

FOCUS

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

August 26, 2005
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**Annual Conference,
October 5-8, 2005 -
San Francisco**

HOT BILLS

OPPOSE SCA 15
(McClintock). Eminent
Domain: Condemna-
tion Proceedings.

OPPOSE ACA 22
(La Malfa). Eminent
Domain: Condemna-
tion Proceedings.

WANT MORE DETAILS ON BILLS?

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billsearch](http://www.cacities.org/billsearch).

AS TEXAS GOES . . . SO GOES CALIFORNIA?

TELECOMMUNICATIONS SHOOTOUT IN THE LONE STAR STATE!

The Texas Legislature just completed a long and somewhat difficult battle over the regulation of the communications industry in that state. The question for California, and for the rest of the nation, is whether this new law will be unique to Texas, or does it become the road map that guides all future state and/or federal legislation on the telecommunications issue? Only time will tell, but we do know that telecommunications will be an issue of intense interest over the next year or two in California and in Washington D.C. *For more, see Page 2.*

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NLC CENTER FOR RESEARCH & MUNICIPAL PROGRAMS PUBLISHES RESEARCH UPDATE

The National League of Cities (NLC) Center for Research & Municipal Programs recently published a variety of reports and briefs of interest to California cities. *For more, see Page 2.*

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BRAC COMMISSION SPARES SOME CALIFORNIA MILITARY SITES

The Federal Defense Base Closure and Realignment Commission (BRAC) began voting this week on Pentagon recommendations for realignment or closure of military installations around the nation. With the voting nearly complete, the commissioners have declined to "rubber stamp" a number of the Pentagon's... *For more, see Page 2.*

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recommendations, indicating that the commissioners are exercising their own judgments about the impact that their decisions will have on military preparedness and the communities where military installations are located.

At press time, the commission has made the following recommendations regarding military installations in California:

Installations to Remain in Operation

- Naval Postgraduate School in Monterey County
- The Defense Language Institute in Monterey County
- Navy Broadway Complex in San Diego County (remains open with a deadline)
- Naval Support Activity Center in Riverside County
- Marine Corps Logistics Base in San Bernardino County
- Naval Surface Warfare Center (NSWC), Corona

Realignments

- Marine Corps Logistics Base Barstow
- Naval Weapons Station Seal Beach in San Diego County

Installations to Be Closed

- Riverbank Army Ammunition Plant in Stanislaus County
- Naval Weapons Station Concord (as requested by the community)
- Onizuka AFB in Sunnyvale was closed as recommended by Department of Defense (DOD)
- Army Reserve Center in Moffett Field
- Army Reserve Center in San Jose
- Army Reserve Center in Mountain View
- Army Reserve Center in Pasadena
- Army Reserve Center in Long Beach
- Army Reserve Center in Los Angeles

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Among those reports are:

Local Budget and Tax Policy in the U.S.: Perceptions of City Officials

The State of America's Cities 2005: The Annual Opinion Survey of Municipal Elected Officials

Strengthening Families in America's Cities: A Survey on Municipal Conditions, Policies and Resources for Children and Families

These reports can be found online at www.nlc.org.

For a hardcopy of any report, please contact Christy Brennan at brennan@nlc.org or Chris Hoene at hoene@nlc.org.

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What Texas Did

After a bill that seriously threatened local franchise authority and revenues was defeated in the regular legislative session (with the cities of the state joining with the cable industry to kill the legislation), a special session was called and the Legislature reconvened to consider another approach to the issue. Ultimately, a measure was passed that will substantially alter the regulatory framework for the Texas communications industry, as well as for local government.

A central piece of the Texas legislation was the elimination of local franchise authority and the establishment of a state franchise authority. Franchise revenues were preserved and for some cities the revenues were increased.

As reform discussions continue in California, with the Assembly Utilities and Commerce Committee currently taking the lead, the Texas legislation clearly sets a standard for the battle that will take place here, in other states and in the next session of Congress.

We highly recommend that city officials review the following summary of the Texas legislation provided by the Texas Municipal League. It may give us a hint of "things to come" in California.

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THE TEXAS TELECOMMUNICATIONS REFORM MEASURE

1. It creates a statewide cable and video franchise to be administered by the state Public Utility Commission (PUC).

2. It requires an entity seeking to provide cable or video service in Texas after September 1, 2005, to file an application with the PUC for the state-issued certificate of franchise authority.

3. It provides that an entity providing cable or video service pursuant to a franchise agreement with a city may not seek a state franchise until the expiration of the existing franchise agreement. However, non-incumbent cable service providers that serve fewer than 40 percent of the total cable customers in a particular municipal franchise area may elect to terminate the existing franchise agreement and move to a state-issued certificate of franchise authority if they do so by January 1, 2006.

4. It requires the PUC to issue a certificate of franchise within 14 business days of the receipt of an application provided that, among other things, the applicant: (a) agrees to comply with all federal laws and regulations; (b) agrees to comply with all city regulations regarding the use of the public rights-of-way (ROW), including the police powers of the city; and (c) provides a description of the service area footprint to be served.

5. It provides that a state-issued certificate of franchise shall contain a grant of authority to use a city's ROWs, subject to the police powers of a city.

6. It provides that the certificate of franchise is fully transferable to successors in interest.

7. It provides that a condition of issuance of a statewide franchise is that the obligations of the entity providing cable or video service will continue to be honored, paid, or performed just as though the entity continued to operate under its prior franchise.

8. It requires a statewide franchise holder to make a quarterly payment to each city in which it provides service; and that the payment be equal to five percent of gross revenues, as that term is defined in the bill, earned by the franchise holder in that city.

9. It authorizes the state or a city to review the business records of a provider to ensure proper payment of fees.

10. It provides that until the expiration of the incumbent cable provider's franchise agreement, a statewide franchise holder shall pay to a city a pro rata amount of cash to cover any in-kind services received by the city.

11. It provides that following the expiration of the incumbent provider's franchise agreement, a statewide franchise holder shall pay each city either an amount equal to one percent of the provider's gross revenue or a monthly, per-subscriber line fee (if such fee was imposed under previous franchise agreements) in lieu of in-kind services and operational grants.

12. It requires an incumbent cable provider to provide certain services, such as cable service to city and other public buildings, until January 1, 2008, or the expiration of a franchise agreement, whichever is later, after which time providers will provide the services at their incremental cost and deduct the amount from the franchise fee owed to the city.

13. It exempts the holder of a statewide franchise from any "build-out" requirements.

14. It requires: (a) a statewide franchise holder to comply with federal customer service requirements until there are two or more providers offering service to an area; and (b) the PUC to post the number of complaints regarding each service provider on its website.

THE TEXAS TELECOMMUNICATIONS REFORM MEASURE

15. It requires a statewide franchise holder to: (a) provide a city, upon request, with public, educational, and governmental access channels (PEG Channels) to be operated by the city for noncommercial programming, with certain limitations and restrictions; (b) provide the same number of PEG channels as provided under the existing city cable franchise; and (c) provide to a city without a PEG channel a certain number of them based on population.

16. It mandates that a city allow a statewide franchise holder to install, construct, and maintain a communications network in the city's ROWs and prohibit discrimination against providers.

17. It provides that a city may enforce police-power-based regulations in the management of the public ROWs against a statewide franchise holder to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

18. It prohibits a city from requiring a statewide franchise holder to: (a) maintain a business office in the city; (b) obtain bonding or insurance for activities within the city; or (c) pay any fee for a permit to work in the city's ROW, but allows the city to require a statewide franchise holder to register with the city and maintain a point of contact.

19. It provides that: (a) a city must promptly process any request from a statewide franchise holder to construct or maintain any facilities in the city's ROW; and (b) a provider may begin work under certain circumstances without a permit if it notifies the city as promptly as possible after work begins.

20. It provides that the PUC has no jurisdiction to review a city's police power regulations governing the city's ROWs.

21. It requires a provider to indemnify a city for the negligent acts of the provider while working in the ROW.

22. It prohibits a statewide franchise holder from discriminating against any group of potential residential subscribers based on income in the "local area" in which the group resides.

23. It provides that the state may enforce any of its franchise provisions in a court of competent jurisdiction, and that a city may be a party to such litigation.

The bill also:

1. Changes the telecommunications access line system to require voice over Internet protocol (VOIP) service providers to pay the right-of-way access line fee to cities.

2. Provides that a city does not have jurisdiction over broadband over power line (BPL) systems or services, including the rates, operations, or services of an electric utility or transmission and distribution utility that are related to providing BPL.

3. Provides that an electric utility may implement BPL under the procedures set forth in the bill, but is not required to do so.

4. Prohibits an electric utility from being penalized for providing or not providing BPL.

5. Authorizes an electric utility to elect to: (a) allow an affiliate to own or operate a BPL system on its electric delivery system; (b) allow an unaffiliated entity to own or operate a BPL system on the utility's electric delivery system; or (c) allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

6. Provides that the installation of a BPL system on an electric delivery system shall not require the utility or the owner of the BPL system

THE TEXAS TELECOMMUNICATIONS REFORM MEASURE

to obtain other rights-of-way or to make payments for easements in addition to payments made by the utility for the placement of its electric delivery system.

7. Provides that an electric utility that allows BPL shall employ all reasonable measures to protect electric reliability.

8. Prohibits the Public Utility Commission or any state or local government from: (a) requiring a utility to install a BPL system on its power lines or to offer BPL services in all or any part of the utility's certificated service area; (b) requiring a utility to allow others to install a BPL system on the utility's electric delivery system; or (c) prohibiting a utility from installing a BPL system or offering BPL services in any part or all of the utility's certificated service area.

9. Provides that if a city is already collecting a charge or fee from an electric utility for the use of a street, alley, or public way for the delivery of electricity to retail electric customers, the city is prohibited from requiring a BPL franchise and is prohibited from imposing or collecting a charge, fee, or tax from an electric utility for installing equipment to facilitate BPL services on an existing electric distribution system.

10. Authorizes the state or a city to impose a charge on the provision of BPL services that is no greater than the lowest charge the state or a city imposes on other broadband providers for use of the public rights-of-way.

11. Provides that a municipally owned utility is not prohibited from providing energy-related data services, such as load management or automated meter reading, to its energy customers.

12. Prohibits a city or a municipally owned utility from discriminating against a certified

telecommunications provider regarding the use of the public rights-of-way.

13. Prohibits a city or a municipally owned utility from charging more for a pole attachment than is allowed by federal law, and requires a city or MOU to establish a single, uniform pole attachment fee prior to September 1, 2006.

14. Requires a study of the purposes of the Universal Service Fund, and whether the fund has achieved its goals.

15. Provides that all incumbent local exchange markets are deregulated on January 1, 2006 (or January 1, 2007, for areas with a population less than 30,000); unless the Public Utility Commission determines that a market should remain regulated.

16. Provides that an incumbent local exchange company may elect to remain regulated.

17. Requires telecommunications and cable employees to provide identification when entering real property to work within a public right of way.

18. Creates a telecommunications competitiveness legislative oversight committee to report to the legislature on telecommunications issues.

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.

ENVIRONMENTAL

AB 1665 (Laird). Flood Control. Levees. AB 1665 is a two-year bill and will not be heard or moved this year. In its current form, AB 1665 begins the process of addressing the status of the state's flood control and levee system, including requiring mapping of potential flood inundation zones, notification of property owners in those zones and information gathering about the status of the levees and their ability to protect public health, safety and property.

AB 1665 became a two-year bill because it did not get the necessary rule waiver to be heard this week in the Senate Natural Resources and Water Committee. More information on the details of AB 1665 and the general issue of levees and flood protection was included in last week's issue of *Priority Focus*. **Staff:** Yvonne Hunter; **Status:** Pending in Senate Natural Resources and Water Committee (two-year bill); **Position: Review and Comment.**

SB 655 (Ortiz). Naturally Occurring Asbestos. SB 655 is intended to ensure that development and other projects in areas that have naturally occurring asbestos (NOA) incorporate mitigation measures to reduce dust and exposure to airborne asbestos. NOA is an evolving health issue that is only now being recognized as a serious problem.

The League has engaged in extensive discussion with the author's office, other local government organizations and other stakeholders to explore how to make the bill work without restricting local government regulatory authority or imposing inap-

propriate conditions on local governments within areas containing naturally occurring asbestos.

In that spirit, the League offered several amendments that would address the League's concerns regarding maintaining local regulatory authority and discretion, while at the same time ensuring appropriate notice and implementation of best management practices designed to mitigate development in areas with natural occurring asbestos.

The author's office has accepted those amendments with some minor modifications and they will go into the bill on the Assembly Floor. The League has indicated that if our amendments are accepted, we will be neutral on SB 655; if they had not been accepted, we would have opposed the bill. Since the author intends to accept other amendments, the League will wait to review the entire package before formally adopting a neutral position.

In addition to requiring the State Geologist to map those counties with naturally occurring asbestos, SB 655 would require the California Environmental Protection Agency to convene a Task Force to compile and distribute advisory best management practices that can be used to mitigate the impacts of naturally occurring asbestos, would require disclosure to purchasers that property is located in a NOA zone and would require cities and counties to amend their general plan safety elements to reflect NOA zones, once the mapping is complete.

Legislative Bill Action

Furthermore, the League's suggested amendments delete the requirement that local governments adopt the best management practices developed by the Task Force into local ordinances. Instead, prior to approving a project, a city or county would require a project proponent to provide a summary of how it plans to implement the mitigation measures required by the local air district, which already has the authority to require NOA mitigation for most large projects. For those projects not subject to air district authority, a city or county would be required to provide a one-page summary of mitigation measures that could be taken. Finally, local governments would be required to consider the best management practices suggested by the Task Force, and adopt those it deems appropriate.

The League thanks Senator Ortiz and her staff for working closely with the League and for understanding and responding to our concerns. It is likely that the amended version of SB 655 will not be available until later next week. **Staff:** Yvonne Hunter; **Status:** Pending on Assembly Floor; **Position:** Watch; anticipated neutral.

ADMINISTRATIVE SERVICES

SB 412 (Figueroa). Massage Therapy. State and Local Regulation. SB 412 is a two-year bill. The intent of SB 412 is to provide a statewide regulatory and licensing framework for massage therapists. However, in doing so, the current version of the bill would preempt most of local government's regulatory authority over massage therapists. Many local governments regulate massage therapy establishments and therapists. This is done as a way of differentiating between legitimate establishments and practitioners and those that are, to put it politely, less than legitimate and more attuned to the darker side of our cities.

The League has been in discussions with the author's office and supporters about the preemption issue and held a conference call this week that included representatives from city police

departments, counties, the author's office and the supporters. While the conversation was productive, it is clear that there is still much to discuss and negotiate relative to preemption in SB 412. Based upon that conversation and other issues, the author decided to make SB 412 a two-year bill, since only two weeks remains in the session, and that is not enough time to resolve the numerous outstanding issues.

The League has told the author that we are willing to continue discussions through the fall and will withhold sending an oppose letter at this time. Although all involved hope that resolution can be reached, the League also has made it clear that we are prepared to oppose the bill if agreement is not reached.

We thank Senator Figueroa and her staff for their willingness to engage in serious discussions with local government to address our concerns. In the meantime, city officials should not get too bent out of shape about the provisions of SB 412. We are attempting to massage the language to address our concerns and won't throw in the towel until the discussions are complete. **Staff:** Yvonne Hunter; **Status:** Pending in Assembly Appropriations Committee (two-year bill); **Position:** Watch.

SB 861 (Speier). Animal Control. Local Regulation of Vicious Dogs. SB 861 would return some limited authority to local governments to regulate vicious dogs. The bill is in response to several tragic accidents where children have been mauled or killed after being attacked by pit bulls. While the bill would permit cities and counties to enact dog breed-specific ordinances pertaining to mandatory spay or neuter programs and breeding requirements, it would not permit a city or county to ban a specific breed or declare that a breed or mix breed is potentially dangerous.

SB 861 passed the Assembly this week and is expected to be heard next week in the Senate Local Government Committee. It would then go to the Senate Floor for concurrence in Assembly

Legislative Bill Action

amendments. Interested cities should send support letters to their senators. **Staff:** Yvonne Hunter; **Status:** Pending in Senate Local Government; **Position:** Support.

TRANSPORTATION

SB 1102 (Hollingsworth). Pocket bikes: restrictions. SB 1102 would prohibit the use 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. SB 1102 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.

Pocket bikes are small, two-wheeled vehicles that may only be operated on private property with the owner's consent. They are a growing safety concern because they can exceed 35 miles per hour and due to their small size, are often difficult to see. SB 1102 improves public safety on local streets and roads by limiting the use of pocket bikes. SB 1102 also grants authority at the city and county level to adopt a regulation ensuring that all costs, seizure, removal and storage fees be placed upon the violator. **Staff:** Liisa Lawson Stark; **Status:** Assembly Floor; **Position:** Support.

Stay Up-To-Date on Bills That May Impact Your City

www.cacities.org/billsearch

Become a regular user of the League's online Legislative Tracking System. The League's website is your gateway to all the information you need: bills sorted by subject areas, showing the bill history, current status, committee analyses, votes, and much more. You can even view League letters of support or opposition, and access the League lobbyist working on the bill.

BRAC from page 2

- Navy Marine Corps Reserve Center Los Angeles
- Navy Marine Corps Reserve Center Encino

China Lake gained jobs (three-fourths of those jobs from Ventura County and one-fourth of the jobs from other states). Point Mugu retained jobs that could have moved to China Lake and remained open.

All that is left for California is the BRAC Commission's decision on the Air Guard Bases. The voting is expected to wrap up later this week, and the BRAC Commission has until September 8 to submit its recommendations to the President. Once approved by the President, Congress will conduct a final vote.

For a complete list of military bases and installations slated for closure or realignment, visit www.brac.gov.

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

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