amending Rev. & Tax. Code §7102); amended by Stats. 1989-1990, 1st Ex. Sess., c. 13 (A.B. 48), §5.

[71] Because the Proposition 111 Delta was collected as part of the spillover, this amount had to be deducted from the spillover estimate before it was transferred to the PTA, which in some years meant no spillover would be transferred.

[72] Stats. 1989, c. 108, p. 1020, §2 (adding Ch. 17 to Div. 3 of Sts. & High. Code).

[73] LAO 1995-96 Budget Analysis, Transportation, Departmental Issues, A-19 et seq.

[74] Prior to that, the statute simply read “transportation purposes.”

[75] The 1992 STIP had a $2.5 billion shortfall and the state faced nearly $1 billion in additional expenditures, including costs for toll bridge seismic retrofit. Even with an additional two years of revenues, the 1994 STIP still fell short of completing all the previously programmed projects, without any new additions. LAO, FY 1994-95 Budget Analysis, Crosscutting Issues, Transportation Programming and Funding, A-11 et seq., February 23, 1994.

[76] LAO 1995-96 Budget Analysis, Transportation, Crosscutting Issues, A-11 et seq., February 22, 1995. Caltrans planned to borrow $847 million over three years to pay for seismic retrofit work ($1 billion with interest).

[77] Another $208 million for debt service on Proposition 108 and 116 bonds was requested in the 1996-97 Budget, $213 million on Proposition 108, 116 and 192 bonds in FY 1997-98, and $295 million for FY 1998-99.

[78] Professional Engineers in California Government v. Wilson, 61 Cal. App. 4th 1013, 72 Cal. Rptr.2d 111 (1998).

[79] The measure provided $1.35 billion for highway seismic retrofit and $650 million for toll bridges.

[80] There was still a $1.4 billion shortage in funds for seismic repairs to state toll bridges. LAO 1997-98 Budget Analysis, Transportation, Major Issues, A-2 et seq., February 18, 1997.

[81] The State needed an additional $3.5 million just to complete all projects programmed in the 1992 STIP through 1998-99. As a result, no new programs were added to either the 1994 or 1996 STIPs. LAO 1997-98 Budget Analysis, Transportation, Crosscutting Issues, A-11 et seq., February 18, 1997.
[82] Stats. 1997, c. 327 (S.B. 60); Stats. 1997 c. 328 (S.B. 226, Kopp).
[83] California Proposition 2, Loans of Transportation-Related Revenues (1998). The measure repealed and replaced Section 6 of Article XIX and added Article XIXA. The measure received 75.4 percent of the vote.
[84] In 1995 California drivers spent 300,000 hours per day in traffic, up 100,000 hours from 1987. Michael Cunningham, *After the Transportation Blueprint: Developing and Funding an Efficient Transportation System* (Sacramento, CA: Legislative Analyst's Office, 1998). The growth in fuel tax revenues lagged far behind growth in vehicle miles travelled due to increasing fuel economy and high inflation, despite the 9-cents per gallon per gallon excise tax increase in 1983. Local option sales taxes (LOST) for transportation did a better job of keeping pace. Id., p. 5, Figure 2.
[85] Stats. 1997, c. 622 (S.B. 45, Kopp), §42 (adding Pub. Util. Code §164).
[86] Stats. 1997, c. 622 (S.B. 45, Kopp), §9 (adding Gov't Code §14529). Id., § 16 (adding Gov't Code §14529.15(c)).
[87] Cunningham, *After the Transportation Blueprint*. These could include road pricing, more compact land development planning policies, and alternatives to driving including mass transportation.
[88] LAO, 1998-99 Budget Analysis, Transportation Cross-Cutting Issues, February 18, 1998, A-20 et seq. The LAO suggested that the state could repay a $91.5 million loan from the PTA to the GF in FY 1993-94.
[89] This increase in costs was due to service expansion and reductions in federal subsidies.
[90] LAO 1999-2000 Budget Analysis, Transportation, Crosscutting Issues, February 16, 1999, A-21 to A-22.
[91] In addition to declining tax collections, the Legislature increased the share of PTA funds for the local transit to 50 percent of all revenues (not just net of expenses), which left less money available for intercity rail projects. Moreover, Article XIX restricts the use of fuel excise tax revenues for rolling stock so funding must come exclusively from the PTA. As a result, the CTC shifted costs for new tracks and facilities to the SHA to free up funds in the PTA. The LAO recommended amending Article XIX to remove the restriction. LAO. FY 1999-00 Budget Analysis Transportation, Crosscutting Issues, February 16, 1999, A-22 to A-24.
[92] The additional tax revenues could have included the entire 5 percent sales tax (not just 4.75 percent) on diesel fuel, the Proposition 111 gasoline excise tax, the 5 percent sales tax on the federal and state gasoline excise tax (not just on the Proposition 111 portion), and up to 4.75 percent of the 5 percent sales tax on gasoline.
[93] Jason Weller, *Public Transportation Account: Options to Address Projected Shortfall* (Sacramento, CA: Legislative Analyst's Office, 2000). The LAO also recommended suspending the $130 million PTA contribution for toll bridge retrofit.
[94] LAO 2004-05 Budget Analysis, February 18, 2004, p. A-30. Lower truck weight fees and declining federal gas tax receipts due in part to increasing use of ethanol and other blended fuels had also reduced revenues for transportation programs. Some local governments had been forced to contribute their own monies to keep STIP and TCRP projects moving forward.
[95] Jeffrey Brown, "Trapped in the Past: The Gas Tax and Highway Finance" (UCLA Master's Thesis, Los Angeles, 1998), 8.
[96] California Transportation Commission, *Inventory of Ten-Year Funding Needs for California's Transportation System*, May 5, 1999.
[97] These revenues consisted of all the non-spillover gasoline sales tax revenues (estimated at $6.2 billion) that would normally have gone to the General Fund from FY 2001-2002 through FY 2005-2006, other than the portion previously allotted to the PTA.
[98] Stats. 2000, c. 91 (A.B. 2928, Torlakson) §6, effective July 7, 2000, operative June 3, 2001 (adding Chapter 4.5 to Part 5.3 of Division 3 of Title 2 of the Government Code commencing with Section 14556).
[99] Weller, *Public Transportation Account*.
[100] Stats. 2000, c. 91 (A.B. 2978), §6, eff. July 7, 2000. Cal. Gov.t Code §14556.3 (West 2015).
[101] Cal. Gov't Code §14556.6 (West 2015).
[102] LAO 2000-01 Budget Analysis, Crosscutting Issues, Transportation, February 21, 2001, A-13 et seq. The estimate was later revised downward to $7.8 billion.
[103] This only covered a portion of the cost of the projects and additional funds were budgeted to the program.

[104] Stats. 2000, c. 91 (A.B. 2928, Torlakson and Flores), §6 (adding Gov't Code §14556.6). LAO, 2001-02 Budget Analysis, Crosscutting Issues, Transportation, A-15, February 21, 2001.
[105] Stats. 2000, c. 91 (A.B. 2829), §20 (appropriating $1.5 billion in general funds to the TCRF per Gov't Code §14556.6(a)).
[106] Stats. 2000, c. 91 (A.B. 2829), §10 (adding Gov't Code §14336.6(b)). The monies would come from the transfer of all gasoline sales taxes for FY 2000-01 at the 5 percent rate – less spillover amounts and the 4.75 percent sales tax on the Proposition 111 tax increment – together with all revenues at the 5 percent rate from sales taxes on the state and federal gasoline excise tax (minus the portion sent to the PTA), up to a maximum of $125 million per quarter. Stats. 2000, c. 91 (A.B. 2928), §10, eff. July 7, 2000, (adding Cal. Rev. & Tax Code §7102(a)(11)-(13)), repealed by its own terms operative June 20, 2001.
[107] Stats. 2000, c. 91 (A.B. 2829), §21, eff. July 7, 2000 (appropriating $400 million to the TCRF)).
[108] Stats. 2000, c. 91 (A.B. 2928), §18, eff. July 7, 2000 (adding Sts. & High. Code §2182).
[109] LAO 2001-02 Budget Analysis, Transportation, Crosscutting Issues, Department of Transportation, February 21, 2001, A-33 et seq.
[110] Stats. 2000, c. 91 (A.B. 2829), §11.5, eff. June 7, 2000, operative June 3, 2001 (adding Rev. & Tax. Code §7104).
[111] Stats. 2001, c. 113 (A.B. 438, Committee on Budget), § 9, eff. July 30, 2001 (amending Cal. Rev. & Tax. Code §7104). The total amount due in the final year was trimmed by $76 million to $602 million.
[112] Stats. 2001, c. 113 (A.B. 438, Committee on Budget), § 10, eff. July 30, 2001 (amending Cal. Rev. & Tax. Code §7104).
[113] The Legislature authorized a total of $180 million from the SHA to be repaid by June 30, 2007 and another $280 million in loans from the PTA to be repaid by June 30, 2008. Stats. 2001, c. 113 (A.B. 438, Committee on Budget), §6, eff. July 30, 2001 (adding Gov't Code §14556.8).
[114] LAO 2002-03 Budget Analysis, Transportation, Crosscutting Issues, Condition of Transportation Funds, February 20, 2002, A-13 et seq.
[115] Stats. 2002, c. 445 (S.B. 1834), §4, eff. Sept. 9, 2002 (amending GC §14556.8). The Legislature increased the authorized SHA loan amount to $654 million (from $180 million).and provided for interest on loan amounts over $180 million to be paid by June 30, 2007. The SHA loan would be funded by deferring a planned $342 million transfer to the Toll Bridge Seismic Retrofit Account that would be partly covered by $210 million in interim financing to be repaid by a later bond issuance that would be serviced by toll revenues.
[116] LAO 2002-03 Budget Analysis, Transportation, Crosscutting Issues, February 20, 2002, A-13 et seq.
[117] The TCRF loaned $238 million to the GF in FY 2001-02 and another $1,145 million in FY 2002-03 for a total of $1,383 million. A total of $183 million was paid in FY 2004-05, leaving a balance of $1.2 billion due by June 30, 2006.
[118] Transportation Congestion Improvement Act. Allocation of Existing Motor Vehicle Fuel Sales and Use Tax Revenues for Transportation Purposes Only. Legislative Constitutional Amendment. Stats. 2001, res. c. 87. The measure received 69.1 percent of the vote.
[119] The Governor wanted to (a) suspend the entire $1.1 billion transfer to the GF (of which $678 million would go to the TCRF), (b) forgive a $500 million scheduled loan repayment from the GF to the TCRF, and (c) transfer $100 million from the TCRF to the GF for FY 2003-04 to repay loans from the SHA used to finance TCRP projects in the STIP. About $1.3 billion worth of TCRP projects would be affected and $84 million in funding for the PTA, including $42 million for the STA. The proposal would have left about $300 million in the TCRP budget to close out projects in the current year. LAO 2003-04 Budget Analysis, Transportation, Crosscutting Issues, February 19, 2003, A-13 et seq.
[120] The $1.1 million suspension would make a total of $4.3 million in delayed funding for the TCRP over the first four years of the original program schedule. The LAO was concerned that this approach did not address the structural financial issues facing the state and would require additional "cuts, transfers or revenue enhancements" in the future. LAO 2004-05 Budget Analysis, February 18, 2004, A-21.
[121] The SHA also faced declining balances in part due to increased STIP expenditures as well as outstanding loans to the GF and to local agencies for street and road improvements. Weight fees, which supplied a significant amount of SHA funding, had also declined due to changes in the method of collection. LAO 2003-04 Budget Analysis, February 19, 2003, A-17 et seq.

[122] This affected $672 million worth of projects in the STIP and SHOPP and $150 million in the TCRF. 123 is LAO 2004-05 Analysis, Transportation, Crosscutting Issues, A-24.
[123] Stats. 2004, c. 223 (AB 1750) §1, eff. Aug.11, 2003 (adding Gov't Code §14557). The suspended funds were to be repaid by July 2009 with $389 million going to the TCRF.
[124] LAO 2004-05 Budget Analysis, Transportation, Crosscutting Issues, A-22. Anticipated receipts of 5.2 billion would have included the first full three years of TIF funding from FY 2000-01 through FY 2003-04 (3.2 billion) plus the entire $2 million grant from the General Fund. Actual receipts consisted on $289 million in TIF funds plus a net $617 million from the General Fund grant after deduction for the 1.383 billion loan.
[125] The $2.1 billion repayment option would include the $1.3 million loan from the TCRF to the GF in FY 2003-04 and the $867 million suspension in TIF funds. LAO 2003-04 Budget Analysis, Transportation, Crosscutting Issues, A-14, et seq.
[126] This would be funded in part by cashing in $800 million of federal transportation funds held in reserve for local projects (and repaying the funds later). The proceeds would be used to make a $406 million debt payment and provide a $200 million loan to the General Fund, while leaving $194 million in the SHA. The remaining $314 million in relief would come from eliminating current funding for TCRP projects ($125 million) and transferring the previously budgeted $189 million from the TCRF to the General Fund.
[127] These represented anticipated spillover tax collections in excess of the $87 million minimum originally allocated to the PTA. Stats. 2003, c. 224 (AB 1751) §2, eff. Aug. 11, 2003 (adding subpart (C) to Rev. & Tax. Code §7102(a)(1)). In fact only about $1.2 million in spillover funds were generated for the year.
[128] These consisted of $2.125 billion in suspended Proposition 42 funds that were to be repaid by June 30, 2008 and the $1.383 billion loan from the TCRF to the General Fund due by June 30, 2006.
[129] Stats. 2003, c. 224 (A.B. 1751), §3, eff. Aug. 11, 2003 (adding Cal. Rev. & Tax. Code §7105 relating to reimbursement of FY 2003-4 TIF suspension); amended by Stats. 2004, c. 212 (S.B. 1098, Committee on Budget and Fiscal Review) § 3, eff. August 11, 2004; Stats. 2005, c. 22 (S.B. 1108), §182; Stats. 2006, c. 56 (S.B. 1132), §6, eff. July 7, 2006; Stats. 2007, c. 1732 (S.B. 79), §6, eff. Aug. 24, 2007; Stats. 2013, c. 35 (S.B. 85), §10, eff. June 27, 2013. Stats. 2004, c. 212 (S.B. 1098, Committee on Budget and Fiscal Review) § 4, eff. August 11, 2004 (adding Cal. Rev. & Tax. Code §7106 relating to reimbursement of FY 2004-5 TIF suspension); amended by Stats. 2006, c. 56 (S.B. 1132) §7, eff. July 7, 2006; Stats. 2007, c. 173 (S.B. 9) §7, eff. Aug. 24, 2007.
[130] The Governor's Budget provided $20 million more for the local transit, but with the TIF suspension there would $216 million less available for the PTA, for which support was actually reduced by $108 million to $137 million.
[131] Altogether these would have provided $678 million to the TCRP, $253 million for the STIP, $253 million for local streets and roads, $171 million for local transit and $171 million for other mass transportation programs. Legislative Analyst's Office, "Part V: Major Issues Facing the Legislature: Transportation Funding Instability Continues," *The 2005-06 Budget: Perspectives and Issues* (Sacramento, CA: Legislative Analyst's Office, 2005) 184, Figure 4.
[132] Ibid., 167.
[133] LAO 2004-05 Budget Analysis, February 18, 2004, A-34 to A-38; LAO 2005-06 Budget Analysis, February 22, 2005, p. 188. The LAO suggested raising the gas excise tax by 6-cents per gallon and adjusting the tax for inflation in future years.
[134] The sum of $687 million was paid to the TCRF, $136 million to the PTA, and $373 million to the STIP, and $272 million for local streets and roads.
[135] Stats. 2004, c. 91 (A.B. 687, Nuñez and McCarthy), §4, eff. July 1, 2004 (adding Gov't Code §63048.65(c)); amended by Stats. 2005. c. 76 (S.B. 62), §3, eff. July 19, 2005; Stats. 2006, c. 56 (S.B. 1132), §3, eff. July 7, 2006. The loan would be due on sale of the bonds. Stats. 2005, c. 76 (S.B. 62, Committee on Budget and Fiscal Review), §2 (amending Gov't Code §14556.8(c)). Even with the loan repayment the TCRP would only receive $2.3 billion in funding through FY 2005-06 ($1.7 billion for the specified projects and $600 million for other purposes), or $5.5 billion less than originally planned.
[136] The original repayment dates were later dropped and the loans made due at the time the TRCF loan was repaid. Stats. 2006, c. 56 (S.B. 1132, Committee on Budget and Fiscal Review), §2, eff. July, 7, 2006 (amending Gov't Code §14556.8).

[137] Stats. 2004, c. 91 (AB 687, Nuñez), §4, eff. July 1, 2004 (adding Gov't Code §63048.65; amended by Stats. 2005, c. 76 (S.B. 62), §3, eff. July19, 2005; Stats. 2006, c. 56 (S.B. 1132), §3, eff. July 7, 2006.
[138] The due dates of the PTA and SHA loans were later changed to coincide with the repayment of the TCRF loan from the bond sales or future tribal gaming revenues. Stats. 2005, c. 76 (S.B. 62), §2; eff. July 19, 2005 (amending Gov't Code §14556.8(c)(2)); amended by Stats. 2006, c. 56 (S.B. 1132), §2, eff. July 7, 2006; Stats. 2008, c. 756 (A.B. 268), §7, eff. Sept. 30, 2008.
[139] LAO 2007-08 Budget Analysis, Transportation, Crosscutting Issues, A-28 to A-30. The sum of $100 million would be paid in the current year and the remaining $100 million in the budget year.
[140] By law the first $443 million is to be paid to the SHA, the next $290 million to the TCRF, the following $275 million to the PTA, and the balance to the TCRF. Cal. Gov't Code §63048.65 (c)(1)(A) (West 2010).
[141] Stats. 2001, c. 113 (A.B. 438) §9, eff. Sept. 30, 2001 (amending Rev. & Tax. Code §7104). No funds were allocated to streets and roads in the final two years of the TCRP, as a total of $288 million for these commitments was funded from SHA funds during the two year delay in the start of the program. Stats. 2001, c. 113 (A.B. 438) §10, Sept. 30, 2001. The SHA was to be repaid from future TIF revenues. For FY 2006-07, a total of $185 million was transferred from the TIF to the SHA per Budget Item 2660-001-3008. Another $256 million payment was made the following year.
[142] The Governor planned to use the funds to provide $410 million to the TCRF and $255 million each to the STIP and for local streets and roads, even though this would mean less money for TCRP projects but more funds for the STIP in the current budget. State law, however, required that the TCRF be reimbursed first plus interest. Stats. 2004, c. 212 (S.B. 1098, Committee on Budget and Fiscal Review), §3, eff. Aug. 11, 2004 (amending Rev. & Tax. Code §7105).
[143] The Governor's budget reflected payment of one-ninth of the amount due, or about $83 million per year through FY 2015-16 for a total of $745 million including interest due in accordance with Proposition 1A.
[144] LAO 2008-09 Budget Analysis, Transportation, February 20, 2008, A-28.
[145] The Legislature approved the immediate payment to the TDIF of $720 million from the General Fund. Stats. 2006, c. 56 (S.B. 1132, Committee on Budget) §7, eff. July 7, 2006 (adding subd. (e) to former Rev. & Tax. Code §7106). Another $200 million in PTA spillover revenues was to be paid by July 2007. Stats. 2006, c. 56 (S.B. 1132, Committee on Budget and Fiscal Review), §4, eff. July 7, 2006 (amending subpart (F) of subd. (a)(1) of Rev. & Tax. Code §7102). The first $232 million was to remain in the TDIF to be used for projects in the STIP, the next $232 million was to be divided equally between cities and counties, and the next $116 million was to go to the PTA. The remaining funds (est. $315 million) were to be transferred to the TCRF. The Legislature also authorized $495 million to be paid on the balance due on the FY 2003-04 suspension by July 2009. Stats. 2006, c. 56 (S.B. 1132, Committee on Budget) §6, eff. July 7, 2006 (adding subd. (e) to former Rev. & Tax. Code §7105). The first $192 million was to remain in the TDIF for STIP projects, $96 million each was to be paid to cities and counties, $96 million was to be transferred to the PTA and any funds remaining distributed to the TCRF.
[146] This consisted of $47 billion in existing funding, $48 billion in new sources (including the $14 billion in revenue bonds) and $12 billion in general obligation bonds.
[147] A total of $6 million would be put before voters in 2006 and another $6 million in 2008.
[148] LAO 2006-07 Budget Analysis, Crosscutting Issues, Transportation, A-27 to A-37.
[149] The $867 million loan was originally scheduled to be repaid by July 2009 (per former Rev. & Tax. Code §7105) while the $1.258 million loan was due by July 2008 (per former Rev. & Tax Code §7106). Extending the repayment schedule (through FY 2015-16) meant that some projects might have had to been delayed for lack of funding.
[150] Article XIXB, Sec. 2(e)(1) required any remaining balance owed to the TCRF on the Proposition 42 suspensions after the payments made to the TDIF contained in Gov't Code §63048.65 to be paid at the rate of 10 percent of the amount due each year.
[151] LAO 2006-07 Budget Analysis, February 23, 2006, A-38 to A-40.
[152] This included $2 billion in additional transportation capital expenditures for highways, roads and transit improvements, but $439 million less for transit operations funded by the STA. LAO 2007-08 Budget Analysis, Transportation, Overview, February 21, 2007.

[153] LAO 2007-08 Budget Analysis, Transportation, Crosscutting Issues, February 21, 2007, A-15 to A-33. The Governor's Budget proposed appropriating $7.7 billion in Proposition 1B bond monies over 3 years, including $1.3 billion for transit capital improvements.
[154] LAO 2007-08 Budget Analysis, Transportation, Crosscutting Issues, February 21, 2007, A-30 et seq.
[155] Proposition 1B bond proceeds also supported the Corridor Mobility and Trade Corridors programs, along with local roads, and as mentioned above, transit capital projects.
[156] LAO 2008-09 Budget Analysis, Transportation, Crosscutting Issues, A-3- et seq.
[157] LAO, 2007-08 Budget Analysis, Transportation, Crosscutting Issues, February 21, 2007, A-32
[158] LAO, 2007-08 Budget Analysis, Transportation, Crosscutting Issues, February 21, 2007, A-30 to A-35; LAO, *Funding for Transportation Programs: Issues and Challenges* (Sacramento, CA: Legislative Analyst's Office, 2008) 6; LAO, *State Funding for Transportation* (Sacramento, CA: Legislative Analyst's Office, 2008) 4.
[159] There were spillovers in only 12 of the 15 years. LAO, 2007-08 Budget Analysis, Transportation, February 21, 2007, A-25 to A-28.
[160] Transfers to the PTA were limited to $81 million plus half of any excess over that amount in FY 2000-01 and $37 million plus half of any excess in FY 2001-02. Stats. 2001, c. 113 (A.B. 438), §8, eff. July 30, 2001.
[161] To reiterate, the PTA funds consisted of the "spillover" gasoline sales tax revenues, the additional sales tax revenues from the 9-cents increase in the gasoline excise tax, and all the sales tax revenues from sales of diesel fuel, plus the 20 percent of the remaining gasoline sales tax revenues transferred to the PTA under the Traffic Congestion Relief Program. Only the transfers of "spillover" funds were affected by these legislative actions.
[162] Stats. 2003, c. 224 (A.B. 1751, Committee on Budget), §2 (amending Rev. & Tax. Code §7102 to add subd. (a)(1)(C)).
[163] Stats. 2004, c. 212 (A.B. 1098) §2 (amending Rev. & Tax. Code §7102 to add subd. (a)(1)(D)). An additional payment of $43 million was made in Item 2660-011-0001 of the 2004-05 Budget for a total of $183 million.
[164] Stats. 2005, c. 76 (S.B. 62) §5 (adding Rev. & Tax Code §7102(a)(1)(E)&(F)). The first $200 million was sent to the TDIF to reimburse the GF for Proposition 42 repayments. Another $125 million was to be used for Bay Area Bridge repairs. Of the remainder, $33 million was allotted to the PTA for appropriations in the 2006 Budget Act, and any balance was to be distributed to the PTA with provision to allocate 80 percent to local transit.
[165] Although the Governor proposed suspending the transfers in FY 2005-06 and possibly FY 2006-07, he also proposed preventing any further suspensions after FY 2006-07. LAO, *The 2005-06 Budget: Perspectives and Issues*, 187.
[166] These consisted of a total of $96 million plus interest authorized per Rev. & Tax. Code §7105(e)(3) from the $495 million repayment of Proposition 42 suspension for FY 2003-04, and $116 million plus interest authorized from the $920 million repayment for the FY 2004-5 suspension per §7106(e)(3).
[167] Through FY 2005-2006 the program received only $2.3 billion or $5.5 billion less than the amount originally planned of which $1.7 was available for specific projects and $600 million for other transportation purposes. LAO, *The 2005-06 Budget: Perspectives and Issues,* 178.
[168] Shaw v. Chiang, 175 Cal. App.4th 577, 591 (2009).
[169] Of the projected $617 million in spillover revenues for FY 2007-08, the Governor proposed to use $340 million for debt service and leave $277 million in the PTA. Out of existing fund balance of $1,343 million, he planned to use $627 million for home-to-school programs, $144 million for regional center transportation, $185 million for local transit $319 million for other projects, or a total of $1,275 million, leaving only $69 million in reserve.
[170] Of the $621 million deposited to the MTF, $539 million was transferred to the TDSF and $82 million used for Proposition 1A debt payment reimbursement.
[171] Stats. 2007, c. 173 (S.B. 79, Committee on Budget and Fiscal Review), §4 (adding subparts (G) & (H) to Rev. & Tax. Code §7102(a)(1)).
[172] Stats. 2007, c. 173 (S.B. 79, Committee on Budget and Fiscal Review), §5 (adding Rev. & Tax. Code §7103); amended by Stats. 2007, c. 313 (A.B. 193, Committee on Budget), §§ 8,9, eff. Oct. 8, 2007 (repealing and reenacting Rev. & Tax. Code §7103). Section 7103(b) provided that of funds transferred to the MTF for FY 2007-08 per Rev. & Tax. Code §7102(a)(1)(G), $540 million was to be transferred to the TDSF, of which $200 million was to be transferred to the General Fund as reimbursement for debt service payments per Gov't Code §16965(b)(2) and the balance of $83 million would also be transferred to the General Fund as reimbursement for the payments

required by former Section 1(f) of Article XIX B of the state Constitution (see now Section 1(e)). Both appropriations were eliminated by the Governor due to technically deficient language and the sections were reenacted to instead authorize the Director of Finance to reimburse the General Fund from the TDSF.

[173] Stats. 2007, c. 171, §2.00, Item 4300-101-0001(5); Stats. 2007, c. 172, §56, Item 6110-111-0046; Stats. 2007, c. 172, Stats. 2007, c. 172, §71 (adding §24.80 to the Budget Act of 2007)

[174] Josh Shaw v. The People ex. rel. John Chiang, Superior Court of Sacramento County (Sapunor), No. 07CS01179. The trial court held that payments from the PTA to reimburse the General Fund for past debt service payments on Proposition 108 bonds did not serve any transportation planning or mass transportation purpose within the meaning of Pub. Util. Code §99310.5.

[175] Stats. 2008, c. 756 (A.B. 268), §11, eff. Sept. 30, 2008 (amending Cal. Rev. & Tax. Code §7102(a)(1) by adding subpart (H)). A total of $83 million was used for the annual payment due on the Proposition 42 loans. Stats 2008, c. 756 (A.B. 268, Committee on Budget), §12 (amending Rev. & Tax. Code §7103 by adding subpara. (c)). The authorized amount was later increased to $1.04 billion. Stats. 2009-2010, 4th Ex. Sess., c. 10 (A.B. X4 10, Committee on the Budget), §6, eff. July 28, 2009 (amending Rev. & Tax. Code §7102(a)(1)(H). Actual receipts were about $804 million, of which a total of $83 million was used for the Proposition 1A reimbursement, $420 million for the Department of Education, and the $306 million remainder was directed to the TDSF.

[176] The trial court in *Shaw* had ruled that funds transferred to the MTF were not subject to the limitations imposed by Proposition 116 on PTA funds, so presumably the funds deposited there could be used to reimburse past debt payments. The Director of Finance was specifically authorized to use the monies to reimburse the GF for any current or past payments on transportation-related bond expenditures. The Legislature amended Gov't Code section 16965 to authorize the use of spillover funds transferred to the TDSF from the MTF in FY 2008-09 to be used to reimburse the General Fund for the cost of debt service payments made in any fiscal year for transportation-related GO bond expenditures. Stats. 2008, c. 756 (A.B. 268), §9, eff. Sept. 30, 2008.

[177] Stats. 2008, c. 268/269, §2.00, Item 4300-101-0001(5), Item 4300-101-0046; Stats. 2008, c. 268/269, §24.85 (in a sum not to exceed $588,826,000).

[178] The proposal also included $231 million in loans to the General Fund from the SHA and other sources in FY 2008-09. The $231 million loan due by June 30, 2011 was composed of $200 million from the SHA (funded by delaying highway projects in the SHOPP) and $31 million from other sources.

[179] Stats. 2008, c. 756 (A.B. 268), §8, eff. 9-Aug. 30, -2008 (adding Gov't Code §14556.85). Other revenue saving proposals included delays in spending $1.1 billion from gasoline excise taxes on local streets and roads to provide $500 million in short-term cash flow relief.

[180] RN 16 07046, Sec. 2 (adding Gov't Code §14556.9), January 27, 2016.

[181] Josh Shaw et al. v. The People ex rel. John Chiang, as Controller, etc., et al., 175 Cal. App. 4th 577, 96 Cal. Rptr. 3d 379 (2009), review denied Sept. 30, 2009 S175357, Cal. LEXIS 10118 (Cal. Sept 30, 2009).

[182] Shaw v. Chiang, 175 Cal. App. 4th at 396.

[183] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §6 (repealing Rev. & Tax. Code §7103), eff. March 22, 2010.

[184] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §7 (adding Rev. & Tax. Code §7103.1), eff. March 22, 2010.

[185] The plaintiffs did not challenge the current debt service payments on Proposition 108 bonds, and the appellate court agreed those were proper.

[186] The appellate court rejected the State's cross-appeal and upheld that portion of the trial court opinion that struck down the transfer of $409 million from the PTA to the General Fund for past debt service payments on Prop 108 bonds.

[187] Unlike the SHA funds used to pay Proposition 108 bonds approved in PE. v. Wilson, 61 Cal.App.4th 1013, which were available for general transportation purposes, the PTA funds were limited to "transportation planning and mass transportation" uses. As discussed in the text, only 20 percent of TIF funds are dedicated to mass transportation; the remainder are available for local streets and highway maintenance, and other general transportation purposes. 175 Cal.App.4th at 404-5.

[188] Although the trial court on remand ordered the state to reimburse the PTA with any unencumbered funds, it could not compel the Legislature to allocate funds for that purpose, and none were ever restored to the account.

[189] Since the Legislature had appropriated $950 million in Proposition 1B funds for local streets and roads FY 2007-08, no additional funds were requested for those uses but the budget did include a $423 million request for intercity rail and local transit.
[190] LAO 2008-09 Budget Analysis, Transportation, Overview, February 20, 2008, A-7 et seq. Despite the significant increase in transportation spending, the 2008-09 Budget did not include any new monies for preventative highway maintenance or rehabilitation, which, as the LAO pointed out at the time, did not address the state's long term highway rehabilitation and maintenance needs which were growing faster than revenues. In fact, it included $500 million less for SHOPP projects than the current year allocation.
[191] LAO 2009-10 Budget Analysis Series, Transportation, February 3, 2009.
[192] Los Angeles Times Editorial, "Giving transit what it needs," *Los Angeles Times* (Los Angeles, CA), February 14, 2010.
[193] The forgone revenues represented a roughly $1 billion tax cut.
[194] In addition, the Governor proposed using $57 million in existing transit funds in the current year and $254 million in the budget year, along with $72 million in other highway funds to cover $362 million in debt service costs that could not be funded from the new excise tax.
[195] LAO, 2010-11 Budget: Transportation, March 2, 2010.
[196] LAO, *Governor's Transportation Funding Proposal* (Sacramento, CA: LAO, 2010). Another suggested alternative was to keep the current excise tax rate on diesel but increase the rate on gasoline by 2 cents.
[197] Gasoline sales were also exempted from an additional 1 percent temporary tax intended to provide funds for the state's fiscal recovery, which was due to expire on July 1, 2011. Sales were still subject to a 0.5 percent tax for the Local Revenue Fund, a 0.5 percent tax for the Public Safety Fund, a 0.25 percent tax for the Education Protection Account, and the 1.25 percent Bradley-Burns Uniform Local Sales Tax (0.25 percent of which is temporary allocated to the state Fiscal Recovery Fund in exchange for specified budget allotments to cities and counties).
[198] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. 9 X8 9), §8 (adding Rev. & Tax. Code §7104.4); repealed by Stats. 2015, c. 12 (A.B. 95, Committee on Budget), §4, eff. June 24, 2015. See Stats. 2015, c. 12 (A.B. 95, Committee on Budget), §4, eff. June 24, 2015 (adding new Rev. & Tax. Code §7104.4).
[199] Former Cal. Const. Art. XIX, Sec. 5 permitted the Legislature to use up to 25 percent of excise tax revenues to service bonds for street and highway purposes.
[200] Budget Item 2660-011-0062. The $648 million loan was initially due June 30, 2013, but the payment date was later extended to 2021. Stats. 2011, c. 38 (A.B. 115), §5, eff. June 30, 2011 (amending Pub. Util. Code §2103).
[201] Under *Shaw*, Article XIX transportation funds could not be used for repayment of Proposition 116 bonds.
[202] For FY 2011-2012, a total of $72 million was allocated to local transit, and $12 million in FY 2012-2013.
[203] Article XIX does not apply to sales and use taxes. Cal. Const. Art. XIX, section 8. Article XIX B only applies to gasoline sales. Cal. Const. Art. XIXB, Section 2.
[204] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §2; (amending Pub. Util. Code §99312); amended by Stats. 2011, c. 6 (A.B. 105), §7, eff. Mar. 24, 2011.
[205] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §4 (amending Pub. Util. Code §99315(g)). A total of $142 million was authorized for FY 2009-2010 and $254 million for FY 2010-2011 (later reduced to $91 million to cover debts up until November 2, 2010, the date of Proposition 22).
[206] "Aviation gasoline" means all special grades of gasoline that are suitable for use in aviation reciprocating engines. Cal. Rev. & Tax. Code §7306 (West 2010).
[207] See Cal. Sts. & High. Code §183.1 (West Supp. 2016). These funds may be used for any transportation purpose authorized by statute upon appropriation by the Legislature.
[208] Stats. 2009-2010, 8th Ex. Sess., c. 12 (A.B. X8 9), §10 (amending Cal. Sts. & High. Code §2103(a)(2)). A total of $54,167,000 was to be held in the account monthly for appropriation by the Legislature. The monies were loaned to the General Fund per Budget Item 2660-011-0062. As a result of Proposition 22, only the payments for the months of July to October of 2010 were made from these reserves. The remainder was made from weight fee revenues. Stats. 2011, c. 6 (A.B. 105), §34, eff. March 24, 2011, as amended by Stats. 2012, c. 22, §6, eff. June 27, 2012. See now Cal. Sts. & High. Code §2103(a)(2) (West Supp. 2016).
[209] Senate Committee on Budget and Fiscal Review (Brian Annis, consultant), S.B. 70, March 22, 2010.

[210] LAO, *Transportation Funding Overview* (Sacramento, CA: LAO, 2011). The SHOPP program is funded from roughly two-thirds of the base gasoline excise tax deposited in the SHA.
[211] Proposition 22, Local Taxpayer, Public Safety, and Transportation Protection Act of 2010, Sec. 2(d).
[212] Proposition 22, Sec. 5.3 (amending and renumbering Art. XIX, Sec 3). See now Cal. Const. Art. XIX, Sec. 4.
[213] Up to 25 percent of the State's allocation of gasoline and diesel excise tax revenues to be used to make payments to retire state street and highway bonds, but only those issued after November 2, 2010 and only after voter approval. Proposition 22, Sec. 5.3 (amending and renumbering Cal. Const. Art. XIX, Sec. 5). See now Cal. Const. Art. XIX, Sec. 6(a). Up to 25 percent of the revenues allocated to a city or county may be used to pay principal and interest on voter approved bonds for any authorized purpose. Id. subsection (b). Note that the *Professional Engineer's* case had prohibited the use of excise taxes to make payments to retire state rail bonds unless approved by voters in the county where the money was to be spent.
[214] Proposition 22, Sec. 5.7 (adding Cal. Const. Art. XIX, Section 7). See Sts. and High. Code §§2104 to 2122 (West 2005 and Supp. 2016).
[215] Cal. Const. Art. XIX, Sec. 8 (as amended and renumbered by Proposition 22, Section 5.8).
[216] Cal. Const. Art. XIXA, §1(f).
[217] Cal. Const. Art. XIXB, §2(b) & (c) (as amended and renumbered by Proposition 22, Section 7.1). Gasoline sales tax revenues in the TIF appropriated for mass transportation and mass transportation had to be divided 50-50 between Caltrans, for passenger rail services and transit capital improvements in the STIP, and transportation planning agencies for local transit.
[218] Cal. Const. Art. XIXB, §2(h) (as added by Proposition 22, Section 7.1).
[219] There was some concern that without a full reenactment, Proposition 26 could have been interpreted as eliminating any new taxes but not reinstating the old taxes, in which case the state would lose about $2.5 billion. LAO, *Transportation Funding Overview*, 5.
[220] Senate Rules Committee, Third Reading Bill Analysis. Presumably this was done to guarantee the agreed amount of funding for transit.
[221] Stats. 2011, c. 6 (A.B. 105, Committee on Budget), §35, eff. March 24, 2011 (adding Veh. Code §9400.4).
[222] Stats. 2011, c. 6 (A.B. 105, Committee on Budget), §34 (amending Sts. & High. Code §2103); as amended by Stats. 2012, c. 22 (A.B. 1465, Committee on Budget), §6, eff. June 27, 2012. See Cal. Sts. & High Code §2103(a)(2)(B). For FY 2010-11, sales tax revenues collected before November 2, 2012 (up to $90.9 million) were used for Proposition 108, Proposition 1A and one-quarter of Proposition 1B bonds. Stats. 2011, c. 6 (A.B. 105, Committee on Budget), §10, eff. Mar. 24, 2011 (amending Cal. Pub. Util. Code §99315(g)). The original allocation was $254 million for whole fiscal year.
[223] Stats. 2011, c. 38 (A.B. 115, Committee on Budget), §§1,7, eff. Mar. 30, 2011 (amending Gov't Code §16965 and Veh. Code §9400.4).
[224] Stats. 2011. c. 38 (A.B. 115), §3, eff. Mar. 30, 2011 (adding Gov't Code §63048.67 relating to the loan referenced in GC §63048.65(c)(1)(A)(i)). Repayments transferred from the SHA to TDSF could be used per Gov't Code §16965 to pay debt service payments and to reimburse the GF.
[225] Stats. 2011, c. 6 (A.B. 105, Committee on Budget), §34, eff. Mar. 24, 2011 (amending Vehicle Code §2103 (a)(1)(C))
[226] Cal. Sts. & High. Code §2103(a)(3).
[227] Mac Taylor, *LAO Policy Brief: The 2011-12 Budget: Achieving General Fund Relief From Transportation Funds* (Sacramento, CA: LAO, 2011).
[228] Stats. 2013, c. 35 (S.B. 85, Committee on Budget and Fiscal Review), § 4, eff. June 27, 2013 (amending Gov't Code §16965); Id., §10 (amending Rev. & Tax. §7105); Id., §14, eff. June 27, 2013, (amending Cal. Veh. Code §9400.4). eff. June 27, 2013.
[229] Assembly Bill No. 6, California Assembly (2010).
[230] The revenue shortfall or surplus from two fiscal years prior is used because the revenue is finalized. In this example, because of budget cycles, the total revenue accumulated during FY 2013-14—the fiscal year immediately before FY 2014-15—would not be known and therefore could not be incorporated into the true-up process.
[231] Capitol Matrix Consulting, *Review of Methodology for Gas and Diesel Excise Tax Rate Adjustments Under the "Fuel Tax Swap"* (Sacramento, CA: California State Board of Equalization, 2014).

https://www.boe.ca.gov/meetings/pdf/hearingsummaries/022514_Report_by_CMC_on_BOE_Fuel_Tax_Rate_Calc.pdf.

[232] "Governor's Revised Budget," (FY10-11 - FY15-16). http://www.ebudget.ca.gov/.

[233] California State Controller's Office, "Monthly Highway Users Tax," 2016. http://www.sco.ca.gov/ard_payments_highway.html.

[234] The debt service repays weight fee funds that were diverted to make payments due on transportation bond measures.

[235] Senate Transportation and Housing Committee, "Conference Committee on SB 4 and AB 3 of the First Extraordinary Session of 2015: California's Transportation Funding Challenge," (Sacramento, CA: California State Senate, 2015).

[236] "Governor's Revised Budget." (FY10-11 - FY15-16). http://www.ebudget.ca.gov/.

[237] "Governor's Revised Budget." (FY10-11 - FY15-16). Retrieved from http://www.ebudget.ca.gov/.

[238] California State Board of Equalization, "Net Taxable Gasoline Gallons" (Sacramento, CA: BOE, 2016); Capitol Matrix Consulting, *Review of Methodology for Gas and Diesel*; Energy Almanac, "California Average Weekly Retail Gasoline Prices," (Sacramento, CA: The California Energy Commission, 2016). http://energyalmanac.ca.gov/gasoline/retail_gasoline_prices.html#2015.

[239] U.S. Energy Information Administration, "Table F3: Motor gasoline consumption, price, and expenditure estimates, 2014," (Washington, D.C.: U.S. EIA, 2014). https://www.eia.gov/state/seds/data.cfm?incfile=/state/seds/sep_fuel/html/fuel_mg.html&sid=US.

[240] U.S. Energy Information Administration, "FREQUENTLY ASKED QUESTIONS: How many gallons of diesel fuel and gasoline are made from one barrel of oil?" (Washington, D.C.: U.S. EIA, 2015). https://www.eia.gov/tools/faqs/faq.cfm?id=327&t=9.

[241] Energy Almanac, "California Average Weekly Retail Gasoline Prices"

[242] Ibid.; U.S. Energy Information Administration, "Table F3."; U.S. Energy Information Administration, "AEO2015 Energy Use Transportation Motor Gasoline (Case Reference case Region United States)," (Washington, D.C.: U.S. EIA, 2015). http://www.eia.gov/forecasts/aeo/data/browser/#/?id=2-AEO2015&region=1-0&cases=ref2015&start=2012&end=2040&f=A&linechart=~ref2015-d021915a.56-2-AEO2015.1-0&map=ref2015-d021915a.7-2-AEO2015.1-0&ctype=linechart&chartindexed=1&sid=ref2015-d021915a.56-2-AEO2015.1-0&sourcekey=0.

[243] U-T San Diego Editorial Board, "Undo the Tax Swap – Then fix the roads," (San Diego, CA), February 25, 2015.

[244] California Department of Finance. (January 2016) *Interviewers: A. Brown, M. Garrett, & M. Wachs*.

[245] Rob Nikolewski, "Drivers to get a 2-cent-a-gallon break in state gasoline taxes," *Los Angeles Times* (Los Angeles, CA), Feb. 25, 2016. http://www.latimes.com/business/la-fi-gas-tax-20160225-story.html

[246] SB-321 Motor vehicle fuel taxes: rates: adjustments. (2015-2016). http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB321

[247] SB16 Transportation Funding (2015-2016). https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB16

[248] Chris Megerian, "Assembly speaker wants new fees to pay for road repairs," *Los Angeles Times* (Los Angeles, CA), Feb. 4, 2015. http://www.latimes.com/local/political/la-me-pc-california-infrastructure-funding-toni-atkins-20150204-story.html

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