



**METROPOLITAN
TRANSPORTATION
COMMISSION**

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Memorandum

TO: Legislation Committee

DATE: March 12, 2010

FR: Executive Director

WI: 1131

RE: Gasoline/Diesel Sales Tax/Excise Tax Swap

Background

On March 4, 2010, the California Legislature approved a complex gasoline and diesel tax swap that fundamentally restructures California's system of transportation finance. AB x8 6 and AB x8 9 of the Eighth Extraordinary Session are a modified version of the Governor's January budget proposal, which called for the elimination of the statewide sales tax on diesel and gasoline fuels and only partial replacement of that revenue source through new excise taxes. The bills currently sit on the Governor's desk and must be acted upon by March 20, or they automatically become law.

The chief purpose of the proposal is to provide immediate and ongoing support to the state's General Fund, which currently faces a \$20 billion deficit between now and FY 2010-11. The Legislature's approach differs from the Governor's budget on a number of counts:

- It is revenue neutral, whereas the Governor's proposal would have lowered taxes at the pump by about 5-cents per gallon, resulting in a net loss of about \$900 million.
- It retains and raises the diesel sales tax by 1.75 percent to provide an ongoing source of state funding for public transportation.

Public Transit Bears the Brunt of General Fund Savings

The proposal would provide the General Fund with approximately \$1.3 billion in FY 2010-11 by shifting the cost of transportation debt service from the General Fund to transportation funds. Over the next ten years, relieving the General Fund of its transportation debt service obligations results in approximately \$11 billion in General Fund savings. While the overall tax swap is revenue neutral by design (in order to allow for passage by a simple majority vote), public transit loses over \$1 billion annually due to the elimination of the sales tax on gasoline, as discussed in greater detail below. An earlier version of the proposal included a regional motor fuel air quality mitigation fee option — subject to voter approval — that had the potential at least to partially backfill for this loss. Unfortunately, this provision was removed due to opposition by the Schwarzenegger administration.

Mechanics of the Tax Swap

The tax swap, contained in AB x8 6, affects four different taxes — the state sales tax on gasoline, the excise tax on gasoline, the state sales tax on diesel, and the excise tax on diesel.

It works as follows:

- Beginning on July 1, 2010, eliminates the six percent statewide sales tax on gasoline, and with it, the funding source for Proposition 42, the 2003 constitutional amendment that required gasoline sales taxes to go to transportation, and “the spillover,” a funding formula dedicated to public transit.¹
- Raises the excise tax on gasoline by 17.3-cents on July 1, 2010, for a total excise tax of 35.3 cents per gallon. Starting March 1, 2011, and each March 1st thereafter, authorizes the State Board of Equalization to estimate how much revenue would have been raised by the sales tax on gasoline and adjust the gasoline excise tax to raise an equivalent amount.
- Effective July 1, 2011, raises the sales tax rate on diesel fuel dedicated to public transit by 1.75 percent (for a total of 6.5 percent) to generate \$120 million per year for the Public Transportation Account (PTA).
- Offsets this sales tax rate increase by lowering the diesel excise tax from 18 cents to 13.6 cents per gallon effective July 1, 2011.

This memo provides additional details on the legislation and analyzes its impact on Bay Area transportation infrastructure and services.

Impact on Public Transit

The elimination of the sales tax on gasoline results in the loss of three sources of PTA funds — the spillover, 20 percent of Proposition 42 funds, and the sales tax on the first nine cents of the gasoline excise tax (commonly referred to as the “Proposition 111 portion”). As shown below, the spillover and Proposition 42 revenue streams fluctuate considerably.

Public Transit Revenue Sources Eliminated by Tax Swap Proposal

(Dollars in millions)

	FY 2008-09	FY 2009-10	FY 2010-11
Spillover	\$1,027	\$620	\$897
Proposition 42	\$270	\$284	\$315
Sales tax on Proposition 111 (9-cents of gas tax)	\$64	\$63	\$61
Total	\$1,361	\$967	\$1,273

While statutes direct these funds to the PTA and voter-approved initiatives provide a degree of protection to the PTA as a “trust fund,” in recent years the Legislature simply amended the statutes to redirect the funds elsewhere or used them to cover questionable “public transit” expenditures, such as K-12 school bus service and transportation to regional centers for the Department of Developmental Services. The California Transit Association (CTA) successfully challenged these practices in court and the California Supreme Court upheld the appeals court ruling in September 2009. With this ruling in hand, coupled with a statewide ballot measure — the Local Taxpayer, Public Safety and Transportation Protection Act, pending for the November 2010 ballot — it appeared that this revenue stream had a good chance of being secured. Nevertheless, the initiative was not drafted to explicitly

¹ The Spillover is a funding trigger contained in Revenue & Taxation Code Section 7102 which provides that whenever the state sales tax on all goods at the 5.75% rate exceeds the sales tax on all goods, excluding gasoline, at the 6% rate, the difference is the “spillover” and shall be deposited in the Public Transportation Account.

require that the existing fund sources be maintained in perpetuity. The tax swap legislation essentially nullifies the intent of the proposed ballot measure by repealing the fund source it seeks to protect.

A Loss of Potential Windfalls, But Improved Stability & Double Average STA Funding

The tax swap represents a significant loss relative to “what could have been,” but not relative to what was. The proposal eliminates the upside potential for public transit to receive funding windfalls, such as what occurred in FY 2006-07 when the State Transit Assistance (STA) program received an unprecedented \$624 million due to high gasoline prices that led to a \$668 million spillover that year. On the other hand, by limiting public transit to the sales tax on diesel fuel, the package could provide significantly greater stability to public transit funding and less temptation to divert funds due to sudden windfalls in the spillover. While not required by statute and still subject to appropriation on an annual basis, legislative staff’s estimate that the package will enable an STA program of at least \$350 million per year appears reasonable. When compared to the status quo or historic funding levels, this is a significant improvement. As part of the FY 2009-10 budget, the Legislature suspended the STA program altogether through FY 2012-13, resulting in *zero* state support for public transit for the next three years. Looking back over the last ten years, STA averaged \$150 million per year, excluding the FY 2006-07 outlier year, as shown in Attachment A.

\$400 Million STA Appropriation

AB x8 9 appropriates \$400 million to STA in FY 2009-10. Transit agencies will be able to access this funding no sooner than July 2010, as the law does not go into effect until 90 days after the special session is closed. Beginning in FY 2011-12, 75 percent of PTA revenue is directed to STA for a statewide STA program of approximately \$350 million, and growing annually thereafter depending on diesel sales tax revenues. For the Bay Area, this will provide approximately \$146 million in FY 2010-11 and another \$128 million in FY 2012. For details on the specific amounts by operator, see Attachment B. AB x8 9 also appropriates \$142 million in PTA funds to offset the cost of public transit bond debt service in FY 2009-10 and another \$254 million for FY 2010-11.

How Will New Gasoline Excise Tax Be Spent?

ABx8 9 provides for the new gasoline excise tax revenue to be distributed as follows:

- Fund highway-related transportation bond debt service as the first priority from the new gasoline excise tax increase. In 2010-11 about \$1.2 billion would go to debt service, and this amount would grow annually and peak at approximately \$1.3 billion in FY 2017-18.
- In FY 2010-11 only, split the funds available after debt service 50/50 between the STIP and local streets and roads.
- Beginning in FY 2011-12, split the balance remaining after debt service as follows:
 - 44 percent to STIP projects
 - 44 percent to local streets and roads
 - 12 percent to the State Highway Operation and Protection Program (SHOPP)

Legislation Designed to Hold Local Streets and Roads & the STIP “Harmless”

Under Proposition 42, local streets and roads and the State Transportation Improvement Program (STIP) each received 40 percent of revenues, with the remainder allocated to public transit. Under the new framework, funding for local streets and roads and the STIP will depend not only on the overall revenue stream — which will continue to depend on gasoline prices and consumption — but also on how much is set aside for debt service “off the top.” An earlier version of the proposal, which

provided the STIP with 30 percent and local streets and roads with 40 percent, would have resulted in a net loss to both categories. However, estimates provided by the Senate Budget & Fiscal Review Committee indicate that at the 44 percent level, each category receives a boost in funding relative to Proposition 42. For Bay Area local streets and roads, the swap results in an additional \$500,000 region-wide in FY 2010-11, growing potentially to a \$20 million gain in FY 2011-12. For the STIP, it results in a net gain of \$407,000 region-wide in FY 2010-11, growing to an expected \$15 million gain in FY 2011-12. For revenue estimates for each Bay Area jurisdiction, see Attachment C.

The State Highway and Protection Program (SHOPP)

The State Highway Operation and Protection Program (SHOPP) gains additional revenue as it will receive 12 percent of the new excise tax remaining after debt service. According to the state's 10-Year SHOPP plan, current funding levels for the SHOPP are less than half of what is needed to maintain the system in a state of good repair. Given this shortfall, the Legislature took the opportunity to provide it with approximately \$190 million in additional funds beginning in FY 2011-12 and growing annually thereafter. As the SHOPP is developed on a needs-basis, there is no "formula" to calculate a Bay Area share for the long term.

Reaction to Proposal

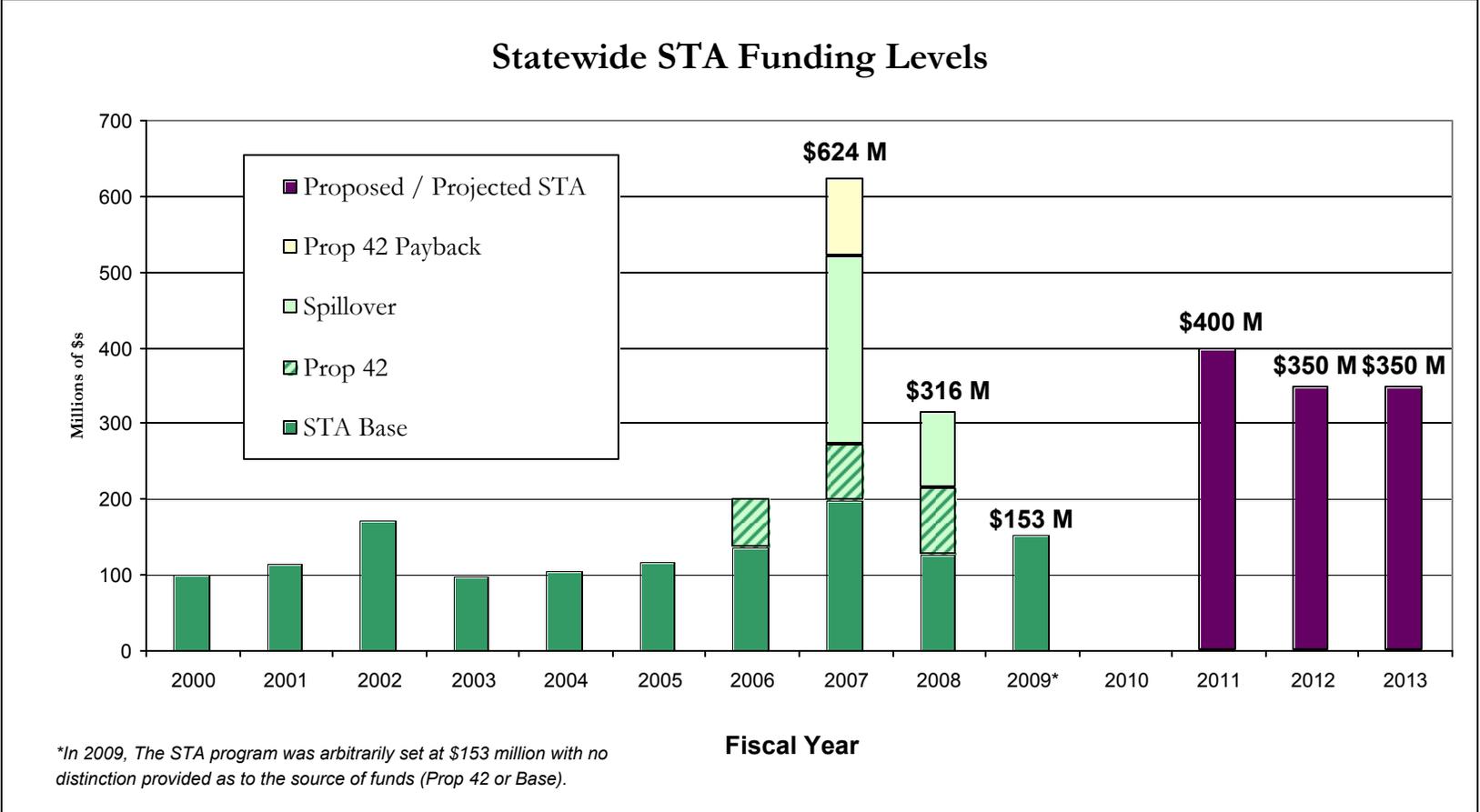
The transportation industry is generally supportive of the proposal, including the California Alliance for Jobs and other industry groups. While the California Transit Association officially opposes the overall swap, it supports the \$400 million appropriation of STA funds in FY 2010-11 and is grateful that the Legislature maintains state support for public transit by not only retaining, but *raising* the diesel sales tax. The railroad industry, however, has raised an objection due to the fact that they are currently exempt from the diesel excise tax so the sales tax rate increase they would have to pay is not offset by the reduction in the diesel excise tax. The railroad industry has estimated this to cost them roughly \$15 million per year and is seeking an exemption from the rate increase. Other industries that are exempt from the diesel excise tax include terminal operators and off-road vehicles. Similar to the railroad industry, these parties are also seeking an exemption from the tax increase. At the time this memo was prepared, there was no reliable estimate for the total revenue hit to PTA if all entities exempt from the diesel excise tax were also exempted from the higher sales tax rate.

Regional Fee Idea May Be Reintroduced Later This Year

At your direction, MTC's support for this package was contingent upon the inclusion of a voter-approved regional motor fuel fee option to help backfill for the significant loss in public transit funding. While this element was removed due to Administration objections, Senate President Pro Tempore Darrell Steinberg and Senator Alan Lowenthal have expressed their strong desire to reintroduce the idea in a separate bill later this session. We will continue to advocate for this original element of the proposal and keep you apprised of any progress.



Steve Heminger



Tax Swap Handout
Attachment B

SAN FRANCISCO BAY AREA POTENTIAL STA FUNDING FROM AB/SB X8 6

STATE TRANSIT ASSISTANCE	<i>FY 2009-10 & 2010-11</i>	<i>FY 2011-12</i>
STATEWIDE REVENUE	\$ 400,000,000	\$ 350,000,000
MTC REVENUE-BASED FUNDING	\$ 108,232,749	\$ 94,703,655
Apportionment Jurisdictions		
AC Transit	\$ 13,061,448	\$ 11,428,767
ACE	\$ 418,050	\$ 365,794
BART	\$ 26,216,459	\$ 22,939,401
Benicia	\$ 18,245	\$ 15,964
Caltrain	\$ 5,131,112	\$ 4,489,723
Central Contra Costa Transit Authority (County Connection)	\$ 586,740	\$ 513,397
Dixon	\$ 5,259	\$ 4,601
Eastern Contra Costa Transit Authority (TriDelta)	\$ 261,798	\$ 229,073
Fairfield	\$ 110,580	\$ 96,757
Golden Gate Bridge, Highway and Transit District	\$ 4,213,035	\$ 3,686,406
Healdsburg	\$ 3,811	\$ 3,335
Livermore-Amador Transit (LAVTA)	\$ 201,023	\$ 175,895
Napa Transit Services	\$ 41,140	\$ 35,997
Rio Vista	\$ 1,311	\$ 1,147
SamTrans	\$ 5,222,402	\$ 4,569,601
San Francisco MTA	\$ 35,957,211	\$ 31,462,560
Santa Rosa	\$ 138,117	\$ 120,852
Sonoma County Transit	\$ 160,199	\$ 140,175
Union City	\$ 35,427	\$ 30,998
Vallejo	\$ 658,003	\$ 575,753
Valley Transportation Authority	\$ 15,505,344	\$ 13,567,176
Western Contra Costa Transit Authority (WestCAT)	\$ 286,036	\$ 250,281
REVENUE BASED AMOUNT	\$ 108,232,749	\$ 94,703,655
POPULATION BASED AMOUNT	\$ 38,365,036	\$ 33,569,407
BAY AREA STA TOTAL	\$ 146,597,785	\$ 128,273,062

SAN FRANCISCO BAY AREA POTENTIAL STA FUNDING FROM AB/SB X8 6

STATE TRANSIT ASSISTANCE	FY 2009-10 & 2010-11	FY 2011-12
<i>Statewide STA Funding</i>	<i>\$ 400,000,000</i>	<i>\$ 350,000,000</i>
MTC POPULATION-BASED FUNDING	\$ 38,365,036	\$ 33,569,407
Apportionment Jurisdictions		
Northern Counties/Small Operators		
Marin	\$ 1,152,454	\$ 1,008,397
Napa	\$ 612,049	\$ 535,543
Solano	\$ 1,910,669	\$ 1,671,836
Sonoma	\$ 2,148,730	\$ 1,880,139
CCCTA	\$ 2,218,251	\$ 1,940,970
ECCTA	\$ 1,297,410	\$ 1,135,234
LAVTA	\$ 899,875	\$ 787,390
Union City	\$ 328,671	\$ 287,587
WestCAT	\$ 312,703	\$ 273,615
Vallejo	\$ -	\$ -
SUBTOTAL	\$ 10,880,812	\$ 9,520,710
Regional Paratransit		
Alameda	\$ 1,392,253	\$ 1,218,222
Contra Costa	\$ 719,484	\$ 629,549
Marin	\$ 160,740	\$ 140,647
Napa	\$ 104,970	\$ 91,849
San Francisco	\$ 1,099,221	\$ 961,818
San Mateo	\$ 608,642	\$ 532,562
Santa Clara	\$ 1,261,041	\$ 1,103,411
Solano	\$ 299,438	\$ 262,008
Sonoma	\$ 332,919	\$ 291,305
SUBTOTAL	\$ 5,978,708	\$ 5,231,370
Lifeline		
Alameda	\$ 3,069,147	\$ 2,685,503
Contra Costa	\$ 1,400,158	\$ 1,225,138
Marin	\$ 302,434	\$ 264,630
Napa	\$ 190,422	\$ 166,619
San Francisco	\$ 1,691,391	\$ 1,479,967
San Mateo	\$ 795,290	\$ 695,879
Santa Clara	\$ 2,430,675	\$ 2,126,840
Solano	\$ 616,070	\$ 539,061
Sonoma	\$ 705,680	\$ 617,470
SUBTOTAL	\$ 11,201,265	\$ 9,801,107
BART to Warm Springs	\$ -	\$ -
eBART	\$ -	\$ -
SamTrans	\$ -	\$ -
MTC Regional Coordination Program	\$ 10,304,251	\$ 9,016,220
POPULATION BASED GRAND TOTAL	\$ 38,365,036	\$ 33,569,407

**Tax Swap Handout
Attachment C**

IMPACT OF AB x8 6 & AB x8 9 SALES TAX SWAP ON STREET AND ROADS FUNDING

(Dollars in Thousands)

	FY 2010-11			FY 2011-12		
	Proposition 42	Swap Estimate	Change	Proposition 42	Swap Estimate	Change
STATEWIDE STREETS & ROADS FUNDING	629,200	632,284	3,084	586,000	699,600	113,600
BAY AREA		111,705	545			
DISTRIBUTIONS TO COUNTIES	45,523	45,746	223	42,397	50,616	8,219
DISTRIBUTIONS TO CITIES	65,637	65,959	322	61,131	72,981	11,851
Total	\$ 111,160	\$ 111,705	\$ 545	\$ 103,528	\$ 123,598	\$ 20,070
DISTRIBUTIONS TO COUNTIES						
Alameda	7,816	7,855	38	7,280	8,691	1,411
Contra Costa	6,473	6,505	32	6,029	7,197	1,169
Marin	2,181	2,191	11	2,031	2,425	394
Napa	1,651	1,659	8	1,537	1,835	298
San Francisco	4,335	4,356	21	4,038	4,820	783
San Mateo	4,641	4,664	23	4,322	5,160	838
Santa Clara	9,675	9,722	47	9,010	10,757	1,747
Solano	3,295	3,311	16	3,069	3,664	595
Sonoma	5,456	5,483	27	5,082	6,067	985
Region	45,523	45,746	223	42,397	50,616	8,219
DISTRIBUTIONS TO THE CITIES						
ALAMEDA						0
ALAMEDA	763	767	4	711	848	138
ALBANY	170	171	1	158	189	31
BERKELEY	1,078	1,083	5	1,004	1,199	195
DUBLIN	442	444	2	412	492	80
EMERYVILLE	93	93	0	87	103	17
FREMONT	2,146	2,156	11	1,998	2,386	387
HAYWARD	1,499	1,506	7	1,396	1,667	271
LIVERMORE	840	844	4	782	934	152
NEWARK	443	445	2	413	493	80
OAKLAND	4,212	4,233	21	3,923	4,684	761
PIEDMONT	112	113	1	104	125	20

Tax Swap Handout

Attachment C

PLEASANTON	697	700	3	649	775	126
SAN LEANDRO	826	830	4	769	918	149
UNION CITY	733	737	4	683	815	132
COUNTY TOTAL	14,054	14,123	69	13,089	15,626	2,537
CONTRA COSTA						
ANTIOCH	1,015	1,020	5	946	1,129	183
BRENTWOOD	496	498	2	462	551	90
CLAYTON	109	110	1	102	122	20
CONCORD	1,252	1,258	6	1,166	1,392	226
DANVILLE	432	434	2	402	480	78
EL CERRITO	235	236	1	219	261	42
HERCULES	243	244	1	226	270	44
LAFAYETTE	243	244	1	226	270	44
MARTINEZ	367	369	2	342	408	66
MORAGA	164	165	1	153	182	30
OAKLEY	323	325	2	301	360	58
ORINDA	178	178	1	165	197	32
PINOLE	195	196	1	182	217	35
PITTSBURG	639	642	3	595	710	115
PLEASANT HILL	336	337	2	313	373	61
RICHMOND	1,053	1,058	5	980	1,170	190
SAN PABLO	314	315	2	292	349	57
SAN RAMON	588	591	3	548	654	106
WALNUT CREEK	663	666	3	617	737	120
COUNTY TOTAL	8,845	8,888	43	8,237	9,834	1,597
MARIN						
BELVEDERE	22	22	0	20	24	4
CORTE MADERA	96	96	0	89	107	17
FAIRFAX	75	75	0	70	83	13
LARKSPUR	123	123	1	114	137	22
MILL VALLEY	140	141	1	131	156	25
NOVATO	531	534	3	495	591	96
ROSS	24	24	0	22	27	4
SAN ANSELMO	127	128	1	118	141	23
SAN RAFAEL	588	591	3	548	654	106
SAUSALITO	76	76	0	70	84	14

Tax Swap Handout

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TIBURON	90	90	0	84	100	16
COUNTY TOTAL	1,892	1,901	9	1,762	2,104	342
NAPA						
AMERICAN CANYON	163	163	1	151	181	29
CALISTOGA	54	54	0	50	60	10
NAPA	781	784	4	727	868	141
ST HELENA	61	61	0	57	68	11
YOUNTVILLE	33	34	0	31	37	6
COUNTY TOTAL	1,091	1,096	5	1,016	1,213	197
SAN FRANCISCO						
SAN FRANCISCO	8,200	8,240	40	7,637	9,118	1,480
COUNTY TOTAL	8,200	8,240	40	7,637	9,118	1,480
SAN MATEO						
ATHERTON	75	76	0	70	84	14
BELMONT	263	264	1	245	292	47
BRISBANE	38	39	0	36	43	7
BURLINGAME	291	292	1	271	323	52
COLMA	16	16	0	15	18	3
DALY CITY	1,076	1,082	5	1,002	1,197	194
EAST PALO ALTO	331	332	2	308	368	60
FOSTER CITY	307	308	2	286	341	55
HALF MOON BAY	131	132	1	122	146	24
HILLSBOROUGH	113	113	1	105	125	20
MENLO PARK	316	317	2	294	351	57
MILLBRAE	213	214	1	198	236	38
PACIFICA	398	400	2	371	442	72
PORTOLA VALLEY	47	47	0	44	52	8
REDWOOD CITY	781	785	4	727	868	141
SAN BRUNO	427	429	2	398	475	77
SAN CARLOS	290	292	1	270	323	52
SAN MATEO	968	973	5	902	1,077	175
SOUTH SAN FRANCISCO	635	638	3	591	706	115
WOODSIDE	56	57	0	53	63	10
COUNTY TOTAL	6,772	6,805	33	6,307	7,529	1,223

**Tax Swap Handout
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SANTA CLARA						
CAMPBELL	403	405	2	375	448	73
CUPERTINO	559	562	3	521	622	101
GILROY	503	506	2	469	560	91
LOS ALTOS	285	286	1	265	317	51
LOS ALTOS HILLS	87	88	0	81	97	16
LOS GATOS	298	300	1	278	331	54
MILPITAS	675	678	3	629	750	122
MONTE SERENO	36	36	0	34	40	7
MORGAN HILL	389	391	2	363	433	70
MOUNTAIN VIEW	743	746	4	692	826	134
PALO ALTO	635	638	3	591	706	115
SAN JOSE	9,871	9,919	48	9,193	10,976	1,782
SANTA CLARA	1,158	1,164	6	1,079	1,288	209
SARATOGA	318	320	2	296	354	57
SUNNYVALE	1,376	1,383	7	1,281	1,530	248
COUNTY TOTAL	17,337	17,422	85	16,147	19,277	3,130
SOLANO						
BENICIA	283	284	1	264	315	51
DIXON	179	180	1	167	199	32
FAIRFIELD	1,069	1,074	5	995	1,188	193
RIO VISTA	79	80	0	74	88	14
SUISUN CITY	284	285	1	264	315	51
VACAVILLE	978	983	5	911	1,088	177
VALLEJO	1,231	1,237	6	1,146	1,369	222
COUNTY TOTAL	4,103	4,123	20	3,821	4,562	741
SONOMA						
CLOVERDALE	86	87	0	80	96	16
COTATI	76	77	0	71	85	14
HEALDSBURG	119	119	1	111	132	21
PETALUMA	578	581	3	538	642	104
ROHNERT PARK	436	438	2	406	484	79
SANTA ROSA	1,602	1,609	8	1,492	1,781	289
SEBASTOPOL	79	79	0	73	87	14
SONOMA	101	101	0	94	112	18

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WINDSOR	268	269	1	250	298	48
COUNTY TOTAL	3,344	3,360	16	3,114	3,718	604
			0			0
BAY AREA TOTAL	\$65,637	\$65,959	\$ 322	\$61,131	\$72,981	11,851
TOTAL DISTRIBUTIONS TO COUNTIES						
Alameda	21,870	21,978	107	20,369	24,317	3,949
Contra Costa	15,318	15,393	75	14,266	17,031	2,766
Marin	4,073	4,093	20	3,793	4,528	735
Napa	2,742	2,755	13	2,553	3,048	495
San Francisco	12,535	12,597	61	11,675	13,938	2,263
San Mateo	11,413	11,468	56	10,629	12,689	2,061
Santa Clara	27,012	27,144	132	25,157	30,034	4,877
Solano	7,398	7,434	36	6,890	8,226	1,336
Sonoma	8,800	8,843	43	8,196	9,785	1,589
Region	\$111,160	\$111,705	\$545	\$103,528	\$123,598	\$20,070

STIP Revenue

Numbers in Thousands

	FY 2010-11			FY 2011-12		
	Proposition 42	Swap Estimate	Change	Proposition 42	Swap Estimate	Change
	629,200	632,284	3,084	586,000	699,600	113,600
Regional Improvement Program (75%)	471,900	474,213	2,313	439,500	524,700	85,200
Interregional Improvement Program (25%)	157,300	158,071	771	146,500	174,900	28,400
			-			-
Total Annual Bay Area RTIP Funding			-			-
Alameda	17,133	17,217	84	15,956	19,050	3,093
Contra Costa	11,100	11,155	54	10,338	12,342	2,004
Marin	3,245	3,260	16	3,022	3,608	586
Napa	2,013	2,022	10	1,874	2,238	363
San Francisco	8,765	8,808	43	8,163	9,746	1,583
San Mateo	9,097	9,141	45	8,472	10,114	1,642
Santa Clara	20,066	20,164	98	18,688	22,311	3,623
Solano	5,253	5,279	26	4,893	5,841	948
Sonoma	6,399	6,430	31	5,959	7,115	1,155
Region	83,069	83,477	407	77,366	92,364	14,998