



1400 K Street, Suite 400  
Sacramento, California 95814  
Phone: 916.658.8200  
www.cacities.org



1100 K Street, Suite 101  
Sacramento, California 95814  
Phone: 916.327.7500  
www.csac.counties.org

June 18, 2009

The Honorable Members of the California State Senate  
State Capitol Building  
Sacramento, CA 95814

**RE: Oppose Unconstitutional Seizure of the Local Share of Gasoline Excise Tax Revenue**

Dear Senator:

In a few days you will be asked to vote on a proposed budget from the Joint Legislative Conference Committee that seizes and diverts to the state general fund over \$1.7 billion in city and county gas tax funds for previous and future state highway bond debt service payments. The Department of Finance (DOF) initially proposed a permanent taking of city and county gas tax funds. The Conference Committee amended that proposal to a two year taking.

We cannot impress upon you enough that cities and counties are dependent upon this revenue stream for personnel and daily operations and maintenance. Therefore we cannot sustain a disruption of this revenue source without severe consequences. Such an approach would decimate local public works departments, resulting in the layoff of thousands of public works employees and the cancellation of many contracts with private companies, bringing traffic safety and project improvements to a halt, inhibiting emergency response, and preventing vital operations, including snow plowing to keep roads open and street sweeping that keeps pollutants from entering our rivers and streams.

Additionally such an approach is severely flawed in that it is a clear and blatant violation of Sections 3, 5 and 6 of Article XIX of the California State Constitution. (See the attached opinion, written by the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, a firm known for its expertise in ballot measure and election law matters.)

In 1974 (in Prop. 5) and again in 1998 (in Prop. 2), voters overwhelmingly approved ballot measures submitted by the legislature that: limited the use of gas tax funds by the state, cities and counties for debt service; required that the legislature give equal consideration to the transportation needs of all areas of the state consistent with the adopted goals of local, regional and state transportation plans before changing the state and local allocations of the gas tax; and, perhaps most importantly, set forth the rules by which the legislature could "borrow" the gas tax to meet general fund needs during times

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of fiscal emergency. The DOF proposal, modified and endorsed by the Conference Committee, quite simply ignores all of these constitutional requirements.

The proposal adopted by the Conference Committee also completely ignores the historic partnership that exists between the state, cities and counties in providing for and maintaining a seamless, multi-modal transportation network for Californians. Our transportation and mobility needs are dependent upon the system operating in its entirety, with **82 percent** of the State's maintained miles within the jurisdiction of cities and counties and dependent upon the local portion of the gas tax.

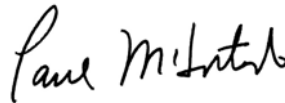
Another troubling aspect of this proposal is DOF's implicit position that the fact the voters in 1998 set forth how loans could be arranged between the Highway Users Tax Account (HUTA) and the state general fund did not rule out wholesale diversion of those funds for use by the State. As the attached legal memorandum on this subject states, such a conclusion would "ascribe to the Legislature and the Legislative Analyst an intent to deceive the voters."

We urge you to oppose any budget containing a clearly unconstitutional seizure of local gas tax funds. In the final analysis, we are confident you will agree it is the only course of action that respects the clear mandate of Article XIX of the California State Constitution and the will of the voters.

Respectfully,



Christopher McKenzie  
Executive Director  
League of California Cities



Paul McIntosh  
Executive Director  
California State Association of Counties

ENCL: Opinion prepared by Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP