

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME	: 11:00 a.m. 11/30/07	DEPT. NO	: 20
JUDGE	: HON. JACK SAPUNOR	CLERK	: TEMMERMAN
JOSH SHAW, Taxpayer and Executive Director of California Transit Association; and the CALIFORNIA TRANSIT ASSOCIATION, a nonprofit corporation, Petitioners, VS. JOHN CHIANG, California State Controller; and MICHAEL C. GENEST, California Director of Finance, in their official capacity, Respondents.		Case No.: 07CS01179	
Nature of Proceedings:		PETITION FOR WRIT OF MANDATE, DECLARATORY RELIEF, INJUNCTION AND ATTORNEYS' FEES; FINAL STATEMENT OF DECISION	

Having received and reviewed the parties' respective objections to the Court's proposed Statement of Decision, and the Court having overruled all objections except Respondents' objections nos. 20, 27, and 28 pertaining to the total amount of PTA funds at issue, the Court affirms its proposed Statement of Decision, as modified to reflect the total amount of PTA funds at issue and to reflect that the \$409,000,000 previously was transferred from the PTA to the General Fund, and issues the following Final Statement of Decision.

**I.
Introduction**

This petition for writ of mandate and complaint for declaratory and injunctive relief ("Petition") challenges appropriations in the 2007-08 state budget act and related trailer bills. Petitioners' principal argument is that the challenged legislation violates Public Utilities Code § 99310 5 and Revenue and Taxation Code § 7102(a)(1)-(3), as amended by Proposition 116, because it diverts \$1,187,909,982 from the Public Transportation Account (the "PTA") for purposes other than "transportation planning or mass transportation." Petitioners further allege that the legislation is unconstitutional because it uses PTA revenues to fund the State's obligation to repay the Transportation Investment Fund for prior suspensions of transfers of gasoline sales tax revenues, as constitutionally required by Propositions 2 and 1A. The Petition seeks a writ of mandate and/or injunction prohibiting Respondents from diverting the challenged appropriations from the PTA; a declaration that use of PTA funds for the purposes set forth in the challenged legislation would violate Proposition 116 (and Propositions 2 and 1A); and an injunction

enjoining the future use of PTA revenues except for transportation planning and mass transportation purposes.

As described more fully below, this case requires the Court to decide whether the challenged legislation is constitutionally invalid as an act in excess of the Legislature's powers. The Court's role as a reviewing court is simply to ascertain and give effect to the voters' intent. The Court does not pass upon the wisdom, expediency, or policy of the ballot measures or of the 2007-08 state budget act and related trailer bills. Even if legislation is unwise, inexpedient, or bad public policy, it still may be within the Legislature's constitutional authority. Moreover, in considering the constitutionality of a legislative act, the Court must presume its validity. Unless conflict with a provision of the Constitution is clear and unquestionable, the Court must uphold the act.

Applying these principles here, the Court concludes that the majority of the challenged appropriations are allowed. However, the Court concludes that the appropriation of \$409,000,000 in PTA funds to reimburse the General Fund for debt service payments on bonds made in prior fiscal years violates Proposition 116, and is beyond the Legislature's constitutional authority.

II.

Background Facts

A. Summary of Background Legislation

This case requires an understanding of the history of several ballot measures approved prior to the legislation challenged in this lawsuit: namely, Proposition 108, Proposition 111, Proposition 116, Proposition 192, Proposition 2, Proposition 42, and Proposition 1A. A brief history of these measures is set forth below.

In June 1990, California's voters approved Propositions 108, 111, and 116. Proposition 108 is known as the Passenger Rail and Clean Air Bond Act of 1990, and is codified at Streets & Highway Code section 2701 *et seq.* It authorizes the sale of \$1 billion in general obligation bonds for the acquisition of rights-of-way, capital expenditures, and acquisition of rolling stock for intercity rail, commuter rail, and urban rail transit and for capital improvements which directly support rail transportation. (Sts. & Hy. Code §§ 2701.06, 2701 10, 2701.15.)

Proposition 116, an initiative measure, is known as the Clean Air and Transportation Improvement Act of 1990. Proposition 116 authorizes the sale of \$1.99 billion in general obligation bonds primarily for "rail projects," including rights-of-way, terminals and stations, rolling stock, grade separations, maintenance facilities, capital expenditures, but also for paratransit vehicles, bicycle facilities, a railroad museum, and water-borne ferry vessels and facilities. (Pub. Util. Code §§ 99690.5, 99613.)

In addition to authorizing the sale of bonds, Proposition 116 also added Public Utilities Code section 99611. Section 99611 provides, in relevant part:

"It is the intent of the people of California, in enacting this part, that bond funds shall not be used to displace existing sources of funds for rail and other forms of public transportation, including, but not limited to, funds that have been provided pursuant to Article XIX of the California Constitution, the Transportation Planning and Development Account in the State Transportation Fund . . . and local transportation sales taxes; that any future comprehensive transportation funding legislation shall not offset or reduce the amounts otherwise made available for transit purposes by this act; and that funding for public transit should be increased from existing sources including fuel taxes and sales tax on fuels." (Pub. Util. Code § 99611.)

Proposition 116 also amended Public Utilities Code section 99310.5. Section 99310.5 governs the use of funds in the Transportation Planning and Development Account, which is now known as the Public Transportation Account (or PTA). (See Pub. Util. Code § 99310.) Prior to 1990, Public Utilities Code section 99310.5 provided that funds in the PTA "shall be available, when appropriated by the Legislature, for transportation purposes as specified." Proposition 116 amended section 99310.5 to designate the PTA as a "trust fund" and to provide that funds in the account shall be available "only for transportation planning and mass transportation purposes, as specified by the Legislature." (*Id.*)

Proposition 116 also amended Revenue and Taxation Code section 7102. Section 7102 governs the disposition of state sales and use tax revenues after they are deposited into the Retail Sales Tax Fund. As amended by Proposition 116, section 7102 requires the State to quarterly estimate the "spillover" and "diesel fuel sales tax" revenues and transfer such amounts to the PTA.¹ In addition, Proposition 116 added section 7102, subdivision (d) [now subdivision (e)], providing that the "Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section."

Proposition 111 is known as the "The Traffic Congestion Relief and Spending Limitation Act of 1990." It is undisputed that Proposition 111 increased the gas excise tax by (ultimately) nine cents per gallon. It also is undisputed that Proposition 111 required the sales tax revenues on this incremental increase in the gas excise tax to be transferred quarterly to the PTA.

In 1996, the voters approved Proposition 192. Proposition 192, another bond measure, is known as the Seismic Retrofit Bond Fund of 1996. It is codified at Government Code § 8879 *et seq.* Proposition 192 authorizes the sale of \$2 billion in bonds for the seismic retrofit of state-owned highways and bridges, including toll bridges, throughout the state.² (Gov. Code § 8879.3.)

¹ "Spillover" revenue is the amount by which gasoline sales tax revenues at the 4.75% rate exceed the amount generated from sales tax on all other goods at the 0.25% rate. "Diesel fuel sales tax" revenue is the net revenue at the 4.75% rate from the sales and use tax imposed on diesel fuel, liquefied petroleum gas, and natural gas.

² It also authorizes funds to be used to reimburse the State Highway Account and the Consolidated Toll Bridge Fund for Phase Two retrofit expenditures incurred in the 1994-95 and 1995-96 fiscal years. (Gov. Code § 8879.3(c).)

In 1998, the voters approved Proposition 2. Proposition 2 is a legislative constitutional amendment. It added article XIX A to the California Constitution, which restrict the conditions under which funds in the PTA can be "borrowed" by the General Fund and used for non-transportation purposes. Specifically, Proposition 2 provides that funds in the PTA may be "loaned" to the General Fund, but only if certain conditions are met. (See Cal. Const. art. XIX A, § 1.)

In 2002, the voters approved Proposition 42, another legislative constitutional amendment. Prior to 2002, gasoline sales tax revenues not transferred to the PTA were deposited in the General Fund and used for general governmental purposes. (See, e.g., Rev. & Tax. Code § 7102(b).) Proposition 42 changed that. Proposition 42 added Article XIX B to the California Constitution. Article XIX B, section 1 provides that all moneys received by the State under the Sales and Use Tax Law upon the sale, storage, use, or other consumption of motor vehicle fuel that are deposited in the General Fund shall instead be transferred to the "Transportation Investment Fund."

Article XIX B, section 1 also specifies how moneys in the Transportation Investment Fund shall be allocated. For the 2008-09 fiscal year and beyond, moneys shall be allocated 20 percent to "public transit and mass transportation;" 40 percent to transportation capital improvement projects; 20 percent to street and highway maintenance by cities; and 20 percent to street and highway maintenance by counties. (Cal. Const. art. XIX B, § 1.) For fiscal years 2003-04 to 2007-08, moneys must be allocated in accordance with section 7104 of the Revenue and Taxation Code, as that section read on March 6, 2002. (*Id.*) As it read on March 6, 2002, section 7104 conditionally required a portion of the funds to be transferred to the PTA. Specifically, section 7104 provided that 20 percent of the amount remaining (if any) after specified allocations to the Traffic Congestion Relief Fund shall be transferred to the PTA for appropriation by the Legislature as follows: 50 percent to the Department of Transportation for funding of bus and passenger rail services and public transit capital improvement projects pursuant to Public Utilities Code § 99315, subdivisions (a) or (b); 20 percent to the Controller for allocation to local transportation planning agencies and county transportation commissions pursuant to Public Utilities Code § 99314; and 20 percent to the Controller for allocation to local transportation planning agencies and county transportation commissions pursuant to Public Utilities Code § 99313.

As originally adopted, article XIX B, section 1 authorized the State to suspend the transfer of revenues from the General Fund to the Transportation Investment Fund in whole or in part, if the Governor has issued a proclamation declaring that the transfer will result in a significant negative fiscal impact on the government functions funded by the General Fund and the Legislature enacts a statute by a two-thirds vote authorizing such suspension. The State suspended the transfer twice between 2002 and 2006. In 2003-04, the transfer was partially suspended, and in 2004-05 the full amount of the transfer was suspended.

In November 2006, the voters adopted Proposition 1A. Proposition 1A, a legislative constitutional amendment, amended article XIX B to, among other things, further limit the conditions under which the Proposition 42 transfer of gasoline sales tax revenues can be suspended. After Proposition 1A, suspensions can occur only if the Governor issues a

proclamation that declares suspension of the transfer is necessary due to a "severe state fiscal hardship." In addition, Proposition 1A amended article XIX B to provide that the transfer to the Transportation Investment Fund shall not be suspended for more than two fiscal years during any ten consecutive year period, and that no suspensions can occur unless prior suspensions (excluding those made prior to 2007-08) have been repaid in full. Further, as amended, article XIX B requires the State to use its General Fund to repay, no later than June 30, 2016, certain amounts that were not transferred to the Transportation Investment Fund because of the suspensions that occurred in 2003-04 and 2004-05. (*See* Cal. Const. art. XIX B, § 1, subdivision (f)(1).) For simplicity, the Court hereafter shall refer to these mandatory re-payments as the "Prop. 1A Gas Tax Reimbursements."

B. Summary of Challenged Legislation

Against this historical background, the Court now proceeds to describe the legislation at issue in this lawsuit. By way of overview, there are four legislative bills at issue: Senate Bills 77, 78, and 79, and Assembly Bill 193.

Senate Bill 79 amends Revenue and Taxation Code section 7102, subdivision (a)(1) by adding two new subdivisions (G) and (H) pertaining to the allocation of "spillover" revenues. As described above, section 7102, subdivision (a)(1) generally requires all "spillover" revenues to be transferred quarterly to the PTA. However, commencing in fiscal year 2001-02, the Legislature began amending section 7102, subdivision (a)(1) for the purpose of limiting/diverting the amount of such transfers. (*See* Rev. & Tax Code § 7102, subdivisions (a)(1)(A) through (F).) In some fiscal years, the Legislature diverted all of the spillover revenues so that no transfers were made to the PTA. (Rev. & Tax Code § 7102(a)(1)(D), (E).) In other fiscal years, the Legislature merely diverted a portion of the total amount of funds that otherwise would be transferred to the PTA. (Rev. & Tax Code § 7102(a)(1)(A), (B), (C), (F).) New subdivisions (G) and (H) continue this practice. These two new subdivisions provide:

"(G) For the 2007-08 fiscal year, the first one hundred fifty-five million four hundred ninety-one thousand eight hundred thirty-seven dollars (\$155,491,837) in revenue estimated pursuant to this paragraph each quarter shall, notwithstanding any other provision of this paragraph or any other provision of law, be transferred quarterly to the Mass Transportation Fund. If revenue in any quarter is less than that amount, the transfer in the subsequent quarter or quarters shall be increased so that the total transferred for the fiscal year is six hundred twenty-one million nine hundred sixty-seven thousand three hundred forty-eight dollars (\$621,967,348).

"(H) For the 2008-09 fiscal year and every fiscal year thereafter, 50 percent of the revenue estimated pursuant to this paragraph each quarter shall, notwithstanding any other provision of this paragraph or any other provision of law, be transferred to the Mass Transportation Fund." (Rev. & Tax Code § 7102(a)(1)(G), (H).)

Thus, as a result of SB 79, for the 2007-08 fiscal year, up to \$621,967,348 of "spillover" revenues that otherwise would have been transferred to the PTA will instead be transferred to a

newly-established "Mass Transportation Fund." Similarly, for the 2008-09 fiscal year and beyond, 50 percent of any additional "spillover" revenues shall also be transferred to the Mass Transportation Fund.

Assembly Bill 193 adds section 7103 to the Revenue and Taxation Code. Section 7103 establishes the Mass Transportation Fund described above. Section 7103, subdivision (a) also provides that moneys in the Mass Transportation Fund "may be used for, but shall not necessarily be limited to," the following transportation purposes: (1) payment of debt service on transportation bonds, or reimbursement to the General Fund for past debt service payments on transportation bonds; (2) funding of the Department of Developmental Services for Regional Center transportation; (3) reimbursement to the General Fund for payments made by the General Fund pursuant to subdivision (f) of Section 1 of Article XIX B of the California Constitution; and (4) funding of home-to-school transportation and Small School District Transportation programs. (Rev. & Tax Code § 7103(a).)

For fiscal year 2007-08, of the \$621,967,348 in spillover revenues diverted to the Mass Transportation Fund, Revenue & Taxation Code section 7103, subdivision (b) provides that \$539,289,348 shall be transferred to the Transportation Debt Service Fund and that the remaining \$82,678,000 shall be transferred to the General Fund to "offset" the Prop. 1A Gas Tax Reimbursements (i.e., the payments required from the General Fund pursuant to article XIX B, section 1, subdivision (f)).

AB 193 also adds Government Code section 16965. Section 16965 establishes the Transportation Debt Service Fund. As its name implies, the Transportation Debt Service Fund is dedicated to the payment of debt service on bonds, including the bonds issued pursuant to Propositions 108, 116, and 192.

Of the \$539,289,348 transferred to the Transportation Debt Service Fund from the Mass Transportation Fund pursuant to Revenue and Taxation Code § 7103(b), Government Code section 16965(b) authorizes the Director of Finance to transfer up to \$339,289,345 to the General Fund for the purpose of offsetting the cost of current debt service payments for bonds issued pursuant to Propositions 108, 116, and 192. (Gov. Code § 16965(b).) (The \$339,289,345 breaks down between the three bond measures as follows (i) \$70,983,363 for Proposition 108; (ii) \$123,973,493 for Proposition 116; and (iii) \$144,332,489 for Proposition 192. (Gov. Code § 16965(b).) Section 16965(b) authorizes the Director of Finance to transfer the remaining \$200,000,000 to the General Fund for the purpose of offsetting the cost of debt service payments for public transportation-related general obligation bond expenditures made from the General Fund "in prior fiscal years." (Gov. Code § 16965(b).) The Department of Finance has determined that this \$200,000,000 will be used to reimburse the General Fund for past debt service payments on Proposition 108 bonds.

Unlike SB 79 and AB 193, which pertain to the use of "spillover" revenues diverted from the Retail Sales Tax Fund, SB 77 and 78 involve appropriations of funds from the PTA.

Senate Bill 78 adds section 24.80 to the Budget Act. It authorizes the Director of Finance to transfer \$409,000,000 from the PTA to the General Fund in the 2007-08 fiscal year for the

purpose of reimbursing the General Fund for debt service payments on public transportation bonds made in prior fiscal years.³ Section 24.80(c) expressly finds that funding debt service on bonds benefiting public transportation is a component of the State's mass transportation program. The Department of Finance has determined that this \$409,000,000 has been (or will be) used to reimburse the General Fund for past debt service payments on Proposition 108 bonds.

Senate Bill 78 also adds section 56 to the Budget Act. Section 56 transfers \$99,120,000 from the PTA to the State School Fund, as part of the Home-to-School Transportation and Small School District Transportation programs. The Home-to-School Transportation program provides funding to local school districts and counties for transportation of students to and from public schools. The Small School District Transportation program provides funding to small school districts and county offices of education to comply with federal safety standards either through the purchase of new school buses or the reconditioning of existing buses.

Senate Bill 77 appropriates \$128,806,000 from the PTA to the Department of Developmental Services for local assistance to Regional Centers. This appropriation is for transporting developmentally disabled persons receiving vocational rehabilitation services at Regional Centers. (*See* 17 C.C.R. § 58520.)

In summary, for fiscal year 2007-08, SB 79 and AB 193 transfer \$621,967,348 of spillover revenues directly from the Retail Sales Tax Fund to the Mass Transportation Fund. Of this amount, \$82,678,000 is then transferred to the General Fund to offset the Prop. 1A Gas Tax Reimbursements, and the remaining \$539,289,348 is transferred to the Transportation Debt Service Fund. Of the amount transferred to the Transportation Debt Service Fund, \$339,289,345 is transferred to the General Fund for current debt service payments on Propositions 108, 116, and 192 bonds, and the remaining \$200,000,000 is transferred to the General Fund for past debt service payments on Proposition 108 bonds. Thus, to further summarize, SB 79 and AB 193 transfer \$621,967,348 from the Retail Sales Tax Fund to the General Fund to offset the Prop. 1A Gas Tax Reimbursements and fund current and past debt service payments on transportation bonds. In addition, commencing in fiscal year 2008-09, SB 79 permanently diverts 50 percent of future spillover revenues from the Retail Sales Tax Fund to the Mass Transportation Fund for the purposes described above.

SB 78 appropriates \$409,000,000 from the PTA to reimburse the General Fund for past debt service payments on Proposition 108 bonds, and appropriates \$99,120,000 from the PTA to fund the Home-to-School Transportation and Small School District Transportation programs. And SB 77 appropriates \$128,806,000 from the PTA to pay the costs of transporting developmentally disabled persons receiving vocational rehabilitation services.

C. Petitioners' Claims

In this proceeding, Petitioners do not challenge the amendments to Revenue and Taxation Code § 7102(a)(1) which limited/diverted spillover revenues in fiscal years 2001-02, 2002-03, 2003-04, 2005-06, and 2006-07. (*See* Rev. & Tax. Code § 7102(a)(1)(A) through (E).)

³ The total reimbursement, however, may not reduce the balance in the PTA below a "prudent reserve," as determined by the Director of Finance

Petitioners contend that these amendments were improper, but do not challenge them here. The legislation challenged in this Petition only involves appropriations for fiscal year 2007-08 and beyond.

Petitioners also do not challenge the diversion of \$70,983,363 in spillover revenues to pay for current debt service on bonds issued pursuant to Proposition 108 for fiscal year 2007-08. Petitioners concede for purposes of this lawsuit that funding *current* debt service on bonds issued pursuant to Proposition 108 bonds is a legitimate "mass transportation" purpose within the meaning of Proposition 116. However, Petitioners challenge all of the other appropriations described above. Specifically, the Petition challenges the following appropriations in fiscal year 2007-08:

- (1) \$144,332,489 in spillover revenues diverted from the Retail Sales Tax Fund to the General Fund to offset current debt service payments on bonds issued pursuant to Proposition 192;
- (2) \$123,973,493 in spillover revenues diverted from the Retail Sales Tax Fund to the General Fund to offset current debt service payments on bonds issued pursuant to Proposition 116;
- (3) \$200,000,000 in spillover revenues diverted from the Retail Sales Tax Fund to the General Fund to reimburse the General Fund for past debt service payments on bonds issued pursuant to Proposition 108;
- (4) \$82,678,000 in spillover revenues diverted from the Retail Sales Tax Fund to the General Fund to offset current Prop. 1A Gas Tax Reimbursements;
- (5) \$409,000,000 in funds appropriated from the PTA to the General Fund to reimburse the General Fund for past debt service payments on bonds issued pursuant to Proposition 108;
- (6) \$128,806,000 in funds appropriated from the PTA to the Department of Developmental Services for local assistance to Regional Centers; and
- (7) \$99,120,000 in funds appropriated from the PTA to the Department of Education for the Home-to-School Transportation and Small School District Transportation programs.

Petitioners challenge the \$144,332,489 appropriation on the grounds it violates Public Utilities Code § 99310.5 and Revenue and Taxation Code section 7102, as amended by Proposition 116. Petitioners contend that the spillover revenues are PTA funds and therefore, pursuant to Public Utilities Code § 99310.5, the revenues are available "only for transportation planning and mass transportation purposes." Petitioners contend that mass transportation means public mass transit, or public transportation, not general transportation infrastructure. Seismic retrofitting of state-owned highways and bridges, Petitioners argue, is not a "transportation planning" or "mass transportation" purpose. Thus, Petitioners contend PTA funds cannot be

used to pay the current debt service on Proposition 192 bonds. Petitioners further contend that the State cannot circumvent the restrictions on PTA funds in Public Utilities Code § 99310.5 by diverting the spillover revenues from the Retail Sales Tax Fund before they are transferred into the PTA. Petitioners contend that Revenue and Taxation Code § 7102(a) imposes a mandatory duty on the State to transfer spillover revenues from the Retail Sales Tax Fund to the PTA, and that Proposition 116 prevents the Legislature from amending section 7102 in a manner inconsistent with the purposes of Proposition 116 and the PTA trust fund account.

Petitioners challenge the \$123,973,493 appropriation on the grounds it violates Public Utilities Code § 99611, as added by Proposition 116. Section 99611 specifies that it is the intent of the people in enacting Proposition 116 that the bond funds approved in the measure "shall not be used to displace existing sources of funds for rail and other forms of public transportation, including but not limited to funds that have been provided pursuant to Article XIX of the California Constitution, [and] the [PTA]" (Pub. Util. Code § 99611.) As described above, Petitioners contend that Revenue and Taxation Code § 7102 and Public Utilities Code § 99310.5 impose a mandatory obligation on the State to transfer spillover revenues from the Retail Sales Tax Fund to the PTA and to use those revenues only for "transportation planning and mass transportation purposes." Because Petitioners contend that mass transportation means public transportation, Petitioners argue that spillover revenues are an existing source of funds for public transportation. Thus, Petitioners contend that by directing that \$123,973,493 of spillover revenues be transferred from the PTA for payments on Proposition 116 bonds, the Legislature effectively has "displaced" existing public transportation funds to service the bonds.

Petitioners challenge the appropriation of \$200,000,000 in spillover revenues, and \$409,000,000 in PTA funds, to reimburse the General Fund for *past* debt service payments on Proposition 108 bonds on the grounds these appropriations serve no "transportation planning or mass transportation" purpose and are a thinly-veiled attempt to divert PTA funds for general governmental purposes. Petitioner asserts that the Legislature does not have the power to broaden the uses for which PTA funds are available beyond "transportation planning and mass transportation purposes."

Petitioners challenge the appropriation of \$128,806,000 in funds appropriated from the PTA to the Department of Developmental Services for local assistance to Regional Centers, and \$99,120,000 in funds appropriated from the PTA to the Department of Education for the Home-to-School Transportation and Small School District Transportation programs, on the grounds these are not transportation planning or mass transportation purposes.

Finally, Petitioners challenge the \$82,678,000 appropriation to offset current Prop. 1A Gas Tax Reimbursements on the ground that using transportation funds to backfill the General Fund's constitutional obligation to reimburse the Transportation Investment Fund for the suspended transfers that occurred in 2003-04 and 2004-05 is contrary to both Proposition 116 and Proposition 1A. Petitioners contend that this appropriation conflicts with Proposition 116 because it would result in spillover revenues being used for non-transportation planning and non-mass transportation purposes. Petitioners contend that this appropriation also conflicts with the intent of Proposition 1A because it would result in no net repayment of the suspended transfers of Prop. 42 transportation funds.

For fiscal year 2008-09 and beyond, Petitioners challenge the diversion of 50 percent of all spillover revenues from the Retail Sales Tax Fund to the Mass Transportation Fund because the transfer would allow the Legislature to use these funds for purposes other than transportation planning and mass transportation. (*See Rev. & Tax. Code § 7102(a)(1)(H).*)

Respondents, in contrast, argue that the Petition should be denied for substantive and procedural reasons.

Substantively, Respondents argue that of the \$1,187,909,982 in appropriations challenged by Petitioners, only \$636,926,000 was appropriated from the PTA. Respondents contend only the appropriations from the PTA are governed by the restrictions of Public Utilities Code § 99310.5. In respect to these PTA appropriations, Respondents assert that the challenged transfers fully comport with the restrictions of Public Utilities Code § 99310.5.

In respect to the non-PTA appropriations (the spillover revenues), Respondents contend that the only relevant issue before the Court is whether the Legislature properly amended Revenue and Taxation Code § 7102(a)(1), to add subdivisions (G) and (H), diverting the spillover revenues from the Retail Sales Tax Fund to the Mass Transportation Fund. Respondents assert that the amendment was proper and must be upheld.

According to Respondents, Proposition 116 allows amendments to section 7102 that are consistent with, and further the purposes of, section 7102. The purpose of section 7102, Respondents argue, is broader than merely funding the PTA. Rather, it is to provide for the distribution of all State sales and use tax revenues that have been deposited in the Retail Sales Tax Fund. Respondents assert that any amendment is consistent with and furthers the purposes of that section so long as it distributes sales and use tax revenue to fund the general operations of the government. Because the challenged amendments to section 7102(a)(1), subdivisions (G) and (H), are consistent with this purpose, the amendments are valid and Petitioners' challenge to the transfers from the Retail Sales Tax Fund must be rejected.

Moreover, even if Public Utilities Code § 99310.5 applies to the diverted spillover revenues, Respondents assert that the challenged appropriations nevertheless are valid. Respondents assert that all of the appropriations are for a "mass transportation" purpose within the meaning of Public Utilities Code § 99310.5. Respondents argue that Petitioners' interpretation of the phrase "mass transportation" is unduly narrow. Respondents deny that mass transportation is synonymous with "mass transit," "public mass transportation," or "public transportation." Respondents interpret the phrase "mass transportation" to include any means or system of conveyance of a large number of people or things, including, potentially, highways and bridges.

In respect to the appropriations for current debt service payments on Proposition 116 bonds, Respondents contend that Petitioners' interpretation of Public Utilities Code § 99611 renders the provision unconstitutional and that, in any event, there is no evidence that bond funds have displaced public transportation funds.

In respect to the appropriations for past debt service payments on Proposition 108 bonds, Respondents contend Petitioners are making a "baseless distinction" between the payment of current debt service on Proposition 108 bonds – which Petitioners concede is proper – and payment of past debt service on Proposition 108 bonds – which Petitioners contend is not proper.

And in respect to the appropriations for Prop. 1A Gas Tax Reimbursements, Respondents contend that such backfilling is permissible because there is no law that prohibits the General Fund from receiving reimbursement for its constitutional obligation.

Procedurally, Respondents argue that Petitioners' challenges are barred by laches. According to Respondents, the Legislature has been diverting spillover revenues and appropriating PTA funds for agricultural worker transportation and seismic retrofit programs since 2001. Respondents contend this established a practice, and that the Legislature and the Department of Finance relied on the legitimacy of this practice in preparing the 2007-08 budget. Respondents argue that to allow Petitioners to now challenge the legitimacy of this established practice would be prejudicial to Respondents.

Furthermore, Respondents argue that even if the Court were to find that one or more of the challenged appropriations does not fully comply with the law, the petition for writ of mandate should be denied on equitable grounds because it will have detrimental consequences for the State's 2008-09 budget.

Finally, Respondents assert the Petition should be denied because the verification of the Petition is defective.

III. Standard of Review

As described above, this Petition alleges that various provisions of the 2007-08 Budget Act and related trailer bills are unconstitutional because they conflict with an initiative statute (Proposition 116) and three legislative constitutional amendments (Propositions 42, 2 and 1A).

In interpreting a constitutional amendment or voter initiative, courts apply the same principles that govern construction of a statute. The paramount task is to ascertain and effectuate legislative intent. Courts turn first to the language of the constitutional text or initiative statute, giving the words their ordinary meaning, in the context of the nature and purpose of the enactment. When the language is clear and unambiguous, the plain meaning of the language governs. (*Hayden v Robertson Stephens, Inc.* (2007) 150 Cal.App.4th 360, 367.) As a judicial body, it is the role of the courts to interpret the laws as they are written; courts cannot insert or omit words to cause the meaning of the measure to conform to a presumed intent that is not expressed. (*Knight v Superior Court* (2005) 128 Cal.App.4th 14, 23) Where there is ambiguity in the language of the measure, however, courts may consider ballot summaries, arguments, and other indicia of voters' intent in determining the meaning of a ballot measure. (*Professional Engineers v Kempton* (2007) 40 Cal.4th 1016, 1037.)

In general, the law-making authority of the State is vested in the Legislature and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. (*Professional Engineers v Wilson* (1998) 61 Cal.App.4th 1013, 1020.) Thus, in considering the constitutionality of a legislative act, the court presumes its validity and resolves all doubts in favor of the act. Unless conflict with a constitutional provision is clear, the court must uphold the act. (*Id.* at p. 1025.)

On the other hand, it also is the duty of the courts to "jealously guard" the people's initiative and referendum power. Thus, it has long been a judicial policy to apply a liberal construction to this power whenever it is challenged in order that the right to initiative and referendum is "not improperly annulled." (*Proposition 103 Enforcement Project v Quackenbush* (1998) 64 Cal.App.4th 1473, 1486; *see also Professional Engineers v Kempton* (2007) 40 Cal.4th 1016, 1044.)

IV. Discussion

A. Is the Petition procedurally barred?

As an initial matter, Respondents contend that the Petition should be denied on procedural grounds because Petitioners have unreasonably delayed in seeking relief; issuance of a writ will not promote the ends of justice; and the Petition is not properly verified. Each of these contentions is rejected.

Petitioners have not unreasonably delayed in seeking relief. The transfers challenged by Petitioners are unique to the 2007-08 Budget Act. The fact that Petitioners could have filed lawsuits challenging similar enactments in prior years is wholly irrelevant. Moreover, the public cannot be estopped from challenging the legality of an illegally established practice. An established practice that is not legal does not become legal by the mere passage of time.

Neither is writ relief barred on the grounds it will not promote the ends of justice. Issuance of a writ, if ordered, will promote the ends of justice by prohibiting illegal appropriations and furthering the will of the people. Whatever detrimental effects this may have on the State's 2008-09 budget is a consequence of the illegal Acts, not this Court's decision. If the Court were to adopt Respondents' argument, writ relief would rarely, if ever, be available in lawsuits against the State.

Respondents' challenge to the verification of the First Amended Petition is likewise rejected. The First Amended Petition on which the verifications were based differed from the filed Petition in only one immaterial respect: the First Amended Petition that was reviewed and verified contained blanks for a legal citation to Assembly Bill 193. All material facts in the Petitioner were properly verified. Moreover, even if the verification is defective, the failure to verify a pleading is not a jurisdictional matter, but a mere defect in pleading, which may be waived by proceeding to trial without proper objection. (*United Farm Workers of America v Agric Labor Relations Bd.* (1985) 37 Cal.3d 912, 915; *Ware v Stafford* (1962) 206 Cal.App.2d 232, 237; *People v Birch Sec. Co.* (1948) 86 Cal.App.2d 703, 707-708.) The proper objection

where a party fails to verify a pleading is a motion to strike. (*Zavala v Board of Trustees* (1993) 16 Cal.App.4th 1755, 1761.) When Respondents proceeded to trial without principally objecting to the lack of verification, they waived any right to object to the verification. (*Id.*)

B. Does Public Utilities Code § 99310.5 apply to the transfers of spillover revenues challenged by Petitioners?

The amendments to Revenue and Taxation Code § 7102(a)(1), subdivisions (G) and (H) transfer from the Retail Sales Tax Fund to the Mass Transportation Fund \$621,967,348 in spillover revenues that would otherwise have been transferred into the PTA. Petitioners argue that these amendments violate Proposition 116. Petitioners contend that Public Utilities Code § 99310.5 and Revenue & Taxation Code § 7102, as amended by Proposition 116, impose a mandatory obligation on the State to transfer spillover revenues from the Retail Sales Tax Fund to the PTA, and to use those revenues only for "transportation planning and mass transportation purposes."

Respondents argue that Petitioners have improperly framed the issue. Respondents assert that Public Utilities Code § 99310.5, by its terms, applies only to funds in the PTA trust fund account. In this case, the challenged spillover revenues were not transferred into the PTA account because the amendments to Revenue & Taxation Code § 7102(a)(1) diverted the spillover revenues directly from the Retail Sales Tax Fund to the Mass Transportation Fund. Therefore, Respondents argue, the only issue before the Court is whether the Legislature had the power to amend Revenue & Taxation Code § 7102(a)(1) in this manner. Respondents assert that it did.

The Court agrees with Respondents that the threshold issue before the Court is whether the Legislature had the power to amend Revenue & Taxation Code § 7102(a)(1). There is a constitutional limitation on the Legislature's power to amend initiative statutes. (*Foundation for Taxpayer & Consumer Rights v Garamendi* (2005) 132 Cal.App.4th 1354, 1364-1365.) Article II, section 10, subdivision (c) of the California Constitution provides that the Legislature may amend or repeal an initiative statute only by another statute approved by the electors, "unless the initiative statute permits amendment or repeal without their approval." (Cal. Const. art. II, § 10(c).) The power of the electors to decide whether the Legislature can amend or repeal an initiative statute is absolute and includes the power to enable legislative amendment subject to conditions attached by the voters. (*Foundation for Taxpayer & Consumer Rights, supra*, at pp. 1364-1365; *Amwest Surety Ins Co v Wilson* (1995) 11 Cal.4th 1251, 1251.) It is common for an initiative measure to include a provision authorizing the Legislature to amend the initiative without voter approval so long as the amendment furthers a purpose of the initiative. (*See Amwest, supra*, at pp. 1251-1252; *see also Professional Engineers v Kempton* (2007) 40 Cal.4th 1016, 1026; *Proposition 103 Enforcement Project v Quackenbush* (1998) 64 Cal.App.4th 1473, 1484.) Where an initiative measure grants the Legislature the power to amend a measure to further its purposes, a court, in determining whether an amendment is valid, applies a presumption of constitutionality to the amendment and upholds the amendment if there is any reasonable basis to conclude that the amendment serves the purposes of the initiative statute. (*Amwest, supra*, at pp. 1251-1253.) In determining the purposes of the measure, a court is not

limited to the general statement of purpose found in the initiative, and may look to many sources, including the historical context of the measure and the ballot arguments. (*Id.* at pp. 1256-1257.)

Revenue & Taxation Code § 7102, at issue here, is an initiative statute. It was amended and re-enacted by virtue of the voters' approval of Proposition 116. (*See* Cal. Const. art. II, § 9; *Yoshisato v Superior Court* (1992) 2 Cal.4th 978, 990 fn. 6)

Proposition 116 allows amendments to Revenue & Taxation Code section 7102 subject to conditions. Section 7102, subdivision (e) provides, in relevant part, "[t]he Legislature may amend this section, by [two-thirds vote], if the statute is consistent with, and furthers the purposes of this section." (Rev. & Tax. Code § 7102(e).)

Respondents correctly observe that the power that Proposition 116 gives to the Legislature is atypical in that amendments to Section 7102 need only further the purposes of "this section" – meaning § 7102 – and not the purposes of the broader initiative.⁴

Petitioners dispute this interpretation and argue that even though the statute uses the term "section," the voters' must have intended to preclude amendments inconsistent with the purposes of the "trust" fund. Why else, Petitioners query, would the voters have amended Revenue & Taxation Code § 7102, subdivision (a) to direct spillover revenues to the trust fund?⁵ However, in making this argument, Petitioners ignore that the voters also amended section 7102 to allow the Legislature to amend "this section" by statute passed by two-thirds vote provided the statute is consistent with and furthers the purposes of "this section." Where the language of a statute is clear on its face, a court may not add to a statute or rewrite it to conform to an assumed intent that is not apparent in its language. (*Professional Engineers v Kempton* (2007) 40 Cal.4th 1016, 1037.) Here, the term "section" has an accepted meaning, (*see* Black's Law Dictionary [6th Ed. 1990], at p. 1353), and the Court cannot rewrite the statute to state something different.⁶

Moreover, even if the Court were to conclude that the term "section" is ambiguous, there is no extrinsic evidence of intent in the ballot materials or anywhere else to support Petitioners' interpretation. While the text of the initiative makes clear the voters intended to designate the PTA as a trust fund, there is nothing in the ballot summaries, arguments, or analysis discussing the trust fund, or suggesting that the voters intended to preclude the Legislature from changing the amount of sales and use tax revenues allocated to the trust fund.⁷ (*Cf.* Pub. Util. Code § 99605 [empowering Legislature to amend part if the statute is consistent with and furthers the

⁴ Section might also be interpreted as reference to the "section" of the initiative (§ 4) setting forth the amendments to Revenue & Taxation Code section 7102. However, that is a distinction without a difference since the only purpose of section 4 of the initiative was to describe the amendments to Revenue & Taxation Code section 7102. The term "section" cannot reasonably be interpreted as a reference to a "part" of the initiative since the text of the initiative clearly distinguished between these two terms. (*See, e.g.*, Pub. Util. Code §§ 99605, 99611.)

⁵ To the extent this rhetorical question requires an answer, one possibility is that the voters intended to conform Revenue & Taxation Code § 7102(a) to the amendments to Public Utilities Code § 99310.5

⁶ Neither can the Court pass upon the wisdom, expediency, or policy of this enactment. (*Professional Engineers v Kempton* (2007) 40 Cal.4th 1016, 1043.)

⁷ Because it was not raised in this proceeding, the Court expresses no opinion on whether Proposition 116 violated the single-subject rule of the California Constitution because the provisions of the initiative measure embraced more than one subject. (*See* Cal. Const. art. IV, § 9, *Senate of the State of Cal. v Jones* (1999) 21 Cal.4th 1142.)

purposes of this part, provided no changes are made in the way in which funds are allocated pursuant to Chapter 3, except Section 99684[.]) The only evidence of the voters' intent regarding the trust fund is the text of the initiative statute itself, which is no basis to overturn the presumption of constitutionality supporting the Legislature's acts. For these reasons, the Court concludes the Legislature may amend section 7102, by a two-thirds vote, provided the statute is consistent with, and furthers the purposes of section 7102.

Here, it is undisputed that the 2007-08 Budget Act's amendments were passed in each house of the Legislature by a two-thirds vote of the membership. Thus, the only remaining question is whether the amendments are consistent with, and further the purposes of, the section. The Court concludes that the amendments are consistent with, and further the purposes of, the section.

The purpose of section 7102 is broader than funding the PTA. Rather, section 7102 is a bucket-type distribution statute that governs the disposition of all state sales and use taxes deposited into the Retail Sales Tax Fund. (*See* Rev. & Tax. Code § 7102 ["The money in the fund shall . . . be drawn [for refunds] . . . or be transferred in the following manner: . . .".]) Although some of its provisions govern the transfer of spillover revenues to the PTA, section 7102 also governs the transfer of revenues to other funds, including the General Fund. The purpose of section 7102, therefore, is to provide for the distribution of all state sales and use tax revenues that have been deposited in the Retail Sales Tax Fund.

The amendments to Revenue and Taxation Code § 7102, subdivisions (a)(1)(G) and (H), are consistent with and further the purposes of section 7102 because the amendments distribute sales and use tax revenues for the general operation of the government. Accordingly, the Legislature had the power to amend § 7102(a)(1). And because the amendments are valid, Petitioners' claim that the transfer of \$621,967,348 in spillover revenues violates Public Utilities Code § 99310.5 must be rejected. By its terms, Public Utilities Code § 99310.5 only applies to funds in the PTA account. By virtue of the amendments, the spillover revenues never were deposited in the PTA.

C. Do the provisions of Proposition 116 preclude the use of spillover revenues for payment of current debt service on Proposition 116 bonds?

Proposition 116, the Clean Air and Transportation Improvement Act of 1990, authorizes the sale of \$1.99 billion in bonds primarily for "rail projects." From the statement of intent set forth in Public Utilities Code § 99611, the voters intended Proposition 116 to increase funds for rail and other public transportation projects without reducing or displacing existing sources of funds for public transportation (*See* Pub. Util. Code § 99611) Petitioners allege that using spillover revenues to reimburse the General Fund for payment of current debt service on Proposition 116 bonds would have the effect of displacing a source of funds for public transportation and, therefore, violate Proposition 116. Respondents contend, however, that Petitioners' argument fails because (1) as a factual matter, there is no evidence that bond funds have displaced public transportation funds, (2) as a matter of law, section 99611 does not apply to the displacement of non-public transportation funds; and (3) Petitioners' interpretation would

render section 99611 an unconstitutional restriction on the Legislature's plenary power to appropriate money.

The Court agrees with Respondents. In enacting Proposition 116, the voters intended to increase mass transit spending without depleting or displacing existing public transportation funds. (*Professional Engineers v Wilson* (1998) 61 Cal.App.4th 1013, 1022.) The PTA is an existing public transportation fund. (See discussion *infra*.) However, the spillover revenues were not deposited into the PTA. As discussed above, the Legislature validly amended Revenue and Taxation Code § 7102, subdivisions (a)(1) to divert the spillover revenues directly from the Retail Sales Tax Fund to the Mass Transportation Fund. Moneys in the Mass Transportation Fund are not restricted to public transportation purposes. (See Rev. & Tax Code § 7103.) And there is no evidence that moneys in the Mass Transportation Fund (or the General Fund) specifically earmarked for public transportation were used for this bond debt reimbursement. (See *Wilson, supra*, at p. 1023.) Thus, there is no evidence that bond funds have displaced public transportation funds.

Further, as a matter of law, section 99611 does not apply to non-public transportation funds. (See *Wilson, supra*, at p. 1022.) Because the diverted spillover revenues were not transferred into the PTA, they were not public transportation funds. To the extent Petitioners construe section 99611 as prohibiting the Legislature from servicing bond debt with any moneys that *could* be used to fund public transportation, then Petitioners' interpretation must be rejected as inconsistent with Proposition 116 and as an unconstitutional limitation on the Legislature's authority.⁸

D. Does Proposition 1A prohibit the appropriation of \$82,678,000 in spillover revenues to offset the Prop 1A Gas Tax Reimbursements?

The subject legislation transfers \$82,678,000 in spillover revenues from the Retail Sales Tax Fund to the General Fund (via the Mass Transportation Fund) for the purpose of offsetting the General Fund's constitutional mandate to repay the suspended Proposition 42 transfers to the Transportation Investment Fund that occurred in 2003-04 and 2004-05 (i.e., the Prop. 1A Gas Tax Reimbursements). Petitioners contend that this appropriation conflicts with Proposition 1A because it would result in no net repayment of the suspended Proposition 42 transportation funds.

Petitioners are correct that the appropriation effectively would result in no net repayment of the suspended transportation funds. However, the Court agrees with Respondents that this backfilling is not unlawful. There is no law that prohibits the General Fund from being reimbursed for its ultimate obligation to re-pay the suspended transfers. (See *Wilson, supra*, at pp. 1020-1021 [upholding use of funds from the State Highway Account to reimburse the General Fund for current debt service payments on bonds based, in part, on fact that bond measures do not prohibit reimbursement].) Accordingly, Petitioners' challenge to this appropriation is rejected.

⁸ The intent of the enactment was to increase public transportation spending without displacing or depleting existing public transportation funds. The intent of the enactment was not to guarantee a particular level of transportation funding or to restrict how the Legislature spends non-public transportation funds.

E. Are the appropriations from the PTA trust fund prohibited by Public Utilities Code § 99310.5?

In addition to challenging \$621,967,348 of spillover revenues diverted from the Retail Sales Tax Fund, Petitioners also challenge \$636,926,000 in funds appropriated from the PTA. Specifically, the Petition challenges \$409,000,000 in PTA funds transferred to the General Fund to "reimburse" the General Fund for past debt service payments on bonds issued pursuant to Proposition 108; \$128,806,000 in PTA funds transferred to the Department of Developmental Services for local assistance to Regional Centers; and \$99,120,000 in PTA funds transferred to the Department of Education for the Home-to-School and Small School District Transportation programs. Petitioners allege that all of these transfers violate Public Utilities Code § 99310.5 because the funds are not being used for "transportation planning" or "mass transportation" purposes.

Respondents do not dispute that Public Utilities Code § 99310.5 restricts the use of funds in the PTA to transportation planning and mass transportation purposes, but Respondents contend that the challenged transfers fully comport with these use restrictions. Respondents argue that Petitioners' interpretation of the phrase "mass transportation" is unduly narrow. Respondents argue that the phrase "mass transportation" was not intended to be synonymous with "public transportation." Rather, Respondents contend, it was intended to include any means or system of conveyance of a large number of people or things. Respondents assert that each of the challenged transfers falls within the scope of this definition.

After considering the arguments of the parties and the evidence presented, the Court is persuaded by Petitioners' argument that the voters intended the phrase "mass transportation" to be synonymous with "mass transit" or "public transit." The Court reaches this conclusion for a number of reasons.

First, and most important, is the fact that the voters specifically amended section 99310.5 to designate the PTA a "trust fund" and to specify that funds in the account shall be available not just for any "transportation purposes," but "only for transportation planning and mass transportation purposes."⁹ The claim by Respondents that "mass transportation" should include any means or system of transportation would render these amendments superfluous. Thus, Respondents' interpretation fails to give meaning to the amendments enacted by Proposition 116. Petitioners' interpretation, in contrast, gives meaning to the amendments enacted by Proposition 116 and is consistent with Proposition 116's broader purpose to increase funding for rail transportation and other forms of public transit. (*See* Argument in Favor of Proposition 116, Pet. Appx., Exh. 1.)

⁹ The qualifying phrase "as specified by the Legislature" authorizes the Legislature to determine the particular "transportation planning" and "mass transportation" purposes for which PTA funds shall be used, but it does not give the Legislature the power to define "mass transportation" to mean something different than what was intended by the voters (*See C&C Construction, Inc v Sacramento Municipal Utility District* (2004) 122 Cal App 4th 284, 300-302 [holding Legislature lacks constitutional authority to re-define "discrimination" for purposes of Proposition 209])

Second, Public Utilities Code § 99611, added by Proposition 116, specifically refers to the trust fund as an "existing source[] of funds for rail and other forms of public transportation." (Pub. Util. Code § 99611; *see also Professional Engineers v Wilson* (1998) 61 Cal.App.4th 1013, 1022.) This suggests that the voters, in approving Proposition 116, intended the phrase "mass transportation" to be synonymous with "public transportation."¹⁰

Third, this interpretation is consistent with the dictionary meaning of the term "mass transportation," i.e., the transportation of large numbers of passengers from one place to another by means of a public conveyance. (*See Webster's Third New International Dictionary* (1986) at pp. 1388, 2430; Pet. Appx., Exh. 12; *see also* 49 U.S.C. § 5302(a)(7), (10), (14).)

The Court next considers whether the \$636,926,000 in challenged appropriations from the PTA were for "mass transportation" purposes.¹¹

Petitioners contend that transporting public school children and the disabled are not mass transportation purposes because the services are not available to the general public. However, the Court is not persuaded public transportation services must be available to every member of the general public to serve a mass transportation purpose within the meaning of Public Utilities Code § 99310.5. Rather, in the Court's view, mass transportation services may include not only general transportation services provided to the public at large, but also specialized transportation services indiscriminately provided to some portion of the public. (*See* Pet. Appx., Exh. 12 [defining mass transportation to include both "general" and "special" services]; 49 U.S.C. § 5302(a)(7), (10) [defining mass transportation as transportation by a conveyance that provides general or special transportation to the public]; *see also* Cal. Pub. Util. Code §§ 99238, 99401.5.) Thus, the Court finds that expenditures for transporting public school children and the disabled serve "mass transportation" purposes within the meaning of section 99310.5.

To the extent Petitioners allege that the Home-to-School Transportation and/or Small School District Transportation programs may include expenditures that do not serve "mass transportation" purposes, such as in lieu payments to parents to transport their own children to school, the Court would be inclined to agree. However, there is no evidence to support Petitioners' claim that the challenged appropriations will be used for these illegitimate purposes as opposed to the legitimate purposes described above. Thus, this claim must fail.

In respect to the \$409,000,000 transfer to reimburse the General Fund for past debt service payments on Proposition 108 bonds, however, the Court agrees with Petitioners that this transfer does not serve any transportation planning or mass transportation purpose.

In reaching this conclusion, the Court distinguishes between using PTA funds to "reimburse" the General Fund for current debt service payments, and using PTA funds to

¹⁰ It also is noteworthy that, after adoption of Proposition 116, the Legislature changed the name of the trust fund account from the Transportation Planning and Development Account to the "Public Transportation Account " (Pub Util Code § 99310, Stats 1997 ch 622 § 32 (SB 45), *see also* Pub Util Code § 99312(d) ["and the remainder of revenue shall remain in the Public Transportation Account to fund other state public transportation priorities"])

¹¹ It is undisputed the appropriations were not for "transportation planning" purposes

reimburse the General Fund for past debt service payments. In the first instance, the funds are essentially passed through the General Fund and used to pay the current debt service on the bonds. In effect, the current debt service is paid with the PTA funds. (See, e.g., *Automobile Club of Washington v City of Seattle* (1959) 55 Wn.2d 161, 165.) In the second instance, the debt service already was paid in prior fiscal years. Thus, the effect of this transfer is simply to transfer funds from the PTA to the General Fund, at which point the funds may be used without restrictions for any general governmental purpose.

In *Professional Engineers v Wilson* (1998) 61 Cal.App.4th 1013, the Court of Appeal was faced with the first type of "reimbursement." The Court considered whether current Proposition 108 and 116 bond payments could be made using funds "reimbursed" (i.e., transferred) to the General Fund from the State Highway Account for this purpose. In considering this issue, the Court looked at how State Highway Account funds are allowed to be used, and how the restricted funds actually were going to be used. The Court concluded that State Highway Account funds can be used for any work within the powers and duties of the Department, including bond debt on rail mass transit projects. Because the State Highway Account funds at issue were going to be used for this purpose, the Court concluded that the challenged transfer did not violate the purposes for which State Highway Account funds can be spent. The Court concluded that current bond debt payments could be made with funds transferred to the General Fund from the State Highway Account. (*Id.* at p. 1029.) In its opinion, however, the Court expressly stated that the distinction between reimbursement and obligation should not be taken too far: "Funding restrictions cannot be ignored through the guise of a theoretical legal 'obligation.'" (*Id.* at p. 1021.)

In this case, the distinction between reimbursement and obligation has been taken too far.¹² Here, unlike in *Professional Engineers*, there is no connection between the "obligation" to be reimbursed and the actual use of the dedicated funds. The bond obligations are not going to be paid with funds transferred to the General Fund from the PTA; those obligations no longer exist, having been retired in prior fiscal years.¹³ Thus, the PTA funds will not be used to pay the debt service on the bonds. Instead, the funds simply will be transferred to the General Fund, where they can be used for any governmental purpose. This "reimbursement" in no way serves a "mass transportation" purpose.¹⁴ As a result, the "reimbursement" violates the purposes for which PTA funds can be spent under Public Utilities Code § 99310.5.¹⁵

¹² Indeed, if Respondents' position is adopted, then restrictions on dedicated funds would be rendered virtually meaningless—the State simply could look over its prior General Fund expenditures and, to the extent it identifies sums paid for purposes consistent with the dedicated fund, it could use the dedicated funds to "reimburse" its General Fund in that amount.

¹³ The funds used to pay the debt service on the bonds in prior fiscal years were not borrowed or advanced from the General Fund on behalf of the PTA. There is no existing obligation to be reimbursed.

¹⁴ It makes no difference that the Legislature found that funding debt service on bonds benefiting public transportation is a component of the state's mass transportation program. The \$409,000,000 appropriation is not funding debt service on bonds. It is reimbursing the General Fund for past debt service on bonds. The Legislature did not find that reimbursing the General Fund benefits the state's mass transportation program, and even if it had, such a finding would be unreasonable. If anything, the reimbursement results in a net decrease in the amount of funds reserved for mass transportation purposes.

¹⁵ Although the Legislature has the power to amend section 99310.5 by statute passed by two-thirds vote if the statute is consistent with and furthers the purposes of "this section," the Court concludes that amending section

F. Conclusion

For the reasons discussed above, the Court concludes that the transfer of \$409,000,000 from the PTA to the General Fund for the purpose of reimbursing the General Fund for past debt service payments on Proposition 108 bonds is contrary to Public Utilities Code § 99310.5. Judgment shall be entered granting the Petition to the extent it seeks to invalidate the portion of SB 78 authorizing the \$409,000,000 transfer from the PTA to the General Fund and order the return of such funds, but denying the Petition in all other respects.

Petitioners are directed to prepare a formal judgment and peremptory writ of mandate consistent with this Court's ruling; submit them to opposing counsel for approval as to form; and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312. Petitioners shall be entitled to recover their costs upon appropriate application. The Court reserves jurisdiction to consider any motions for an award of attorney fees.

Date: March 3, 2008



Jack Sapunor
Judge of the Superior Court of
County of Sacramento



99310.5 to allow trust funds to be used for any purpose, or even any transportation purpose, would not be consistent with the purposes of the section