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

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AB 2987 AMENDMENTS FAIL TO ADDRESS CONCERNS

June 22 amendments to AB 2987 move video franchising authority from the Department of Consumer Affairs to the Secretary of State. They also attempt to address red-lining of services and correct serious problems with the collection of franchise fees — but the amendments fail to solve these problems. *For more, see Page 3.*

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UPDATE ON KEY LAND USE/HOUSING BILLS

As the State Legislature nears adoption of a budget, talk fills the halls of the State Capitol that the month-long summer recess (July 7 to August 7) may actually occur. By July 7, policy committees will have concluded their work, and when the members return in August, they will have only 23 days to finish work in the appropriations committees, debate issues on the floors, then adjourn for the year on August 31. *For more, see Page 5.*

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MAYORS AND COUNCIL MEMBERS ACADEMY – REGISTER NOW!

Less than two weeks remain to register online for the Mayors and Council Members Academy Executive Forum and Advanced Leadership Workshops. By registering online by July 3, registrants will receive a $20 coupon for CityBooks! *For more, see Page 2.*

WANT MORE DETAILS ON BILLS?

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

IN THIS ISSUE:

TELECOM IN THE NEWS

A Primer on Network Neutrality

Hearing a lot about the term “network neutrality” but don’t fully comprehend what it means? Don’t worry, you’re not alone.

Network neutrality concerns whether all traffic on the Internet should be treated the same, and at the same price, or whether the companies that deliver the Internet to homes of consumers can charge a differing rate depending on usage.

To read a primer on the subject, visit www.sfgate.com and search for “**Network Neutrality – Speed Bumps on the Information Highway**.”

AT&T Not Exempt from Stevens’ Telecom Reform Bill

According to an article by Newswire Multichannel, a Senate staff member has confirmed that AT&T Inc.’s Internet-Protocol TV services (IPTV) is not exempt from video-franchising provisions in S.2686, a telecommunications reform bill sponsored by Senate Commerce Committee Chairman Ted Stevens (R-Alaska).

To read more, visit www.multichannel.com, and search for “**No Free Ride for AT&T in Stevens Bill**.”

Telecos Spend More Than $30 Million on Telecom Advertising

Media buyers of the California Cable and Telecommunications Association, an opponent of AB 2987, have estimated that telecos have spent more than $30 million on telecommunications advertising as of April 30.

The amount spent underscores the importance of the bill, which passed the State Assembly and is set for hearing in the State Senate on June 27.

To read more, visit www.mercurynews.com and search for “**Millions Spent to Push Bill on Broadband**.”

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Join your colleagues at the Monterey Conference Center on July 26-29, and explore the latest issues of interest in cities throughout California. The Executive Forum features keynote speaker Joseph Grenny, president of “VitalSmarts” and co-author of “Crucial Confrontations” and “Crucial Conversations” – both *New York Times* bestsellers. Enjoy beautiful Monterey in the summer and the excellent cuisine as you get reacquainted with old friends and make some new ones.

The full conference registration fee is $445. Please visit www.cacities.org/events to register and view the programs.

NATIONAL BROWNFIELD ASSOCIATION TO HOST CALIFORNIA CHAPTER RECEPTION ON JULY 19

The California Chapter of the National Brownfield Association (NBA) is hosting a complimentary reception on July 19 in San Francisco.

The even will be held from 5 p.m. to 7 p.m. and feature guest speakers Maureen Gorsen, director, California Environmental Protection Agency – Department of Toxic Substances Control and Robert Colangelo, chief executive officer, NBA. The reception is a great networking opportunity for those involved in the redevelopment process.

To register, visit www.brownfieldassociation.org. More information is also available at (773) 714-0407, ext. 22, or via e-mail at mayalanm@brownfieldassociation.org.

AB 2987 BUILD OUT REQUIREMENTS: WHY THESE ARE STILL INADEQUATE

The amendments specify build out requirements on franchise holders with more than 500,000 telephone customers in California, as well franchise holders with less than 500,000 telephone customers in California. Here are some of the concerns with these requirements:

- A franchise holder with more than 500,000 telephone customers must build out to at least 30 percent of low-income households within five years after the holder begins providing video service. **But there is no requirement to go beyond this 30 percent build out level after five years – even though the franchise is issued for 10 years.**

- Specifying that holders with less than 500,000 telephone customers, who are required to provide video service to "all customers … within a reasonable time (undefined)," but **the holder will not have to meet the requirement** if "the average cost to provide service is substantially above the average cost of providing service in that community."

- The bill allows holders to apply to the Secretary of State for a waiver from the build out requirements with **no prior notice to cities and counties.**

- The bill defines "low-income household" as having an average income of less than $35,000. But this definition does not account for geographic location or number of persons in the household.

- AT&T and Verizon are still free to gerrymander their service area to underserve lower income areas, and later seek a waiver from the Secretary of State from any further build out requirements.

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The bill still protects telephone companies at the expense of consumers, and provides competition mainly for those "high value" areas of the state that already are likely to have high quality video and broadband service. This bill will not improve the United States' pathetic 15th worldwide ranking in terms of access to broadband services.

Other serious problems with the bill remain unaddressed. These include the funding for "PEG" (public, education and government) channels that would be required; consumer protection; preserving community control over local rights-of-way; and funding for I-Net ("institutional network") services and free hook-ups for schools and libraries.

Key Issues with AB 2987 (Núñez/Levine), As Amended On June 22

***Need to Prevent Discrimination*.** The June 22 amendments attempt to respond to the concerns raised by the League and many other concerned parties regarding cherry-picking of "high value" customers by the telephone companies – leaving "low value" customers with inferior or no service. The amendments specify build-out requirements on franchise holders – but the "requirements" contain numerous weaknesses, virtually guaranteeing that discrimination will occur. (See "AB 2987 Build-Out Requirements: Why These Are Still Inadequate".)

Solution: Amend the bill to require that state franchise holders must provide the same landline-based broadband service throughout each local jurisdiction within a specified number of years of providing the service to the first customer within that jurisdiction. Provide that state franchisees must offer the same landline-based broadband service throughout their telephone service territory within the state within a specified number of years, deploying to both high and low income areas.

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Franchise Fees Still At Risk. AB 2987 provides local agencies with franchise fees equal to 5 percent of gross revenues (as many agencies receive today). But the bill – even with amendments — as drafted presents **two serious issues.**

1. ***"Fee" really a state tax.*** While local agencies can currently impose a franchise fee as "rent" for local rights-of-way, AB 2987 imposes a **state franchise fee.** The June 22 amendments say that local agencies can collect the "fees" if they adopt an ordinance. But since the state does not own local streets, this state-imposed fee is really a tax. **Local agencies would need voter approval before they could impose these new "franchise fees" (taxes) on new franchisees.**

2. The amended version of the bill continues to use a definition of "gross revenues" that allows video service providers to manipulate their gross revenues and thereby reduce franchise fees – meaning that agencies will lose revenues.

Abrogation of Contracts: More than $300 Million Annual Franchise Fees at Risk. California cities currently receive approximately $300 million a year in cable franchise fees, in exchange for the cable companies "renting" local rights-of-way. These funds are considered general revenues – available to fund public safety or other local priorities.

Cable companies are proposing amendments to terminiate existing franchise agreements with local agencies. Franchise revenues could be placed in jeopardy or significantly reduced if cable companies are able to cut a deal in AB 2987 that allows them to abrogate current contracts to achieve a "level playing field" with telephone companies.

Strengthen Customer Service Standards. AB 2987 pre-empts local customer service standards which local agencies adopt and enforce under their cable franchise agreements. The bill requires local agencies to enforce limited state standards and authorizes the imposition of liquidated damages, but pre-empts franchise termination as a remedy. In other words, the bill gives local agencies the responsibility for ensuring consumer protection with little real authority.

Solution. Leave in place local agency authority to adopt customer service standards; at a minimum, adopt model customer service standards developed by the Federal Communications Commission (FCC). Leave in place local authority to enforce those standards, including franchise termination in extreme cases.

Retain Local Authority to Manage Public Rights-of-Way. AB 2987 contains confusing and conflicting language about the conditions under which telephone companies can deploy their equipment in local rights-of-way.

Solution: Amend the bill to provide that nothing in the bill affects the authority of local agencies to regulate the time/place/manner of the use of the public rights-of-way provided it is done in a manner consistent with the bill.

Retain Funding for PEG Channels. Public, education and government channels ("PEG") are an important tool used by many local agencies and local organizations to broadcast public meetings, programs and information of community interest. Cities are currently able to negotiate with cable providers as part of their local franchise agreement for PEG funding and support. AB 2987 would instead allow only 1 percent for both PEG channels and I-Net services ("institutional networks"), and limit that to only pay for capital expenses (no operating expense).

Solution: Amend AB 2987 to provide that operators shall pay a specified amount of gross revenues for PEG only (not I-Net, which should be funded separately). Provide that these funds may be used for either capital or operational expenses.

Institutional Networks. Institutional Networks ("I-Net") provide a tremendous benefit to

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local government by providing high capacity voice/video/data networks that they could never afford on their own, while costing the operator relatively little due to the fact that the incremental cost of building additional capacity is relatively low. Many local franchises require the cable operator to provide an I-Net – but AB 2987 doesn't require operators to provide an Institutional Network even if paid for by the local agency. The bill would effectively terminate existing Institutional Networks and prevent the deployment of new Institutional Networks.

Solution: Amend the bill to require operators to provide an I-Net, with the number of network connections or sites based on the population of the local agency. Alternatively, require existing Institutional Networks provided by incumbents to continue, but require new entrants to pay a proportionate share of the cost to the incumbent.

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This is, therefore, a good time to take stock on where things stand on land use and housing legislation.

The 2006 Legislative Session has been a contentious one for land use issues: infrastructure funding, redevelopment reform, eminent domain and (*Kelo*), housing elements, 20-year land supplies, density bonus battles, etc.

Infrastructure Bond Package. Two of the most important developments for housing in this legislative session have been the passage of a $38 billion infrastructure bond package, with funding for transportation, housing, schools, levees; and passage of measure that protects local Proposition 42 transportation funds. Voter approval in November remains a significant hurdle, however, as we are reminded by the voters' rejection of the library bond (Prop. 81) and many local transportation taxes in the June primary.

Eminent Domain (*Kelo*) and Redevelopment Reform. Early in the year, redevelopment agencies were running a gauntlet of legislative proposals aimed at stripping away eminent domain authority, forcing higher housing set-asides, and imposing other restrictions. Thanks to the excellent efforts of the California Redevelopment Association and opposition from local governments, many of the most onerous proposals have been defeated or stalled.

Several bills, however, including SB 1206 (Kehoe), continue to have provisions that merit opposition. Yet, the real battle will come over the "Anita Anderson" initiative measure, which is anticipated to qualify for the November ballot. This measure not only contains many limitations on the use of eminent domain, it also expands broadly into the field of "regulatory takings" and would require compensation by state or local governments to property owners for impacts of state or local laws on property.

Housing Elements and Other Laws. A number of bills were introduced in this area, but many have either stalled or have been significantly amended. SB 1800 (Ducheny), a homebuilder-sponsored bill which required 20-year land supplies to be dedicated to housing and expanded state control over local housing elements, remains stalled in the Senate due to significant environmental and local government opposition.

Other measures which the League opposed, such as AB 2526 (Arambula) and SB 1177 (Hollingsworth) are also stalled. While amendments have improved other bills, the League remains opposed to SB 1330 (Dunn), which expands attorney fee provisions against local governments, and several other measures.

League's Housing/Land Use Package. The League's housing package also has thinned out over the Legislative Session. Two League-sponsored measures both failed to emerge from the Appropriations Committee suspense files due to costs to the state, and the adoption of $2.85 billion the housing bond SB 1689 (Perata). These are SB 1754 (Lowenthal), which expanded tax increment financing for high-density housing development, and AB 2503 (Mullin), which re-

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quired a dollar-for-dollar return or ERAF funds to local governments to match investment in local housing trust funds.

Other stalled measures are AB 2468 (Salinas), allowing local self-certification of housing elements, and AB 3042 (Evans), which proposed a more flexible housing transfer process. AB 2468 became bogged down in housing advocate opposition, while AB 3042 became so loaded with unrealistic requirements that it was no longer worth pursuing.

These other League-sponsored measures, however, continue to move: AB 2158 (Evans), which requires Councils of Governments (COGs) to consult with LAFCO's prior to adopting housing allocation methodology; AB 2572 (Emmerson) which ensures communities with universities can raise unique local issues; and AB 2259 (Salinas), which continues LAFCO authority to review unincorporated county development for consistency with LAFCO policies.

Flood Control. Within the last few months, the Legislature has been "awash" in flood control bills. Two key measures that relate to housing, planning and flood control are AB 802 (Wolk) and AB 1899 (Wolk). AB 802 is supported by the League. It now includes amendments jointly developed by the League, CSAC, APA and RCRC and others to enhance how general plans address flood issues.

AB 1899 (Wolk) is the so-called "show me the flood protection" bill which proposes to tie future Greenfield development to implementation of plans to achieve 200-year flood protection. The state Department of Water Resources has been circulating a conceptual proposal to address the topic in a different manner.

A hotly debated bill, AB 1899 will likely be the subject of continued negotiations throughout the summer. The League has sent comments to the author, and the EQ and HCED policy committees. Finally, it is likely that one omnibus bill will be crafted to address the issue of liability and flood control.

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.

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.

TRANSPORTATION AND PUBLIC WORKS

AB 573 (Wolk). Design/Engineering Contracts. Indemnification. AB 573 would limit the types of indemnification provisions public agencies may require in contracts with design and/or engineering firms. The sponsors and Assemblymember Wolk have observed that insurance is not available for the broader types of indemnification required by many public agencies and thus, public agencies have a false sense of security when design or engineering firms sign such contracts.

To the contrary, some public agency attorneys have remarked that their clients have no trouble

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finding qualified design firms for public projects and that the broader indemnification requirements are necessary to protect taxpayers.

Although the League has heard from cities that they oppose the bill, we have also heard from cities that either they "can live with the bill's requirements" or that they already use the types of indemnification provisions specified in the bill.

Because the bill would limit the flexibility and ability of local agencies to use this type of tool in public contracts, the League opposes AB 573. AB 573 passed the Senate Judiciary Committee this week and will be heard next on the Senate Floor. **Staff:** Yvonne Hunter; **Status:** Pending on AsmFlr; **Position: Oppose.**

ENVIRONMENTAL QUALITY

AB 1665 (Laird). Flood Control. After a lengthy hearing in the Senate Natural Resources and Water Committee, the vote on AB 1665 was put over for a week. AB 1665, sponsored by the Administration, would address a variety of flood protection issues. Many provisions are non-controversial and supported by many groups.

Others, however, are extremely controversial and have attracted extensive opposition. These include requirements that cities and counties that benefit from state investment in levee improvement agree to share the state's liability before the state will invest funds to upgrade the levee beyond its original design. The controversial provisions also include granting the Reclamation Board the authority to assess property owners fees to pay for upgrades to levees for which the state has legal responsibility.

At the hearing, several sections were deleted from the bill – some to be negotiated and amended, some to remain deleted but included in another vehicle. The shared liability/indemnification portion of the bill to which the League had objected is one of the issues that was deleted and will be included in another bill.

Based upon several sources at the Capitol, the different shared liability/indemnification provisions of various bills will all be deleted. Instead, one comprehensive approach to flood liability and indemnification will be crafted, with the likely legislative vehicle being AB 1528 (Jones), which is currently sitting in Senate Rules Committee. This is likely an issue that will be negotiated during the July summer recess. The League will participate in those discussions.

With the liability provision deleted, the League no longer opposes AB 1665. **Staff:** Yvonne Hunter; **Status:** Pending in SenNR&Wa; **Position: Pending.**

AB 802 (Wolk). Flood Issues. General Plans. AB 802 passed the Senate Local Government Committee this week with no opposition. It would enhance how city and county general plans identify and respond to flood issues. Many of the new requirements are taken from the general plan guidelines, which suggest optional items for inclusion. AB 802 will move next to the Senate Appropriations Committee. **Staff:** Yvonne Hunter; **Status:** Pending in SenAppr; **Position: Support.**

AB 1899 (Wolk). Show Me the Flood Protection. AB 1899 moved out of the Senate Local Government Committee this week after an extensive hearing. The complexity of the issue and difficulty in finding a workable solution to the problem of how to enhance flood protection for new developments was demonstrated by the myriad of perspectives presented at the committee.

The League has provided Assemblymember Wolk with extensive comments based upon recommendations from the League flood control working group. Thursday, the League's Environmental Quality and Housing, Community and Economic Development Policy Committees considered the working group's recommendation and the EQ Committee engaged in a lively discussion with Assemblymember Wolk.

Both policy committees unanimously adopted a position that differs slightly from the flood control

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working group's recommendation to oppose AB 1899 unless it is amended. Instead, the policy committees recommend that the League take no position at this time on AB 1899. The League will continue to work with the author's office and others to resolve the issues included in our letter, as well as any other issues that come up. It is clear that the bill is still a work in progress.

The policy committees also agreed that some of the concepts included in the DWR proposal have merit and should be factored in the mix of discussion. Ultimately, we will evaluate how well the bill has addressed our issues and then determine whether to support, be neutral or oppose it.

A copy of the League's letter, which includes a discussion of the problem issues, is posted on the League's website. It is clear that the issue of flood control and development will be one negotiated throughout the summer. **Staff:** Yvonne Hunter; **Status:** Pending in SenAppr; **Position: Pending.**

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

Senate Appropriations—(13)—Murray (Chair), Aanestad (Vice–Chair), Alarcon, Alquist, Ashburn, Battin, Dutton, Escutia, Florez, Ortiz, Poochigian, Romero and Torlakson. Staff Director: Bob Franzoia. Consultants: Miriam Barcellona Ingenito, John Decker, Nora Lynn, Mark McKenzie, John Miller and Maureen Ortiz. Assistant: Sally Ann Romo and Krimilda Hodson. Phone: (916) 651–4101. Room: 2206.

Senate Natural Resources and Water—(7)—Kuehl (Chair), Margett (Vice–Chair), Aanestad, Kehoe, Lowenthal, Machado, and Migden. Chief Consultant: Bill Craven. Principal Consultants: Dennis O'Connor. Consultant: Marie Liu. Assistants: Patricia Hanson and Cathy Cruz. Phone: (916) 651–4116. Room: 407.