

FOCUS

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

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LEAGUE BOARD OPTS FOR NEUTRAL POSITION ON PROPOSITION 76

At its meeting on July 30, the League of California Cities board of directors decided not to adopt positions on seven of the eight ballot measures that will appear on the November 8 special election ballot. *For more, see Page 3.*

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EMINENT DOMAIN HEARINGS TO TAKE PLACE IN OCTOBER AND NOVEMBER

The League has learned that the first legislative interim hearing on eminent domain will be held on October 26 in San Diego. It will be a joint hearing sponsored by the Senate Local Government Committee and Senate Transportation and Housing Committee. The location and time of the hearing are still unknown. *For more, see Page 4.*

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STATE BAR NAMES MANUELA ALBUQUERQUE 'PUBLIC LAWYER OF THE YEAR'

STATE MINORITY BAR COALITION CONFERS ADDITIONAL HONOR

The Public Law Section of the State Bar of California named **Manuela Albuquerque**, a League of California Cities board member and city attorney of Berkeley, as its 2005 Public Lawyer of the Year. *For more, see Page 4.*



Manuela Albuquerque receives the 2005 Public Lawyer of the Year award from Chief Justice Ronald George.

WANT MORE DETAILS
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Visit the League of
California Cities
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U.S. SENATE APPROVES TALENT-FEINSTEIN ANTI-METH BILL

On September 9, the U.S. Senate unanimously approved legislation by U.S. Senators Jim Talent (Mo.) and Dianne Feinstein (Calif.) to limit access to cold medicines containing pseudoephedrine, the primary ingredient used to make methamphetamine (meth).

The Senate approved the Talent-Feinstein bill by unanimous consent adding it to the Commerce, Justice and Science Appropriations bill. The appropriations bill has passed the House and is expected to pass the Senate. Once the Commerce, Justice and Science Appropriations bill passes the full Senate, it will then go to a conference committee between the House and the Senate.

The Talent-Feinstein legislation would move cold medicines containing pseudoephedrine behind the pharmacy counter and limit how much one person can buy to 7.5 grams a month. It is modeled after the successful Oklahoma law that resulted in an immediate 80 percent drop in meth labs seized. The comprehensive bill also authorizes \$43 million in new anti-meth funding for law enforcement, training and treatment.

The bill:

- Moves cold medicines containing pseudoephedrine behind the counter-amends the Controlled Substances Act to appropriately limit the sale of medicines containing pseudoephedrine by placing them behind the counter and sets a limit on how much of such medicines one person can buy in a month to 7.5 grams.
- Requires signature and identification for purchases - the Attorney General will develop regulations to ensure uniformity.
- Creates alternate procedures for stores without pharmacies and stores in rural areas - the Drug Enforcement Administration (DEA) and states will be able to develop additional procedures to continue to allow cold medicine to be sold at retail

stores without pharmacies and in rural areas (but which meet appropriate security criteria), consistent with the intent of the bill to limit access to pseudoephedrine.

- Establishes a uniform federal standard that strengthens all existing state laws.
- Creates a national Meth treatment center to research effective treatments for Meth abuse.
- Authorizes \$43 million for enforcement, training, and research into treatment. This includes \$25 million for local law enforcement and federal prosecutors to bring meth manufacturers and dealers to justice, \$13 million for meth treatment and research and \$5 million to help children who have been affected by meth.

2005 LEAGUE ANNUAL CONFERENCE: OCTOBER 5-8, MOSCONE CONVENTION CENTER, SAN FRANCISCO

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The League’s board made this decision after coming to a conclusion that the measures did not affect a significant municipal interest. The board did agree to consider adopting a position on Proposition 76 — the “Live Within Our Means Act” supported by Gov. Schwarzenegger and a number of other groups and individuals. The board also asked the League Revenue and Taxation Policy Committee to meet in special session this past August to review and advise the board on the ballot measure.

In accordance with League bylaws, on September 12, 42 of the 47 League board members convened by conference call to hold a special meeting to consider the League’s position on Proposition 76. The written staff report contained the recommendation of the Revenue and Taxation Policy Committee to support the ballot measure and included a lengthy analysis of the potential impacts on cities of the measure.

Tom Campbell, former state director of finance and a current member of the campaign team in support of Proposition 76, made the presentation in support of Proposition 76. Craig Brown, also a former director of finance and now a representative of the Alliance for a Better California (which is opposing the governor’s ballot measures), argued the opposing position. After their presentations, board members spent approximately an hour asking questions of the speakers.

During the action portion of the meeting, an initial motion was made to oppose Proposition 76. A substitute motion was then made to support the ballot measure. Finally, after thorough debate, a second substitute motion was made to be neutral on the measure. This measure was adopted by a vote of 23-15 (with four abstentions). (Several board members who had left the call did not participate in the vote.)

Throughout the debate, board members expressed differing opinions on all three potential positions by the board, but ultimately, support for the neutral position reflected a strong desire by the majority to not let any issue on which there are strongly divergent views deeply divide the League.

The League can only act effectively when it is united on an issue, and remaining true to the organization’s vision statement “to be recognized and respected as the leading advocate for the common interests of California’s cities,” it was clear that the board was deeply divided on the Proposition 76 question, laying the groundwork for the neutral position that was ultimately approved.

The board of directors will have its next meeting on October 6, in connection with the League’s Annual Conference in San Francisco.

For more information on Proposition 76 and the board of directors’ action, see www.cacities.org.

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LINKING UP: THE ASH INSTITUTE
FOR DEMOCRATIC GOVERNANCE
AND INNOVATION

The League of California Cities recently added a link on the League’s website to the Ash Institute for Democratic Governance and Innovation www.innovations.harvard.edu, housed at Harvard University’s Kennedy School of Government.

The Kennedy School website serves as a web portal that strives to be the pre-eminent source of information on government innovations for policy makers and practitioners. Included are invitations to online events focused on policy areas, relevant news, documents from research centers at the Kennedy School, descriptions of award winning programs, a calendar of international and national events, and much more.

The link is included on the League’s website at www.cacities.org under “All About Cities” on the main navigation bar, and then choosing “Other Useful Links” under the “Governance” subhead.

ALBUQUERQUE from page 1

Albuquerque received her award from Chief Justice Ronald George during the State Bar of California's 2005 Annual Meeting on September 9, in San Diego. In addition to her service to the city of Berkeley and the League, Albuquerque has become a leader in the realm of public law ethics. She has worked with a variety of officials statewide on efforts to define when a public lawyer could ethically disclose the improper conduct of his or her clients, and was a major force in the League's City Attorney Ad Hoc Committee on Legal Ethics, which published "Practicing Ethics: A Handbook for Municipal Lawyers."

"I have been amazed and humbled by Manuela over the years," said Tom Brown, of counsel with Hanson Bridgett Marcus Vlahos & Rudy LLP, and the former city attorney of Napa. "She represents everything I admire and respect most in an attorney, namely, keen intellect and unsurpassed analytical ability coupled with humanity, generosity, compassion and humor. She completely deserves this distinction."

"Manuela's commitment, energy and intellectual contributions to the City Attorneys Department's efforts have been extraordinary," added JoAnne Speers, general counsel of the League.

Currently, Albuquerque is working with the State Bar Rules Revision Committee to amend Rule 2-100 — Communication with a Represented Party — to address concerns public attorneys face when adverse parties wish to speak directly with public officials about matters in litigation.

STATE MINORITY BAR COALITION ALSO HONORS ALBUQUERQUE

In addition, the **State Minority Bar Coalition**, made up of all the minority, women and gay and lesbian bar associations in California, have chosen Atty. Albuquerque to be their overall honoree this year at their Unity Reception later this year.

Each of the minority bar associations choose a member of their association to honor, and then they nominate a member from their association to be the overall honoree. The Asian American Bar Association nominated Albuquerque and she was selected for her outstanding work and commitment to civil rights issues to be this year's overall honoree.

The League congratulates Manuela on her outstanding achievements, and applauds her continuing work in the areas of public and civil rights law.

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EMINENT DOMAIN from page 1

The second hearing will be the week of November 14 in Sacramento. It will be a joint hearing sponsored by the Assembly Housing and Community Development Committee, Senate Local Government Committee and the Assembly Local Government Committee. The day and time are still to be determined. It is uncertain whether a third hearing will be held.

Although the format of both hearings is still undecided, the first hearing is likely to be a "listening" hearing, possibly featuring eminent domain case studies with invited presenters, while the second one will consider reform proposals.

To follow this story as it develops, please check the League website at www.cacities.org.

For more information on this and other League issues, visit www.cacities.org.

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.

REVENUE AND TAXATION

AB 1690 (Laird). Municipal services: University of California: Legislative Analyst. This measure would require the Legislative Analyst to conduct a study of the University of California's current campus long-range development planning process and report back to the Legislature with possible proposals to reform the process.

AB 1690 will allow legislators to gain a better understanding of how the University of California growth plans consider the impacts on cities and counties. This will help as future policies are considered regarding the ongoing growth on these campuses and their cooperation with local governments. **Staff:** Jean Korinke; **Status:** Governor's Desk; **Position:** Request for Signature.

TRANSPORTATION, COMMUNICATIONS AND PUBLIC WORKS

AB 1329 (Wolk). Design-Build Contractations: Cities. Authorizes cities residing in the Yolo and Solano Counties to enter into design-build contracts until January 1, 2011, subject to the conditions and requirements currently applicable to design-build contracts in Alameda, Contra Costa, Sacramento, Santa Clara, Solano, Sonoma, and Tulare Counties.

AB 1329 would limit city design-build contracting to projects for the erection of structures, but excludes the construction of roads, bridges, and other transit and non-transit infrastructure. **Staff:**

Liisa Lawson Stark/Dan Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

AB 1507 (Pavley) Cardiac Health. Automatic External Defibrillators. Health Studios. Requires that health club facilities purchase and install Automatic External Defibrillators (AEDs), as well as train personnel in their use, and provides immunity from civil damages to any employee, member of a board of directors of a health club, or the health club itself, provided the health club uses an AED consistent with the terms of the bill.

Health clubs that choose to continue the installation of AEDs past the January 1, 2012, sunset date must continue to train personnel and maintain the devices in addition to receiving continued immunity from civil damages. **Staff:** Liisa Lawson Stark/Dan Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

AB 1051 (Benoit) Pocket Bikes. Restrictions. Requires a manufacturer of a two-wheeled motorized vehicle ("pocket bike") to affix a sticker indicating that the operation of a pocket bike on a sidewalk, roadway, highway, bikeway, bicycle path or trail, equestrian trail, hiking or recreation trail, or on public lands available to off-highway motor vehicle use, is prohibited.

This bill also authorizes a peace officer to remove and seize a pocket bike that is found to be operating in violation of this bill for a minimum of

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Legislative Bill Action

48 hours. **Staff:** Liisa Lawson Stark/Dan Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

AB 453 (Benoit) Grade Separation Projects.

Increases the period, from one year to two years, within which a local agency must promise to begin a grade separation project (to separate a roadway from a railroad crossing) and complete related pre-construction activities before it can receive a grade separation project allocation from the California Transportation Commission (CTC). **Staff:** Liisa Lawson Stark/Dan Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

SB 275 (Torlakson) Transportation Needs

Assessment. Requires the California Transportation Commission (CTC), working with the Department of Transportation (DOT), regional planning agencies, cities and counties to complete a 10-year needs assessment of the state's transportation system and to subsequently submit an assessment every 10 years. **Staff:** Liisa Lawson Stark/Dan Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

SB 719 (Romero) Police Vehicle Pursuits.

Narrows the available immunity for public entities that employ peace officers when a third party is injured or killed in a collision with a person fleeing from peace officer pursuits. Such entities receive immunity if they 1) have adopted and promulgated a policy for safe conduct of motor vehicle pursuits that meet minimum state standards, and 2) provide regular and periodic training for their officers regarding safe pursuits.

This bill also increases criminal penalties for willfully fleeing or attempting to evade police pursuit in a motor vehicle. **Staff:** Liisa Lawson Stark/Dan Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

HOUSING AND LAND USE

AB 712 (Canciamilla): Down Zoning Residential Property: Attorneys Fees. While this

legislation provides a number of clarifying changes to existing law affecting the down zoning of residential property, the League is opposing the measure based upon language added in the Senate, that extends a sunset date of a controversial attorney's fees provision of the statute from January 1, 2007, to January 1, 2009. The League originally opposed this language when it was added by AB 2292 (Dutra), Chapter 706, of 2002.

This attorney fee language is much broader than the standard attorney fee provision established by Section 1021.5 of the Code of Civil Procedure, and tilts the balance too far in the direction of plaintiffs at the expense of local taxpayers. In short, it offers attorney's fees to whomever can successfully sue a local jurisdiction over the down zoning of residential property. Although some may believe that local community interests should always bend to the agenda for higher densities, there are many legitimate instances when changing or reducing the zoning of residential property is necessary for infrastructure, environmental or other reasons.

Moreover, the request for zoning changes often comes from the property owner. For a sample "Veto" letter please go to www.cacities.org/billsearch and type **AB 712**. **Staff:** Dan Carrigg **Status:** Governor's Desk; **Position:** Request For Veto.

AB 1227 (Torrico) Attorney's Fees: Housing Discrimination: This measure authorizes attorneys fees to be awarded to a broad range of local governments who are litigated against under a housing discrimination provision. While the bill was narrowed during the last week of session, the attorney fee language remains overbroad. This language has become an unstudied precedent that is being applied to land use.

The League offered several amendments to the author, in an effort to clarify circumstances **when it would not** be appropriate for local agen-

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Legislative Bill Action

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cies to pay attorney fees, such as:

- When the court determines that it is not an equitable response to the action of the public agency.
- When the agency's decision related to housing was taken in an effort to comply with other state or federal laws and policies affecting land use.
- When a good faith misinterpretation of the law has occurred.
- When the plaintiff has not incurred a significant financial burden.
- When an undue burden would be imposed upon the taxpayer.

Unfortunately, we were unable to reach agreement on any narrowing of the broad attorney fee language in the bill. For a sample "Veto" letter please go to www.cacities.org/billsearch and type AB 1227. **Staff:** Dan Carrigg **Status:** Governor's Desk; **Position:** Request For Veto

AB 14 (Harman) Property Tax: Subdivisions Divisions: Separate Assessments and Valuations. This measure prohibits an assessor from assigning parcel numbers or preparing a separate assessment related to a proposed division of a residential structure until the assessor has received evidence that clarifies that the division has occurred in compliance with applicable laws.

The League supports this measure because it ensures that assessors will not provide parcel numbers to subdivisions of residential properties that have not received required local approvals. **Staff:** Daniel Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

AB 1390 (Jones) Housing. AB 1390 would repeal the sunset on the definition of "substantial rehabilitation" found in Section 33413 (b) of the Health and Safety Code. The current definition of "substantial rehabilitation" has been found to be an

effective and reasonable standard for redevelopment agencies in cities across the State.

This bill also provides a 10-year statute of limitations period for actions to compel compliance with a redevelopment agency's obligation to deposit not less than 20 percent of their "tax increment" funds into their Low- and Moderate-Income Housing (L&M) Fund. AB 1390 provides a 10-year statute of limitations period to bring actions against redevelopment agencies for improper expenditures of the L&M Fund. Finally, the bill requires an agency, which has deposited inadequate funds or unlawfully expended funds to repay the funds with interest, and provides several methods for repayment of the funds. **Staff:** Daniel Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

AB 1512 (Garcia) California Housing And Infrastructure Finance Agency. This measure allows up to \$75 million in funds not used from the California Housing Loan Insurance Fund to be used by the California Housing and Infrastructure Finance Agency (CHFA) to finance the construction and development of housing in California.

The League supports programs that assist in providing housing, and supports AB 1512 because it provides additional flexibility for the CHFA, which will lead to the production of additional housing in California. **Staff:** Daniel Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

AB 1746 (Committee on Local Government). Local Government Reorganization. This bill would make changes to state laws affecting local agency formation commissions (LAFCOs) and local government boundaries.

AB 1746 would extend the deadline for spheres of influence for LAFCOs to review, revise and update from January 1, 2006 to January 1, 2008. Under AB 2838 (Hertzberg, 2000) LACFOs

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Legislative Bill Action

are required to review and update spheres of influence every five years. Due to delays in the release of advisory guidelines for municipal services, LAFCOs report that they will have revised less than half of their spheres of influence by the January 1, 2006 deadline. By extending the deadline by two years, LAFCOs will be able to meet the requirements set forth in AB 2838. **Staff:** Daniel Carrigg; **Status:** Governor's Desk; **Position:** Request for Signature.

ENVIRONMENTAL

AB 1660 (Pavley) Vehicular Air Pollution: Energy-Efficient Vehicles. AB 1660 would establish an energy-efficient vehicle group purchase program within the Department of General Services. Under the auspices of this program, the department would be required to negotiate the lowest possible purchase price for energy-efficient vehicles on behalf of state and local agencies that are interested in obtaining those vehicles. The League supports this worthy effort to facilitate the purchase of energy-efficient vehicles by state and local agencies. **Staff:** Yvonne Hunter; **Status:** Governor's Desk; **Position:** Request for Signature.

ADMINISTRATIVE SERVICES

AB 783 (Jones). Elections. Payments of Expenses. AB 783 would reinstate the provision of California Elections Code §13000 which requires the State to pay for all special elections proclaimed by the Governor to fill a vacancy for an office in the State Senate, State Assembly, U.S. Senate, or U.S. Congress. Due to a mistake regarding the sunset date, local governments must bear the cost of preparation and administration of State special elections.

With the governor recently calling special elections for vacancies in the U.S. Congress and the California State Assembly, AB 783 is a priority for local government. **Staff:** P. Anthony Thomas; **Status:** Governor's desk; **Position:** Request for Signature.

SB 8 (Soto) Political Reform Act of 1974. Conflicts of Interest. SB 8 would prohibit local elected officials, county administrators, and city managers, for a period of one year after leaving office or employment, from representing any other person or entity, by lobbying their former local governing agency. SB 8's prohibition does not apply to any individual who is appearing on behalf of another local government or public agency of which the individual is a board member, officer, or employee.

Existing law already prohibits members of the Legislature and State elected officials from lobbying the body they served for one year after leaving service. SB 8 applies the same standard to officials at the city and county level, and would help prevent former local elected officials from wielding unfair influence with the office they once held. **Staff:** P. Anthony Thomas; **Status:** Governor's desk; **Position:** Request for Signature.

EMPLOYEE RELATIONS

AB 186 (Bogh) Occupational Safety and Health. Fines. AB 186 establishes a refund plan for civil and administrative penalties imposed against public safety agencies for violation of laws relating to safety in employment. Funds received as a result of a penalty imposed on a local governing agency would be allocated to the California Firefighter Joint Apprenticeship Program for the purpose of establishing occupational injury and illness prevention programs.

AB 186 would contribute to a safer workplace and reduce financial impacts on public safety operational revenues during a budgetary shortfall. **Staff:** P. Anthony Thomas; **Status:** Signed by the Governor; **Position:** Request for Signature.