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

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77 - 0 - 3: ASSEMBLY PASSES SPEAKER'S TELECOMMUNICATIONS BILL (AB 2987)

77 - 0 - 3. That is the vote count from the Assembly floor Wednesday evening on the Speaker's bill, AB 2987. **AYES – 77; NOES – 0; and, NOT VOTING – 3.** This bill enacts a statewide franchising process for industries providing video and broadband Internet services to California residents. Assemblymembers **Nation, Niello and Oropeza** chose not to vote on the bill. All other assembly members voted **"YES!"** *For more, see Page 5.*

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BUDGET UPDATE: PROP 42 REPAYMENT STILL ON THE TABLE

The League is urging cities to call or fax a letter to the members of the Budget Conference Committee to urge their support of the $920 million early payback of Proposition 42 funds for local streets and roads. ($245 million would go to cities and counties.) A sample letter is available on the League's website at www.cacities.org/infrastructure2006.
For more, see Page 3.

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Want More Details on Bills?

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

SB 1800 (DUCHENY): AMENDMENTS TO STATE HOUSING PROPOSAL MERIT CITY REVIEW

Cities are encouraged to have their planners and city attorney review SB 1800 (Ducheny) and the recent amendments added to the bill on May 23. While Proposition 1A may have protected local revenues, local land use authority remains vulnerable to continuous legislative attack and erosion.
For more, see Page 4.

IN THIS ISSUE:

LEAGUE URGES CITIES TO OPPOSE H.R. 5252 UNLESS AMENDED

RIGHTS-OF-WAY AND BUILD-OUT ISSUES OF KEY CONCERN

The House is expected to vote next week on H.R. 5252, the Community, Opportunity, Promotion and Enhancement Act (COPE Act). The bill aims to reform federal telecommunications law and increase competition in the broadband and video service markets, but local concerns regarding what actual effect the proposed legislation will have on residents in our communities remains unknown.

On Wednesday, May 30, Congresswoman Diane Watson (D-Calif.) wrote a "dear colleague" letter (available for download at www.cacities.org/telecom) expressing her concerns about keeping the control of the local rights-of way local. The League commends her for her leadership on the issue and believes that we need more representatives to understand the effects that this legislation will have on their local communities.

The League is asking for amendments that address the following two issues:

Rights-of-Way

While local governments would retain authority to regulate the use of public rights-of-way, enforcement authority would rest with the Federal Communications Commission (FCC) 3,000 miles away in Washington, D.C. The bill is also silent on the appropriate forum to resolve rights-of-way disputes, leaving that authority again to the FCC – an agency that most people have no idea even how to contact!

- The ability to manage our rights-of-way and related infrastructure is meaningless without the ability to enforce actual activities occurring in our local streets and related areas.
- When did it become appropriate for the FCC to take charge of our local roads?
- Does the FCC have nationwide knowledge of city streets, sidewalks, local safety and traffic patterns/congestion?
- How will the FCC be able to handle all of these local concerns in a timely fashion?
- What does a city do when, without the city's knowledge, a service provider cuts into a local street, bursts a water main and disrupts traffic? How long does the city wait for the FCC to get back to them on how to resolve this immediate safety issue?
- Residents are not going to wait for a response from the FCC. They are going to call their elected officials, members of Congress and demand answers. Are we forced to tell them "sorry there is nothing we can do, Congress gave away our authority to control our streets to the FCC?"

Build-Out

H.R. 5252 allows service providers to self-select their service areas and contains **NO** build-out requirement (not even goals!) to ensure that local communities are served.

- Telecommunications providers contend they have "every incentive" to expand their coverage and therefore, should not have any build out requirements or even any build-out goals. If they truly have the incentive, build out goals should be a non-issue.
- Somehow the cable industry figured out how to meet existing build out requirements and as a result many of our communities and residents are served. How is it that cable can do it and telecommunications providers can't or shouldn't?
- Clearly the federal government believes build out requirements are fair and reasonable as they require them when they give out spectrum.

What Cities Can Do

The League is asking cities to call or write their congressional representatives to oppose the

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PROP 42 from page 1

Background. As reported in *Priority Focus* last week, differing actions by the Senate and Assembly budget subcommittees mean that the joint legislative Budget Conference Committee will make the ultimate decision regarding Proposition 42 repayment funds and allocation of those funds in the FY 2006-07 budget.

The committee's deliberations are based around two differing proposals:

- **The Senate Budget Subcommittee #4** approved repayment at the level of $460 million (half of the Governor's proposal), with the requested repayment allocation proportionally reduced (approximately $205 million to the Traffic Congestion Relief Fund, $127.5 million to local streets and roads and $127.5 million to the Statewide Transportation Improvement Project [STIP]).

- **The Assembly Budget Subcommittee #5** recommended repayment of the $920 million in the Governor's proposal, but shifted the allocations. The repayment would be allocated as follows: $308 million to the Traffic Congestion Relief Program (TCRP); $245 million to the STIP; $245 million to local streets and roads; and $122 million to the Public Transit Account.

The League supports the Assembly proposal to provide repayment of local street and road money consistent with the Governor's proposal.

Call to Action!

The Budget Conference Committee is currently meeting to consider both the Senate and Assembly recommendations for early repayment of Proposition 42 funds. **Contact the members of the Budget Conference Committee by phone or fax and urge their support of the $920 million early payback for local streets and roads** ($245 million would go to cities and counties.)

The Budget Conference Committee members are:

Sen. Wesley Chesbro, Chair: (916) 651-4002, Fax: (916) 323-6958
Sen. Dennis Hollingsworth: (916) 651-4036, Fax: (916) 447-9008
Sen. Denise Moreno Ducheny: (916) 651-4040, Fax: (916) 327-3522
Assemblymember John Laird: (916) 319-2027, Fax: (916) 319-2127
Assemblymember Rick Keene: (916) 319-2003, Fax: (916) 319-2103
Assemblymember Judy Chu: (916) 319-2049, Fax: (916) 319-2149

Talking Points

Below are some talking points to use when speaking with members of the Conference Committee:

- Cities and counties received $254 million for fiscal year 2005-06 with the full funding of Prop. 42. However, we are not slated to receive <u>any</u> monies in FY 2006-07 and 2007-08, even if Proposition 42 is fully funded. The early repayment of $920 million as proposed by the Governor and the Assembly will provide the only money for local streets and roads for critical preservation and storm damage projects.

- Cities can put this money to use immediately. It will enable us to continue repairing city streets that are in disrepair, especially in light of damage caused by recent storms.

- While SCA 7, if passed, will provide repayment of borrowed Prop. 42 funds over 10 years, it would be of greater benefit to make those repayments now so that the money can be put to use immediately. We pay now, or we pay much more later to fix our streets and roads.

- Repayment of $920 million now will reduce the state's budget deficit and cut down interest paid on continued debt.

- Even if the infrastructure bond package passes in November, it is unclear when money will actually start flowing. Providing payback of Prop. 42 funds now will ensure that cities have at least some funding for the local road system.

SB 1800 from page 1

Passage of SB 1800 would double the land supply, which must be made available through the controversial regional housing needs assessment process (RHNA), and imposes many other restrictive requirements on local governments related to planning and development approvals. The bill is currently in the Senate Transportation and Housing Committee.

Local governments and environmental groups remain opposed to SB 1800. The author and the bill's homebuilder sponsors continue to pursue rule waivers that would allow SB 1800 to be heard. In addition, there is always the possibility of the contents being dumped into another vehicle (bill) later in the legislative session.

Among its many changes of concern, SB 1800 would:

- Expand the land supply for housing through the RHNA process from a current five-year allocation to a 10-year allocation, with additional comprehensive planning required for a 20-year period.
- Increase the scope review of local elements by the State Department of Housing and Community Development to include infrastructure planning, design guidelines, property development standards, and the goals and objectives of other elements of the general plan.
- Require site-by-site reviews and extensive planning and engineering to ensure each residential parcel can be developed to permit the maximum density allowed by the density range.
- Require a market analysis of each site to ensure that "market factors" will result in development. (Many infill locations may not meet these requirements as well as traditional greenfield developments.)
- Prohibit denial of a housing development unless a stiff finding can be made accompanied by a four-fifths vote.
- Authorize fines of up to $10,000 per day and the appointments of "special masters" in communities that are unable to comply with various requirements.
- Make numerous other changes which diminish local land use authority.

Please have your city planner and attorney review this legislation. Letters of opposition continue to be encouraged. An expanded legal analysis of the legislation prepared by the League can be found by looking up SB 1800 using the League's bill search utility at www.cacities.org/billsearch.

H.R. 5252 from page 2

legislation unless it is amended to reflect our concerns with rights-of-way and build out before the bill goes to the floor for a vote.

Specifically, cities should ask their representative to:

- **Support amendments that maintain local government's ability to enforcement and resolve disputes over their streets and rights-of-way.**
- **Support amendments that provide for reasonable build out provisions.**
- **Oppose the bill if amendments are not added that would address these issues.**

FIND A BILL, LEGISLATORS, LEG COMMITTEE - OR ASK LEG STAFF

Visit (and bookmark!) the League's Legislative Resources page (www.cacities.org/legresources). You'll find a roster and contact information for the League's legislative staff; the online Bill Search program, background materials on lobbying your legislators, and more.

AB 2987 from page 1

Energy Deregulation Déjà vu! As the vote was taken on the night of May 31, it brought back memories from 10 years ago when **electric deregulation** legislation was passed under very similar circumstances. A small number of legislators, blessed by legislative leadership, convinced virtually every member of the Legislature that electric deregulation was the "right way to go."

In that debate, the people of California were promised competition and lower prices. Today, AT&T and Verizon are promising competition and lower prices for video services if AB 2987 is passed. We all know what happened in 1996. Is the Legislature forgetting the lesson it learned on the electric deregulation debacle?

This is not the kind of bill that deserves 77 "YES" votes on the floor of the Assembly, much less the majority needed for passage! While many members have expressed concerns with the bill, there was a rush to approve the Speaker-blessed and -carried legislation.

SCHEDULE. So what's next? The bill will be heard in the Senate Energy, Utilities and Communications Committee. That committee is chaired by Senator Martha Escutia. Members of the committee also include Senators Alarcon, Battin, Bowen, Cox (Vice-chair), Dunn, Dutton, Kehoe, Murray and Simitian. While no date for a hearing has been announced, it is likely that it will be heard toward the end of June (possibly June 20). **This means that we have to take full advantage of this time and make contacts with senators immediately.**

ACTION!! We CAN Do It! California cities have already proven that when we act together, we can change events in the State Capitol. Even with the Assembly's top-heavy vote – we CAN turn this around. If you agree with this assessment of the legislation, you need to take action on the following items: (For sample letters and other materials, visit www.cacities.org/ab2987.)

- **Call Your Assemblymember.** Please call your Assemblymember and express how disappointed you are with his or her vote. Remember, the bill will have to come back to the Assembly for concurrence in any Senate amendments and there will likely be many Senate amendments. **Be sure to thank Nation, Niello and Oropeza for withholding their votes, if these are your representatives!**

- **Call Your Senator.** Immediately call your Senator and tell him or her that it's time to save your city from the Assembly! Please carefully outline the impacts on your community and encourage the Senator not to commit another **electric deregulation debacle.**

- **Call Local Press.** Give your local newspaper, television or radio station a call and point out the detrimental impact this bill will have on your community. Remind them that competition is good **as long as it is fair.**

- **Call Local Community Groups.** The League is working to build a coalition of groups at the statewide level that can work together with us to oppose AB 2987. You can help, by talking to local community groups that have an interest in this issue and pointing out the problems with the bill. Encourage them to join the "No on AB 2987" coalition.

  Groups can include those interested in digital divide issues and preventing discrimination against lower income areas of a community. Groups can also include those with an interest in the public, educational and governmental channels, and consumer protection.

- **Check Out the League's New AB 2987 Webpage (www.cacities.org/ab2987).** You'll find a form to download and use to

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WHAT WILL AB 2987 MEAN FOR YOUR CITY?

The May 26 amendments to AB 2987 only address marginal concerns the League has identified with the bill. The bill does little or nothing to address the core issues for cities. **This is what the bill in its current form will do to <u>your</u> city:**

- **<u>Discriminatory.</u>** The bill permits video service providers to pick and choose the areas in a community that they will serve while ignoring other neighborhoods. Cities support competition services in telecommunications, but it has to be **FAIR TO ALL CALIFORNIANS!** Under current law, city officials decide the deployment of video services and have a record with the cable industry to prove that all areas of a community have been served. Under this law, will AT&T and Verizon be put in charge of protecting the underserved?

- **<u>PEG Channels.</u>** Public access to broadcasting is not protected. The bill fails to adequately protect the community's public, education and governmental (PEG) channels. These are important assets in a community that permit the televising of community events, governmental deliberations and educational opportunities. The current language permits new video service providers to ignore this commitment to the community.

- **<u>New State Bureaucracy Pre-empts Local Franchises.</u>** The bill establishes a new state bureaucracy that will grow to regulate what are essentially local decisions about the deployment of new telecommunications services. In short, the state is taking over local streets when it comes to industries providing video services. Have a problem on a local street? Go to Sacramento and ask the state to correct it!

- **<u>State Takes Over Local Rights-of-Way</u>.** This bill fails to adequately protect the taxpayers' investment in public rights-of-way. New market entrants, primarily telephone companies, want to access local streets under rules they have written.

- **<u>Revenue Loss.</u>** The local government revenues from franchise fees are in jeopardy in the current language in the bill. Serious legal flaws remain. In its current form, the bill **<u>is a tax</u>** under the constitution of the state. The language needs to be amended to ensure that the traditional local franchise fee for local government is maintained and not taken over and pre-empted by the state tax currently in the bill. **<u>Also</u>**, the bill narrows the definition of "gross revenues" that is the basis for calculating local government revenues, likely resulting in a revenue loss.

AB 2987 from page 5

sign up to join the "No on AB 2987" coalition, fact sheets, a statement of coalition principles and other resources.

At the end of the day, we all want to achieve expanded consumer choice and help lower costs—not the illusion of reform or, worse still, more expensive services and less choice. Let's take the time to do this right!

(See also, **"What Will AB 2987 Mean for Your City?"**)

Stay Up-To-Date on Bills That May Impact Your City

<u>www.cacities.org/billsearch</u>

Become a regular user of the League's online Legislative Tracking System. The League's website is your gateway to all the information you need: bills sorted by subject areas, showing the bill history, current status, committee analyses, votes, and much more. You can even view League letters of support or opposition, and access the League lobbyist working on the bill.

WESTERN CITY MAGAZINE RECOGNIZED FOR EXCELLENCE IN COMMUNICATIONS

Western City, the League's monthly magazine, recently won several awards. The magazine was recognized by the International Association of Business Communicators (IABC) Sacramento Chapter, winning a Crystal Award for the *Western City* Media Kit in the "Media Kit" category, and an Award of Merit in the "Three-Color or More Magazine" category.

In addition, the California Association of Public Information Officers (CAPIO) awarded its highest honor, the Award of Excellence, in its "Writing" category to *Western City* for the article, "How the Telecommunications Revolution Will Affect Your City." The magazine also received an Award of Merit from CAPIO for overall writing and design in the "Special Publication" category.

Western City is an entirely self-supporting project that is provided to League members as a free membership benefit. It reaches more than 30,000 elected city officials and key staff. Subscriptions are also available. To subscribe, visit www.westerncity.com or call (916) 658-8223. For advertising information, call (800) 262-1801 or visit www.westerncity.com.

Legislative Bill Action

The following are summaries of just a few of the legislative bills that are currently being acted upon by the League of California Cities. For more information about these and other bills, please **visit** the League website to access information about legislation, policy issues and related developments. You can track information on bills (**www.cacities.org/billsearch**), locate legislators and legislative committees, send letters to legislators or the media through the online Advocacy Center (**www.cacities.org/advocacycenter**), research League policy positions, access useful related links, and much more.

ENVIRONMENTAL

AB 1899 (Wolk). Show Me the Flood Protection. The Assembly's major flood protection bill, AB 1899, narrowly passed the Assembly this week. It applies to areas within the Sacramento and San Joaquin Rivers watershed.

Known as the "show me the flood protection" bill, AB 1899 would establish a process to ensure that new housing development that is not infill would have verified 100-year flood protection before being approved, and have a plan in place to achieve 200-year protection within ten years. In the interim, developers would be required to provide home buyers notice that their home is at risk of flooding and to provide flood insurance until the 200-year standard is reached.

The author has accepted numerous amendments requested by the League and has committed to working with interested stakeholders in the Senate. While the League has no position on the bill at this time, we have informed the author that the basic issue that likely will determine the League's position will be the 200-year protection standard.

The League has invited representatives from cities impacted by this legislation to a meeting next week to discuss the bill and to make a recommendation on what position the League should take. Representatives from the author's office will attend the meeting. Interested cities are encouraged to review the newly amended version of the bill and send their comments to the League and the author.

Staff: Yvonne Hunter; **Status:** Passed Assembly; Pending in Senate; **Position: Pending.**

AB 3050 (Jones). Flood Control. Liability. AB 3050 was not taken up by the author again this week and thus the bill – but not the issue – is dead.

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Legislative Bill Action

AB 3050 would make cities and counties share in the state's liability for damages due to flooding for areas that were once either open space or agricultural land, but were rezoned for residential development.

As a result of a court case (the 2003 *Paterno v. State of California* decision, which held the state responsible for paying nearly $500 million in damages for flooding caused by a breach in a levee for which the state had responsibility), the state is attempting to find ways to share its liability. It is under the misguided perception that cities and counties that approve housing development in ways that are consistent with existing state and federal law should somehow also liable be for damages, even if the city or county does not own, operate or have any other responsibility for the levee.

Interestingly, AB 3050 was amended this week to add the following statement: "Nothing in this subdivision shall be construed to prevent a local public entity from approving new housing developments in a previously undeveloped area." "Nothing," perhaps, except the threat of a lawsuit and financial exposure. Remember, while the bill may be dead, the issue of requiring cities and counties to share in the liability is very much alive.

Staff: Yvonne Hunter; **Status:** Failed in Assembly; **Position: Oppose.**

AB 2951 (Goldberg). Municipal Utilities. Capital Facilities Fees. AB 2951 passed the Assembly this week. It would clarify existing law regarding capital facilities fees for municipal water, electric and waste water utilities and whether such fees apply to other public agencies. AB 2951 is drafted to protect all rate payers and would prevent cost-shifting in monthly rates from public agencies to residential and commercial customers. AB 2951 is the third attempt by Assemblymember Goldberg to address this topic.

The League appreciates her willingness to tackle this complicated subject and her leadership. Cities with any type of municipal utility should be sure to send letters of support to the author, their Senator and to the Senate Local Government Committee. Detailed information AB 2951 is available on the League's website.

Staff: Yvonne Hunter; **Status:** Pending in SenLGov; **Position: Support.**

ADMINISTRATIVE SERVICES

SB 1179 (Morrow). Skateboarding. City Liability. SB 1179 passed the Senate unanimously this week with no opposition. As amended, it would change the age threshold from age 14 to age 12 that provides limited immunity to public agencies for injuries to skateboarders performing a trick, stunt or luge in a skatepark.

It would also extend the sunset date for this limited liability by four years – from 2008 to 2012. Since the Consumer Attorneys of California (the Trial Lawyers) have removed their opposition and are now neutral, it appears that SB 1179 will move along smoothly. Cities with skateparks should send letters of support to the author, their assembly members and members of the Assembly Judiciary Committee.

Staff: Yvonne Hunter; **Status:** Pending in AsmJud; **Position: Support.**

WANT TO SEND A LETTER IN SUPPORT OF A LEAGUE POSITION? HERE'S WHO TO CALL:

ASSEMBLY JUDICIARY—(9)—Jones (Chair), Harman (Vice Chair), Evans, Haynes, Laird, Leslie, Levine, Lieber, and Montañez. Chief Counsel: Drew Liebert. Counsel: Kevin Baker, Leora Gershenzon, Manuel Valencia, Tom Clark. Secretaries: Cindy Fischer, Saba Hashmat. 1020 N Street, Room 104. Phone: (916) 319–2334.

SENATE LOCAL GOVERNMENT—(5)—Kehoe (Chair), Cox (Vice–Chair), Ackerman, Machado, and Torlakson. Consultants: Peter Detwiler and Brian Weinberger. Assistant: Elvia Diaz. Phone: (916) 651–4115. Room: 410.