PRIORITY

FOCUS

Analysis, Commentary and Updates on Legislative and Policy Issues that Affect California Cities

July 15, 2005
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The Legislature is in recess until August 15.

U.S. SENATE VOTES TO RETAIN SMALL STATE MINIMUMS IN HOMELAND SECURITY FORMULA

On Tuesday, July 12, the U.S. Senate voted down a proposed amendment to the FY 2006 Homeland Security Appropriations bill (H.R. 2360) that would have implemented recommendations of the 9/11 Commission and the Secretary of the Department of Homeland Security by allocating a larger portion of local homeland security funds based upon identified risk. *For more, see Page 6.*

PROP 42 TRANSPORTATION FUNDING: MAKING SURE YOUR CITY IS ELIGIBLE

According to the State Controller's Office, cities will begin to receive quarterly Proposition 42 allocations beginning in October 2005. Below is a reminder on the specific use of Proposition 42 funds along with the requirements for cities to remain... *For more, see Page 6.*

VEHICLE LICENSE FEES: BUDGET UPDATE

The State Controller's office informed the League yesterday that cities that did not securitize the their vehicle license fee (VLF) gap loan will receive their loan payments from the state within the next five to ten business days, with the countdown beginning today. The Controller's Office staff are in the process of contacting the recipient cities to make arrangements on how to transfer the money to them.

WANT MORE DETAILS ON BILLS?

Visit the League of California Cities website at www.cacities.org/billsearch.

IN THIS ISSUE:

SUPPORT CALIFORNIA ARTS DAY ON OCTOBER 7

Celebrate "California Arts Day" on October 7! Promoted by the California Arts Council, this fifth annual celebration is designed to recognize the role that arts such as music, theater, visual art, poetry, dance, and creativity in general play in the state.

The nonprofit arts provide $5.4 billion in economic activity annually, supporting more than 160,000 jobs and generating $300 million in local and state revenue, according to the 2004 study "The Arts, a Competitive Advantage for California," commissioned by the California Arts Council and conducted by KPMG Peat Marwick. The study also found that California has more arts-related businesses and more people employed in the creative industries than any other state.

Cities can do a number of things to support this cause. They can adopt a city council resolution recognizing the value of the arts in their community (Go to www.cac.ca.gov for a sample resolution), write an editorial on how the arts play a critical role in the community, or highlight arts offerings of your community services department in your October newsletter.

The annual California Arts Day is always on the first Friday of October. For more ideas, and additional information on the event, visit the California Arts Council website at www.cac.ca.gov.

2005 LEAGUE ANNUAL CONFERENCE: OCTOBER 6-8, MOSCONE CONVENTION CENTER, SAN FRANCISCO

Plan now to attend the League's 2005 Annual Conference this fall - the first time it has been in San Francisco since 1997.

Make you reservations through our online system at www.cacities.org/ac.

POLLING AND PUBLIC OPINION—A ONE-TO-ONE RELATIONSHIP?

Public officials frequently look to public opinion polls as a reliable indicator of public sentiment. But is it? Under what circumstances could polls even mislead?

Come find out at the Institute for Local Government's (ILG) first-ever luncheon symposium at the upcoming League Annual Conference. This year's symposium will feature Daniel Yankelovich, a leading interpreter of trends shaping American society. Mr. Yankelovich is the author of 10 books, including *Coming to Public Judgment*, *New Rules*, and *The Magic of Dialogue: Transforming Conflict into Cooperation*. To learn more about Mr. Yankelovich, check out his interview with Bill Moyers at www.pbs.org/now.

Daniel Yankelovich

The symposium will be from **12:30 p.m. to 2 p.m. on Thursday, October 6**, at the Moscone Convention Center West in San Francisco. The fee for attending this event is $40, which covers the cost of the lunch. Your attendance also shows your support for the ILG's work in service to local officials in the areas of ethics, civic engagement, fiscal stewardship and housing/land use. League alumni (former city officials) are invited as well!

To sign up, see the attached form or visit www.cacities.org/ac and either check the "ILG Luncheon" box on the regular League annual conference registration form, or take advantage of the online registration process. Please note that you do not have to attend the entire conference to attend in this event.

BUDGET ENACTS CHANGES TO SOME KEY REIMBURSABLE MANDATES

As part of the budget deliberations, the Legislature passed Assembly Bill 138, a trailer bill addressing some key issues related to reimbursable mandates. AB 138 impacts, among others, the Open Meeting Act (Brown Act) reimbursable mandate items, and the Police Officer's Bill of Rights.

In addition to those items, the bill also changed the "payback" period for previously deferred mandates payments from a period of five years (as had been agreed to last year), to a period of not more than 15 years, beginning in 2006-2007. Currently, there is more than $1.19 billion in deferred mandate payments owed to local governments.

The League is concerned about these actions to remove, reconsider, and extend the state's obligation to reimburse local governments for the costs of programs that have been determined to be reimbursable by the Commission on State Mandates (COSM). We will continue our efforts to work with the Legislature on mandate related issues as they arise to ensure that locals receive the monies owed to them.

Brown Act Mandate

In its effort to eliminate the Brown Act reimbursable mandate, the Legislature made a significant change to the Government Code that will have implications beyond the Brown Act mandate. It changed the law to read that if any mandate is "necessary to implement or reasonably within the scope of" a voter-approved ballot measure, then the mandate is not reimbursable. Prior to this change, the law provided that reimbursement was not required if a statute imposed duties that were "expressly included in a ballot measure approved by the voters."

Secondly, with specific regard to the Brown Act, it found that the previously reimbursable requirements were "necessary to implement and reasonably within the "scope of" Proposition 59 approved by the voters last November. Proposition 59 was the measure that grants a constitutional right of access to public information and public meetings. By enacting both of these changes, the Brown Act requirements are no longer reimbursable.

POBAR

The Legislature directed the COSM to review its statement of decision regarding the Peace Officer Procedural Bill of Rights in light of *San Diego Unified School District v. Commission on State Mandates.* This case analyzed a section of the Education Code that requires suspension of pupils for carrying firearms and requires that such pupils receive a hearing. The section also permits a principal to recommend suspension for other behavior (but does not require suspension for other behavior). If a principal recommends suspension, then the pupil must receive a hearing. The California Supreme Court held that the former, but not the latter, was a reimbursable mandate. Since the principal was not required to recommend suspension of a pupil the costs of the mandatory hearing were not reimbursable. It appears as if the Legislature is making an analogy to the Police Chief, for example, who is not required to impose discipline, investigate behavior, etc. but once the decision is made to do so, a hearing/other procedures are required.

Miscellaneous

The Legislature amended Section 13304 of the Elections Code to relieve local governments of the reimbursable state mandate to provide handicapped voter access information. Chapter 494 of the Statutes of 1979 initially imposed this activity.

The Legislature also amended Sections 15151 and 15375 of the Elections Code to repeal the presidential primaries reimbursable state mandate imposed by Chapter 18 of the Statutes of 1999.

For full language and details on these changes, go to www.cacities.org and search for AB 138.

Congressional action to rewrite the 1996 Telecommunications Act is limited at this point to a handful of hearings and small, private discussions among lawmakers. In the meantime, several legislative proposals addressing a variety of telecommunications and tax issues have been introduced.

It is too early to determine which of the many vehicles will become the focus of discussion, but each proposal represents a likely issue that will be raised once Congress begins the rewrite in earnest. None of the bills introduced have seen any formal legislative action yet and it is expected that no real action will begin until the next legislative session.

It is our recommendation that city officials begin to gear up in their local communities on the issue of telecommunications and to familiarize themselves with the issues in these legislative proposals. It is also our recommendation that city officials begin to articulate to congressional representatives the key issues in this debate for your community. This will help to set the stage for what promises to be an active legislative year in Washington DC. For the time being, we encourage city officials to state your positions on the different legislative proposals, but that any more pointed advocacy be placed on hold until the direction of Congress gets clearer next session.

The key pieces of legislation in Congress for your review include the following:

Franchise Agreement Preemption

On June 30, Representatives Marsha Blackburn (R-Tenn.) and Albert Wynn (D-Md.) introduced H.R. 3146, the Video Choice Act of 2005, which would prohibit local governments from asserting franchise agreements over traditional telephone providers offering competitive video services. H.R. 3146 has been referred to the House Energy and Commerce Committee and has four cosponsors. A companion measure, S. 1349, was introduced in the senate by Gordon Smith (R-Ore.) and John D. Rockefeller (D-W. Va.). S. 1349 has been referred to the Senate Commerce Committee and has no cosponsors.

Municipal Broadband

Rep. Pete Sessions (R-Texas), former Texas District Manager for SBC, introduced the Preserving Innovation in Telecom Act of 2005 (H.R. 2726) on May 26. The bill would prohibit municipal governments or groups affiliated with them from offering telecom services if a telecom corporation already serves the city. No action has been scheduled on the bill, nor does the bill have any cosponsors.

On June 23, Senators John McCain (R-Ariz.) and Frank Lautenberg (D-N.J.) introduced S. 1294, the Community Broadband Act of 2005, which would amend the 1996 Telecommunications Act to preserve and protect the ability of local governments to provide broadband capability and services. Both senators (Sen. McCain is very senior on the committee) are on the Senate Commerce Committee and are expected to be very active in the rewrite of the 1996 Act.

Internet Tax

On April 19, Rep. Christopher Cox (R-Calif.) introduced the Internet Tax Nondiscrimination Act of 2005 (H.R. 1684). Sen. George Allen (R-Texas) introduced a companion bill (S. 859) in the Senate with identical language. The bill would amend the Internet Tax Freedom Act to make permanent the ban on state taxation of Internet access and on multiple or discriminatory taxes on electronic commerce. H.R. 1684 has been referred to the House Judiciary Committee and has 44 cosponsors, including California Representatives Calvert, Eshoo, Herger, Lofgren, Radanovich, Dreier and Gary Miller. S. 859 has 10 cosponsors.

On April 19, Rep. Christopher Cox also introduced the Internet Consumer Protection Act of 2005 (H.R. 1685). The bill would amend the Internet Tax Freedom Act to make permanent the moratorium on certain taxes relating to the Internet and to

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STATE SUPREME COURT CLARIFIES CONTRACTORS' STATE LICENSE LAW

In late 1999, MW Erectors and Niederhauser Ornamental and Metal Works Company entered into two contracts for "structural" and "ornamental" steel work in connection with the construction of a hotel. MW began work under the structural contract on December 3, 1999, but did not receive its C-51 structural steel contractor's license until December 21, 1999. MW started work under the ornamental contract in early January 2000.

Subsequently, MW sued Niederhauser, seeking amounts due under both contracts. The trial court dismissed the lawsuit because MW was not properly licensed at all times during the performance of the contract as required by the Contractors' State License Law (CSLL). But the court of appeal reversed. The court held that MW could seek to recover compensation for work performed under the contracts once MW had obtained its C-51 license on December 21.

This year on July 14, the state Supreme Court handed down its ruling. The Court held, in part, that: (1) the CSLL bars one from suing to recover for any compensation under an agreement for services requiring a contractor's license unless the proper licensure was in place *at all times* during the performance of the agreement; (2) the CSLL does not permit a contractor who was unlicensed at any time during the contractual performance to recover compensation for any acts performed while duly licensed; and (3) a contractor fully licensed during the performance of the contract may recover compensation even if not fully licensed at the time the contract was executed.

The League filed a friend-of-the-court brief in this matter because cities are invariably in the category of owners who have an interest in adherence to the licensure laws at all times. The court of appeal's decision eviscerated an important defense against the claims of unlicensed contractors.

The Legal Advocacy Committee thanks Kimberly Barlow and Elena Gerli of Jones & Mayer for writing the friend-of-the-court brief. Their brief may be reviewed at www.cacities.org/recentfilings.

RIVERSIDE MAYOR RECEIVES NATIONAL AWARD FOR LEADERSHIP

Former League President and Riverside Mayor Ronald O. Loveridge was presented with the Tom Bradley Leadership award on June 28, at the National Association of Regional Councils' (NARC) annual conference in Monterey. The award recognizes leadership excellence in advocating regional concepts, approaches, and programs in all levels of government.

Mayor Loveridge was nominated by the Southern California Association of Governments (SCAG) for his leadership and commitment to improving the transportation network in and maintaining a high quality of life in Southern California. A member of the SCAG Regional Council since 1995, Loveridge is currently the chair of the SCAG Benchmarks Task Force. The Task Force has guided the preparation of the State of the Region Report (an annual report on seven key policy areas in the region) since 1998, and is made up of local elected officials and regional issue experts in Southern California.

"I am truly honored by this recognition," Loveridge said in a news release. "Elected leaders, such as myself, are increasingly recognizing that the issues examined in the State of the Region Report extend beyond city and county limits, making it imperative that we work together as regions to improve our collective quality of life."

The League congratulates Mayor Loveridge on his being awarded this honor.

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eligible for the allocation of these funds. To find out how much your city will receive visit www.californiacityfinance.com.

Use of these Prop 42 Funds: Prop 42 funds must be used only for street and highway pavement maintenance, rehabilitation, reconstruction and storm damage repair. For Proposition 42 purposes, maintenance means patching and overlay, and sealing. Reconstruction includes overlay, sealing or widening of the roadway to bring the roadway width to the desirable minimum pavement width consistent with accepted design standards for local streets and roads, but does not include widening for increasing the traffic capacity of a street or road.

Maintenance of Effort (MOE) Requirement: In order to receive Prop 42 allocations, cities must be in compliance with the MOE provision. The MOE provision requires cities to expend from their general fund, in the budget year in which Prop 42 monies are allocated, a defined amount of funds for transportation purposes. This amount is equal to or greater than the average transportation expenditures for the fiscal years 1996-97, 1997-98 and 1998-99.

At the end of each fiscal year in which a city has received Proposition 42 funding, the city must prove to the State Controller that they have spent the required MOE monies. Any that city fails to do so must reimburse the state for the funds it received during that fiscal year. (For specific detail on Proposition 42, look up Section 7104 of the Revenue and Taxation code.)

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HOMELAND SECURITY from page 1

H.R. 2360 proposes to change the distribution formula for allocating federal homeland security funding to state and local first responder agencies.

During the debate on H.R. 2360, Senators Susan Collins (Maine) and Joseph Lieberman (Conn.), both members of the Senate Committee on Homeland Security and Government Affairs, proposed an amendment that would set the minimum percentage for states at 0.55 percent of all funds spent. The current percentage is 0.75 percent, but the amendment would be applied to more funding. **As a result, a smaller proportion of the nation's homeland security funding resources would be distributed without taking into account identified risk or threat under the proposed Senate approach.**

Senators Dianne Feinstein (Calif.) and John Cornyn (Texas) proposed an alternative plan to set 0.25 percent as a minimum for states for four programs: The State Homeland Security Grant Program (SHSGP), Urban Area Security Initiative (UASI), Law Enforcement Terrorism Prevention Program (LETPP) and Citizens Corps. If approved and enacted, the Feinstein-Cornyn amendment would have distributed nearly 90 percent of homeland security grant dollars according to identified risk and threat information

In the end, large, high-threat states were defeated. Sen. Collins argued that 43 states would get more money under the Collins-Lieberman amendment as opposed to the Feinstein-Cornyn amendment.

The Senate voted to adopt the Collins-Lieberman amendment, 71-26, and rejected the Feinstein-Cornyn amendment, 32-65.

The result is that high-risk areas in California and other states will continue to suffer from a lack of federal funding to defend against and prepare for the risk of terrorist actions.

Commenting on the story, *The New York Times* had this to say in an editorial on July 14:

"Rather than dole out homeland security money according to a system based entirely on risk, Congress builds in guaranteed state minimums - money that goes to a state regardless of the risks and threats it faces…Senators had a chance to fix next year's formula, but they voted to make it worse."

The Senate appropriations bill will soon move to conference with the House.

CONSTITUTIONAL AMENDMENT WOULD UNDERCUT AFFORDABLE HOUSING, JOBS, SMART GROWTH

Senator Tom McClintock, Assemblymember Doug LaMalfa and several co-authors announced on July 14 the introduction of SCA 15 (McClintock) and ACA 22 (LaMalfa), identical constitutional amendments that would prohibit local governments from using eminent domain if it results in a later use of the property by a private party (with a few narrow exceptions for PUC-regulated entities and incidental uses).

The senator is using the recent Supreme Court *Kelo v. City of New London* decision (a case that arose in Connecticut) to assert that that eminent domain strips families of their property and gives it to private economic interests.

The League Opposes These Measures. These measures will strip redevelopment agencies of a seldom used, but critical tool that California cities urgently need to build affordable housing for needy families, restore safe communities and generate jobs.

Most important, this proposal is a solution in search of a problem. ***California is not Connecticut:*** we already have strong laws on the books protecting property owners and restricting the use of eminent domain. Redevelopment agencies may only use eminent domain as a last resort, and only where there is a clear finding of blight, as defined by state law. Land does not qualify simply because it is not being put to its optimum use or may be more valuable for other uses.

These Measures are Job Killers. California is in the midst of an economic recovery, and these measures would kill valuable construction and other jobs that redevelopment projects create. Redevelopment is a significant economic and job-generating resource for California and local communities, responsible for more than **$31.84 billion in economic activity and the creation of 310,000 full and part-time jobs in a single year.**

These projects and jobs create valuable revenue for state government and help with the state budget crisis.

These Measures Are Affordable Housing Killers. After the federal government, redevelopment is the biggest funder of affordable housing projects in the state. And redevelopment is sometimes the only tool a community has to jump start revitalization of downtrodden, blighted communities.

According to information from the state Department of Housing and Community Development and the State Controller, redevelopment is responsible for the construction of 63,406 units of affordable housing units since 1994, and 20,048 units of low- and moderate-income housing are expected to be built or refurbished as part of redevelopment projects over the next two years. Since 1997-98, agencies have assisted 88,711 households with obtaining affordable housing; 45 percent of this activity occurred in the last two reporting years.

SCA 15 and ACA 22 will make housing in California less affordable and worsen our housing crisis.

What You Can Do. With the Legislature starting its summer recess today, city officials will have a good opportunity to provide their legislators information about why these measures aren't needed in California and how they will hurt your city's ability to build affordable housing, generate jobs and restore public safety to blighted areas. Here is what we ask that you do:

- Tell legislators and the media about spe cific redevelopment projects in your city that have included new housing, improved public safety, generated jobs and economic activity.
- Explain how eminent domain is a seldom used, but critical tool to bring parties to the table to build affordable housing, remove blight, and create jobs.

We will provide more information about this issue in the weeks ahead.

THE LEAGUE SEEKS YOUR INPUT ON WEBSITE

Do you use the League of California Cities' website? If so, we'd like to know what you think about it!

The League has posted a short, five-minute-or-less online website survey so that website users can let us know how well the site works for them, and what services they find most valuable.

If you use the site - whether frequently or only occasionally – please help us by participating in this short survey. Data from the survey is collected anonymously.

To take the survey, please visit the League's website at www.cacities.org. Thank you!

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electronic commerce. H.R. 1685 has been referred to the House Judiciary Committee and has 42 cosponsors, including California Representatives Calvert, Eshoo, Herger, Lofgren, Radanovich, Dreier and Gary Miller. These bills would combine to ensure a permanent moratorium on all taxes of Internet services and eliminate the grandfather provisions in the Internet Tax Nondiscrimination Act compromise bill (now Public Law No: 108-435) reached last year.

VoIP

On May 18, Sen. Bill Nelson (D-Fla.) introduced the IP-Enabled Voice Communications and Public Safety Act of 2005 (S. 1063) which would direct the FCC to prescribe regulations and establish a set of requirements for providers of IP-enabled voice service to ensure that 911 and E-911 services are available to customers to IP-enabled voice service. S. 1063 has been referred to the Senate Commerce Committee and has 4 co-sponsors.

A House companion measure (H.R. 2418) with identical language was introduced in the House by Rep. Bart Gordon (D-Tenn.) and has 19 cosponsors, including California Representatives Eshoo, Lofgren and Schiff. The House measure has been referred to the Energy and Commerce Committee.