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IN THIS ISSUE:

SENATE EXPECTED TO RETURN TO SACRAMENTO NEXT WEEK: SB 67, 65, OTHER ISSUES REMAIN IN BALANCE

The Senate is expected to return to session on Tuesday, Oct. 13, close to a month after the official end of the 2009 legislative session. The goal is to address a number of items, including two of critical importance to local agencies. SB 67 contains clean-up language to the Proposition 1A property tax provisions that will enable California Communities to move forward with the securitization program benefiting more than 700 local agencies. SB 65 contains necessary clean up to the Highway User Tax Account (HUTA or gas tax) deferral language. *For more, see Page 2.*

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LEAGUE SUMMARIES OF RTAC REPORT NOW AVAILABLE

Last week, the Regional Targets Advisory Committee (RTAC) released its report advising the state Air Resources Board (ARB) on how to set regional targets for transportation related greenhouse gas emissions from cars and light trucks under SB 375. *For more, see Page 2.*

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STATE'S RAID ON TRANSIT FUNDS RULED ILLEGAL
State Supreme Court Rejects State's Request for Review

The California Supreme Court last week rejected the state's request to review a lower court's ruling that the recent seizures of transit funding were illegal. Earlier this year, the Third District Court of Appeal ruled that the state violated statutory and constitutional amendments enacted by voters since 1990. By not accepting the state's petition for review, the high court upheld the lower courts ruling. *For more, see Page 3.*

'Budget' Continued from Page 1…

SB 67, SB 65 and approximately 20 other bills were previously stalled the night of Sept. 11, when Senate Republican members refused to vote for any measure that required a two-thirds vote due to a dispute with Senate Pro Tem Darrell Steinberg (D-Sacramento) over unrelated items.

Over the past month, city, county and special district officials have attempted to educate Republican legislators on the importance of passing SB 67 and SB 65, and asked them set aside differences and demonstrate the necessary leadership to get these bills passed.

As the weekend approaches, legislative leadership continues to attempt to put together a comprehensive package on water, while Gov. Arnold Schwarzenegger withholds action on more than 700 bills as leverage to encourage an agreement. He must decide to sign or veto all bills by midnight on Sunday, Oct. 11. Speculation continues over possible legislative reactions should the Governor choose to veto large numbers of bills as punishment for failure to complete a water deal.

As reported in the Oct. 2 edition of *City Advocate Weekly,* all that is needed for SB 67 to pass is for the Senate to reconvene, take up the matter under reconsideration, pass it with 27 votes and send it to the Governor for signature. The bill received 26 votes in the last vote prior to the end of the session. All 25 Democrats were in support as well as Sen. Abel Maldonado (R-Santa Maria).

Take Action Immediately

City officials are encouraged to urge their senators pass SB 67 and 65 when they reconvene on Tuesday. It is imperative that this happens so that cities can continue to provide critical services to residents. Call your senator and emphasize the importance of securitizing the state's repayment obligation pursuant to Prop. 1A.

Please explain the impacts in your community that will ensue from the state borrowing 8 percent of your city's property tax. Ask your senator if he or she will vote for SB 67 when it is brought up for reconsideration. Tell them it's critical that they take this action immediately.

California Communities has produced a list of the local agencies that have enrolled in its Prop. 1A Securitization Program by Senate District.

It's been posted on the League's Web site so city officials can use it as a resource when contacting their senators.
www.cacities.org/resource_files/28370.Prop1ASecuritizationEnrollmentList.pdf

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'RTAC' Continued from Page 1…

RTAC's report includes details about the form of the target (a statewide per capita metric), the process in how the target will be set, and how ARB will review the regional plans for achieving the target. League staff has prepared two documents to help local officials and their staff sort through the details.

The first document is a two page, 12 point summary highlighting the main findings included in the report. This summary is posted on the League's Web site at http://www.cacities.org/resource_files/28373.RTAC12PointSummary.pdf.

League staff has also prepared a more technical 11 page abridged summary, for those interested in more detail but do not want to the entire 47 page RTAC report. The abridged summary is also posted on the League's Web site at http://www.cacities.org/resource_files/28374.RTACExtendedSummary.pdf.

While neither of these summaries is a perfect substitute for reading the entire RTAC report, League staff has prepared these summaries as a means of helping its membership understand the findings and participate in the process as it moves forward.

Finally, RTAC's report is not the final word. The ARB Board will consider the Committee Report at its November meeting.

'Transit' Continued from Page 1…

The California Transit Association reports that the state has seized or diverted nearly $5 billion in transit funding in the last decade. With the Supreme Court's review denial, the case now returns to the Third District Court of Appeal to decide how and when the state will repay the diverted and seized funds.

Please visit the California Transit Association Web site for more information about the case at www.caltransit.org.

Ninth Circuit Concludes City's Mobile home Rent Control Ordinance Constitutes a "Taking" Under the Constitution

Local governments were dealt a blow last week when the Ninth Circuit Court of Appeal issued its opinion in *Guggenheim v. City of Goleta*. A three-judge panel of the court concluded in this case that the city's mobile home rent control ordinance constitutes a "taking" under the United States Constitution, for which the government must pay "just compensation." This decision follows an equally disappointing decision by a federal district court last August, *MHC Financing v. City of San Rafael*, which likewise concluded that the city's mobile home rent control ordinance constituted a taking.

The ordinances in the two cases are fairly similar; both limit mobile home park owners' ability to increase rents on the "pads" (or plots of land) where mobile homes rest. The ordinances also limit park owners' ability to raise rents on a pad when a mobile home is sold to a new party.

Many municipalities have enacted similar ordinances in an effort to protect tenants from exorbitant rent increases due to housing shortages. Mobile home pad tenants are seen as vulnerable in light of the high cost of moving mobile homes.

The *Guggenheim* decision is particularly disturbing in light of the fact that the Guggenheims purchased the property 18 years after mobile home rent control limits were introduced in the county. The county's original rent control ordinance was enacted in 1979 and amended in 1987. When the city incorporated in 2002, it adopted the county's ordinance by reference. The Guggenheims purchased the property in 1997 and sued the city over the ordinance in 2002 – just one month after the city incorporated.

By concluding that Goleta's ordinance constitutes a taking, the Ninth Circuit concluded that the ordinance impermissibly transfers wealth from park owners to tenants. Specifically, the ordinance caused the Guggenheims to rent their property at a rate less than the going market rate. Tenants, on the other hand, benefited from a "transfer premium" that allowed them to sell their homes at a higher price than that which they would normally garner absent rent control.

Goleta will be petitioning the Ninth Circuit for rehearing. The League will file a letter, drafted by Andrew Schwartz of Shute, Mihaly & Weinberger, in support of the city's petition. The League is also set to file an amicus brief in the *MHC Financing* case, drafted by Henry Heater of Endeman, Lincoln, Turek & Heater, depending on the outcome of the *Guggenheim* case.

Ninth Circuit to Consider Retiree Benefit Case

The League filed an amicus brief with the Ninth Circuit Court of Appeal earlier this week in *Retired Employees Association of Orange County v. County of Orange*. The district court in this case concluded that the county is not required to subsidize retiree health benefits absent an express commitment by the Board of Supervisors, which was never given. Unhappy with the lower court's decision, the retiree association has appealed to the Ninth Circuit. In this era of rising healthcare costs and fiscal instability, the court's decision will have consequences for local governments throughout the state.

The facts of the case are simple. In 1966, the county began providing health care benefits to its retired employees. In 1985, the county began “pooling” the retired employees with the active employees in the rate-setting process. Pooling the two groups allowed retirees to pay lower premiums and receive greater coverage than they otherwise would (pooling benefit). In 2006, after determining its employee health plans were underfunded and needed adjustment, the county decided to “split the pool,” creating different premium pools for active and retired employees. Under the new system, retirees pay higher premiums then they paid while receiving the pooling benefit.

The retirees assert they have a vested right to the pooling benefit. The district court disagreed. As the League’s brief explains, the power to set retiree benefits rests with the agency’s governing body and its acquiescence cannot be implied. To conclude otherwise would deprive the public of an opportunity to weigh in on a significant undertaking that would ultimately affect taxpayers.

The League wishes to thank Jonathan Holtzman, Steve Cikes, and Kerry O’Donnell of Renne Sloan Holtzman Sakai for drafting the League’s brief.

The League will continue to report on this decision as more information becomes available.