PRIORITY

FOCUS

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

May 26, 2006
Issue #21-2006

AB 2987 AMENDED: LEAGUE STILL OPPOSED

AB 2987 (Núñez/Levine) passed out of the Assembly Appropriations Committee on May 25 with amendments that fail to address the League's concerns with fairness, protection against red-lining, enforcement of consumer standards, preservation of local public access stations, protection of local rights-of-way, and other issues. *For more, see Page 12.*

BUDGET UPDATE: SENATE AND ASSEMBLY SUBCOMMITTEES MAKE RECOMMENDATIONS ON TRANSPORTATION FUNDING

Proposition 42 Repayment

Differing actions in the Senate and Assembly budget subcommittees mean that the joint legislative Budget Conference Committee will ultimately decide how much the state will provide in FY 2006-07 to repay Proposition 42 transportation funds that were borrowed in FY 2004-05, and how those repayment funds will be allocated. *For more, see Page 8.*

LEAGUE URGES CITIES TO OPPOSE SB 1177 (HOLLINGSWORTH)

The League of California Cities is encouraging cities to oppose SB 1177 (Hollingsworth) which will be heard in the Assembly Housing and Community Development Committee on Wednesday, June 14. *For more, see Page 13.*

WANT MORE DETAILS ON BILLS?

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

IN THIS ISSUE:

TELECOM IN THE NEWS

Consumer Groups Protest Risks of Telecom Reform

A group called SaveAccess.org held protests on May 24 outside buildings owned by AT&T Inc., Verizon, BellSouth Corp. and Qwest Communications International Inc. in Chicago, Boston, New York and San Francisco.

The groups were protesting legislation proposed in the House and Senate that would grant telephone companies national video franchises. They argued that a national-franchise law would threaten funding for PEG-access (public, education and government) channels.

To view the story, visit www.MultiChannel.com. Look for the story titled, "**Verizon Can Hear Protesters Now**".

New AT&T Video Strategy Could Be In the Works

Concerns that AT&T's "Project Lightspeed" fiber- to-the-node (FTTN) architecture may be experiencing challenges and even if deployed could be un-competitive is leading market researchers to predict that AT&T will announce a new video architecture with increased revenue potential later this year.

To view the story, visit www.forbes.com and look for the story titled "**New AT&T Video Strategy Could Be In The Works**."

Mayor of Albuquerque Calls Video Franchise Legislation 'Unwise Trade-Off'

Martin Chavez, mayor of Albuquerque, N.M. recently addressed issues of video franchise legislation reform in an op-ed.

In his remarks, Mayor Chavez labeled efforts for video franchise legislation to be seeking to solve competition problems that do not exist, calling the repeal of current law a "very unwise trade-off."

To read the article, visit www.news.com and search for "**Perspective: Hanging Up on the Competition**."

S.C. Passes Statewide-Franchise Bill

South Carolina became the latest state to approve a statewide video-franchising bill, but the new law has provisions that may release incumbent cable providers from their local agreements once a new provider launches service in direct competition.

The bill, signed into law this week by Gov. Mark Sanford, assigns franchise licensing to the secretary of state.

To view the article, visit www.multichannel.com and search for "**S.C. Passes Statewide-Franchise Bill**."

Pa. bill would allow competition in cable from phone companies

A Pennsylvania state lawmaker plans to introduce legislation within two weeks to establish a statewide franchise for telephone companies to introduce video services to compete with Comcast and other cable television providers.

To read the article, visit www.poconorecord.com and search for "**Pa. bill would allow competition in cable from phone companies.**"

Telecos' Push for Network Neutrality is Ironic Change of Pace

A blog entry on network neutrality posted at www.techdirt.com points out that while telecos are claiming that their interest in network neutrality is about "keeping regulatory hands off the Internet," the telecos have gained billions of dollars from regulations in their favor over the years and are more concerned with how regulation would impact competition than a regulation-free Internet.

The piece further illustrates that if there was true competition that allowed others to enter the market, network neutrality would not be an issue, as firms couldn't break network neutrality without receiving serious criticism.

To read the full article, visit www.techdirt.com and search for "**Funny, the Telecos Weren't So Against Regulations When it Helped Them**."

HIGHLIGHTS OF THE LEAGUE BOARD MEETING MAY 18-19, SACRAMENTO

League Celebrates Infrastructure Bonds with State Leaders. The board of directors met following the League's Legislative Action Days at which the Governor and bipartisan leadership of the Legislature were recognized for collaborating on a very favorable infrastructure bond package. These measures will appear on the November 2006 ballot as Propositions 1A through 1E. They include:

- Protection of Prop. 42 funding;
- Additional funding for transportation and transit;
- Funding for affordable housing and infill incentives;
- Funding for school construction; and
- Funding for levees and flood protection.

The board voted to support the infrastructure bond package.

Telecommunications: Cities Welcome Fair Competition. Building upon a policy framework for telecommunications reform that the League membership and board have developed over the past several months, the board urged cities to communicate their readiness to embrace new telecommunications technology and applications and to foster fair competition among all service providers. The board urges cities to communicate with the industry that the city is "open for business" and eager to expedite local franchise approvals that expand the delivery of video services to their residents in a fair and competitive environment. The board approved a sample letter which cities can adapt and send to service providers.

League Annual Conference in San Diego, September 6-9. This year's annual conference will return to San Diego after an absence of several years. The board has added a Leadership Gala as a new special feature this year. Future annual conferences will be hosted by the following cities:

2006—San Diego	2007—Sacramento
2008—Long Beach	2009—San Jose
2010—Los Angeles	2011—San Francisco

LEAGUE BOARD OF DIRECTORS ADOPTS A NEUTRAL POSITION ON PROPOSITION 82

The League of California is now **neutral** on Proposition 82, the **Preschool Education. Tax on Incomes Over $400,000 for Individuals $800,000 for Couples initiative**, that will appear on the June ballot.

The League's position was adopted last week by its board of directors. When voting to take the neutral position, the board noted that the League is involved with a number of vital public policy issues, many of which will be before voters later this year. The board concluded that Proposition 82 on preschool education does not represent a compelling municipal interest.

If passed, Proposition 82 would establish a constitutional entitlement to statewide voluntary preschool services for all children one year prior to entering kindergarten. It would be funded by imposing an additional 1.7 percent tax rate on individuals with taxable income over $400,000, head of household filers with taxable income over $544,457 and married couples with taxable incomes over $800,000.

Our Mission

Restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

LEGISLATURE AWASH IN FLOOD BILLS

Activity heated up this week in the Assembly on two key flood control bills, AB 1899 (Wolk) and AB 3050 (Jones). The League has no position at this time on AB 1899 – the so-called "show me the flood protection bill". We are continuing to work with the author to address the League's concerns.

The League opposes AB 3050, which would establish that local governments that approve housing developments in areas previously zoned agricultural or open space share liability with the state for flood damage.

Amended AB 1899 Moves to Assembly Floor

AB 1899 was removed from the Assembly Appropriations Suspense File this week and passed on to the Assembly floor. In the process, it was substantially amended and should be in print soon.

As amended, AB 1899 applies only to cities and counties within the Sacramento-San Joaquin Rivers watershed. It would establish a process for cities and counties to follow in reviewing and approving residential development in areas that are subject to flooding with a depth of three feet or greater. Prior to proceeding with such development, verification of the existence of 100-year flood protection would be required, and, a plan implemented that will achieve a 200-year protection standard within ten years. In the interim, the measure would require that the developer provide notice to homebuyers about the flood risk. The developer would also be required to arrange for the property to have flood insurance until the 200-year standard it met. The bill also incorporates flood protection verification and mitigation into the CEQA review of a project.

AB 1899 is now pending on the Assembly floor and will be taken up next week. Friday, June 2, is the deadline to get bills out of the house of origin

The League thanks Assemblymember Wolk and her staff for their willingness to respond to our concerns and to amend the bill accordingly. At this time, the League has no position on the bill and is continuing our analysis, consultation with cities and the author. Cities are encouraged to review the amended version of AB 1899 carefully and send their comments to the League's Sacramento office.

Making Lawful City Actions Responsible for Flood Damage

AB 3050, which attempts to have cities and counties share in the state's liability for flood damage, failed on the Assembly floor Thursday on a 35-36 vote, with nine legislators not voting. The bill was unexpectedly taken up at the last minute, after many at the Capitol thought the house was shutting down.

It should be noted that although the measure failed passage, reconsideration was granted and we expect it to come up again next week.

The League continues to oppose AB 3050 because we do not think it is appropriate to shift liability to cities that approve development when the city does not operate the flood control infrastructure and if the city has complied with state and federal law in approving the development. The Legislature cannot have it both ways: it cannot, one the one hand, pass laws that increasingly push cities to approve housing, while on the other hand, make cities liable for flood damage if they approve housing while adhering to state and federal planning and flood control laws.

Cities should write their Assemblymembers and urge a no vote on AB 3050. Although AB 3050 failed on the Assembly floor, it was granted reconsideration and is likely to be taken up again.

AB 1899 – Status: Pending on the Assembly floor; **Position: Pending; Staff:** Yvonne Hunter

AB 3050 – Status: Failed on Assembly floor; reconsideration granted; **Position: Oppose; Staff:** Yvonne Hunter

ADDITIONAL DETAILS ON PROPOSITION 1B: THE TRANSPORTATION BOND

The infrastructure bond package recently approved by the Legislature and signed by the Governor includes $19.9 billion for transportation purposes. Those funds will be listed on the November ballot as Proposition 1B, which is SB 1266 (Núñez/Perata), the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.

In the May 5 issue of *Priority Focus*, a brief summary of some of the bond components was published. Listed below are additional details on specific allocations and the project selection processes for those allocations. This information is intended to help you determine which portions of bond funding, if passed, your city may eligible for.

- $2 billion for the Local Street and Road Improvement, Congestion Relief, and Traffic Safety Account, allocated directly to cities and counties for traffic congestion relief, traffic safety, transit, storm damage, maintenance, construction and other projects to improve the local street and road system. $1 billion will go directly to cities (minimum $400,000 allocation), and $1 billion will go directly to counties. Eligible projects include maintenance, rehabilitation and storm damage (identical to Prop. 42), but also include transit, congestion and safety projects.

- $4.5 billion to Corridor Mobility Improvement Account to fund performance improvements on highly congested travel corridors. This includes major access routes to the state highway system on the local road systems that relieve congestion.

Funds in the account, allocated by the California Transportation Commission (CTC), will be used for performance improvements on the state highway system, or major access routes to the state highway system on the local road system that relieve congestion by expanding capacity, enhancing operations, or otherwise improving travel times within these high-congestion travel corridors, as identified by the department and regional or local transportation agencies.

The CTC must develop and adopt guidelines, including regional programming targets, by December 1. Project nominations can be submitted by the Department of Transportation, regional transportation planning agencies (RTPAs) or county transportation commissions or authorities responsible for preparing a regional transportation improvement plan. All projects must be included in a regional transportation plan.

Project nominations must be made no later than January 15, 2007. All project nominations must include documentation regarding the quantitative and qualitative measures validating each project's consistency with the policy objectives developed by the CTC.

The CTC must adopt a funding plan by March 1, 2007, which may be updated every two years in conjunction with the adoption of the state transportation improvement program (STIP). The inclusion of a project in the program will be based on all of the following criteria:

o The project is a high-priority project to improve mobility in the corridor as demonstrated by either: 1) It's inclusion in the list of nominated projects by both the department pursuant and the regional transportation planning agency or county transportation commission or authority; and 2) If needed to fully fund the project, the identification and commitment of supplemental funding to the project from other state, local, or federal funds.

o Able to commence construction or implementation no later than December 31, 2012.

o Improves mobility in a high-congestion corridor by improving travel times or reducing the number of daily vehicle hours of delay, improves the connectivity of the state highway system between rural, suburban, and urban areas, or improves the operation or safety of a highway or road segment.

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o Improves access to jobs, housing, markets, and commerce.

Current language in the proposal would require the CTC to select projects with 60 percent dedicated to 13 southern counties (San Luis Obispo, Kern, Mono, Tulare, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial) and 40 percent to the remaining counties in the state.

- $1 billion for improvements to State Route 99 traversing approximately 400 miles of the Central Valley.

- $3.1 billion for the California Ports Infrastructure, Security, and Air Quality Improvement Act. Of the $3.1 billion, $2 billion is to fund improvements to trade corridors. These monies will be allocated by the CTC for infrastructure improvements along federally designated trade corridors. No funds can be allocated until the Secretary of Business, Transportation and Housing and the Secretary for Environmental Protection develop and submit a trade infrastructure and goods movement plan.

$1 billion in this fund will go to the State Air Resources Board for emission reductions related to goods movement in trade corridors commencing at airports, seaports and land ports of entry.

Additionally, $100 million will go to the Office of Emergency Services for publicly-owned port, harbor and ferry terminal security improvements. Projects eligible for funding include, but are not limited to: video surveillance equipment; X-ray devices; cargo scanners; radiation monitors; protective equipment; chemical agent, weapons of mass destruction and overweight cargo detection devices; and, activities relative to emergency response planning.

- $200 million for school bus retrofitting and replacement to reduce air pollution.

- $2 billion for projects in the State Transportation Improvement Program (STIP). These funds are subject to current law and would require compliance with the north/south split formula and countywide shares, thus equitable distribution is ensured throughout the state.

- $4 billion for the Public Transportation Modernization Improvement and Service Enhancement Account to fund intercity rail projects, commuter or urban rail operators, bus operators, water transit operators, and other transit operators for rehabilitation, improvement, or new capital projects.

Of this amount, $400 million shall be appropriated to Caltrans for intercity rail, of which $125 million shall be for intercity rail cars and locomotives. The remaining funds ($3.6 billion) will be allocated equally pursuant to Public Utilities Code Sections 99314 and 99313, which distribute funds to all RTPAs based on population and transit fare recovery.

- $1 billion for the State-Local Partnership Program Account for eligible transportation projects nominated by an applicant transportation agency. This program requires a dollar-for-dollar match of local funds. Criteria for allocation of these funds will be determined by the Legislature through follow-up legislation. The CTC will allocate these funds over a five-year period.

- $1 billion for the Transit System Safety, Security and Disaster Response Account for projects that increase protection again security and safety and develop disaster response for public transit systems. Criteria for allocation of these funds will be determined by the Legislature through follow-up legislation.

- $125 million for the Local Bridge Seismic Retrofit Account to provide the 11.5 percent required match for the federal Highway Bridge Replacement and Repair program for the seismic work on local bridges, ramps, and overpasses as determined by Caltrans. Thirty-nine cities have 97 bridges not yet retrofitted.

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• $750 million for the Highway Safety, Rehabilitation and Preservation Account (SHOPP) for safety, rehabilitation and preservation projects on state highway systems. These funds will be allocated by the CTC based on current statute for state highway operation and protection programs in Section 14526.5 of the Streets and Highways Code.

$250 million of the funds in this account must be used for traffic light synchronization projects or other technology-based projects to improve safety, operations and the effective capacity of local streets and roads.

• $250 million for the Highway-Railroad Crossing Safety Account for completion of high-priority grade separation and railroad crossing safety improvements. These monies will be allocated to Caltrans for completion of high-priority grade separation improvements pursuant to Chapter 10 (section 2450) of the Streets and Highways Code. Funds in this account require a 1-to-1 match of non-state funds.

$100 million in this account will be allocated by the CTC, in consultation with the Public Utilities Commission, outside of the current process in statute, but should focus on crossings in ozone non-attainment areas and crossings that delay access to emergency services.

IRS TO STOP COLLECTING TELEPHONE TAX, REFUND $13 BILLION

On Thursday, May 25, 2006, U.S. Treasury Secretary announced that, beginning July 31, the Internal Revenue Service (IRS) will stop collecting the 3 percent federal excise tax (FET) on long-distance telephone calls, and the agency will refund to businesses and individual taxpayers all such taxes collected over the past three years. Treasury estimates that taxpayers will receive refunds totaling about $13 billion.

The League's Utility Users Tax (UUT) Technical Task Force, a subcommittee of the League's Revenue and Taxation Policy Committee, has been evaluating this issue for the last year, and its potential impact on local collection of utility user taxes on long distance telephone calls. The task force will make a recommendation to the Revenue and Taxation Policy Committee as to how the League should respond.

The League recommends that cities with UUTs consult with their city attorneys first before deciding to make any changes in response to this ruling to the way UUTs are collected on long distance telephone calls.

The FET on local telephone service remains in place unless Congress acts to repeal it. The Bush administration will support legislation sponsored in the House by Representative Gary Miller, (CA-R) and in the Senate by Senator Rick Santorum, (PA-R) to do repeal the tax.

The League will continue to monitor this issue as legislation moves through Congress.

Gov. Schwarzenegger proposed in January and in his May revision to the FY 2006-07 budget to provide early repayment of $920 million in Prop. 42 funds. His proposal was to allocate $410 million to the Traffic Congestion Relief Program (TCRP), $255 million to the State Transportation Improvement Program, and $255 million to cities and counties for local streets and roads (half for cities, half for counties).

The League strongly supports the Governor's proposal. The $255 million for local streets and roads will provide the only Proposition 42 funding dedicated to cities and counties for the local system for the budget year.

Senate Approves Reduced Repayment

Senate Budget Subcommittee #4 recently 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 STIP). The subcommittee cited the recently enacted package of bills to place infrastructure bonds on the November 2006 ballot as background for its recommendation. The subcommittee specifically noted that SB 1266 includes $19.9 billion in bonds for transportation and SCA 7 further restricts the ability of the Governor and the Legislature to suspend Proposition 42 during a fiscal crisis, and provides for repayment of all past Proposition 42 loans no later than June 30, 2016.

Subcommittee background materials further referenced that a FY 2006-07 repayment at the level of $460 million would still provide a significant prepayment of the amount due in FY 2007-08 and would more than double the annual repayment amount required in SCA 7.

Assembly Supports $920 Million, But Shifts Allocations

Earlier this week, the Assembly Budget Subcommittee #5 recommended repayment of the $920 million in the Governor's proposal, but shifted the allocations.

According to subcommittee background materials, at the time of the Governor's proposal it was estimated that the payment to the STIP and local streets and roads would include the full principal amount of $232 million and an interest amount of $23 million for a total payment of $255 million for each. This resulted in an estimated $410 million for the TCRP.

However, the Legislative Analyst's Office indicates that the Controller has updated the interest amounts owed, and the STIP and local streets and roads would actually receive $13 million in interest payments, for a total payment of $245 million for each.

The subcommittee, on a unanimous vote, passed repayment of $920 million as follows: $308 million to the TCRP; $245 million to the STIP; $245 million to local streets and roads; and $122 million to the Public Transit Account.

What's Next?

Due to the differing recommendations by the subcommittees, the Proposition 42 repayment issue will now go to the full Budget Conference Committee consisting of members of both houses of the legislature. It is unclear when the repayment issue will be addressed, but the League will continue to advocate for full repayment for local streets and roads.

Other Budget Issues—Spillover Revenues and the Public Transportation Account

Cities with transit agencies will be interested in the Governor's proposal to divert $669 million in FY 2006-07 to transportation debt funding and the Bay Bridge seismic retrofit project rather than to the Public Transportation Account (PTA). The funds he proposes to use are known as "spillover" funds: revenues from the growth in sales tax on gasoline, to the extent they exceed the growth in

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other sales tax revenues. (See "What Are the Spillover Funds?", p. 11.)

As proposed by the Governor, the funds would be transferred to the Transportation Debt Service Fund that will pay a portion of the debt service on existing and new transportation bonds (e.g., Proposition 116 and Proposition 1B). The administration estimates that this could provide over $4.1 billion through FY 2015-16 toward transportation debt service costs, with the state general fund paying the remaining debt service.

If the Legislature and Governor instead follow the FY 2005-06 budget agreement, the estimated $669 million of spillover revenue would provide $200 million for the general fund, $125 million for the Bay Bridge seismic retrofit program (BATA), and $344 million to the PTA.

However, both the Senate and Assembly Budget Subcommittees have rejected the Governor's proposal and will now consider how to allocate the additional PTA funds. As this issue moves forward to the Budget Conference Committee, the Senate and Assembly recommendations it will become clearer.

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.

TELECOM UPDATE

There were significant developments this week on telecommunications reform in both Congress and the state Legislature. Here are the highlights:

State Legislature

AB 2987 Passes to the Assembly Floor. The Assembly Appropriations Committee passed AB 2987 (Núñez/Levine), with amendments. AB 2987 addresses telecommunications' companies' desire to by-pass local franchising requirements for video services, by establishing a statewide franchise that would address the telephone companies' "speed to market" concern.

The amendments fail to address most of the issues the League has been concerned with. The bill is expected to be taken up on the floor of Assembly next week, probably on Thursday, June 1. Friday, June 2, is the deadline for policy bills to pass their house of origin.

Please write or call your Assemblymember to OPPOSE this bill! (See "AB 2987 Amended: League Still Opposed" for talking points. You can also access a sample letter at www.cacities.org/advocacycenter.)

Congress

Second Hearing on Senate Telecom Reform Measure. The Senate Committee on Commerce, Science and Transportation held the second of three planned hearings on S. 2686, the Communications, Consumers' Choice, and Broadband Deployment Act of 2006. The hearing covered net neutrality and interconnection.

Senate Democratic Reform Measure. Senate Democratic staff released a working draft of an alternative telecom reform measure. The League is still analyzing this measure. The online publication "Multimedia News" issued the following story about the measure on May 25:

A telephone company could get a local cable

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franchise within 30 days if it agreed to the terms and conditions of the franchise most recently granted to the market's cable incumbent, according to a draft bill prepared by staff to Senate Commerce Committee Democrats.

The bill, designed to update the Telecommunications Act of 1996, would phase in franchisewide buildout requirements on phone companies and impose Internet-nondiscrimination mandates on broadband-access providers. It would also bar cable operators under many conditions from withholding programming not delivered via satellite.

A copy of the 94-page bill was obtained by Multichannel News Wednesday.

Under the bill, a phone company unwilling to sign the incumbent's franchise agreement could negotiate different terms with local regulators during a 60-day window. If those talks failed, the phone company would be allowed to enter the video market within 30 days under "standard franchise" — a default mechanism that includes a 5% franchise fee and other conditions specified in the bill.

Cable incumbents can escape their local franchises and obtain a standard franchise after another video provider with a standard franchise offers service to more than 5% of homes in the same franchise area.

House Judiciary Committee Passes "Net Neutrality" Bill. The bill would require broadband providers to abide by strict Net neutrality principles, meaning that their networks must be operated in a "nondiscriminatory" manner.

The vote is a surprise victory for Internet companies such as Amazon.com, Google, Microsoft and Yahoo that had lobbied fiercely in the last few months for stricter laws to ensure that Verizon, AT&T and other broadband providers could not create a "fast lane" reserved for video or other high-priority content of their choice.

All 14 Democrats on the committee (joined by 6 Republicans) supported the measure, while 13 Republicans opposed it.

The vote appears to be more about a turf war between two House committees than it is about a new-found conviction that content on the Internet should continue to be freely available. The House telecom reform measure, H.R. 5252, would give exclusive authority to the Federal Communications Commission (FCC) to investigate violations of Net neutrality principles. That legislation is sponsored by Rep. Joe Barton, a Texas Republican who heads the House Energy and Commerce Committee, which also has jurisdiction over the FCC.

The Judiciary Committee vote appears to be an attempt to ensure that Judiciary Committee members would not be prevented from holding hearings on Net neutrality antitrust violations. Quoted in the online publication C/NET News.com, California Representative Adam Schiff said, "I think the bill is a blunt instrument, and yet I think it does send a message that it's important to attain jurisdiction for the Justice Department and for antitrust issues."

WHAT ARE THE "SPILLOVER" FUNDS?

Since 1971, state law has provided that revenues from the growth in sales tax on gasoline, to the extent they exceed the growth in other sales tax revenues, are to be transferred to the Public Transportation Account for public transit capital and operations. These funds, commonly known as the "spillover," do not flow to Proposition 42 and neither the Traffic Congestion Relief Program nor Proposition 42 has any impact on the spillover.

In recent years, the Legislature has diverted $694 million of these spillover funds to the general fund and other purposes.

The Transportation Development Act of 1971 created a statewide funding program for local public transportation services and facilities. One feature of this act involved the lowering of the state's sales tax rate by ¼ percent and the extension of the sales tax to gasoline, which had not been previously subject to the sales tax. This action was intended to be revenue neutral, but the act provided that any excess revenues to the state from this change would be transferred to the Public Transportation Account.

The Board of Equalization and the Department of Finance are charged each year with

determining the amount of the spillover: the difference between (a) a 5 percent state sales tax applied to all taxable goods *except* gasoline, and (b) a 4¾ percent state sales tax applied to all taxable goods *including* gasoline. Essentially, the spillover is generated when gasoline prices increase at a faster rate than all other taxable items. Hence we are presently seeing unprecedented amounts of revenue in the spillover.

Neither the Traffic Congestion Relief Program of 2000, nor Proposition 42 altered the spillover provisions. Proposition 42 captures the sales tax on gasoline not subject to the spillover that had previously gone to the state general fund. Proposition 42 revenues grow in tandem with the overall growth in total taxable sales. Proposition 42 does not interfere with the spillover.

From its inception until FY 1985-86, the spillover provided revenues to public transit. But there was no spillover during most of the subsequent 17 years. Over the last three years, the spillover has generated a significant source of funds that help the state deal with its general fund problems. This recent period of critical funding shortfalls initiated the diversion of the spillover funds to the general fund.

Current law provides that such diversions, though limited, will continue in FY 2006-07. Under the FY 2005-06 Budget Agreement (now codified in Revenue and Taxation code 7102), in FY 2006-07, the first $200 million of spillover would go to the state general fund. Any additional spillover revenue up to $125 million would go to the BATA, and any revenue beyond that to the Public Transportation Account

Under the administration's proposal, the funds would be used to finance transportation programs, a logical connection with sales tax on gasoline. The administration notes that specific provisions of Revenue and Taxation Code Section 7102 provide that the allocation of the spillover may be altered with a 2/3 vote of each house, and they argue that this proposal is consistent with the intentions of current law.

Opponents of the Governor's proposal argue that spillover revenues are most needed for public transit when gas taxes are high and people seek alternative forms of transportation to their automobiles. Opponents also note that this proposal is unprecedented in its use of the spillover as a long term on-going resource that in effect relieves fiscal burden on the general fund. The spillover has been diverted to the general fund in recent years, but only as a one-time remedy (or several-time remedy as the case may be) to the state's fiscal crisis. The expectation among most observers has been that when the state's fiscal condition is restored, that the spillover will once again be transferred to the Public Transportation Account as was intended in the Transportation Development Act of 1971.

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AB 2987 responds to telecommunications' companies' desire to by-pass local franchising requirements for video services, by establishing a statewide franchise.

The amendments (which at this writing are not yet in print) do the following:

- Attempt, unsuccessfully, to convert the so-called "fee" of the original version (in actuality a tax) into a true franchise fee.
- Impose some new requirements on the transfer of a state franchise from the original holder to a new entity.
- Include some new provisions relating to PEG channels, but, significantly, include new loopholes that may allow franchise holders to avoid providing channels that are dedicated exclusively to public or educational programming.
- Include intent language requiring a level-playing field to ensure competition is fair, and will require wide-spread build-out of state-of-the-art services so that competition will benefit the greatest number of customers, and will prohibit discrimination, redlining, and service abandonment. ***But this language lacks any enforcement mechanism, specificity, or definitions of the vague terms used.***
- Provide that the local entity shall enforce customer service and protection standards. It is unclear whether this would constitute a new state mandate or not.
- Permit the local entity to adopt an ordinance imposing penalties for material breaches of a state franchise.
- Allow local entities to continue to impose generally applicable fees and taxes, including utility user taxes.
- Provide that the state franchise would be administered by the Department of Consumer Affairs rather than the Department of Corporations.

Next Steps. The bill is expected to be taken up on the floor of Assembly next week, probably on Thursday, June 1. (Friday, June 2, is the deadline for policy bills to pass their house of origin.)

What You Can Do: Please Call or Write Your Assembly Members to Oppose This Bill! Here are talking points to use in either a conversation or a letter (or both!):

- **<u>Discriminatory.</u>** Cities support competition in telecommunications services, but it has to be **FAIR TO ALL CALIFORNIANS!** AB 2987 permits new entrants in the video service industry to discriminate, picking and choosing the neighborhoods they will serve in a community, while ignoring other neighborhoods in the same community. The addition of intent language does not constitute protection against discrimination. Who is protecting the underserved? The Department of Consumer Affairs is only empowered to process applications, not evaluate their merit. We see no specific or detailed provisions that will prevent discrimination and decrease the "digital divide."

- **<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 seriously narrows the PEG options now open to a community.

- **<u>New State Bureaucracy.</u>** The bill establishes a new state bureaucracy that will grow to regulate what is essentially a local franchise process. The new state bureaucracy will be put in charge of determining issues relating to local streets. 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!

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AB 2987 from page 12

- **Rights-of-Way.** This bill fails to adequately protect the taxpayers' investment in public right-of-way.

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

For these reasons, the city of ________ is opposed to AB 2987 and asks for your **NO** vote on the bill.

SB 1177 from page 1

SB 1177 undercuts the ability of local governments to implement their development standards on density bonus projects.

Density Bonus Law has become a Byzantine and litigation-oriented process due to a series of recent changes to the law. SB 1177 compounds the confusion and weakens local land use authority by deleting language from the statute which empowers local government to require developers to demonstrate that the waivers or modifications they are demanding are necessary "*to make the housing units economically feasible.*"

It is replaced with other language that will allow developers to game the waiver process to attempt to demand more waivers than they really need to produce the density bonus units.

What Cities Can Do

Cities are encouraged to write an opposition letter to SB 1177 to Senator Hollingsworth and copy their senator and assemblymember. For a more detailed explanation of this bill, please review the League's most recent letter of opposition. A sample letter is also available by looking up SB 1177 on the League's bill search, located at www.cacities.org/billsearch.

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's new "Issues and Advocacy" page (www.cacities.org/issuesandadvocacy)** – a one-stop location to access information about legislation, policy issues and related developments.

You can track information on bills (www.cacities.org/legtracking), locate legislators and legislative committees, send letters to legislators or the media through the online Advocacy Center, research League policy positions, access useful related links, and much more.

ENVIRONMENTAL

SB 1059 (Escutia). Transmission Line Corridors. Bill Amended – League Removes Opposition. SB 1059 was one of the most fiercely opposed energy bills of last year's session. However, last week the bill was amended to address all of the League's concerns about its preemption of local land use authority, general plan amendments and possible takings lawsuits. As a result of those amendments, the League and other local government associations have removed their opposition and are now neutral on the bill. Cities who were previously opposed are encouraged to review the amended bill and contact the author,

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thank her for responding to the concerns of local government and to indicate that they are now neutral on the bill.

As amended May 16, SB 1059 would still authorize the California Energy Commission to engage in long term planning to identify and designate possible transmission corridors, in which, at some future date, transmission lines might be built. However, the bill no longer requires local governments to amend their general plans to be consistent with the corridors. Instead, the bill provides for extensive property owner notification and local government consultation and requires local governments to "... *consider* the designated corridor when making a determination regarding a land use change within or adjacent to the corridor that could affect its continuing viability to accommodate a transmission line planned within the corridor."

SB 1059 is now pending in the Assembly Energy and Utilities Committee and Assembly Local Government Committee. The League thanks Senator Escutia, her staff and the Energy Commission for working with us to resolve our concerns. It was a long haul, but worth it. **Staff:** Yvonne Hunter; **Status:** AsmU&C; **Position: Neutral.**

PUBLIC WORKS

AB 573 (Wolk). Indemnification. Design Professionals. After working for many months to try to resolve our differences, the League is now officially opposed to AB 573 (Wolk). We had informed the author's staff that if our concerns were not resolved, we would strongly oppose the bill. This measure would restrict the types of indemnification clauses that may be included in a public agency contract with a design or engineering professional or firm. Instead, it would specify an indemnification provision that does not allow a public agency to adequately manage its potential liability, thus limiting the options available to public agencies to protect their taxpayers.

AB 573 purports, according to the sponsors, to grant to California public agencies the authority to include indemnity provisions in their contracts with architecture and engineering ("A/E") consultants. However, such authority already exists. AB 573 would actually limit the flexibility of public agencies to negotiate professional service agreements which reflect the particular risks of each project and the relative capacities and capabilities of different architects and engineers. Moreover, AB 573 addresses an issue that was already fairly and reasonably addressed through AB 994 (Sweeney) in 1997. In fact, AB 573 goes far beyond AB 994 (Sweeney), to the detriment of the public.

In substance, AB 573 is identical to several prior bills that were rejected or vetoed. (See, for example, SB 1915 (Figueroa 2004); AB 1839 (Campbell 2002); AB 1070 (Campbell 997 – 1998. While the sponsors provided several examples of cities that include "fair" (from their perspective) indemnification provisions in their contacts, the League's sampling of some of the cities on the list indicates that those cities were either no longer using those provisions, had used them in a special situation only, or were reviewing their continued use of those provisions.

Cities are encouraged to have their city attorneys and public works directors carefully review AB 573 and then send letters of opposition to the author and members of the Senate Judiciary Committee. Please indicate how you believe such indemnification restrictions would impact your ability to find qualified design and engineering contractors, and whether, as the sponsors contend, the current system is actually limiting the ability of cities to find qualified design contractors. The League disputes this contention. **Staff:** Yvonne Hunter; **Status:** SenJud, Hearing June 16; **Position: Oppose.**

TRANSPORTSATION

AB 2210 (Goldberg). Tow Trucks. Regulating. AB 2210 strengthens regulations on vehicle towing

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and protects consumers. In addition, this bill affirms the authority that local policy leaders have regarding the licensing and regulation of tow truck companies. AB 2210 will create a safe and speedy towing and vehicle recovery process that is regulated at the local level, which can reduce the wasteful use of local law enforcement's limited resources while ensuring the safety of citizens. **Staff:** Liisa Lawson Stark; **Status:** AsmAppr; **Position: Support.**

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

ASSEMBLY APPROPRIATIONS (18)—Chu (Chair), Runner (Vice Chair), Bass, Berg, Calderon, De La Torre, Emmerson, Haynes, Karnette, Klehs, Leno, Nakanishi, Nation, Oropeza, Ridley–Thomas, Saldaña, Walters, and Yee. Chief Consultant: Geoff Long. Principal Consultants: Julie Salley–Gray, Steve Archibald, Scott Bain, Chuck Nicol, Kimberly Rodriguez, Stephen Shea. Secretary: Laura Lynn Gondek. Room 2114. Phone: 319–2081.

ASSEMBLY UTILITIES AND COMMERCE (11)—Levine (Chair), Blakeslee (Vice Chair), Baca, Bogh, Cohn, De La Torre, J. Horton, Keene, Montañez, Ridley–Thomas, and Wyland. Chief Consultant: Edward Randolph. Principal Consultant: Gina Mandy. Secretary: Kelly Roberts. Room 5136. Phone: 319–2083.

SENATE JUDICIARY—(5)—Dunn (Chair), Morrow (Vice–Chair), Ackerman, Escutia and Kuehl. Chief Counsel: Gene Wong. Deputy Chief Counsel: Gloria Megino Ochoa. Counsels: Alexandra Montgomery, Amanda Taylor and Benjamin Palmer. Assistants: Carol Thomas and Roseanne Moreno. Phone (916)651–4113. Room 2187.