

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: June 22, 2009

SUBJECT: AUTHORIZING THE CITY ATTORNEY TO COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES IN LITIGATION CHALLENGING THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET MAINTENANCE FUNDS

Report in Brief

Governor Schwarzenegger's final revised May Budget revision proposed the seizure of almost \$1 billion from city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax "gas tax" to fund past and future highway bond debt service payments out of the State general fund. This has the potential for the City to lose 100% of its projected FY 2009-10 motor vehicle fuel tax revenue or \$2,039,108, and 75% of the FY 2010-11 projected tax revenue. This will severely impact the ability of the City to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities used for vehicle or pedestrian traffic.

At a recently held meeting of the Joint Budget Conference Committee within the State Legislature, this recommendation was approved. However, legal counsel retained by the League of California Cities has advised if enacted into law, this proposed reallocation of gas tax funds would violate Article XIX of the California Constitution. Reallocation to the State of the cities' and counties' share of HUTA funds can only be done through borrowing in accordance with constitutional restrictions. Staff recommends the City Council adopt Resolution No. 09-54 directing the City Attorney to cooperate with the League of California Cities in planning litigation challenging the constitutionality of the proposal, if necessary.

Background

The current economic crisis has placed cities under incredible financial pressure forcing painful budget cuts, including layoffs and furloughs of city workers, decreasing maintenance and operations of public facilities, and reductions in direct services to keep spending in line with declining revenues.

Since the early 1990s the California state government has seized over **\$10 billion** of city property tax revenues statewide, now amounting to over \$900 million each year, to fund the State budget. This proposal will force the City to use money from its local General Fund for basic street repair and maintenance. The City simply does not have sufficient money in its General Fund to bear this additional expense.

**AUTHORIZING THE CITY ATTORNEY TO COOPERATE WITH THE LEAGUE
OF CALIFORNIA CITIES IN CHALLENGING THE CONSTITUTIONALITY OF
ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET
MAINTENANCE FUNDS**

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Discussion

By passing Proposition 5 in 1974 and Proposition 2 in 1998, the California voters overwhelmingly imposed restrictions on the State's ability to do what the Governor has proposed. Any effort to permanently divert the local government share of gas tax revenues would violate the State Constitution and contravene the will of the voters. The proposed Resolution would expressly authorize the City Attorney to cooperate with the League and other cities and counties to advance litigation challenging the constitutionality of the proposed gas tax take-away in the event that litigation proves necessary.

Fiscal Impact

This is no immediate negative fiscal impact. However, should the proposal be enacted into law, the City could potentially lose \$2,039,108 in motor vehicle fuel tax revenue in FY 2009-10.

Public Contact

The agenda has been posted.

Recommendation for Action

Staff recommends the City Council adopt Resolution No. 09-54 directing the City Attorney to cooperate with the League of California Cities in planning litigation challenging the constitutionality of the proposed reallocation of HUTA revenues, if necessary.



Daniel E. Keen
City Manager
Dan.Keen@ci.concord.ca.us

Reviewed by: Craig Labadie
City Attorney
Craig.Labadie@ci.concord.ca.us

Attachment No. 1: Proposed Resolution No. 09-54

Attachment No. 2: June 17, 2009 letter from Mayor Hoffmeister to Chair of Budget Conference Committee opposing Local Gas Tax Fund Diversion.

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A RESOLUTION AUTHORIZING THE CITY
ATTORNEY TO COOPERATE WITH THE
LEAGUE OF CALIFORNIA CITIES, OTHER
CITIES AND COUNTIES IN LITIGATION
CHALLENGING THE CONSTITUTIONALITY
OF ANY SEIZURE BY STATE GOVERNMENT
OF THE CITY'S STREET MAINTENANCE
FUNDS**

Resolution No. 09-54

WHEREAS, the current economic crisis has placed cities under incredible financial pressure and caused them to make painful budget cuts, including layoffs and furloughs of city workers, decreasing maintenance and operations of public facilities, and reductions in direct services to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s the state government of California has seized over **\$10 billion** of city property tax revenues statewide, now amounting to over \$900 million each year, to fund the state budget even after deducting public safety program payments to cities by the state; and

WHEREAS, in his proposed FY 2009-10 budget the Governor has proposed transferring \$1 billion of local gas taxes and weight fees to the state general fund to balance the state budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring public; and

WHEREAS, the loss of almost all of the City's gas tax funds will seriously compromise the City's ability to perform critical traffic safety related street maintenance, including, but not limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk and curb ramp maintenance and repair, and more; and

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1 **WHEREAS**, some cities report to the League of California Cities that they will be forced to
2 eliminate part or all of their street maintenance operations while others will be forced to cut back in
3 other areas (including public safety staffing levels) to use city general funds for basic street repair and
4 maintenance. Furthermore, cities expect that liability damage awards will mount as basic maintenance
5 is ignored and traffic accidents, injuries and deaths increase; and

6 **WHEREAS**, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state
7 overwhelmingly imposed restriction on the state’s ability to do what the Governor has proposed, and
8 any effort to permanently divert the local share of the gas tax would violate the state constitution and
9 the will of the voters; and

10 **WHEREAS**, cities and counties maintain 81% of the state road network while the state
11 directly maintains just 8%; and

12 **WHEREAS**, ongoing street maintenance is a significant public safety concern. A city’s failure
13 to maintain its street pavement (potholes filling, sealing, overlays, etc.), traffic signals, signs, and
14 street lights has a direct correlation to traffic accidents, injuries and deaths; and

15 **WHEREAS**, according to a recent statewide needs assessment¹ on a scale of zero (failed) to
16 100 (excellent), the statewide average pavement condition index (PCI) is 68, or “at risk.” Local streets
17 and roads will fall to “poor” condition (Score of 48) by 2033 based on existing funding levels
18 available to cities and counties.

19 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**
20 **RESOLVE AS FOLLOWS:**

21 **Section 1.** Council directs the City Attorney to take all necessary steps to cooperate with the
22 League of California Cities, other cities and counties in supporting litigation against the state of
23 California if the legislature enacts and the governor signs into law legislation that unconstitutionally
24 _____

25 ¹ *California Statewide Local Streets and Roads Needs Assessment*, Nichols Consulting Engineers, Chtd. (2008), sponsored
26 by the League of California Cities, California State Association of Counties and County Engineers Association of
27 California.
28

1 diverts the City’s share of funding from the Highway Users Tax Account (HUTA), also known as the
2 “gas tax,” to fund the state general fund.

3 **Section 2.** The City Manager is directed to send a certified copy of this resolution with an
4 accompanying letter from the Mayor to the Governor and each of the City’s legislative
5 representatives, informing them of the City’s resolve to oppose any effort to frustrate the will of the
6 electorate as expressed in Proposition 5 (1974) and Proposition 8 (1998) concerning the proper use
7 and allocation of the gas tax.

8 **Section 3.** The City Clerk is directed to send a certified copy of this Resolution to the
9 League of California Cities and to Concord Greater Chamber of Commerce, advising of the proposed
10 takeaway of HUTA funding and the City’s resolve to oppose such action.

11 **Section 4.** This resolution shall become effective immediately upon its passage and adoption.

12 **PASSED AND ADOPTED** by the City Council of the City of Concord on June 22, 2009, by
13 the following vote:

- 14 **AYES:** Councilmembers -
- 15 **NOES:** Councilmembers -
- 16 **ABSTAIN:** Councilmembers -
- 17 **ABSENT:** Councilmembers -

18 **I HEREBY CERTIFY** that the foregoing Resolution No. 09-54 was duly and regularly
19 adopted at a regular joint meeting of the City Council and the Redevelopment Agency of the City of
20 Concord on June 22, 2009.

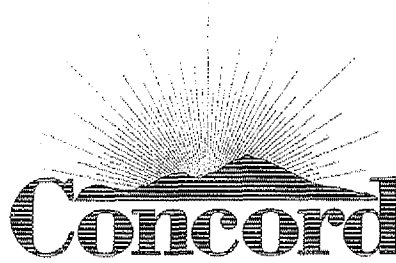
22 _____
Mary Rae Lehman, CMC
City Clerk

23 **APPROVED AS TO FORM:**

24
25 _____
26 Craig Labadie
City Attorney

CITY OF CONCORD
1950 Parkside Drive, MS/01
Concord, California 94519-2578
FAX: (925) 798-0636

OFFICE OF THE MAYOR
Telephone: (925) 671-3158



CITY COUNCIL
Laura M. Hoffmeister, Mayor
Guy S. Bjerke, Vice Mayor
Helen M. Allen
Mark A. Peterson
William D. Shinn

Mary Rae Lehman, City Clerk
Thomas J. Wentling, City Treasurer
Daniel E. Keen, City Manager

June 17, 2009

The Honorable Noreen Evans
Chair, Budget Conference Committee
California State Assembly
State Capitol
Sacramento, CA 95814

Opposition to Local Gas Tax Fund Diversion

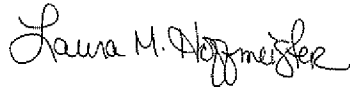
Dear Chair Evans:

The City of Concord strongly urges you to reject the Schwarzenegger Administration's proposed diversion of local gasoline tax funds to the General Fund to cover transportation-related debt service costs. For FY 2009-10, the Administration proposes diverting \$986 million in funds that cities and counties rely upon to fund their public works programs, including staffing costs. This redirection of funds would lead to thousands of job losses statewide and put an immediate halt on local transportation improvements across the state. To make matters worse, this funding cut would be compounded by a loss of federal funds provided through the American Recovery and Reinvestment Act if cities and counties are unable to provide the required local match or cover their staffing costs.

For the City of Concord, the proposal translates into about a \$2.0 million hit, just one month before the beginning of the fiscal year. This \$2.0 million hit represents 60% of street funding per year that the City of Concord relies upon for maintenance of its street system. The City of Concord would have to layoff 8 to 10 City staff if this revenue stream is discontinued. The impact on our ability to maintain our street system is magnified because there is a corresponding loss in our ability to apply for federal grants using the gas tax as a local match. Even without this diversion of funds, our state's local streets and roads are already close to the tipping point, where major rehabilitation – costing more than five times as much as regular maintenance – will be necessary. In the San Francisco Bay Area alone, we are underfunding our local streets and roads by roughly \$250 million per year.

We know the state faces immense budget challenges, but we implore you to find a better way to balance the budget than continued raids on the state's infrastructure programs.

Sincerely,



Laura M. Hoffmeister
Mayor, City of Concord

cc: Members, Budget Conference Committee

The Honorable Robert Blumenfield,
State Capitol, Room 3132, Sacramento, CA 95814
The Honorable Denise Ducheny,
State Capitol, Room 5035, Sacramento, CA 95814
The Honorable Bob Dutton,
State Capitol, Room 5094, Sacramento, CA 95814
The Honorable Kevin de Leon,
State Capitol, Room 2114, Sacramento, CA 95814
The Honorable Mark Leno,
State Capitol, Room 4061, Sacramento, CA 95814
The Honorable Alan Lowenthal,
State Capitol, Room 2032, Sacramento, CA 95814
The Honorable Roger Niello,
State Capitol, Room 6027, Sacramento, CA 95814
The Honorable Jim W. Nielson,
State Capitol, Room 6031, Sacramento, CA 95814
The Honorable Mimi Walters,
State Capitol, Room 3082, Sacramento, CA 95814
Members, San Francisco Bay Area Delegation, State Capitol, Sacramento, CA 95814
The Honorable Darrell Steinberg, Senate President Pro Tempore,
State Capitol, Room 205, Sacramento, CA 95814
The Honorable Karen Bass, Speaker, California State Assembly
State Capitol, Room 219, Sacramento, CA 95814
The Honorable Dennis Hollingsworth, Minority Leader, California State Senate
State Capitol, Room 305, Sacramento, CA 95814
The Honorable Sam Blakeslee, Minority Leader, California State Assembly,
State Capitol, Room 4117, Sacramento, CA 95814
Michael C. Genest, Director, Department of Finance,
915 L Street, Sacramento, CA 95814
DeAnn Baker, California State Association of Counties,
1100 K Street, Suite 101, Sacramento, CA 95814
Jennifer Whiting, League of California Cities,
1400 K Street, Suite 400, Sacramento, CA 95814

The Honorable Noreen Evans

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Senator Mark DeSaulnier, 1350 Treat Blvd., Suite 240, Walnut Creek, CA 94597

Assemblyman Tom Torlakson, 815 Estudillo St., Martinez, CA 94553

Members of the City Council

Mary Rae Lehman, City Clerk

Joe Gonsalves & Sons, 925 L Street, Suite 250, Sacramento, CA 95814

Eric Figueroa, Regional Representative, East Bay Division – League of California
Cities, P.O. Box 901, San Leandro, CA 94577