

Senate Bill No. 7

CHAPTER 14

An act to amend Section 16965 of, and to add Section 63048.66 to, the Government Code, to amend Sections 99312, 99312.7, and 99315 of the Public Utilities Code, and to amend Sections 7102 and 7104.2 of the Revenue and Taxation Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2009. Filed with
Secretary of State February 20, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 7, Ducheny. Transportation finance.

(1) Existing law, pursuant to Proposition 116 of 1990, creates the Public Transportation Account as a trust fund in the State Transportation Fund, provides that revenues are to be deposited in the account from specified portions of the sales taxes on gasoline and diesel fuel, and provides that moneys in the account are available for expenditure only for transportation planning and mass transportation purposes. Existing law specifies various transportation programs that are eligible to receive funds from the account, including the State Transit Assistance program that provides grants to local transit operators for operating and capital purposes, and certain transportation planning functions and mass transportation programs administered by state agencies. Certain provisions of Proposition 116 may be amended by the Legislature only by a $\frac{2}{3}$ vote of both houses and if the amendment is consistent with the purposes of the provision being amended.

This bill, for the 2009–10 to 2012–13 fiscal years, would suspend the State Transit Assistance program as an eligible recipient of Public Transportation Account funds, and would provide that certain revenues in the account shall be available only for other specified transportation planning and mass transportation programs. The bill would also revise the authorized uses of Public Transportation Account funds to include regional center transportation and home-to-school transportation.

(2) Existing law creates the Mass Transportation Fund in the State Treasury and provides that a portion of gasoline sales tax revenues commonly known as the “spillover” that would otherwise be deposited in the Public Transportation Account shall instead be deposited in the Mass Transportation Fund. Existing law specifies the transportation purposes that may be funded by the fund, including payment of debt service on transportation bonds through transfer of funds to the Transportation Debt Service Fund, regional center transportation of the State Department of Developmental Services, and schoolbus transportation, among other things.

This bill, for the 2009–10 to 2012–13 fiscal years, would provide for the transfer of all of those gasoline sales tax revenues commonly known as the “spillover” to the Mass Transportation Fund and eliminate any transfer of those “spillover” revenues to the Public Transportation Account. Because this change would amend a provision contained in Proposition 116, it would require a $\frac{2}{3}$ vote of both houses of the Legislature for passage.

(3) Existing law, pursuant to Article XIXB of the California Constitution, creates the Transportation Investment Fund, which receives another portion of gasoline sales tax revenues that are not designated for deposit into the Public Transportation Account. Moneys in the Transportation Investment Fund are allocated to various transportation purposes, including the state transportation improvement program, local streets and roads, and mass transportation. The portion of moneys designated for mass transportation is, by statute, deposited in the Public Transportation Account, and 75% of these revenues are to be allocated to the State Transit Assistance program, with the remainder to be allocated to mass transportation programs administered by the Department of Transportation.

This bill, for the 2009–10 to 2012–13 fiscal years, would suspend the allocations under these provisions to the State Transit Assistance program. The bill would instead provide for allocation of these funds to the other mass transportation programs authorized for funding from the Public Transportation Account. After fiscal year 2012–13, these funds would be available to these programs and the State Transit Assistance program as specified.

(4) Existing law creates the Transportation Debt Service Fund in the State Treasury for the purpose, among other things, of using transportation revenues for the payment of debt service on transportation bonds and to reimburse the General Fund for past debt service payments on transportation bonds.

This bill would revise the provisions governing the Transportation Debt Service Fund to authorize the Director of Finance, with moneys transferred to that fund pursuant to an annual Budget Act or other statute from the State Highway Account in the State Transportation Fund, to reimburse the General Fund any amount necessary to offset the cost of debt service made in any fiscal year for transportation-related general obligation bond expenditures consistent with Article XIX of the California Constitution.

(5) Existing federal law, the Indian Gaming Regulatory Act of 1988, provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature. Existing law ratifies a number of tribal-state gaming compacts between the State of California and specified Indian tribes. Existing law authorizes the Infrastructure and Economic Development Bank, upon a filing by the Director of Finance with the bank of a list of specified amended tribal compacts and compact assets, to sell for, and on behalf of, the state all or any portion of those compact assets to a special purpose trust. Existing law

authorizes the special purpose trust to issue bonds secured by those compact assets.

This bill would provide that the portion of the above-described compact assets that are timely deposited or are due for deposit in a specified fund between July 1, 2008, and June 30, 2010, shall not be available for the purpose described above. The bill would require the Director of Finance to determine the portion of those compact assets attributable to each fiscal year. The bill would allow the Director of Finance to direct the Controller, by separate order applicable to the assets for each fiscal year, to transfer the compact assets attributable to that fiscal year to the General Fund. This bill would make other related changes.

(6) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

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

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

SECTION 1. Section 16965 of the Government Code is amended to read:

16965. (a) The Transportation Debt Service Fund is hereby created in the State Treasury. Moneys in the fund shall, among other things, as provided in this section, be dedicated to payment of debt service on bonds including bonds issued pursuant to the Clean Air and Transportation Improvement Act of 1990 (Part 11.5 (commencing with Section 99600) of Division 10 of the Public Utilities Code), the Passenger Rail and Clean Air Bond Act of 1990 (Chapter 17 (commencing with Section 2701) of Division 3 of the Streets and Highways Code), and the Seismic Retrofit Bond Act of 1996 (Chapter 12.48 (commencing with Section 8879) of Division 1 of Title 2). If the moneys in the fund are insufficient to pay the balance of the debt consistent with existing obligations, the General Fund will be used to pay the balance of any debt service.

(b) (1) From moneys transferred to the fund pursuant to subdivision (b) of Section 7103 of the Revenue and Taxation Code, the Director of Finance is hereby authorized to reimburse the General Fund for up to three hundred thirty-nine million two hundred eighty-nine thousand three hundred forty-five dollars (\$339,289,345) for the purpose of offsetting the cost of debt service payments made from the General Fund during the 2007–08 fiscal year for public transportation-related general obligation bond expenditures in the following amounts:

(A) Clean Air and Transportation Improvement Act of 1990, one hundred twenty-three million nine hundred seventy-three thousand four hundred ninety-three dollars (\$123,973,493).

(B) Passenger Rail and Clean Air Bond Act of 1990, seventy million nine hundred eighty-three thousand three hundred sixty-three dollars (\$70,983,363).

(C) Seismic Retrofit Bond Act of 1996, one hundred forty-four million three hundred thirty-two thousand four hundred eighty-nine dollars (\$144,332,489).

(2) From moneys transferred to the fund pursuant to subdivision (b) of Section 7103 of the Revenue and Taxation Code, the Director of Finance is hereby authorized to reimburse the General Fund in the 2007–08 fiscal year for two hundred million dollars (\$200,000,000) for the purpose of offsetting the cost of debt service payments made in prior fiscal years from the General Fund for public transportation-related general obligation bond expenditures.

(c) From moneys transferred to the fund pursuant to subdivision (c) of Section 7103 of the Revenue and Taxation Code, the Director of Finance is hereby authorized to reimburse the General Fund any amount necessary to offset the cost of debt service payments made from the General Fund during any fiscal year for transportation-related general obligation bond expenditures.

(d) From moneys transferred to the fund pursuant to an annual Budget Act or other statute from the State Highway Account in the State Transportation Fund, the Director of Finance is hereby authorized to reimburse the General Fund any amount necessary to offset the cost of debt service payments made from the General Fund during any fiscal year for transportation-related general obligation bond expenditures consistent with Article XIX of the California Constitution.

SEC. 2. Section 63048.66 is added to the Government Code, to read:

63048.66. (a) Notwithstanding Section 63048.65 or any other provision of this article, compact assets that are subject to designation by the Director of Finance for sale pursuant to subdivision (a) of Section 63048.65 and that are timely deposited or are due for deposit in the Special Deposit Fund on or after July 1, 2008, and on or before June 30, 2010, shall not be available for the purpose of Section 63048.65.

(b) The Director of Finance shall determine the portion of the compact assets described in subdivision (a) that are attributable to payments made for each fiscal year. The Director of Finance may direct the Controller, by separate order applicable to the assets for each fiscal year, to transfer the compact assets attributable to that fiscal year from the Special Deposit Fund to the General Fund.

(c) Upon order of the Director of Finance, the Controller shall transfer the compact assets as provided in subdivision (b).

(d) If any legal challenges to the issuance of bonds pursuant to this article are settled sufficiently for the bonds to be sold, the following shall occur:

(1) Notwithstanding subdivision (a), the tribal assets described in subdivision (a) that are in the Special Deposit Fund, or are still due for payment to the Special Deposit Fund, may be made available for sale pursuant to subdivision (a) of Section 63048.65.

(2) The transfer of any compact assets to the General Fund pursuant to this section shall be suspended until after the bonds are sold, and any possible future transfers to the General Fund shall be consistent with the provisions of the bond sale.

SEC. 3. Section 99312 of the Public Utilities Code is amended to read:

99312. The funds transferred to the account pursuant to Section 7102 of the Revenue and Taxation Code shall be made available for the following purposes:

(a) Fifty percent for purposes of Section 99315.

(b) To the Controller, 25 percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314.

(c) To the Controller, 25 percent for allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313.

(d) For the 2007–08 fiscal year, notwithstanding any other provision of this section, or any other provision of law, the allocations made pursuant to this section shall be adjusted as follows:

(1) From the funds transferred to the account pursuant to paragraph (1) of subdivision (a) of Section 7102 of the Revenue and Taxation Code, fifty million dollars (\$50,000,000) is hereby appropriated to the Controller and shall be allocated pursuant to subdivision (b); fifty million dollars (\$50,000,000) is hereby appropriated to the Controller and shall be allocated pursuant to subdivision (c); and the remainder of revenue shall remain in the Public Transportation Account to fund other state public transportation priorities. The Controller shall make these allocations in four equal quarterly amounts of twelve million five hundred thousand dollars (\$12,500,000), as achievable by the receipt of the specified revenue.

(2) The amount appropriated in Item 2640-101-0046 of the Budget Act of 2006 for state transit assistance pursuant to subdivision (b) and (c) was greater than the amount of revenues received to support state transit assistance pursuant to Section 7102 of the Revenue and Taxation Code. Therefore, notwithstanding any other provision of law, the amount that would have otherwise been available for appropriation to state transit assistance in the 2007–08 fiscal year pursuant to paragraphs (2) and (3) of subdivision (a) of Section 7102 of the Revenue and Taxation Code, shall be reduced by the excess amount that was appropriated to state transit assistance in the Budget Act of 2006, and that excess amount, as determined by the Department of Finance, shall instead remain in the Public Transportation Account to fund other state public transportation priorities. The funding for state transit assistance as described in this paragraph is hereby appropriated to the Controller for allocation. The Controller shall

attempt to spread this adjustment equally over four quarterly payments, as achievable by revenue estimates.

(e) For the 2008–09 fiscal year and thereafter, notwithstanding any other provision of this section or any other provision of law, and except as provided in subdivision (f), the funds transferred to the account pursuant to paragraph (1) of subdivision (a) of Section 7102 of the Revenue and Taxation Code shall be made available for the following purposes:

(1) For purposes of Section 99315, 33.34 percent, subject to appropriation by the Legislature.

(2) To the Controller, 33.33 percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314. These funds are hereby continuously appropriated for purposes of this paragraph.

(3) To the Controller, 33.33 percent for the allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313. These funds are hereby continuously appropriated for purposes of this paragraph.

(f) For the 2009–10 to 2012–13 fiscal years, inclusive, notwithstanding any other provision of this section or any other provision of law, the funds transferred to the account pursuant to Section 7102 of the Revenue and Taxation Code shall be made available only for purposes of Section 99315, subject to appropriation by the Legislature.

SEC. 4. Section 99312.7 of the Public Utilities Code is amended to read:

99312.7. (a) Not later than each January 31st, the Controller shall send to each transportation planning agency and county transportation commission, and the San Diego Metropolitan Transit Development Board, an estimate of the amount of funds to be allocated to it during the next fiscal year pursuant to Sections 99313 and 99314.

(b) Not later than each August 1st, on the basis of the amount appropriated in the Budget Act for purposes of Sections 99313 and 99314, the Controller shall send to each of the entities an estimate of the amount of funds to be allocated to it during the fiscal year.

(c) No notification shall be required for a fiscal year if funding for Sections 99313 and 99314 allocations is suspended pursuant to subdivision (f) of Section 99312 or any other provision of law.

SEC. 5. Section 99315 of the Public Utilities Code is amended to read:

99315. Funds made available pursuant to subdivision (a) of Section 99312, shall be available for all of the following purposes:

(a) To the department for bus and passenger rail services pursuant to Sections 14035, 14035.5, and 14038 of the Government Code.

(b) To the department for funding of public transit capital improvement projects in the state transportation improvement program, pursuant to Section 14529 of the Government Code.

(c) To the department for its planning activities not payable from the State Highway Account in the State Transportation Fund, its mass

transportation responsibilities, and its assistance in regional transportation planning.

(d) To the department for allocation by the director to the Institute of Transportation Studies of the University of California for training and research in public transportation systems engineering and management and coordination with other transportation modes.

(e) To the commission for its activities not payable from the State Highway Account.

(f) To the Public Utilities Commission for its passenger rail safety responsibilities specified in statute on commuter rail, intercity rail, and urban rail transit lines.

(g) To the State Department of Developmental Services for funding of regional center transportation.

(h) To the Department of Education for funding of home-to-school transportation, pursuant to Article 10 (commencing with Section 41850) of Chapter 5 of, and Small School District Transportation, pursuant to Article 4.5 (commencing with Section 42290) of Chapter 7 of, Part 24 of Division 3 of Title 2 of the Education Code.

SEC. 6. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, credits or refunds pursuant to Section 60202, and refunds pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4³/₄-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund, except as modified as follows:

(A) For the 2001–02 fiscal year, those transfers may not be more than eighty-one million dollars (\$81,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds eighty-one million dollars (\$81,000,000).

(B) For the 2002–03 fiscal year, those transfers may not be more than thirty-seven million dollars (\$37,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds thirty-seven million dollars (\$37,000,000).

(C) For the 2003–04 fiscal year, no transfers shall be made pursuant to this paragraph, except that if the amount to be otherwise transferred pursuant to this paragraph is in excess of eighty-seven million four hundred fifty thousand dollars (\$87,450,000), then the amount of that excess shall be transferred.

(D) For the 2004–05 fiscal year, no transfers shall be made pursuant to this paragraph, and of the amount that would otherwise have been transferred, one hundred forty million dollars (\$140,000,000) shall instead be transferred to the Traffic Congestion Relief Fund as partial repayment of amounts owed by the General Fund pursuant to Item 2600-011-3007 of the Budget Act of 2002 (Chapter 379 of the Statutes of 2002).

(E) For the 2005–06 fiscal year, no transfers shall be made pursuant to this paragraph.

(F) For the 2006–07 fiscal year, the revenues estimated pursuant to this paragraph shall, notwithstanding any other provision of this paragraph or any other provision of law, be transferred and allocated as follows:

(i) The first two hundred million dollars (\$200,000,000) shall be transferred to the Transportation Deferred Investment Fund as partial repayment of the amounts owed by the General Fund to that fund pursuant to Section 7106.

(ii) The next one hundred twenty-five million dollars (\$125,000,000) shall be transferred to the Bay Area Toll Account for expenditure pursuant to Section 188.6 of the Streets and Highways Code.

(iii) Of the remaining revenues, thirty-three million dollars (\$33,000,000) shall be transferred to the Public Transportation Account to support appropriations from that account in the Budget Act of 2006.

(iv) The remaining revenues shall be transferred to the Public Transportation Account for allocation as follows:

(I) Twenty percent to the Department of Transportation for purposes of Section 99315 of the Public Utilities Code.

(II) Forty percent to the Controller, for allocation pursuant to Section 99314 of the Public Utilities Code.

(III) Forty percent to the Controller, for allocation pursuant to Section 99313 of the Public Utilities Code.

(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, and except as provided in subparagraph (I), be transferred to the Mass Transportation Fund. Notwithstanding this requirement, for the 2008–09 fiscal year, the amount of two hundred thirty-four million eight hundred fifty-two thousand dollars (\$234,852,000) each quarter shall be transferred to the Mass Transportation Fund. If revenue for any quarter is less than that amount, the transfer in the subsequent quarter or quarters shall

be increased so that the total transfer for the fiscal year is nine hundred thirty-nine million four hundred eight thousand dollars (\$939,408,000).

(1) For the 2009–10 to 2012–13 fiscal years, inclusive, all revenue estimated pursuant to this paragraph shall, notwithstanding any other provision of this paragraph or any other provision of law, be transferred quarterly to the Mass Transportation Fund.

(2) All revenues, less refunds, derived under this part at the $4\frac{3}{4}$ -percent rate, resulting from increasing, after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the $4\frac{3}{4}$ -percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(5) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be made quarterly.

(d) Notwithstanding the designation of the Public Transportation Account as a trust fund pursuant to subdivision (a), the Controller may use the Public Transportation Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) 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.

SEC. 7. Section 7104.2 of the Revenue and Taxation Code is amended to read:

7104.2. (a) The Transportation Investment Fund (hereafter the fund) in the State Treasury is hereby continued in existence. All revenues transferred to the fund pursuant to Article XIX B of the California Constitution beginning with the 2008–09 fiscal year shall be available for expenditure as provided in this section. Notwithstanding Section 13340 of the Government Code or any other provision of law, moneys in the fund are continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(b) All of the following shall occur on a quarterly basis:

(1) The State Board of Equalization, in consultation with the Department of Finance, shall estimate the amount that is transferred to the General Fund under subdivision (b) of Section 7102 that is attributable to revenue collected for the sale, storage, use, or other consumption in this state of motor vehicle fuel, as defined in Section 7304.

(2) The State Board of Equalization shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(3) Commencing with the 2008–09 fiscal year, the Controller shall transfer the amount estimated under paragraph (1) from the General Fund to the fund.

(c) For each quarter, commencing with the 2008–09 fiscal year, the Controller shall make all of the following transfers and apportionments from the fund:

(1) To the Public Transportation Account, a trust fund in the State Transportation Fund, 20 percent of the revenues deposited in the fund. Funds transferred under this paragraph shall be made available as follows:

(A) Twenty-five percent for purposes of Section 99315 of the Public Utilities Code, subject to appropriation by the Legislature.

(B) Thirty-seven and one-half percent to the Controller, for allocation pursuant to Section 99314 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99314 of the Public Utilities Code. These funds are continuously appropriated to the Controller for purposes of this subparagraph.

(C) Thirty-seven and one-half percent to the Controller, for allocation pursuant to Section 99313 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99313 of the Public Utilities Code. These funds are continuously appropriated to the Controller for purposes of this subparagraph.

(D) Notwithstanding subparagraphs (A), (B), and (C), for the 2009–10 to 2012–13 fiscal years, inclusive, all funds transferred under this paragraph shall be made available only for purposes of Section 99315 of the Public Utilities Code, subject to appropriation by the Legislature.

(2) To the Department of Transportation for expenditure for transportation capital improvement projects subject to all of the rules governing the State

Transportation Improvement Program, 40 percent of the revenues deposited in the fund.

(3) To the Controller for apportionment pursuant to paragraphs (A) and (B), 40 percent of the revenues deposited in the fund.

(A) Of the amount available under this paragraph, 50 percent shall be apportioned by the Controller to the counties, including a city and county, in accordance with the following formulas:

(i) Seventy-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(ii) Twenty-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(B) Of the amount available under this paragraph, 50 percent shall be apportioned by the Controller to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

(d) Funds received under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(1) In the case of a city, into the city account that is designated for the receipt of state funds allocated for transportation purposes.

(2) In the case of a county, into the county road fund.

(3) In the case of a city and county, into a local account that is designated for the receipt of state funds allocated for transportation purposes.

(e) Funds allocated to a city, county, or city and county under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be used only for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair. For purposes of this section, the following terms have the following meanings:

(1) “Maintenance” means either or both of the following:

(A) Patching.

(B) Overlay and sealing.

(2) “Reconstruction” includes any overlay, sealing, or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the department for 3R (reconstruction, resurfacing, and rehabilitation) projects that are not on a freeway, but does not include widening for the purpose of increasing the traffic capacity of a street or highway.

(3) “Storm damage repair” is repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to winter storms and flooding, and construction of drainage improvements

to mitigate future roadway flooding and damage problems, in those jurisdictions that have been declared disaster areas by the President of the United States, where the costs of those repairs are ineligible for emergency funding with Federal Emergency Relief (ER) funds or Federal Emergency Management Administration (FEMA) funds.

(f) (1) Cities and counties shall maintain their existing commitment of local funds for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for the allocation of funds pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (c).

(2) In order to receive any allocation pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (c), the city or county shall annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996–97, 1997–98, and 1998–99 fiscal years, as reported to the Controller pursuant to Section 2151 of the Streets and Highways Code. For purposes of this paragraph, in calculating a city’s or county’s annual general fund expenditures and its average general fund expenditures for the 1996–97, 1997–98, and 1998–99 fiscal years, any unrestricted funds that the city or county may expend at its discretion, including vehicle in-lieu tax revenues and revenues from fines and forfeitures, expended for street and highway purposes shall be considered expenditures from the general fund. One-time allocations that have been expended for street and highway purposes, but which may not be available on an ongoing basis, including revenue provided under the Teeter Plan Bond Law of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code, may not be considered when calculating a city’s or county’s annual general fund expenditures.

(3) For any city incorporated after July 1, 1996, the Controller shall calculate an annual average of expenditure for the period between July 1, 1996, and December 31, 2000, that the city was incorporated.

(4) For purposes of paragraph (2), the Controller may request fiscal data from cities and counties in addition to data provided pursuant to Section 2151, for the 1996–97, 1997–98, and 1998–99 fiscal years. Each city and county shall furnish the data to the Controller not later than 120 days after receiving the request. The Controller may withhold payment to cities and counties that do not comply with the request for information or that provide incomplete data.

(5) The Controller may perform audits to ensure compliance with paragraph (2) when deemed necessary. Any city or county that has not complied with paragraph (2) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with paragraph (2) shall be reallocated to the other counties and cities whose expenditures are in compliance.

(6) If a city or county fails to comply with the requirements of paragraph (2) in a particular fiscal year, the city or county may expend during that fiscal year and the following fiscal year a total amount that is not less than

the total amount required to be expended for those fiscal years for purposes of complying with paragraph (2).

(7) The allocation made under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be expended not later than the end of the fiscal year following the fiscal year in which the allocation was made, and any funds not expended within that period shall be returned to the Controller and shall be reallocated to the other cities and counties pursuant to the allocation formulas set forth in subparagraph (A) or (B) of paragraph (3) of subdivision (c).

(g) For the purpose of allocating funds under subparagraph (A) or (B) of paragraph (3) of subdivision (c) to counties, cities, and a city and county, the Controller shall use the most recent population estimates prepared by the Demographic Research Unit of the Department of Finance. For a city that incorporated after January 1, 2008, that does not appear on the most recent population estimates prepared by the Demographic Research Unit, the Controller shall use the population determined for that city under Section 11005.3.

SEC. 8. This act addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make statutory changes to provisions governing transportation funds that are necessary to address the state's fiscal emergency, it is necessary that this act take effect immediately.