

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 23, 2012

Reference No.: 4.1  
Action

From: BIMLA G. RHINEHART  
Executive Director

Subject: **STATE AND FEDERAL LEGISLATION**

## **ISSUE:**

Should the California Transportation Commission (Commission) adopt a support position on Assembly Constitutional Amendment (ACA) 23 by Assembly Member Perea that would provide that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for local transportation projects would require the approval of 55% of its voters?

Should the Commission adopt an oppose position on Senate Bill (SB) 1396 by Senator Dutton that would require the State Board of Equalization (BOE) to reduce, but not increase, certain excise tax rates on gasoline and diesel fuels to maintain revenue neutrality?

Attachment A provides the status of bills that staff is monitoring as of May 4, 2012.

## **RECOMMENDATION:**

Staff recommends that the Commission adopt the following positions:

ACA 23 – Support  
SB 1396 - Oppose

## **SUMMARY:**

### **ACA 23 (Perea) – Local government transportation projects: special taxes: voter approval**

This measure would provide that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for local transportation projects requires the approval of 55% of its voters voting on the proposition. The measure would also make conforming and technical, nonsubstantive changes.

**Bill Status:** Read first time in Assembly February 23, 2012. Not yet in Committee.

Several counties are giving serious consideration to new transportation sales tax measures to help fund critical transportation needs, but prospects for success are slim in the face of a two-thirds voter approval requirement. Many small counties have won majority votes for local transportation improvement sales taxes, but were unable to make the two-thirds requirement. ACA 23 gives

counties majorities to establish their own measures to address transportation needs that are best understood at the local level, and as a result local-initiated funding would remain strong resulting in reduced highway congestion and quality public transportation, and assist in keeping pace with the critical transportation needs of the state. The loss of local sales tax as a viable revenue source for transportation purposes will only increase the funding burden on the state.

A draft letter for the Commission Chair's signature is provided in Attachment B, along with a copy of the constitutional amendment.

**SB 1396 (Dutton) – Sales and Use Taxes: Excise Taxes: Fuel (Urgency)**

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or a tax, measured by the sales price, on the storage, use, or other consumption of tangible personal property in this state.” That law defines the terms “gross receipts” and “sales price.” This bill would exclude from the terms “gross receipts” and “sales price” the amount charged at retail for gasoline and diesel fuels in excess of \$3.88 or \$3.52 per gallon, respectively, as provided. Existing law imposes a sales and use tax and an excise tax on gasoline and diesel fuels and requires BOE to annually modify both the gasoline and diesel excise tax rates on a going-forward basis so that the taxes imposed on gasoline and diesel fuels, as described above, are revenue neutral. This bill would require BOE to reduce, but not increase, certain excise tax rates on gasoline and diesel fuels to maintain revenue neutrality.

**Bill Status:** Hearing scheduled May 8, 2012 in Senate Transportation and Housing Committee.

This bill undoes major portions of the 2010 gas tax swap, and thus would decrease transportation revenues beginning on July 1, when it would stop the BOE from adjusting the gasoline excise tax rate from 35.7 cents per gallon to 36 cents per gallon. The bill would also limit BOE's ability to adjust the excise tax rates over coming years to "true up" transportation revenues to reflect how much revenue would have resulted if the swap had never occurred. Over time, as the price of gasoline increases, the 35.7-cent cap that this bill imposes would ratchet transportation revenues down, limiting funds available to state and local governments for highway, street and road maintenance and improvements.

A draft letter for the Commission Chair's signature is provided in Attachment C, along with a copy of the bill.

**BACKGROUND:**

The Commission approved criteria to guide Commission staff in monitoring legislation and selecting bills that should be brought forward for Commission consideration. An over-arching criterion is that a bill must directly affect transportation on a statewide basis. Bills meeting one or more of the criteria, provided below, will be brought forward to the Commission for consideration.

- Funding/Financing - funding or a funding mechanism for transportation (capital and operations)
- Environmental Mitigation - implementation of green house gas emissions reduction and transportation (e.g., AB 32), and/or involve the environmental process and transportation (e.g., CEQA)
- Planning - implementation of transportation and land use and planning (e.g., SB 375)
- Project Delivery - changes to the way transportation projects are delivered

Additional criteria for bringing a bill forward include:

- Direct Impact to Commission - changes in Commission responsibility, policy impact or operations
- Commissioner Request - recommended by a Commissioner for consideration by the Commission at its next regularly scheduled meeting

The Commission adopted policy to consider legislation in relation to its overall policy by topic area, prior to taking a position on legislation addressing that topic; and remain selective in its use of watch, support or opposition on a bill. The rationale for a policy by topic area is it permits the Commission to address a suite of legislative proposals dealing with the same topic by commenting to the author(s) without necessarily taking a position. Rather than taking specific positions on bills in their initial state, the Commission can advise the Legislature on a bill's policy and/or technical aspects, as well as how it helps or hinders transportation. The intent of the Commission's comments is to alert the author of the bill's impact on a policy and/or technical aspect related to transportation planning, programming, financing, mitigation, or project delivery.

Further direction will be provided to staff, by the Chair, on bills that meet the aforementioned criteria.

Attachments

CALIFORNIA TRANSPORTATION COMMISSION  
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**FUNDING/FINANCING**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
AB 1229	Feuer	California Transportation Financing Authority Fund: subsidies: local agency revenue bonds	Provides the term eligible transportation project in existing law may include projects programmed by a regional transportation planning agency using specified federal funds. Authorizes a minimum percentage of bonding capacity of GARVEE bonds from being made available for these projects. Requires such agency to commit to repaying the state for debt service if that agency's share of federal regional surface transportation program funds or federal congestion mitigation and air quality funds is insufficient.	<p><b>Last Action</b>                      In Senate Committee on Appropriations                      Held in Committee                      August 25, 2011</p> <p><b>Current Location</b>                      Senate Committee on Appropriations</p>
<b><u>AB 1770</u></b>	Lowenthal B.	California Transportation Financing Authority	The bill provides that a rail project may consist of, or include, rolling stock for the purpose of the issuance of bonds to fund transportation projects. Requires a project to be supplemental to or improve existing facilities currently owned or operated by the project sponsor. <i>(Urgency)</i>	<p><b>Last Action</b>                      In Assembly                      Read third time                      Urgency clause adopted                      Passed to Senate                      May 3, 2012</p> <p><b>Current Location</b>                      Senate</p>
<b><u>ACA 23</u></b>	Perea	Local government transportation projects: special taxes: voter approval	This measure would provide that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for local transportation projects requires the approval of 55% of its voters voting on the proposition. The measure would also make conforming and technical, nonsubstantive changes.	<p><b>Last Action</b>                      In Assembly                      Read first time                      February 23, 2012</p> <p><b>Current Location</b>                      Not yet in Committee</p>
SB 475	Wright & Emmerson	Infrastructure Financing	Authorizes a local governmental agency to enter into an agreement with a private entity for financing (public private partnership) for specified types of revenue-generating infrastructure projects (including commuter and light rail and highways or bridges). Requires an agreement entered into under these provisions to include adequate financial resources to perform the agreement, and would permit the agreements to lease or license to, or provide other permitted uses by the private entity.	<p><b>Last Action</b>                      In Assembly Committee on Local Government                      Failed Passage                      Reconsideration granted                      June 29, 2011</p> <p><b>Current Location</b>                      Assembly Committee on Local Government</p>
<b><u>SB 633</u></b>	Huff	Bond: Fine for Unauthorized Use	Amends the State General Obligation Bond Law. Provides that if the Department of Finance determines that funds from a bond act are expended for a purpose not authorized by the bond act, and the entity responsible for the funds does not take the corrective action prescribed by the department within a time to be determined by the department, then the Department of Finance may prohibit the entity that was responsible for the unauthorized use from allocating any additional funds from the bond act.	<p><b>Last Action</b>                      In Assembly                      To Committee                      April 26, 2012</p> <p><b>Current Location</b>                      Assembly Committee on Business, Professions and Consumer Protection</p>

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**FUNDING/FINANCING (Continued)**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
SB 907	Evans	Master Plan for Infrastructure Financing and Development Commission	Would create the Master Plan for Infrastructure Financing and Development Commission, consisting of specified members, and would require the commission to prepare and submit a strategy and plan for infrastructure development in California that meets certain criteria to the Legislature and the Governor by December 1, 2013. This bill would provide that the commission would dissolve 30 days after submission of its final report. This bill would repeal these provisions upon the dissolution of the commission. Would provide that these provisions become operative only if the funds required to support the commission are appropriated and made available in the annual Budget Act.	<p><b>Last Action</b>                      In Senate                      Read third time                      Passed to Assembly                      June 1, 2011</p> <p><b>Current Location</b>                      Assembly Committee on Jobs,                      Economic Development and the                      Economy</p>
<b><u>SB 1102</u></b>	DeSaulnier	State Transportation Improvement Program	<p>This bill would require the Department of Transportation, as part of the annual project delivery report, to report on the difference between the original allocation made by the Commission and the actual construction capital and support costs at project close for all STIP projects completed during the previous fiscal year. Would revise provisions to require project costs to include right-of-way support costs. Would require the Commission to allocate funds for construction support costs for a project in the STIP at the time of allocation of funds for construction capital costs. Would require a supplemental project allocation request to be made for all interregional and regional projects that experience construction support costs equal to more than 120% of the amount originally allocated.</p> <p>Similar Bill: SB 1499 (Anderson, 2012) – See below</p> <p><b>Action Item: March 28-29, 2012 – Send letter expressing the Commission’s support – Completed</b></p>	<p><b>Last Action</b>                      In Senate                      Read third time                      Passed to Assembly                      May 3, 29012</p> <p><b>Current Location</b>                      Assembly</p>
<b><u>SB 1189</u></b>	Hancock	The Safe, Reliable High-Speed Passenger Train Bond Act for the 21 <sup>st</sup> Century: project funding	<p><del>This bill would state the intent of the Legislature to enact legislation that would appropriate funding from the \$950 million net proceeds of bonds described above to projects that eligible operators have requested and that have been approved by the California Transportation Commission. Existing law requires the Commission to allocate those funds to eligible recipients, as defined, and to develop guidelines to implement those provisions. This bill would appropriate \$523,400,000 from the High-Speed Passenger Train Bond Fund to the Department of Transportation for allocation by the Commission as provided for in specified guidelines adopted by the Commission.</del></p>	<p><b>Last Action</b>                      In Senate                      In Senate Committee on                      Transportation and Housing                      Passed and re-referred                      April 30, 2012</p> <p><b>Current Location</b>                      Senate Committee on                      Appropriations                      Placed on Suspense File</p>
<b><u>SB 1396</u></b>	Dutton	Sales and Use Taxes: excise taxes: fuel	Would require the State Board of Equalization to reduce, but not increase, certain excise tax rates on gasoline and diesel fuels to maintain revenue neutrality.	<p><b>Last Action</b>                      In Senate                      Read second time and amended                      Re-referred to Committee                      April 11, 2012</p> <p><b>Current Location</b>                      Senate Committee on                      Transportation and Housing  <b><u>Hearing Scheduled</u></b>                      May 8, 2012</p>

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**FUNDING/FINANCING (Continued)**

Bill #	Author	Bill Title	Subject	Status
<b><u>SB 1499</u></b>	Anderson	California Transportation Commission: review of expenditures	Would require the Commission to allocate funds for construction support costs for a project in the state transportation improvement program at the time of allocation of funds for construction capital costs. The bill would require a supplemental project allocation request to be made for all state transportation improvement program projects that experience construction support costs equal to or more than 120% of the amount originally allocated. The bill would also require the department, as part of the annual project delivery report, to report on the difference between the original allocation made by the Commission and the actual construction support costs at project close for each state transportation improvement program project completed during the previous fiscal year. Similar Bill: SB 1102 (DeSaulnier, 2012) – See above	<b><i>Last Action</i></b> Senate Committee on Transportation and Housing Hearing cancelled at the request of author April 17, 2012 <b><i>Current Location</i></b> Senate Committee on Transportation and Housing

**PROJECT DELIVERY**

Bill #	Author	Bill Title	Subject	Status
AB 294	Portantino	Transportation Projects: Procurement	Requires the Department of Transportation to use specified persons for highway projects. Authorizes the department to let contracts for the design and construction of not more than 5 transportation projects utilizing the design-sequencing method, and to use department employees or consultants under contract for these design services. Requires the department to compile data on the transportation projects awarded under these provisions and to include that information in a report to the Legislature.	<b><i>Last Action</i></b> In Senate Ordered to third reading To inactive file September 2, 2011 <b><i>Current Location</i></b> Senate
<b><u>AB 2498</u></b>	Gordon	Department of Transportation: Construction Manager/General Contractor project method	Would authorize Caltrans to engage in a Construction Manager/General Contractor project delivery method, as specified, for projects for the construction of a highway, bridge, or tunnel, <i>would require the department to submit a report, as specified, no later than July 1 of each year during which any project using the Construction Manager/General Contractor method is underway and no later than July 1 of the year after any project using the Construction Manager/General Contractor method has been completed</i> , and would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime. Similar Bill: SB 1549 (Vargas, 2012) – See below	<b><i>Last Action</i></b> In Assembly Read second time and amended Re-referred to Committee May 1, 2012 <b><i>Current Location</i></b> Assembly Committee on Appropriations

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**PROJECT DELIVERY (Continued)**

Bill #	Author	Bill Title	Subject	Status
<b><u>SB 1549</u></b>	Vargas	Transportation projects: <del>construction</del> <b>Manager/General Contractor</b> <del>alternative project method.</del> <i>delivery methods</i>	<del>This bill would, upon authorization by the California Transportation Commission, allow a consolidated San Diego regional transportation entity, as specified, or the Department of Transportation to engage in a Construction Manager/General Contractor project delivery method, as specified, for up to 20 total projects for either local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the local transportation entity or state highway, bridge, or tunnel projects by the Department of Transportation. This bill would allow the San Diego Association of Governments to utilize alternative project delivery methods, as defined, for public transit projects within its jurisdiction. The bill would require a transportation entity, as defined, the San Diego Association of Governments to pay fees related to prevailing wage monitoring and enforcement into the State Public Works Enforcement Fund, a continuously appropriated fund, except as specified, and, thus, would make an appropriation. The bill would also, upon completion of a project, require a progress report to be submitted by the transportation agency to the commission every year following the award of a contract under these provisions, and would require the commission to submit an annual report to the Legislature that includes the information in the report submitted by the transportation agency, as specified. San Diego Association of Governments to its governing board and would require the report to be made available on its Internet Web site. This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime. The bill would provide that its provisions are severable. This bill would make legislative findings and declarations as to the necessity of a special statute for San Diego regional transportation entities.</del>  Similar Bill: AB 2498 (Gordon, 2012) – See above	<b>Last Action</b> In Senate Committee on Transportation and Housing Passed as amended Re-referred to Committee April 30, 2012  <b>Current Location</b> Senate Committee on Appropriations <b>Hearing Scheduled</b> May 14, 2012

**DIRECT IMPACT TO COMMISSION**

Bill #	Author	Bill Title	Subject	Status
AB 441	Monning	State Planning	This bill would require that the Commission to, by no later than 2014, include health issues, as specified, voluntary health and health equity factors, strategies, goals, and objectives in the guidelines promulgated by the Commission for the preparation of regional transportation plans.  <b>Action Item: March 28-29, 2012 – Send letter expressing the Commission’s concerns – Completed</b>	<b>Last Action</b> In Senate Committee on Rules Assigned to Committee February 16, 2012  <b>Current Location</b> Senate Committee on Transportation and Housing
AB 845	Ma	Transportation: Bond Funds	Requires the guidelines adopted by the Commission to determine the funding share for each eligible commuter and urban rail recipient to use the distribution factors gathered from the 2007 Data Tables in the National Transit Database of the Federal Transit Administration. Requires the Commission to accept from each eligible recipient a priority list of projects up to the target amount expected to be available for the recipient and would require matching funds for bond fund allocation purposes.	<b>Last Action</b> In Senate Ordered to third reading To inactive file August 22, 2011  <b>Current Location</b> Senate

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**DIRECT IMPACT TO COMMISSION (Continued)**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
AB 1645	Norby	State Highways: Naming and Designation by the Legislature	This bill would transfer the authority for naming highways, bridges, pathways, and other transportation infrastructure from the Legislature to the Commission.  <b>Action Item: March 28-29, 2012 – Send letter expressing the Commission’s opposition – Completed</b>	<b>Last Action</b> Assembly Committee on Transportation <b>Failed Passage</b> April 9, 2012
SB 103	Liu	State government: meetings	Authorizes a state body, to the extent practicable, to conduct teleconferencing meetings. Requires a state body to provide a supplemental live audio broadcast on the Internet Web site of its board meetings that are open to the public unless it is determined to be too costly. Prohibits teleconference meetings as a matter of convenience. Requires a body that operates an Internet Web site to provide a supplemental live audio or video broadcast on the Web site of board meetings open to the public.	<b>Last Action</b> In Assembly Committee on Appropriations Held in Committee August 25, 2011  <b>Current Location</b> Assembly Committee on Appropriations
<b><u>SB 749</u></b>	Steinberg	California Transportation Commission: guidelines	Establishes specified procedures that the Commission will be required to utilize when it adopts guidelines regarding transportation capital improvement projects. Provides exceptions. Exempts the adoption of those guidelines from the requirements of the Administrative Procedure Act.  Similar Bills: SB 1348 (Steinberg, 2010) – Vetoed by Governor on September 30, 2010 SB 126 (Steinberg, 2011) – Amended to relate to agriculture labor relations	<b>Last Action</b> In Assembly Referred to Committee April 23, 2012  <b>Current Location</b> Assembly Committee on Transportation
<b><u>SB 1117</u></b>	DeSaulnier	Statewide Passenger Rail Transportation Plan	Would require the Commission to prepare a statewide passenger rail transportation plan relative to conventional and high-speed intercity passenger rail, commuter rail, and urban rail transit containing various elements. <i>The bill would require the Department of Transportation to assist the commission, as specified.</i> The bill would require the Commission to adopt the plan by September 2014, and update the plan every 4 years thereafter. Requires the plan to contain goals for integrated passenger rail services and facilities, and to adopt policies and guidelines to be used by the department, the authority, and regional transportation agencies in the development of their plans, and would prohibit those agencies from taking inconsistent actions. Requires regional transportation planning agencies to submit their plans for commuter rail and urban rail transit to the Commission by December 31, 2013. This bill would also impose certain requirements on the High-Speed Rail Authority with regard to the high-speed rail element of the plan and implementation of projects on an incremental basis by the authority, including preparation of an incremental high-speed rail development program, as specified, by December 31, 2013, which would be incorporated into the authority’s business plan.	<b>Last Action</b> In Senate Senate Committee on Transportation and Housing Passed as amended April 24, 2012  <b>Current Location</b> Senate Committee on Appropriations <b>Hearing Scheduled</b> May 14, 2012

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**OTHER**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
AB 286	Berryhill	State Highways: Route 108 and 120	Requires the proceeds from the sale of excess properties acquired for improvements to State Highway Route 120, less any reimbursements due to the federal government and all costs include in the sale of those properties, to be used for improvements to State Highway Route 108 in Stanislaus County, the North County Corridor. Authorizes the Commission to allocate funds to the Stanislaus Council of Governments or any agency designated by that entity to deliver the North County Corridor project.	<b>Last Action</b> In Senate Order to third reading To inactive file September 6, 2011 <b>Current Location</b> Senate
<b><u>AB 1780</u></b>	Bonilla	Department of Transportation: Project Study Reports	Would revise provisions to authorize the department to prepare project study reports or equivalent planning documents for any projects on the state highway system, limited by the resources available to the department. Require the department to pay for the costs of its review and approval of project study reports or equivalent planning documents that are prepared by other entities for projects that are in an adopted regional transportation plan, a voter-approved county sales tax measure expenditure plan, or other voter-approved transportation program. In other cases, the bill would require the cost of the department's review and approval to be paid by the entity preparing the project study report or equivalent planning document. Delete the provisions relating to the guidelines adopted by the Commission and would instead require open and continuous communications between the parties during the development of project study reports or equivalent planning documents.	<b>Last Action</b> In Assembly Committee on Transportation Passed April 23, 2012 <b>Current Location</b> Assembly Committee on Appropriations Suspense File

**RELATED TO RAIL**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
AB 16	Perea (D)	High-Speed Rail Authority	Amends existing law that creates the High-Speed Rail Authority. Requires the authority to make every effort to purchase high-speed train rolling stock and related equipment that are manufactured in California, consistent with federal and state laws.	<b>Last Action</b> In Senate To inactive file September 9, 2011 <b>Current Location</b> Senate
<b><u>AB 41</u></b>	Hill	High-Speed Rail Authority: Conflicts of Interest: Disqualification	Amends existing provisions of the Political Reform Act of 1974. Adds members of the High-Speed Rail Authority to those specified officers who must publicly identify a financial interest giving rise to a conflict of interest, and recuse themselves accordingly. <i>This bill would provide that each employee of a contractor or subcontractor of the High-Speed Rail Authority who serves in a peer review capacity to the authority shall be deemed to be a designated employee of the authority, thereby making those persons subject to the provisions of the authority's conflict-of-interest code and to the various other restrictions that apply to the designated employees of a state agency.</i> (Urgency)	<b>Last Action</b> In Senate Read second time and amended April 30, 2012 <b>Current Location</b> Senate Third Reading

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**RELATED TO RAIL**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
AB 145	Galgiani and Lowenthal	High-Speed Rail	Repeals all of the State High-Speed Train Act and enacts a new act. Continues the High-Speed Rail Authority with limited responsibilities within the Business, Transportation, and Housing Agency. Requires specified personnel matters. Requires the authority to adopt policies directing the development and implementation of high-speed rail, prepare and adopt a business plan and high-speed train capital program, and select alignments for the routes of the trains system, award franchises, and provide for fares.	<p><b><i>Last Action</i></b>                      In Senate Committee on Appropriations                      Held in Committee                      August 25, 2011</p> <p><b><i>Current Location</i></b>                      Senate Committee on Appropriations</p>
AB 292	Galgiani	High Speed Rail: Agricultural Lands	Requires the High-Speed Rail Authority to appoint an agricultural advisory committee with a specified number of members recommended by the Secretary of Food and Agriculture. Requires the Authority to consult with the committee and to reflect the committee's comments on policies and related matters in any action item brought before the Board of the Authority.	<p><b><i>Last Action</i></b>                      In Senate                      To inactive file                      August 30, 2011</p> <p><b><i>Current Location</i></b>                      Senate</p>
AB 492	Galgiani	High-Speed Rail Authority	Requires the High-Speed Rail Authority to consider, to the extent permitted by federal and state law, the creation of jobs and participation by small business enterprises in the state when awarding major contracts or purchasing high-speed trains. Requires the authority to appoint a small business enterprise advisory committee.	<p><b><i>Last Action</i></b>                      In Senate                      Read second time and amended                      Referred to Committee on Rules                      June 27, 2011</p> <p><b><i>Current Location</i></b>                      Senate Committee on Rules</p>
AB 1092	Lowenthal	High-Speed Rail	Requires the High-Speed Rail authority to report biannually to the Legislature beginning on a specified date on the status of the project, including overall progress, th0065 project budget, expenditures to date, a comparison of the current and project work schedule and the baseline schedule.	<p><b><i>Last Action</i></b>                      In Senate                      Read first time                      To Committee for assignment                      June 2, 2011</p> <p><b><i>Current Location</i></b>                      Senate Committee on Rules</p>
<b><u>AB 1455</u></b>	Harkey	High-Speed Rail	This bill would reduce the amount of general obligation debt authorized for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to the amount contracted as of January 1, 2013.	<p><b><i>Last Action</i></b>                      In Assembly Committee on Transportation                      Hearing cancelled at the request of the author                      April 12, 2012</p> <p><b><i>Current Location</i></b>                      Assembly Committee on Transportation</p>

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**RELATED TO RAIL (Continued)**

<b>Bill #</b>	<b>Author</b>	<b>Bill Title</b>	<b>Subject</b>	<b>Status</b>
<b><u>AB 1574</u></b>	Galgiani	High-Speed Rail	This bill would repeal all of the provisions of the California High-Speed Rail Act. The bill would enact a new California High-Speed Rail Act. Would continue the High-Speed Rail Authority in existence with limited responsibilities and would place the authority within BT&H Agency. The 5 members of the authority appointed by the Governor would be subject to Senate confirmation, but existing members could continue to serve the remainder of their terms. Would authorize the authority to appoint an executive director, and would provide for the Governor to appoint up to 6 additional individuals exempt from civil service as authority staff. Would require the authority to adopt policies directing the development and implementation of high-speed rail, prepare and adopt a business plan and high-speed train capital program, establish a peer review group, select alignments for the routes of the high-speed train system established by law, adopt criteria for the award of franchises, and set fares or establish guidelines for the setting of fares.	<p style="text-align: center;"><b><i>Last Action</i></b>                      In Assembly Committee on Transportation                      Hearing cancelled at the request of the author                      April 23, 2012</p> <p style="text-align: center;"><b><i>Current Location</i></b>                      Assembly Committee on Transportation</p>
SB 517	Lowenthal	High-Speed Rail Authority	Places the High-Speed Rail Authority within the Business, Transportation and Housing Agency. Requires the Secretary to propose an annual budget for the authority. Requires the members of the authority appointed by the Governor to be appointed with the advice and consent of the Senate. Vacates the membership of the authority. Provides for the appointment or reappointment of members on a specified date. Provides that the executive director is subject to appointment with the advice and consent of the Senate.	<p style="text-align: center;"><b><i>Last Action</i></b>                      In Assembly Committee on Appropriations                      Held in Committee                      August 25, 2011</p> <p style="text-align: center;"><b><i>Current Location</i></b>                      Assembly Committee on Appropriations</p>
<b><u>SB 985</u></b>	LaMalfa	Transportation Bonds	Provides that no further bonds shall be sold for high-speed rail and related rail purposes pursuant to the Safe, Reliable, High-Speed Passenger Train Bond Act for the 21 <sup>st</sup> Century. Authorizes redirection of the net proceeds received from outstanding bonds issued and sold prior to the effective date of this act, to retiring the debt incurrent from the issuance and sale of those outstanding bonds.	<p style="text-align: center;"><b><i>Last Action</i></b>                      In Senate Committee on Transportation and Housing                      Heard; remains in Committee</p> <p style="text-align: center;"><b><i>Current Location</i></b>                      Senate Committee on Transportation and Housing</p>

JOSEPH TAVAGLIONE, Chair  
JAMES C. GHIEMMETTI, Vice Chair  
BOB ALVARADO  
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LUCETTA DUNN  
JAMES EARP  
DARIO FROMMER  
CARL GUARDINO  
FRAN INMAN  
JAMES WARING

STATE OF CALIFORNIA

ATTACHMENT B  
EDMUND G. BROWN Jr., Governor



SENATOR MARK DESAULNIER, Ex Officio  
ASSEMBLY MEMBER BONNIE LOWENTHAL, Ex Officio

BIMLA G. RHINEHART, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

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### DRAFT

The Honorable Henry T. Perea  
Member of the Assembly  
State Capitol, Room 4112  
Sacramento, CA 95814

Re: Support Assembly Constitutional Amendment (ACA) 23

Dear Assembly Member Perea:

As part of its statutory charge, the California Transportation Commission (Commission) advises the Administration and the Legislature in formulating and evaluating state policies and plans for California's transportation programs. I am writing to inform you that the Commission, at its May 23, 2012 meeting, adopted a support position on ACA 23. The Commission applauds your leadership on this issue in light of our dwindling resources and growing transportation system demands.

The useful life of the existing system, which represents decades of major investments, is placed at risk due to the lack of necessary funding to meet basic maintenance, operation and rehabilitation needs. In addition, congestion in urban areas, safety and unexpected delays in rural areas, and growing challenges of freight movement are only a few examples of the compelling issues facing California's transportation agencies. Public sources of reliable revenues meant to provide an efficient transportation system have not kept pace with California's growing transportation needs. Our existing transportation system continues to deteriorate while demand increases, adversely affecting mobility, commerce, quality of life, the environment and the operational efficiency of key transportation assets.

Ongoing state funds are raised primarily from a state excise tax on gasoline and diesel fuels, weight fees, and the equivalent of most of the state sales tax on motor fuels, which is now translated into a higher excise tax. Additional sources of state funding can include revenues from the sale of bonds and specific appropriations from the General Fund. State revenues provide about 22 percent (\$53.1 billion) of the total funds projected to be available for transportation infrastructure over the next ten years.

Nineteen of California's 58 counties have passed local sales tax measures to pay for transportation projects; approximately 80 percent of all Californians live in counties where voters have passed local sales tax measures to pay for this infrastructure. This local investment has brought with it a history of high expectations and accountability. Local funds for transportation are raised from a variety of public revenue sources. These include (but are not limited to) a statewide 0.25 percent tax on the sale of all goods and services, additional local sales taxes, property taxes, and transit fares. Local funds account for about 65 percent (\$158.4 billion) of all revenues projected to be available for transportation infrastructure over the next ten years.

Several counties are giving serious consideration to new transportation sales tax measures to help fund critical transportation needs, but prospects for success are slim in the face of a two-thirds voter approval requirement. Many small counties have won majority votes for local transportation improvement sales taxes, but were unable to make the two-thirds requirement. ACA 23 gives counties majorities to establish their own measures to address transportation needs that are best understood at the local level, and as a result local-initiated funding would remain strong resulting in reduced highway congestion and quality public transportation, and assist in keeping pace with the critical transportation needs of the state. The loss of local sales tax as a viable revenue source for transportation purposes will only increase the funding burden on the state.

If you have any questions, please call the Commission's Executive Director, Ms. Bimla Rhinehart, at 916-654-4245.

Sincerely,

JOSEPH TAVAGLIONE  
Chair

c: The Honorable Bonnie Lowenthal, Assembly Transportation Committee Chair  
The Honorable Mark DeSaulnier, Senate Transportation and Housing Committee Chair  
California Transportation Commissioners

**Assembly Constitutional Amendment**

**No. 23**

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**Introduced by Assembly Member Perea**

February 23, 2012

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Assembly Constitutional Amendment No. 23—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 4 of Article XIII A thereof, and by amending Section 2 of Article XIII C thereof, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

ACA 23, as introduced, Perea. Local government transportation projects: special taxes: voter approval.

The California Constitution conditions the imposition of a special tax by a city, county, or special district upon the approval of  $\frac{2}{3}$  of the voters of the city, county, or special district voting on that tax, except that certain school entities may levy an ad valorem property tax for specified purposes with the approval of 55% of the voters within the jurisdiction of these entities.

This measure would provide that the imposition, extension, or increase of a special tax by a local government for the purpose of providing funding for local transportation projects requires the approval of 55% of its voters voting on the proposition. The measure would also make conforming and technical, nonsubstantive changes.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

- 1 *Resolved by the Assembly, the Senate concurring,* That the
- 2 Legislature of the State of California at its 2011–12 Regular

1 Session commencing on the sixth day of December 2010,  
2 two-thirds of the membership of each house concurring, hereby  
3 proposes to the people of the State of California that the  
4 Constitution of the State be amended as follows:

5 First—That Section 4 of Article XIII A thereof is amended to  
6 read:

7 Section 4. ~~Cities, Counties and special districts, Except as~~  
8 ~~otherwise provided by Section 2 of Article XIII C, a city, county,~~  
9 ~~or special district, by a two-thirds vote of the qualified electors of~~  
10 ~~such district its voters voting on the proposition, may impose~~  
11 ~~special taxes on such district a special tax within that city, county,~~  
12 ~~or special district, except an ad valorem taxes tax on real property~~  
13 ~~or a transaction transactions tax or sales tax on the sale of real~~  
14 ~~property within such City, County that city, county, or special~~  
15 ~~district.~~

16 Second—That Section 2 of Article XIII C thereof is amended  
17 to read:

18 SEC. 2. ~~Local Government Tax Limitation.~~ Notwithstanding  
19 any other provision of this Constitution:

20 (a) ~~All taxes—A tax~~ imposed by any local government ~~shall be~~  
21 ~~deemed to be~~ is either a general taxes tax or a special taxes. Special  
22 ~~purpose districts tax. A special district or agencies agency,~~  
23 ~~including a school districts, shall have district, has no power~~  
24 ~~authority to levy a general taxes tax.~~

25 (b) ~~No—A~~ local government ~~may shall not~~ impose, extend, or  
26 increase any general tax unless and until that tax is submitted to  
27 the electorate and approved by a majority vote. A general tax ~~shall~~  
28 ~~is not be~~ deemed to have been increased if it is imposed at a rate  
29 not higher than the maximum rate so approved. The election  
30 required by this subdivision shall be consolidated with a regularly  
31 scheduled general election for members of the governing body of  
32 the local government, except in cases of emergency declared by  
33 a unanimous vote of the governing body.

34 (c) Any general tax imposed, extended, or increased, without  
35 voter approval, by any local government on or after January 1,  
36 1995, and prior to the effective date of this article, ~~shall may~~  
37 continue to be imposed only if *that general tax is* approved by a  
38 majority vote of the voters voting in an election on the issue of the  
39 imposition, which election ~~shall be is~~ held within two years of the

1 ~~effective date of this article no later than November 6, 1998, and~~  
2 in compliance with subdivision (b).

3 (d) ~~No (1) Except as otherwise provided in paragraph (2), a~~  
4 local government ~~may~~ shall not impose, extend, or increase any  
5 special tax unless and until that tax is submitted to the electorate  
6 and approved by a two-thirds vote of the voters voting on the  
7 proposition. A special tax shall is not be deemed to have been  
8 increased if it is imposed at a rate not higher than the maximum  
9 rate so approved.

10 (2) *The imposition, extension, or increase of a special tax by a*  
11 *local government for the purpose of providing funding for local*  
12 *transportation projects under its jurisdiction, as may otherwise*  
13 *be authorized by law, requires the approval of 55 percent of the*  
14 *voters voting on the proposition. A special tax for the purpose of*  
15 *providing funding for local transportation projects is not deemed*  
16 *to have been increased if it is imposed at a rate not higher than*  
17 *the maximum rate previously approved in the manner required by*  
18 *law. The Legislature shall define local transportation projects for*  
19 *purposes of this paragraph.*

JOSEPH TAVAGLIONE, Chair  
JAMES C. GHIEMMETTI, Vice Chair  
BOB ALVARADO  
DARIUS ASSEMI  
YVONNE B. BURKE  
LUCETTA DUNN  
JAMES EARP  
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CARL GUARDINO  
FRAN INMAN  
JAMES WARING

STATE OF CALIFORNIA



SENATOR MARK DESAULNIER, Ex Officio  
ASSEMBLY MEMBER BONNIE LOWENTHAL, Ex Officio

BIMLA G. RHINEHART, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

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# DRAFT

The Honorable Robert Dutton  
California State Senate  
State Capitol, Room 5097  
Sacramento, CA 95814

Re: Oppose Senate Bill 1396 - Sales and Use Taxes: Excise Taxes: Fuel

Dear Senator Dutton:

As part of its statutory charge, the California Transportation Commission (Commission) advises the Administration and the Legislature in formulating and evaluating state policies and plans for California's transportation programs. I am writing to inform you that the Commission, at its May 23, 2012 meeting, adopted an oppose position on SB 1396.

The useful life of the existing system, which represents decades of major investments, is placed at risk due to the lack of necessary funding to meet basic maintenance, operation and rehabilitation needs. In addition, congestion in urban areas, safety and unexpected delays in rural areas, and growing challenges of freight movement are only a few examples of the compelling issues facing California's transportation agencies. Public sources of reliable revenues meant to provide an efficient transportation system have not kept pace with California's growing transportation needs. Our existing transportation system continues to deteriorate while demand increases, adversely affecting mobility, commerce, quality of life, the environment and the operational efficiency of key transportation assets.

SB 1396 would cap the state excise tax on gasoline at 35.7-cents and limit the sales tax to the first \$4.00 per gallon of gasoline. Diesel taxes would also be capped at their current rate. California's transportation network is crumbling and in severe need of significant repair, rehabilitation, and maintenance. The Commission's 2011 Statewide Transportation System Needs Assessment found that over the next ten-year period, for all modes of transportation, there is a shortfall of \$298 billion for system preservation, management, and expansion. The 2010

California Statewide Local Streets and Roads Needs Assessment Report found an \$8 billion annual shortfall for maintenance and rehabilitation needs on just the local system alone.

If transportation infrastructure needs continue to go unaddressed, the negative economic, environmental, and social consequences will continue to plague our state. Not only is the multiplier effect of investing in transportation projects critical to our economic growth to rebound from the Great Recession, the cost of rebuilding our transportation system increases exponentially the longer the repairs are delayed. According to the Board of Equalization's draft analysis of SB 1396, the measure would result in a loss of \$439 million for critical state highway, streets and roads, and transit projects. As such, SB 1396 reduces revenues at a time when the exact opposite outcome is needed.

Additionally, when the Legislature adopted the Transportation Tax Swap (Swap) in March 2010, and reaffirmed the Swap in March 2011, all stakeholders were in agreement that the replacement gasoline excise tax rate must be adjusted annually to achieve revenue neutrality with what the sales tax on gasoline would have otherwise generated. The annual adjustment must reflect both increases and decreases in order to achieve this mutually agreed upon goal. SB 1396 is contrary to the agreement made under the Swap. If the excise tax rate is not allowed to increase to keep pace with what the sales tax would have generated, investment in our transportation network will continue to be deferred. The economic consequences of this policy choice cannot be overstated. Every Californian, whether they drive a personal vehicle, carpool, take mass transit, ride their bike, or walk to work, school, and essential services, will feel the negative ramifications of a continued underinvestment in transportation.

If you need additional information regarding the Commission's position on this bill, please call the Commission's Executive Director, Ms. Bimla Rhinehart, at 916-654-4245.

Sincerely,

JOSEPH TAVAGLIONE  
Chair

c: The Honorable Bonnie Lowenthal, Assembly Transportation Committee Chair  
The Honorable Mark DeSaulnier, Senate Transportation and Housing Committee Chair  
California Transportation Commissioners

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1396

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**Introduced by Senator Dutton**

*(Principal coauthor: Assembly Member Beth Gaines)*

February 24, 2012

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An act to amend Sections ~~18152 and 18152.5~~ 6011, 6012, 7360, and 60050 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1396, as amended, Dutton. ~~Income taxes: gross income. Sales and use taxes: excise taxes: fuel.~~

*The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or a tax, measured by the sales price, on the storage, use, or other consumption of tangible personal property in this state." That law defines the terms "gross receipts" and "sales price."*

*This bill would exclude from the terms "gross receipts" and "sales price" the amount charged at retail for gasoline and diesel fuels in excess of \$3.88 or \$3.52 per gallon, respectively, as provided.*

*Existing law imposes a sales and use tax and an excise tax on gasoline and diesel fuels and requires the State Board of Equalization to annually modify both the gasoline and diesel excise tax rates on a going-forward basis so that the taxes imposed on gasoline and diesel fuels, as described above, are revenue neutral.*

*This bill would require the State Board of Equalization to reduce, but not increase, certain excise tax rates on gasoline and diesel fuels to maintain revenue neutrality.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~The Personal Income Tax Law in modified conformity with federal income tax laws provides that gross income does not include 50% of any gain from the sale or exchange of qualified small business stock, as defined, held for more than 5 years, as provided.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6011 of the Revenue and Taxation Code  
2     is amended to read:  
3     6011. (a) "Sales price" means the total amount for which  
4     tangible personal property is sold or leased or rented, as the case  
5     may be, valued in money, whether paid in money or otherwise,  
6     without any deduction on account of any of the following:  
7         (1) The cost of the property sold.  
8         (2) The cost of materials used, labor or service cost, interest  
9     charged, losses, or any other expenses.  
10        (3) The cost of transportation of the property, except as excluded  
11     by other provisions of this section.  
12     (b) The total amount for which the property is sold or leased or  
13     rented includes all of the following:  
14        (1) Any services that are a part of the sale.  
15        (2) Any amount for which credit is given to the purchaser by  
16     the seller.  
17        (3) The amount of any tax imposed by the United States upon  
18     producers and importers of gasoline and the amount of any tax  
19     imposed pursuant to Part 2 (commencing with Section 7301) of  
20     this division.  
21     (c) "Sales price" does not include any of the following:  
22        (1) Cash discounts allowed and taken on sales.  
23        (2) The amount charged for property returned by customers  
24     when that entire amount is refunded either in cash or credit, but  
25     this exclusion shall not apply in any instance when the customer,  
26     in order to obtain the refund, is required to purchase other property  
27     at a price greater than the amount charged for the property that is  
28     returned. For the purpose of this section, refund or credit of the  
29     entire amount shall be deemed to be given when the purchase price

1 less rehandling and restocking costs are refunded or credited to  
2 the customer. The amount withheld for rehandling and restocking  
3 costs may be a percentage of the sales price determined by the  
4 average cost of rehandling and restocking returned merchandise  
5 during the previous accounting cycle.

6 (3) The amount charged for labor or services rendered in  
7 installing or applying the property sold.

8 (4) (A) The amount of any tax (not including, however, any  
9 manufacturers' or importers' excise tax, except as provided in  
10 subparagraph (B)) imposed by the United States upon or with  
11 respect to retail sales whether imposed upon the retailer or the  
12 consumer.

13 (B) The amount of manufacturers' or importers' excise tax  
14 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
15 Code for which the purchaser certifies that he or she is entitled to  
16 either a direct refund or credit against his or her income tax for  
17 the federal excise tax paid or for which the purchaser issues a  
18 certificate pursuant to Section 6245.5.

19 (5) The amount of any tax imposed by any city, county, city  
20 and county, or rapid transit district within the State of California  
21 upon or with respect to retail sales of tangible personal property,  
22 measured by a stated percentage of sales price or gross receipts,  
23 whether imposed upon the retailer or the consumer.

24 (6) The amount of any tax imposed by any city, county, city  
25 and county, or rapid transit district within the State of California  
26 with respect to the storage, use or other consumption in that city,  
27 county, city and county, or rapid transit district of tangible personal  
28 property measured by a stated percentage of sales price or purchase  
29 price, whether the tax is imposed upon the retailer or the consumer.

30 (7) Separately stated charges for transportation from the  
31 retailer's place of business or other point from which shipment is  
32 made directly to the purchaser, but the exclusion shall not exceed  
33 a reasonable charge for transportation by facilities of the retailer  
34 or the cost to the retailer of transportation by other than facilities  
35 of the retailer. However, if the transportation is by facilities of the  
36 retailer, or the property is sold for a delivered price, this exclusion  
37 shall be applicable solely with respect to transportation which  
38 occurs after the purchase of the property is made.

39 (8) Charges for transporting landfill from an excavation site to  
40 a site specified by the purchaser, either if the charge is separately

1 stated and does not exceed a reasonable charge or if the entire  
2 consideration consists of payment for transportation.

3 (9) The amount of any motor vehicle, mobilehome, or  
4 commercial coach fee or tax imposed by and paid the State of  
5 California that has been added to or is measured by a stated  
6 percentage of the sales or purchase price of a motor vehicle,  
7 mobilehome, or commercial coach.

8 (10) (A) The amount charged for intangible personal property  
9 transferred with tangible personal property in any technology  
10 transfer agreement, if the technology transfer agreement separately  
11 states a reasonable price for the tangible personal property.

12 (B) If the technology transfer agreement does not separately  
13 state a price for the tangible personal property, and the tangible  
14 personal property or like tangible personal property has been  
15 previously sold or leased, or offered for sale or lease, to third  
16 parties at a separate price, the price at which the tangible personal  
17 property was sold, leased, or offered to third parties shall be used  
18 to establish the retail fair market value of the tangible personal  
19 property subject to tax. The remaining amount charged under the  
20 technology transfer agreement is for the intangible personal  
21 property transferred.

22 (C) If the technology transfer agreement does not separately  
23 state a price for the tangible personal property, and the tangible  
24 personal property or like tangible personal property has not been  
25 previously sold or leased, or offered for sale or lease, to third  
26 parties at a separate price, the retail fair market value shall be equal  
27 to 200 percent of the cost of materials and labor used to produce  
28 the tangible personal property subject to tax. The remaining amount  
29 charged under the technology transfer agreement is for the  
30 intangible personal property transferred.

31 (D) For purposes of this paragraph, "technology transfer  
32 agreement" means any agreement under which a person who holds  
33 a patent or copyright interest assigns or licenses to another person  
34 the right to make and sell a product or to use a process that is  
35 subject to the patent or copyright interest.

36 (11) The amount of any tax imposed upon diesel fuel pursuant  
37 to Part 31 (commencing with Section 60001).

38 (12) (A) The amount of tax imposed by any Indian tribe within  
39 the State of California with respect to a retail sale of tangible  
40 personal property measured by a stated percentage of the sales or

1 purchase price, whether the tax is imposed upon the retailer or the  
2 consumer.

3 (B) The exclusion authorized by subparagraph (A) shall only  
4 apply to those retailers who are in substantial compliance with this  
5 part.

6 (13) (A) *The amount charged at the retail level for gasoline,*  
7 *including federally imposed and state-imposed excise taxes, but*  
8 *excluding state-imposed sales and use taxes, in excess of three*  
9 *dollars and eighty-eight cents (\$3.88) per gallon.*

10 (B) *The amount charged at the retail level for diesel fuel,*  
11 *including federally imposed excise taxes, but excluding*  
12 *state-imposed excise, sales, and use taxes, in excess of three dollars*  
13 *and fifty-two cents (\$3.52) per gallon.*

14 *SEC. 2. Section 6012 of the Revenue and Taxation Code is*  
15 *amended to read:*

16 6012. (a) "Gross receipts" mean the total amount of the sale  
17 or lease or rental price, as the case may be, of the retail sales of  
18 retailers, valued in money, whether received in money or otherwise,  
19 without any deduction on account of any of the following:

20 (1) The cost of the property sold. However, in accordance with  
21 any rules and regulations as the board may prescribe, a deduction  
22 may be taken if the retailer has purchased property for some other  
23 purpose than resale, has reimbursed his or her vendor for tax which  
24 the vendor is required to pay to the state or has paid the use tax  
25 with respect to the property, and has resold the property prior to  
26 making any use of the property other than retention, demonstration,  
27 or display while holding it for sale in the regular course of business.  
28 If that deduction is taken by the retailer, no refund or credit will  
29 be allowed to his or her vendor with respect to the sale of the  
30 property.

31 (2) The cost of the materials used, labor or service cost, interest  
32 paid, losses, or any other expense.

33 (3) The cost of transportation of the property, except as excluded  
34 by other provisions of this section.

35 (4) The amount of any tax imposed by the United States upon  
36 producers and importers of gasoline and the amount of any tax  
37 imposed pursuant to Part 2 (commencing with Section 7301) of  
38 this division.

39 (b) The total amount of the sale or lease or rental price includes  
40 all of the following:

- 1 (1) Any services that are a part of the sale.
- 2 (2) All receipts, cash, credits and property of any kind.
- 3 (3) Any amount for which credit is allowed by the seller to the
- 4 purchaser.
- 5 (c) "Gross receipts" do not include any of the following:
- 6 (1) Cash discounts allowed and taken on sales.
- 7 (2) Sale price of property returned by customers when that entire
- 8 amount is refunded either in cash or credit, but this exclusion shall
- 9 not apply in any instance when the customer, in order to obtain
- 10 the refund, is required to purchase other property at a price greater
- 11 than the amount charged for the property that is returned. For the
- 12 purpose of this section, refund or credit of the entire amount shall
- 13 be deemed to be given when the purchase price less rehandling
- 14 and restocking costs are refunded or credited to the customer. The
- 15 amount withheld for rehandling and restocking costs may be a
- 16 percentage of the sales price determined by the average cost of
- 17 rehandling and restocking returned merchandise during the
- 18 previous accounting cycle.
- 19 (3) The price received for labor or services used in installing or
- 20 applying the property sold.
- 21 (4) (A) The amount of any tax (not including, however, any
- 22 manufacturers' or importers' excise tax, except as provided in
- 23 subparagraph (B)) imposed by the United States upon or with
- 24 respect to retail sales whether imposed upon the retailer or the
- 25 consumer.
- 26 (B) The amount of manufacturers' or importers' excise tax
- 27 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
- 28 Code for which the purchaser certifies that he or she is entitled to
- 29 either a direct refund or credit against his or her income tax for
- 30 the federal excise tax paid or for which the purchaser issues a
- 31 certificate pursuant to Section 6245.5.
- 32 (5) The amount of any tax imposed by any city, county, city
- 33 and county, or rapid transit district within the State of California
- 34 upon or with respect to retail sales of tangible personal property
- 35 measured by a stated percentage of sales price or gross receipts
- 36 whether imposed upon the retailer or the consumer.
- 37 (6) The amount of any tax imposed by any city, county, city
- 38 and county, or rapid transit district within the State of California
- 39 with respect to the storage, use or other consumption in that city,
- 40 county, city and county, or rapid transit district of tangible personal

1 property measured by a stated percentage of sales price or purchase  
2 price, whether the tax is imposed upon the retailer or the consumer.

3 (7) Separately stated charges for transportation from the  
4 retailer's place of business or other point from which shipment is  
5 made directly to the purchaser, but the exclusion shall not exceed  
6 a reasonable charge for transportation by facilities of the retailer  
7 or the cost to the retailer of transportation by other than facilities  
8 of the retailer. However, if the transportation is by facilities of the  
9 retailer, or the property is sold for a delivered price, this exclusion  
10 shall be applicable solely with respect to transportation which  
11 occurs after the sale of the property is made to the purchaser.

12 (8) Charges for transporting landfill from an excavation site to  
13 a site specified by the purchaser, either if the charge is separately  
14 stated and does not exceed a reasonable charge or if the entire  
15 consideration consists of payment for transportation.

16 (9) The amount of any motor vehicle, mobilehome, or  
17 commercial coach fee or tax imposed by and paid to the State of  
18 California that has been added to or is measured by a stated  
19 percentage of the sales or purchase price of a motor vehicle,  
20 mobilehome, or commercial coach.

21 (10) (A) The amount charged for intangible personal property  
22 transferred with tangible personal property in any technology  
23 transfer agreement, if the technology transfer agreement separately  
24 states a reasonable price for the tangible personal property.

25 (B) If the technology transfer agreement does not separately  
26 state a price for the tangible personal property, and the tangible  
27 personal property or like tangible personal property has been  
28 previously sold or leased, or offered for sale or lease, to third  
29 parties at a separate price, the price at which the tangible personal  
30 property was sold, leased, or offered to third parties shall be used  
31 to establish the retail fair market value of the tangible personal  
32 property subject to tax. The remaining amount charged under the  
33 technology transfer agreement is for the intangible personal  
34 property transferred.

35 (C) If the technology transfer agreement does not separately  
36 state a price for the tangible personal property, and the tangible  
37 personal property or like tangible personal property has not been  
38 previously sold or leased, or offered for sale or lease, to third  
39 parties at a separate price, the retail fair market value shall be equal  
40 to 200 percent of the cost of materials and labor used to produce

1 the tangible personal property subject to tax. The remaining amount  
2 charged under the technology transfer agreement is for the  
3 intangible personal property transferred.

4 (D) For purposes of this paragraph, “technology transfer  
5 agreement” means any agreement under which a person who holds  
6 a patent or copyright interest assigns or licenses to another person  
7 the right to make and sell a product or to use a process that is  
8 subject to the patent or copyright interest.

9 (11) The amount of any tax imposed upon diesel fuel pursuant  
10 to Part 31 (commencing with Section 60001).

11 (12) (A) The amount of tax imposed by any Indian tribe within  
12 the State of California with respect to a retail sale of tangible  
13 personal property measured by a stated percentage of the sales or  
14 purchase price, whether the tax is imposed upon the retailer or the  
15 consumer.

16 (B) The exclusion authorized by subparagraph (A) shall only  
17 apply to those retailers who are in substantial compliance with this  
18 part.

19 For purposes of the sales tax, if the retailers establish to the  
20 satisfaction of the board that the sales tax has been added to the  
21 total amount of the sale price and has not been absorbed by them,  
22 the total amount of the sale price shall be deemed to be the amount  
23 received exclusive of the tax imposed. Section 1656.1 of the Civil  
24 Code shall apply in determining whether or not the retailers have  
25 absorbed the sales tax.

26 (13) (A) *The amount charged at the retail level for gasoline,*  
27 *including federally imposed and state-imposed excise taxes, but*  
28 *excluding state-imposed sales and use taxes, in excess of three*  
29 *dollars and eighty-eight cents (\$3.88) per gallon.*

30 (B) *The amount charged at the retail level for diesel fuel,*  
31 *including federally imposed excise taxes, but excluding*  
32 *state-imposed excise, sales, and use taxes, in excess of three dollars*  
33 *and fifty-two cents (\$3.52) per gallon.*

34 SEC. 3. Section 7360 of the Revenue and Taxation Code is  
35 amended to read:

36 7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed  
37 upon each gallon of fuel subject to the tax in Sections 7362, 7363,  
38 and 7364.

39 (2) If the federal fuel tax is reduced below the rate of nine cents  
40 (\$0.09) per gallon and federal financial allocations to this state for

1 highway and exclusive public mass transit guideway purposes are  
2 reduced or eliminated correspondingly, the tax rate imposed by  
3 paragraph (1), on and after the date of the reduction, shall be  
4 recalculated by an amount so that the combined state rate under  
5 paragraph (1) and the federal tax rate per gallon equal twenty-seven  
6 cents (\$0.27).

7 (3) If any person or entity is exempt or partially exempt from  
8 the federal fuel tax at the time of a reduction, the person or entity  
9 shall continue to be so exempt under this section.

10 (b) (1) (A) On and after July 1, 2010, *and before July 1, 2012*,  
11 in addition to the tax imposed by subdivision (a), a tax is hereby  
12 imposed upon each gallon of motor vehicle fuel, other than aviation  
13 gasoline, subject to the tax in Sections 7362, 7363, and 7364 in an  
14 amount equal to seventeen and three-tenths cents (\$0.173) per  
15 gallon.

16 (B) *On and after July 1, 2012, in addition to the tax imposed*  
17 *by subdivision (a), a tax is hereby imposed upon each gallon of*  
18 *motor vehicle fuel, other than aviation gasoline, subject to tax in*  
19 *Sections 7362, 7363, and 7364 in an amount equal to seventeen*  
20 *and seven-tenths cents (\$0.177) per gallon.*

21 (2) For the ~~2011–12~~ 2013–14 fiscal year and each fiscal year  
22 thereafter, the board shall, on or before March 1 of the fiscal year  
23 immediately preceding the applicable fiscal year, ~~adjust the rate~~  
24 ~~in paragraph (1) in that manner as to generate an amount of revenue~~  
25 ~~that will equal the amount of revenue loss attributable to the~~  
26 ~~exemption provided by Section 6357.7, based on estimates made~~  
27 ~~by the board estimate the amount of revenue loss attributable to~~  
28 ~~the exemption provided by Section 6357.7 and the revenue~~  
29 ~~attributable to the tax imposed by subparagraph (B) of paragraph~~  
30 ~~(1). If the estimated revenue attributable to the tax imposed by~~  
31 ~~subparagraph (B) of paragraph (1) exceeds the revenue loss~~  
32 ~~attributable to the exemption provided by Section 6357.7, the rate~~  
33 ~~imposed by subparagraph (B) of paragraph (1) shall be adjusted~~  
34 ~~to generate the amount of revenue that will be equal to the revenue~~  
35 ~~loss during the state's next fiscal year, and that rate shall be~~  
36 ~~effective during the state's next fiscal year.~~

37 (3) ~~In order to maintain revenue neutrality for each year,~~  
38 ~~beginning~~ *Beginning* with the rate adjustment on or before March  
39 1, ~~2012~~ 2014, the adjustment under paragraph (2) shall also take  
40 into account the extent to which the actual amount of revenues

1 derived pursuant to this subdivision and, as applicable, Section  
2 ~~7361.1~~, and the revenue loss attributable to the exemption provided  
3 by Section 6357.7 resulted in a net revenue gain or loss for the  
4 fiscal year ending prior to the rate adjustment date on or before  
5 March 1.

6 (4) The intent of paragraphs (2) and (3) is to ensure that the act  
7 adding this subdivision and Section 6357.7 does not produce a net  
8 revenue gain in state taxes rate imposed pursuant to this  
9 subdivision does not exceed the rate specified in subparagraph  
10 (B) of paragraph (1).

11 SEC. 4. Section 60050 of the Revenue and Taxation Code is  
12 amended to read:

13 60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby  
14 imposed upon each gallon of diesel fuel subject to the tax in  
15 Sections 60051, 60052, and 60058.

16 (2) If the federal fuel tax is reduced below the rate of fifteen  
17 cents (\$0.15) per gallon and federal financial allocations to this  
18 state for highway and exclusive public mass transit guideway  
19 purposes are reduced or eliminated correspondingly, the tax rate  
20 imposed by paragraph (1), including any reduction or adjustment  
21 pursuant to subdivision (b), on and after the date of the reduction,  
22 shall be increased by an amount so that the combined state rate  
23 under paragraph (1) and the federal tax rate per gallon equal what  
24 it would have been in the absence of the federal reduction.

25 (3) If any person or entity is exempt or partially exempt from  
26 the federal fuel tax at the time of a reduction, the person or entity  
27 shall continue to be exempt under this section.

28 (b) (1) On July 1, 2011, the tax rate specified in paragraph (1)  
29 of subdivision (a) shall be reduced to thirteen cents (\$0.13) and  
30 every July 1 thereafter shall be adjusted pursuant to paragraphs  
31 (2) and (3).

32 (2) For the 2012–13 fiscal year and each fiscal year thereafter,  
33 the board shall, on or before March 1 of the fiscal year immediately  
34 preceding the applicable fiscal year, *estimate the revenue loss*  
35 *attributable to the rate reduction in paragraph (1) and the revenue*  
36 *gain attributable to Sections 6051.8 and 6201.8. If the revenue*  
37 *gain attributable to Sections 6051.8 and 6201.8 exceeds the*  
38 *revenue loss attributable to the rate reduction attributable to*  
39 *paragraph (1), the board shall adjust the rate reduction in*  
40 *paragraph (1) in that manner as to result in a revenue loss*

1 attributable to paragraph (1) that will equal the amount of revenue  
2 gain attributable to Sections 6051.8 and 6201.8, based on estimates  
3 made by the board, and that rate shall be effective during the state's  
4 next fiscal year.

5 (3) ~~In order to maintain revenue neutrality for~~ For each year,  
6 beginning with the rate adjustment on or before March 1, 2013,  
7 the adjustment under paragraph (2) shall take into account the  
8 extent to which the actual amount of revenues derived pursuant to  
9 Sections 6051.8 and 6201.8 and the revenue loss attributable to  
10 this subdivision resulted in a net revenue gain or loss for the fiscal  
11 year ending prior to the rate adjustment date on or before March  
12 1.

13 (4) The intent of paragraphs (2) and (3) is to ensure that the act  
14 ~~adding this subdivision and Sections 6051.8 and 6201.8 does not~~  
15 ~~produce a net revenue gain in state taxes rate imposed beginning~~  
16 ~~with the 2012-13 fiscal year shall not exceed the rate specified in~~  
17 ~~paragraph (1).~~

18 *SEC. 5. This act is an urgency statute necessary for the*  
19 *immediate preservation of the public peace, health, or safety within*  
20 *the meaning of Article IV of the Constitution and shall go into*  
21 *immediate effect. The facts constituting the necessity are:*

22 *In order to provide tax relief related to the price of gasoline and*  
23 *diesel fuel at the earliest possible date, it is necessary that this act*  
24 *take effect immediately.*

25  
26  
27 **All matter omitted in this version of the bill**  
28 **appears in the bill as introduced in the**  
29 **Senate, February 24, 2012. (JR11)**  
30