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

September 9, 2005
Issue #36-2005

LEGISLATIVE UPDATE: BIG IDEAS, FEW RESULTS…AND ON TO THE SPECIAL ELECTION

It was billed as the year of reform. But as the Senate and Assembly worked through the last bills on their files this week, it was clear that no major reforms would emerge from the Legislature this year. *For more, see Page 2.*

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TWO HOUSING ATTORNEY FEE BILLS HEAD TO GOVERNOR

The League is requesting that the governor veto two housing bills (AB 712 – Canciamilla and AB 1227 -Torrico) that were amended to include attorney fee provisions that may inspire additional litigation, or threats of litigation, against local governments. Both measures would award attorneys fees to plaintiffs in housing suits, when they would not otherwise qualify to receive them. *For more, see Page 5.*

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Hurricane Katrina: California Cities Respond

Like their counterparts throughout the nation, California cities are responding with a heartfelt outpouring of sympathy to residents from the cities and communities that have been devastated by Hurricane Katrina and subsequent flooding. Cities are also considering and acting on ways that they can offer practical assistance to respond to the immediate and long-term expected needs of the people of the Gulf Coast region. *For more, see Page 6.*

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With the Legislature now in recess until January 4, it is clear that the reform agenda first proposed by Gov. Arnold Schwarzenegger last January has shifted entirely to the November special election, where several of the governor's surviving reform proposals will appear before the voters as:

- **Proposition 74** (teacher tenure);
- **Proposition 76** (state spending limit); and
- **Proposition 77** (legislative and congressional redistricting).

Another measure aimed at reforming the system and put on the ballot by supporters of the governor is **Proposition 75** (employee union dues).

Democratic leaders asserted in recent weeks that one reason it was difficult to reach agreement in the Legislature on reform proposals was what they characterized as the "gun at our heads" approach taken by the governor in calling for and supporting the special November election, rather than bargaining with legislators. While the governor did attempt to move budget and pension reform proposals through the Legislature, he was met with strong resistance to those efforts.

Whether or not one agrees with this analysis, the fact remains that, after 8-1/2 months of legislative session, there is little progress to report on many key issues. (See **"Key Policy Issues for Cities: What Happened?"** for a summary of several key issues of concern to cities.)

Real Action Occurred with State Budget. With the legislative session now over for the year, we can see that the most significant impact on cities this year occurred in the state budget – and the news was very good:

• **Proposition 1A** – the measure we all worked so hard to pass last year -- succeeded in protecting local revenues from new state raids.

• **VLF Gap Loan Paid Early.** The governor and the Legislature surprised and pleased local officials by repaying the vehicle license fee (VLF) gap loan from 2003 in its entirety – and one year earlier than expected.

• **Proposition 42 Transportation Funding**. The governor proposed, and the Legislature passed, full funding of Proposition 42 transportation funding this year, making $254 million in revenue from the sales tax on gasoline available for local street and road repairs. This much-needed influx of funds for infrastructure projects was a welcome departure from the previous two years, when Prop 42 funds were used to help shore up the state general fund.

The League will work with the California State Association of Counties (CSAC) and others in 2006 to encourage continued Prop 42 funding for transportation projects, as the voters intended when they passed this measure in 2002.

The 2006-07 fiscal year looks even better for cities and other local governments, as the $2.6 billion ($1.3 billion a year for each of two years) Prop 1A shift of revenue from local governments to the state will end. The end of this transfer of funds to the state means that $350 million in much-needed funding will remain available to help cities meet the needs of the state's expanding population – 80 percent of whom become city residents.

Next year is also the first year that the Proposition 58 provisions go into effect. Previously, the state constitution required the governor to propose in January a budget that was balanced -- but the Legislature was not required to ***pass*** a balanced budget. Prop 58 changed this, by requiring the Legislature to ***enact*** a balanced budget.

Prop 58 additionally requires the Legislature, beginning in the 2006-07 budget year, to annually transfer an increasing amount of the state's general fund into a reserve account until the reserve reaches $8 billion or 5 percent of the general fund revenues, whichever is greater. Given the state's ongoing deficit of approximately $6 billion, this requirement is expected to add pressure on legislators in the budget debate next year.

In sum, it was a year where the Legislature and the administration took up some big, important issues, but ones where agreement and/or solutions could not be found, or were subsumed by positioning for the Special Election.

Key Policy Issues for Cities: What Happened?

The following summarizes legislative action on key issues of concern to cities.

Pension reform. In January, the governor called a special session on pension reform, and proposed a constitutional amendment that would have dramatically altered the current state and local government defined benefit pension programs, by requiring that new employees be enrolled instead in defined contribution programs (e.g. 401k's).

The League formed a Pension Reform Task Force, which spent weeks working with city fiscal experts and an actuary to analyze the issues and concerns with the current defined benefit pension programs and identify alternative approaches. The League and the California State Association of Counties (CSAC) both presented alternative reform ideas to the administration and to legislators.

Facing extensive criticism from unions and others about drafting problems, the governor withdrew his proposal in April. He instead committed to a series of discussions with all stakeholders, including local government organizations such as the League and CSAC, employee unions and others. The governor said that he wanted to work on a compromise proposal that could be taken to the voters as soon as June of 2006.

Progress on this issue bogged down, however, as issues on the November 2005 special election ballot consumed more attention. While there was some discussion toward the end of the session about working on the pension bills and moving one or more to the governor's desk, in the final hours of the session these plans fell by the wayside.

Assemblymember Keith Richman, the author of SCA 5, did contact the League and other local government organizations several weeks ago to provide an update on his latest proposal for pension reform: a hybrid plan that combines a defined benefit plan with a defined contribution plan. (The League's Pension Reform Task Force is currently reviewing this package.) He assured the participants that he intends to continue his efforts to secure a reform package in the Legislature, but if those efforts fail, he said that he intends to go to the ballot with a plan.

The bottom line: No real progress on pension reform, but watch for movement in 2006.

State Fiscal Reform. While the governor called a special session to deal with this issue, and proposed a legislative alternative to Proposition 76, there was no movement on his proposal. Hearings produced testimony from detractors to the governor's ideas, but no serious alternatives.

It should be noted that the special sessions called by the governor on both fiscal reform and pension reform have not recessed. While not expected, the governor could again activate these during the legislative interim this fall.

Housing Reform. A number of ideas surfaced in this area this year, with proposals from Business, Transportation and Housing Secretary Sunne McPeak, Senate Pro Tempore Don Perata and a number of other legislators.

The League also worked hard on this issue, with its Housing/General Plan Task Force conducting intense discussions over many months with representatives of the building industry in an effort to identify changes to the housing approval process and new sources of funding that cities need to pay for local services and infrastructure. These reform discussions are still ongoing, and will continue throughout the fall and into next year.

One measure that did pass, however, was SB 575 (Torlakson), which restricts local ability to unreasonably deny affordable housing developments. The bill is the result of discussions between a task force of city attorneys and housing advocates to update existing state anti-NIMBY law.

The measure now tightens existing law to limit local denials of affordable housing developments, and authorizes courts to impose fines on those communities when courts deem their actions to be in "bad faith." Central to the success of this effort was the goodwill demonstrated by Sen. Torlakson, who agreed to delete controversial elements that collaborative discussions could occur.

Eminent Domain. This issue surfaced in late June, in reaction to the recent United States Supreme Court decision in *Kelo vs. New London,* where the media and some legislators erroneously interpreted as an expansion of state and local governments' eminent domain authority.

In response, Sen. Tom McClintock introduced SCA 15, along with more than 40-co-authors. The proposed constitutional amendment would prohibit the use of eminent domain for any property that will not be owned and occupied by a government agency. The measure was opposed by the League, the Western Center on Law and Poverty, the California Redevelopment Association (CRA), and a number of individual cities. Although SCA 15 did not move out of the Senate Judiciary Committee, the issue was the topic of numerous hearings. Various other legislative proposals were also introduced.

The Senate Local Government Committee held an oversight hearing on the *Kelo* case, and heard testimony from property rights advocates who argued strenuously that reforms to the eminent domain process were badly needed. Two virtually identical measures, AB 1162 (Mullin) and SB 1026 (Kehoe), would have imposed a two-year moratorium on the use of eminent domain for owner-occupied housing, during which time the state would undertake a study of how eminent domain was applied in California. The measures appeared to gain momentum during the final days of the Session, but eventually stalled.

Interim hearings on the eminent domain issue will occur during the fall. Meanwhile, it is anticipated that Senator McClintock may begin efforts to qualify the contents of his SCA 15 as an initiative measure in 2006.

Eminent domain is still an issue in Congress, and the National League of Cities urges cities to talk to their representatives and senators about reform eminent domain proposals. (See **"Congress is Back! Your Voice Needed on Franchising, Eminent Domain."**)

Telecommunications Reform. The need for an extensive review and overhaul of the current system for telecommunications regulation loomed large this year, driven by increasing competition among providers of telecommunications services (telephone, video, internet). As we have reported earlier (see telecom stories on the League's website), reforms in this area have the potential to dramatically alter cities' franchising authority and their ability to ensure access to telecommunications services for all their residents.

After much discussion, the Assembly Utilities and Commerce Committee, chaired by Assemblymember Lloyd Levine, postponed discussions on telecommunications legislation until September 21 - after the current legislative session has ended. Senator Escutia, Chairman of the Senate Energy, Utilities and Communications committee, has indicated her desire to have interim hearings on this issue as well.

The issue is far from over and will certainly come back again next year. It promises to be a very busy interim for telecommunications. It should be noted that the issue is still being debated in Congress, and the National League of Cities (NLC) is urging cities to contact their representatives and Senators Boxer and Feinstein about the reform proposals under consideration. (See **"Congress is Back! Your Voice Needed on Franchising and Eminent Domain."**)

Two Housing Attorney Fee Bills Continued from Page 1…

The League urges cities to join us in asking the governor to veto these bills. The League will post a sample letter next week on the Advocacy Center, located online at www.cacities.org/advocacycenter.

AB 712 (Canciamilla). While this legislation provides a number of clarifying changes to existing law affecting the down zoning of residential property, the League's opposition is 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. The attorney fee language of AB 712 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 whoever 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 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.

AB 1227 (Torrico). This measure authorizes broad attorneys fees against local governments who are litigated against under a housing discrimination provision. While the bill was narrowed during the last week of the legislative session, the attorney fee language remains overbroad, and is virtually identical to the language contained in AB 712.

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 agencies 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.

Hurricane Katrina Continued from Page 1

Legal Issues

As cities ponder how to provide help, they must also bear in mind that there are legal restrictions in California on the degree to which cities and other public entities can make their resources available to communities other than their own.

Some city attorneys believe that such acts of compassion can be legally justified under theories of mutual aid, since the prospect of reciprocated assistance constitutes a benefit that then flows back to the giving city's taxpayers.

The key is to consult with your city's attorney before making any decision regarding the use of public resources to assist victims of Hurricane Katrina.

State Efforts

The League is working with Gov. Arnold Schwarzenegger's office, and the state Office of Emergency Services (OES). The Federal Emergency Management Association (FEMA) is focusing on what communities in California and elsewhere can do to support evacuees by providing longer term housing and assistance -- not merely the standard emergency sheltering typically established for short-term disaster needs. OES and the Governor's Office are contacting cities and counties to assess local capability and availability of resources.

Initial plans called for approximately 1,000 evacuees to be flown to San Diego, San Francisco and San Jose, where they would receive immediate shelter and assistance. Other California cities and counties were also contacted by the governor's office and asked to prepare for evacuees.

Plans changed, however, when FEMA informed the Governor's Office and OES that many evacuees were reluctant to travel so far from their homes. At this writing, OES regions are conducting daily conference calls to report to cities and counties on the status of California aid efforts, and answer questions about ways that cities can help. For a listing of OES regions, please visit the OES website at www.oes.ca.gov.

The state emphasizes two key points on helping evacuees:

Coordination is Critical. Points of contact include county OES offices and local Red Cross organizations. The evacuees will need a range of services, from short- and long-term housing, to medical care and social services, to schooling for their children. For a listing of OES regions, please visit the OES website at www.oes.ca.gov.

Evacuees Must be Registered to be Eligible for Federal Financial Assistance. If you know of evacuees who have come to your city, put them in touch with your local Red Cross office, so that they can be registered. While the Red Cross is providing initial aid to evacuees, we understand that FEMA has will provide financial assistance of $26,000 per person to aid with food, housing and more long-term needs. This aid can only be provided if people are first registered.

What the State is Doing. California has already provided substantial resources to the Gulf Coast to assist in the Hurricane Katrina Disaster and continues to be available to provide additional resources as requests are made by the Federal Emergency Management Agency. To this end, OES activated the State Operations Center (SOC) on September 1 and is in contact with the states of Louisiana, Alabama, and Mississippi and Florida to identify any additional needs that California might be able to meet through proper channels.

OES is attempting to track all emergency management resources being sent from California to ensure enough resources are retained within the state for adequate response and recovery in the event of a disaster here. California resources deployed to the scene include:

- 8 Swiftwater Rescue Teams (112 firefighters and lifeguards)
- 8 Urban Search & Rescue Task Forces (528 people)
- 23 Incident Support Team Managers
- 3 OES Assistant Fire Chiefs
- 6 Disaster Medical Assistance Teams (210 people)
- 713 National Guard soldiers and airmen
- 116 California Highway Patrol Officers with 4 helicopters who left on 9/4

For more the latest information on California's response to the Hurricane Katrina Disaster, please visit the OES website at www.oes.ca.gov. Please also see **"Hurricane Katrina: National League of Cities Update."**

Hurricane Katrina: National League of Cities Update

On Friday, September 9, National League of Cities (NLC) Executive Director Don Borut forwarded to the League the following update on Hurricane Katrina relief efforts:

Yesterday the Intergovernmental Office at the White House had a conference call for the Big 7 public interest groups, which included representatives from Homeland Security, FEMA and the Department of Energy to share information and respond to questions.

As of yesterday 16 states have been declared disaster areas for the purpose of being eligible for FEMA grants to support evacuees. Arkansas, Texas, Georgia, Oklahoma, Florida, West Virginia, North Carolina, Utah, Colorado, Michigan, Washington D.C., Washington, Oregon, New Mexico, and Illinois. The League was told that California is about to receive the designation as well.

- Under current FEMA regulations "eligible individuals" can receive emergency housing vouchers for up to 18 months. We asked for clarification on eligibility.

- Under the new emergency appropriation of $52 billion, HUD is developing guidelines for housing vouchers and eligibility. We asked for a single composite description of all of the short- and long-term housing vouchers, which we can share with you and through you to your cities.

- They estimate that it will take three to five years to re-establish the housing stock and at least 300,000 people will require temporary housing.

- They also provided an extensive report on the federal response, number shelters established, individuals registered, damage inspections, flood claims…..

They are operating on short, intermediate and long-term priorities:

- **Short Term** –focus on life safety, search and rescue e.g. medical mortuary, public safety, mass support for workers and volunteers, commodity flow, debit cards, transportation, restoring power and communications and "the un-watering" of New Orleans.
- **Intermediate** – shelter and housing, decontamination, beginning infrastructure repairs.
- **Long term** – infrastructure, housing, human services, crisis counseling, and community restoration.

City and County Officials Appointed to the California Partnership for the San Joaquin Valley

On September 7, Gov. Arnold Schwarzenegger announced the appointment of nine city and county officials to the California Partnership for the San Joaquin Valley.

Connie Conway, current chair of the Tulare County Board of Supervisors, and the incoming president of the California State Association of Counties (CSAC), was appointed deputy chair. The eight other city and county officials appointed to the partnership include:

- Michael Amabile, mayor of Los Banos
- Alan Autry, mayor of Fresno
- Susan Benham, Bakersfield city council member
- Paul Boyer, Famersville city council member
- Marcelyn Buford, Hanford city council member
- Gary Gilbert, member of the Madera County Board of Supervisors
- Jeff Grover, a Stanislaus County supervisor and chair of the Stanislaus County Council of Governments
- Victor Mow, San Joaquin County supervisor and former Stockton city council member

The League of California Cities congratulates all city and county officials on their appointment to the partnership.

The governor created the California Partnership for the San Joaquin Valley when he signed Executive Order S-5-05. The partnership brings state agency secretaries and Central Valley representatives together to make recommendations to the governor regarding changes that would improve the economic well being of the Valley and the quality of life of its residents.

The 26-member partnership is led by Secretary of the Business, Transportation and Housing Agency Sunne Wright McPeak. It is composed of eight state government members, eight local government members, and eight private sector members, along with two deputy chairs.

Congress is Back! Your Voice Needed on Franchising, Eminent Domain

Congress reconvened in Washington, D.C. on September 6. While the August recess was a time to contact your congressional members while they were in their districts about key issues affecting your city, continuing this dialogue in the upcoming weeks will be equally important.

In particular, the National League of Cities (NLC) and the League urge that you contact your representative and senators and talk with them about ***two key issues*** that will significantly impact cities: ***Threat to Local Franchise Authority*** and ***Eminent Domain***. Congressional offices are only hearing from local governments' opponents on both of these issues - they must hear directly from local elected officials.

Below are talking points on both of these critical issues to equip your local elected officials with strong and succinct messages. Further background is available on the Grassroots Action Center at www.nlc.org.

Threat to Local Franchise Talking Points

The telecommunications industry is successfully portraying local franchising as a significant barrier to new competition, which in fact may be anti-competitive and anti-consumer. NLC has been working together with the United States Conference of Mayors (USCM), the National Association of Counties (NACO), and the National Association of Telecommunication Officers and Advisors (NATOA) to develop a strong, unified position to counter threats to local franchising.

Each organization is stepping up its grassroots efforts on this issue in conjunction with the return of Congress. Local elected officials must immediately and aggressively counter this public relations and lobbying campaign with **"localized and personalized"** messages.

• Cities strongly oppose **S.1504** (the Broadband Investment and Consumer Choice Act introduced by Ensign R-NV), **H.R. 3146** (the Video Choice Act of 2005, introduced by Blackburn R-TN and Wynn D-MD), and **S. 1349** (the Video Choice Act of 2005 introduced by Rockefeller D-WV and Smith R-OR) or any other federal legislation that would eliminate local government's authority to manage local rights of way and ensure that the public is compensated for the use of the rights of way.

Urge your members of Congress not to co-sponsor any of the pending bills and to consult with you and other city officials before co-sponsoring any legislation addressing franchising.

• Local government strongly endorses promoting competition for all consumers. However, these bills would mean that fewer citizens would receive the benefit of video competition. The bills take away local government's authority to ensure head-to-head competition for all citizens, leaving video providers free to cherry pick the most lucrative communities. ***Note: If pertinent, identify communities that would not be likely targets for new video competitors, such as lower income or rural communities in your city.***

• A franchise is essentially a lease and land management agreement. Cities allow for the private use of public land in exchange for compensation and services for the public. The bills would abrogate these local contracts leaving cities with no authority to manage the use of their rights of way.

• The bills would significantly limit the amount of fees local government can collect, as well as local government's authority to enforce collection. This will directly jeopardize critical public services including police, fire, schools, and libraries. ***Note: Identify the revenue your city receives from cable franchise fees and identify the public services that would be in jeopardy by reductions in these fees.***

• The bills would undermine local governments' authority to ensure that public safety is maintained. Citizens do not want more video services at the cost of potholes in their roads, water main breaks, and traffic jams during rush hour. The bills would also eliminate institutional networks that serve our police and firefighters. ***Note: If pertinent, share examples of telecom companies digging in streets without sufficient municipal oversight or describe networks that serve first responders.***

• As an elected leader, I stand ready and willing to welcome and promote video competition in my community without completely cutting local governments' authority to ensure service for all citizens and to receive compensation for private use of public land.

Eminent Domain Talking Points

Congressional hearings on eminent domain are expected during September – a reaction to the recent Supreme Court decision in *Kelo v. City of New London,* which upheld the city's eminent domain action. Since June, members of Congress have been bombarded by messages from property rights advocates who are effectively painting the picture of government taking citizens' private property and giving it to private developers for profit. It is essential that city officials **"localize and personalize"** their message with examples of projects that would not exist **but for** the use of eminent domain or the ability to use eminent domain.

• We urge Congress to slow down, take a step back, and consider the facts. The bills that have been introduced would create unintended consequences and severely hamstring our ability to promote the economic health of our cities and towns.

• Eminent domain is a state-derived power. Decisions about the proper use of eminent domain - including whether additional checks and balances are needed to protect individual rights - are best left to the states and their political subdivisions. Congress should not and need not respond with one-size-fits-all, blunt, and overly broad federal legislation. Note that California already has laws that provide stronger protections for property owners than exist in Connecticut, where the *Kelo v. City of New London* case arose.

• Without the power of eminent domain for economic development, our community would not have. ***Note: Insert specific examples of economic development projects in your community that would not exist but for the exercise of eminent domain or the opportunity to exercise eminent domain***.

• The use of eminent domain in our community is already governed by **state laws and local ordinances** that contain appropriate checks and balances. We use eminent domain carefully, prudently and in the sunshine of public scrutiny**.** And consistent with the Just Compensation requirement in the Constitution, we ensure that property owners are fully and fairly compensated. ***Note: Insert specific local safeguards or processes you follow in exercising eminent domain.***

Removing Barriers to Affordable Housing

A conference on "Removing Barriers to Affordable Housing" will be held on September 19 at the Ontario Convention Center, in Ontario. The event begins promptly at 9:30 a.m.

The program will feature a number of topics, including America's Affordable Communities Initiative, global gateway regions, challenges and barriers to affordable housing and what's being done, and what the federal government can do to help.

Featured speakers include United States Secretary of Housing and Urban Development, the Honorable Alphonso Jackson, who will deliver the program's keynote address, U.S. Congressman Gary Miller, and California Department of Housing and Community Development Director Lucy Dunn. Chris McKenzie, executive director of the League of California Cities and John Shirey, executive director of the California Redevelopment Association, will also be speaking with Dunn on the "What's Being Done" panel.

Mail-in registration must be received by September 14, although registrations can be accepted online up until September 16 at http://www.cbpa.csusb.edu/register/. For more information, contact Lauren or Jarret at (909) 945-1884.

LEGISLATIVE BILL SUMMARIES

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 451 (Yee). Local Sales Tax: Jet Fuel: Place of Sale. This measure would specifically identify the place of sale of jet fuel as the site where the fuel is delivered to the aircraft when there is a single sales office in California for the jet fuel sales. This change would go into effect January 1, 2008.

This change would close an unintended loophole that was created during previous legislation regulating sales taxes on jet fuel. Airports demand significant service responsibilities from local agencies, such as public safety and maintenance of local streets and roads. These costs have increased significantly with heightened security concerns.

Current law allowed for a loophole that resulted in the diversion of jet fuel sales taxes from many local governments with airports to a single sales location. The impact on the effected local governments has been the loss of millions of sales tax dollars. **Staff:** Jean Korinke; **Status:** To the Governor; **Position: Request for Signature.**