

FOCUS

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

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U.S. SUPREME COURT UPHOLDS CONDEMNATION FOR ECONOMIC DEVELOPMENT

Of the U.S. Supreme Court's three takings cases this year, *Kelo v. City of New London* received a significant amount of media coverage. It had all the elements of a good press story. On one hand, an economically "distressed municipality" was struggling to offset the loss of a military base and 1,500 jobs. On the other, sympathetic owners were being forced to sell their life long homes in the name of progress. *For more, see Page 8.*

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COURT AFFIRMS STANDARD PRACTICES IN PROPERTY RIGHTS LITIGATION

Sometimes, common sense prevails.

Such was the case when the U.S. Supreme Court affirmed that property owners do not get a "second bite at the apple" by bringing a takings claim in federal court *after* the case has already been decided in state court. *For more, see Page 4.*

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TEA-21 REAUTHORIZATION CONFERENCE REPORTEDLY REACH AGREEMENT ON FUNDING TOTAL

With a deadline of June 30 looming on the latest Transportation Equity Act for the 21st Century (TEA-21) extension, news reports late in the evening on Thursday, June 23, indicated that lawmakers reached an agreement on a final spending figure for a multi-year authorization bill for renewing the 1998 TEA-21 bill. *For more, see Page 7.*

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ON BILLS?

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**REGISTER NOW!
MAYORS AND COUNCIL MEMBERS
ACADEMY ADVANCED
LEADERSHIP WORKSHOPS**

If your city had a natural disaster or terrorist attack, what are the first three steps you would take? "Elected Officials' Role in Providing Homeland Security" is one of the five workshops following the Mayors and Council Members Academy Executive Forum in Monterey. The description is below:

If a terrorist attack, natural disaster, or other emergency struck your city, what actions would you take? Who would you communicate with and how? What would you tell the public through the media? How would you interact with other responsible agencies such as the FBI and OES? These are important issues that face elected officials. Strategic planning is necessary to ensure our communities are prepared and equipped to handle homeland security concerns. Learn answers to these questions and much more in this unique workshop designed by homeland security experts who understand the needs of cities because they are also city elected officials.

For registration information, please visit www.cacities.org/events. Each workshop is five to six hours spread over Friday afternoon and Saturday morning, July 29-30.

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Restore and protect local control
for cities through education and
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life for all Californians.

**MAYORS AND COUNCIL MEMBERS
EXECUTIVE FORUM, JULY 27- 29
IN MONTEREY
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There are numerous sessions that will provide elected officials with fresh insights and information – extremely useful in meeting the challenges of California's rapid changes and tight local budgets. This year's conference theme is maintaining the political power of cities. In keeping with the goals of the League of California Cities board of directors, sessions will address housing, infrastructure, economic development and redevelopment. Many other sessions target timely topics such as land use planning, how to increase city finances, telecommunication regulations and much more.

A full daily breakfast buffet will increase your energy level for days packed with exciting sessions and events. Discussion groups, briefings, and presentations will enhance your knowledge, and allow you to network with your fellow elected officials. Enjoy a beach party reception dinner with live music, palm trees, roaring bonfire, ping-pong, and other entertainment.

Don't miss this event to acquire new skills, learn about key city issues, and exchange innovative ideas all in the relaxed atmosphere of the Monterey Peninsula.

Register before July 15 and receive a coupon worth \$25 redeemable at CityBooks.

To register for the conference and view the preliminary program, visit our web site at www.cacities.org/events. For more information, you may contact Paul Flint via e-mail at pflint@cacities.org.

STATE SUPREME COURT DENIES REVIEW

On June 16, the state Supreme Court denied review in *Howard Jarvis Taxpayers Association v. City of Fresno*. The case involved a city of Fresno ordinance that required each municipal utility to pay into the city's general fund a yearly fee "in lieu of property and other taxes normally placed upon private business." In 2002, the city expected to generate approximately \$8.6 million from these in lieu fees paid by the municipal utilities. The amount paid by each utility was passed through to its customers.

In January 2003, a lawsuit was filed against Fresno, alleging that the in lieu fees were pre-empted by state law and that they violated various state constitutional provisions and statutes. The Fifth District Court of Appeal agreed. In its decision, the court held that:

- Water, sewer and trash fees are subject to Proposition 218;
- Proposition 218's requirements have applied to such fees since July 1, 1997, regardless whether such fees have been "extended, imposed or increased" since then; and
- Utility fees may include the cost of providing municipal services to public utilities, such as the cost of repairing streets impacted by wear and tear of utility vehicle traffic.

By denying review, the decision by the Fifth District Court of Appeal stands.

For more information on this case, please see "Are Utility Fees Subject to Proposition 218?" by Michael Colantuono in the May 2005 edition of *Western City*.

LAWSUIT CHALLENGING PARCEL TAX TOSSED

Several lawsuits are currently underway in California that challenge parcel tax elections. On June 17, a Santa Clara County judge dismissed one such action. The lawsuit challenged the election on the basis that it did not permit non-resident property owners to vote on the parcel tax, even though they would have to pay it.

The lawsuit was dismissed on the grounds that the plaintiff failed to "properly publish papers in a certain format and in a timely manner." The judge did not address the underlying merits of the case. It is believed that a similar lawsuit filed against the Mountain View-Whisman Elementary School District will be dismissed on the same grounds.

The League is monitoring these various cases and has filed a friend-of-the-court brief in an appellate court case that raises similar issues. In *Neilsen v. City of California City*, an out-of-town property owner filed a lawsuit challenging a parcel tax election that limited the voting electorate to parties residing within the precincts in California City. The brief was written on behalf of the League by Michael Colantuono.

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GOVERNOR SIGNS NEW INDIAN GAMING AGREEMENTS

Gov. Arnold Schwarzenegger recently announced the completion of Indian gaming agreements with the Quechan Tribe of the Fort Yuma Indian Reservation and the Yurok Tribe. The governor ascertains that the agreements provide a fair contribution of revenues to the state, provide protections to patrons and employees, and ensure that local communities will be protected and receive compensation to mitigate off-reservation and environmental impacts.

The Yurok and Quechan tribes are two of the largest tribes in the California, and the compacts authorize a single casino each at a single location on their reservations in Del Norte and Imperial County, respectively (the 1999 compacts afforded each tribe the right to two casinos).

The Yurok Tribe anticipates that its facility will generate \$7 million annually in net win from the operation of its slot machines, and the Quechan Tribe anticipates that its new facility will generate around \$59 million annually.

According to a press release from the governor's office, in each case, the tribes will provide a revenue contribution to the state based on a percentage of their net win from the operation of their slot machines, based on a sliding scale starting at 10 percent. The two compacts are anticipated to provide the state with approximately \$7 million in revenue per year.

In addition, the tribes have agreed to enter into intergovernmental agreements with their local communities to mitigate impacts on infrastructure, the environment, fire protection, law enforcement, public safety, gambling addiction, and emergency medical services.

The compacts must now be ratified by the State Legislature and then approved by the U.S. Department of the Interior.

Click here [for details of the recently signed compacts.](#)

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The case involved a challenge to San Francisco's hotel conversion fee. The San Remo Hotel (San Remo) claimed that the fee amounted a taking. At issue before the U.S. Supreme Court, however, was the extent to which a takings claim could be heard in federal court after a state court had already reached a final decision on the claim.

The procedural history was complex. San Remo first filed a claim in federal court. But the federal court held that the state court was the proper venue under the "*Williamson County*" rule, which holds that compensation claims under the Takings Clause should be brought in state court. See *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). San Remo, however, was allowed to preserve its right to bring a subsequent claim in federal court to the extent that such a claim was different than what could be brought in state court.

Fast-forward a few years. San Remo pursued its claim all the way to the California Supreme Court and ultimately lost. Afterwards, San Remo re-filed a claim in federal court that made the same arguments already decided by the California Supreme Court. San Francisco argued that there was no difference between federal law and state law on the takings issue, and thus San Remo should be precluded from filing its claim in federal court.

The U.S. Supreme Court sided unanimously with the City of San Francisco. Justice John Paul Stevens, writing for the court, found that federal courts cannot disregard the full faith and credit statute, which prohibits the re-litigation of issues resolved by courts of competent jurisdiction. Thus, the federal court was precluded from hearing San Remo's claim because a fully competent state court had already reached a determination.

The Supreme Court also upheld its long-standing *Williamson County* rule (as mentioned above, that takings claims should be heard in state court). Chief Justice Rehnquist, however, who had originally signed the *Williamson County* opinion 20

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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.

HOUSING AND LAND USE

SB 4 (Murray). The California Public Performance Facilities Authority Act. SB 4 would establish the California Public Performance Facilities Authority (Authority) Act in state government to be administered by a board of directors. The Authority, among other powers and duties, would have the ability to acquire, construct and operate a sports facility, sell naming and sponsorship rights, impose facility fees on tickets, and issue revenue bonds for financing.

On June 21, the bill was heard in the Assembly Arts, Entertainment, Sports, Tourism, and Internet Media Committee. The League had previously adopted a "Watch" position on SB 4 because of concerns of how the bill will impact local land use authority. During the committee hearing, the League asked Senator Murray to take several amendments that would address concerns about local land use approval.

The requested amendments would clarify that proposed facilities must receive all necessary land use and other development approvals required by the local government in which the proposed facility would be located. Senator Murray also agreed to remove a section of the bill that would give the Authority the power of eminent domain to acquire land. The League requests that cities and their financial officers review the newly amended version of SB 4 and give feedback on whether the amended version could be a useful financing tool for local governments. The author is soliciting support from cities on this measure. **Staff: Dan Carrigg; Status: AsApps; Position: Review and comment.**

SB 575 (Torlakson) Housing Development Projects. This bill would revise the conditions under state Anti-NIMBY Law, upon which a disapproval or conditional approval of a housing development project is based. The League had many concerns with the introduced version of this bill, so the author removed the most controversial items to facilitate discussions. A working group of city attorneys and housing advocates met for several months and have been able to reach consensus on a number of issues. The author has agreed to take the working group's amendments and place them into the bill. **Staff: Dan Carrigg; Status: AsmFlr; Position: Neutral.**

TRANSPORTATION

AB 1051 (Benoit and Umberg). Pocket Bikes. Restrictions. AB 1051 requires a manufacturer of a two-wheeled motorized vehicle, commonly known as a "pocket bike," to provide a printed disclosure indicating prohibited uses of pocket bikes. Additionally, AB 1051 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 48 hours. AB 1051 improves public safety on local streets and roads by requiring notification to purchasers of the limited use of pocket bikes. **Staff: Liisa Lawson Stark; Status: SenApps, Hrg. 6/27; Position: Support.**

SB 275 (Torlakson) Transportation Needs Assessment. SB 275 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.

Legislative Bill Action

The proposed 10-year needs assessment is to include the state highway system, local streets and roads, rail programs, regional transit systems, as well as high priority projects that anticipate traffic reduction, and are economically and environmentally beneficial to the state. In addition, the CTC, with the help of involved entities, will submit actions and estimates necessary for the DOT to complete the projects in a timely and cost-effective manner.

In 1999, when the last needs assessment (SR-8) was complete, the report demonstrated the need to reinvest in, and fund, California's existing transportation systems. With the continual population growth and vehicle miles traveled in California, a new needs assessment is necessary to evaluate where our transportation infrastructure stands. **Staff: Liisa Lawson Stark; Status: AsTrans, Hrg. 6/27; Position: Support.**

PUBLIC SAFETY

AB 1507 (Pavley). Cardiac Health. Automatic External Defibrillators. Health Studios. AB 1507 requires that health club facilities purchase and install Automatic External Defibrillators (AEDs), as well as train personnel in their use. Many private health clubs are located within city limits, within response areas of local fire departments. Placing AEDs in health clubs is a good public safety measure that will allow increased chances of survival of a cardiac arrest victim if use of an AED is available prior to the arrival of emergency responders. **Staff: Liisa Lawson Stark; Status: SenJud, Hrg. 6/28; Position: Support.**

AB 669 (La Suer). Firefighter Training and Standards. AB 669 creates the California Firefighter Training Standards Task Force to develop a system that puts in place a comprehensive, continuing training and education structure that meets the needs of the disciplines within the fire service profession. Many public entities provide education and training to firefighters, including cities, counties, special districts, community colleges and the state. The California Firefighter Training Standards Task Force will bring together these stakeholders to develop coordinated training and education for the fire service. **Staff: Liisa Lawson Stark; Status:**

SenGO, Hrg.6/28; Position: Support.

SB 719 (Romero). Police Vehicle Pursuits. SB 719 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 are immune 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. Additionally, SB 719 increases criminal penalties for willfully fleeing or attempting to evade police pursuit in a motor vehicle.

The act of driving a motor vehicle in an attempt to evade a peace officer is dangerous and unnecessarily places the lives of peace officers and other citizens at risk for injury or even death. SB 719 is a good approach to help curb the escalating danger of high-speed pursuits by increasing peace officer training and providing prison sentence enhancements to deter offenders from attempting to flee law enforcement officers and endangering lives. **Staff: Liisa Lawson Stark; Status: AsPubSfty, Hrg. 6/28, 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, Emmerson, Gordon, Haynes, Karnette, Klehs, Leno, Nakanishi, Nation, Oropeza, Ridley—Thomas, Saldaña, Walters, and Yee. Room 2114. Phone: (916) 319-2081.

ASSEMBLY PUBLIC SAFETY (7)—Leno (Chair), La Suer (Vice Chair), Cohn, Dymally, Goldberg, Ruskin, and Spitzer. 1020 N Street, Room 111. Phone: (916) 319-3744.

ASSEMBLY TRANSPORTATION (13)—Oropeza (Chair), Huff (Vice Chair), Bogh, Chan, S.

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Horton, Karnette, Liu, Mountjoy, Niello, Pavley, Ridley-Thomas, Salinas, and Torrico. 1020 N Street, Room 112. Phone: (916) 319-2093.

SENATE APPROPRIATIONS—(13)—Migden (Chair), Aanestad (Vice-Chair), Alquist, Ashburn, Battin, Bowen, Dutton, Escutia, Murray, Ortiz, Poochigian, Speier, and Vacancy. Staff Director: Anne Maitland. Deputy Director: Bob Franzoia. Consultants: George Cate, Miriam Barcellona Ingenito, Nora Lynn, Lisa Matocq and Maureen Ortiz. Assistant: Sally Ann Romo. Phone: (916) 445-3284. Room: 2206.

SENATE GOVERNMENTAL ORGANIZATION—(11)—Florez (Chair), Denham (Vice-Chair), Battin, Chesbro, Cox, Dunn, Margett, McClintock, Murray, Soto, and Vincent. Consultants: Steve Hardy and Arthur Terzakis. Assistant: Brenda K. Heiser. 1020 N Street, Suite 584. Phone: (916) 445-1193.

SENATE JUDICIARY—(7)—Dunn (Chair), Morrow (Vice-Chair), Ackerman, Cedillo, Escutia, Figueroa, and Kuehl. Chief Counsel: Gene Wong. Deputy Chief Counsel: Gloria Megino Ochoa. Counsels: Alexandra Montgomery. Assistants: Carol Thomas and Emily Crossland. Phone (916) 445-5957. Room 2187.

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years ago, filed a separate opinion suggesting rule should be “reconsidered.” The fact that three other justices joined him effectively creates an invitation to challenge the rule. It only takes the vote of four justices to place a case on the Supreme Court’s calendar.

The League’s legal advocacy committee has been involved the earlier stages of this case in both state court and federal court. The National League of Cities filed a brief on behalf of all cities before the U.S. Supreme Court.

For a copy of the decision, see U.S. Supreme Court’s website at www.supremecourtus.gov/opinions/04slipopinion.html.

After 21 months of deadlock, it was reported that House and Senate conferees have agreed on \$286.5 billion for multi-year highways, transit and traffic safety legislation.

Both chambers of Congress successfully approved transportation legislation earlier this year, but a lack of consensus over a reauthorization spending total stalled conference negotiations for weeks. A \$295 billion Senate bill (S.732) cleared in May was deemed too expensive by the White House, which continues to back the House’s \$284 billion spending measure (HR 3).

It is unclear if the Bush Administration would accept a compromise figure, the deal would represent a significant step forward for transportation conferees that have struggled with the overall funding level dilemma for almost two years. Since prior authorization law expired in 2003, several short-term extensions have kept transportation programs running while Congress continues work on a final bill, which has been said, might occur before the June 30 deadline next week.

Earlier this week, the California Delegation sent a letter to the conferees outlining three reauthorization priorities for California. They include Minimum Guarantees, preservation of urban transit formula in current law and adopting House Congestion, Mitigation and Air Quality (CMAQ) Improvement language.

Visit the League’s website for a copy of the California Delegation letter to the Conferees.

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

KELO from page 1

The case involved a development plan to create 1,000 jobs, increase public revenues, and generally revitalize an economically distressed city. To implement the plan, New London purchased most of the property earmarked for the project from willing sellers, but initiated condemnation proceedings against those who refused to sell.

In reviewing the legal issues, however, the court upheld in a five-to-four decision the city's authority to condemn land for the purpose of economic development. Specifically, court examined the scope of the "public use" requirement of the Takings Clause, which provides that the power of eminent domain (and the resulting just compensation) may only be used for "public purposes."

The owners had challenged the public nature of the New London's action because the ultimate result was to turn the land over to a developer. Thus, the owners argued, the action was effectively "private" insofar that it ultimately resulted in transferring ownership of the land from one private part to another.

Justice Stevens, delivering the opinion of the court, rejected this argument, noting that subsequent private ownership did not necessarily negate the public purpose of the action. There is no principled way of distinguishing economic development from the other recognized public purposes. Indeed, the city's development plan included many public elements, such as a marina, parks, and a riverwalk.

Moreover, the court deferred to the city's determination that the overall objective of rejuvenating the downtown and waterfront was in itself a sufficient public purpose to justify the condemnation action.

The court concluded by noting that in "affirming the city's authority to take petitioners' properties, we do not minimize the hardship that condemnations may entail, notwithstanding the payment of just compensation. We emphasize that nothing in our opinion precludes any state

from placing further restrictions on its exercise of the takings power...."

Finally, Justice Kennedy hinted that this ruling might not be so broad as it first appears. Though he joined the majority, he filed a concurring opinion stating that in his mind there were limits to how deferential the court would be to deferring to legislative bodies on the issue of public purpose. In such cases, he would entertain a higher level of judicial scrutiny. When combined with the four dissenting justices, there would seem to be a majority of justices that would favor some limitations to the rule affirmed by the court. But Justice Kennedy did not provide any further clarification, leaving that determination to another day.

For a copy of the decision, see U.S. Supreme Court's website at www.supremecourtus.gov/opinions/04slipopinion.html.

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