

PRIORITY FOCUS



IN THIS ISSUE:

June 22, 2007
Issue #24-2007

- Page 3: Infrastructure Bond Implementation Update
- Page 5: Workers' Compensation Legislation: League-Opposed Measures
- Page 6: Transient Occupancy Tax – Is Your City Owed Unpaid Past Taxes?
- Page 7: Annual Conference Resolutions Introduction Deadline Approaching
- Page 8: Leadership Applications for Mayors and Council Members Dept. Due Next Week
Flood Conference Planned for Sacramento
Summit on Municipal Financial Stability to be Held in San Francisco
- Page 9: Find a Bill, Legislators, Leg Committee, or Ask League Leg Staff

SB 303 UPDATE

SB 303 (Ducheny), a bill that would impose significant land use hardships on California cities, is currently held at the State Assembly desk, awaiting assignment to a committee.

At press time, word around the capitol was that the bill would first be heard in the Assembly Committee on Local Government, followed by the Assembly Committee on Housing and Community Development. Cities are encouraged to write Sen. Ducheny opposing this measure. *For more, see Page 2.*

.....

PROP. 1B NEWS CONFERENCES A SUCCESS

Officials Get the Word Out: Cities Have Infrastructure Projects 'Ready to Go'

Two news conferences were held in California last week to encourage state officials to allocate the \$1 billion in Proposition 1B funds in this year's budget to improve local streets and roads. *For more, see Page 2.*



.....

FEDERAL GANG BILL APPROVED BY SENATE JUDICIARY COMMITTEE

On Thursday, June 14, the U.S. Senate Judiciary Committee approved S. 456, the Gang Abatement and Prevention Act of 2007. The bill is a product of nearly a decade of bipartisan negotiations and has been a priority for California Sen. Dianne Feinstein. *For more, see Page 3.*

'SB 303' Continued from Page 1...

The League of California Cities stands opposed to SB 303 on several grounds. As it is currently written, the bill is a recipe for sprawl; doesn't take into account other planning issues such as air quality, climate change, or infill; doesn't guarantee the building of more housing; and currently lacks a plan to pay for the mandates it will impose.

For detailed information on SB 303's impact on cities, see "[SB 303 Moves to Assembly: Time to Look at this Bill Again](#)" and "[SB 303 Amended, League Still Opposed](#)" at www.cacities.org/hced.

Since the bill has been significantly amended, cities should read the above-referenced articles, and send new opposition letters to Sen. Ducheny with a "cc" to your Assembly Member. A sample letter is available by looking up SB 303 using the League of California Cities Web site's bill search program, located at www.cacities.org/billsearch.

'Prop. 1B' Continued from Page 1...



The conferences were held in Elk Grove and Fresno, on June 12 and June 15, respectively. In Elk Grove, mayors and council members from Colusa, Davis, Elk Grove, Lincoln and Rancho Cordova gathered at the interchange of Sheldon Road and Route 99, where a \$70.5 million regional facility project is ready to get underway.

The group of city officials encouraged the Legislature to "complete the work the people of California started last November by passing Prop. 1B."

City officials attending the Elk Grove press conference included:

- Council Member Kay Hosmer, Colusa
- Council Member Don Saylor, Davis
- Mayor James Cooper, Elk Grove
- Police Chief Robert Simmons, Elk Grove
- Council Member Sophia Scherman, Elk Grove
- Mayor Kent Nakata, Lincoln
- Mayor David Sander, Rancho Cordova
- Council Member Ken Cooley, Rancho Cordova

The Elk Grove event was covered by a number of media outlets, including television stations KCRA, KQCA, KOVR, KXTV and KUVS and radio stations KXJZ and KFBK. A story was also published in the *Elk Grove Citizen*.

Central Valley Cities Rally to Encourage Prop. 1B Funding

The Clovis press conference was equally well-attended by representatives from cities in the Central Valley and members of the media. The event took place at the intersection of Shaw and Fowler avenues in Clovis, where more than \$1 million in infrastructure work is needed.

Clovis Mayor Bob Whalen was adamant that Clovis roadways need to be repaired in a timely fashion, in order to extend the life of roads – something the immediate \$1 billion allocation of Prop. 1B funds in the budget would help do.



Clovis Mayor Pro Tem Harry Armstrong agreed, adding that by having the full amount of Prop. 1B funds immediately, projects can be planned quickly, instead of waiting around for years as roads crack and deteriorate.

Joining Whalen and Armstrong at the conference were the following city officials:

- City Manager Kathy Milison, Clovis
- Public Utilities Director Mike Leonardo, Clovis
- Motor Officer Chuck Wages, Clovis
- Mayor Terry McKittrick, Dinuba
- Mayor Jim Simonian, Fowler
- Mayor Leland Bergstrom, Kingsburg

The Clovis news conference got quite a bit of media coverage. *The Fresno Bee* published a story and TV stations KMPH, KFSN and KGPE all covered the event.

For more on Prop. 1B allocation and a sample letter of supporting the immediate \$1 billion funding in this year's budget, visit www.cacities.org/infrastructure.

'Gang Bill' Continued from Page 1...

If signed into law, the bill would authorize \$100 million over five years to expand crime control grants to state and local governments, for the purpose of hiring additional prosecutors, staff and technology to bring more cases against gangs and violent criminals. Additionally, the bill would authorize at least \$411.5 million in funding over five years for gang prevention and intervention efforts, which would be directed to High Intensity Gang Activity Areas (HIGAAs) created in the bill.

Sen. Feinstein's efforts to find common ground among her colleagues on the contents of S. 456 were crucial in guiding the bill to Judiciary Committee approval last week.

The text of the measure (as agreed to by the Judiciary Committee) is available at www.cacities.org/federalresources. Sen. Feinstein's press release on committee passage of the bill is available at www.feinstein.senate.gov.

What's Next

S. 456's next stop is a full hearing on the Senate Floor. At press time, a date for the hearing had not been set.

Companion Measure

California Reps. Adam Schiff, D-Pasadena, and Mary Bono, R-Palm Springs, have introduced companion legislation to S. 456 in the House of Representatives. No date has been set for its consideration. The text of the House measure, H.R. 1582, is available at www.cacities.org/federalresources.

Infrastructure Bond Implementation Update

Below is an update on the implementation of each of the infrastructure bonds passed in November 2006. This update will be run periodically in *Priority Focus* as new developments with each bond occur.

Proposition 1B: This measure provides \$19.92 billion for various transportation projects to rebuild California. Of the total amount, \$1 billion is allocated for cities and \$1 billion for counties for streets and road projects. The development of the \$1 billion State-Local Partnership Program and \$3.1 billion "goods movement" and air quality programs are underway. In addition, the allocation schedule of the \$4 billion for public transit, intercity, commuter rail and waterborne transit still needs to be established.

Related Legislation and Current Status:

The allocation of the Prop. 1B local street and road funds is being held as an open item in the Joint Senate-Assembly Budget Conference Committee and will require further debate. The League of California Cities continues to advocate for the allocation of the full \$1 billion for cities in FY 2007-08. The League is also sponsoring SB 286 (Lowenthal) to provide a framework for the program and establish accountability and oversight for use of the bond money.

SB 286 passed off the Senate floor with bipartisan support and is being held at the Assembly Desk due to current budget negotiations and its potential incorporation into budget trailer bill language.

There are two measures in the Legislature that attempt to define the \$1 billion State-Local Partnership Program which requires a local match to access bond funds – AB 1351 (Levine) and SB 748 (Corbett). These bills differ in the criteria for eligible matching funds. AB 1351 includes only sales tax dedicated to transportation as a match, thus limiting the program only to “self-help” counties. SB 748 broadens the local match to also include all voter approved taxes and fees, bridge tolls and Uniform Developer fees.

The \$3.1 billion “goods movement” and air quality program are encompassed in Sen. Lowenthal’s SB 9 and SB 19. Both measures passed out of the Senate and are with the Assembly Transportation Committee. It has yet to be determined if they will be incorporated into budget trailer language or debated further to define the “goods movement” program under Prop. 1B.

Proposition 1C: This measure allocates \$2.85 billion for housing projects. Approximately half of the bond, \$1.45 billion, will fund existing programs including the Multifamily Housing Program (MHP), Emergency Housing Assistance Program (EHAP), and Building Equity and Growth in Neighborhoods (BEGIN) program. The remaining \$1.4 billion is designated for infill infrastructure (\$850 million), parks (\$200 million), transit-oriented development (\$300 million), and innovative programs (\$100 million).

Related Legislation and Current Status:

Who is eligible to apply for infill infrastructure funding is one of the outstanding issues of significance. The infill infrastructure fund has attracted the most legislative attention with two bills emerging as the frontrunners.

AB 1053 (Núñez) would distribute \$450 million to a competitive infrastructure program administered by the California Department of Housing and Community Development (HCD). The remaining \$400 million would be divided evenly between the Infrastructure Bank, a workforce housing program administered by HCD, MHP, and the Cal-Reuse Brownfields program. As a result, a total of \$750 million will go directly to local agencies for infrastructure related to housing.

SB 46 (Perata) would create a single competitive grant program for infill infrastructure and affordable housing that can be applied for by local governments and nonprofit housing developers.

Proposition 84: This measure allocates \$5.4 billion for improving natural resources and water programs including state projects and flood control, safe drinking water, water quality improvement, integrated water management, water planning and sustainable communities.

Related Legislation and Current Status:

Before the funds can be released, the elements that fall under \$580 million for climate change must be defined further. This includes \$90 million for incentives for planning, how to spend the \$1 billion allocated to local agencies to meet local water needs, as well as a potential effort to redirect \$400 million in park funds to create a per capita grant program.

There are several legislative proposals to further refine the allocation of dollars under Prop. 84.

SB 732 (Steinberg) the most significant of bills on Prop. 84, provides a comprehensive statutory framework to implement new programs under Prop. 84. Included in SB 732, are requirements for implementing agencies to develop project guidelines by March 2008, language for the development of a competitive local park program and the creation of a "Sustainable Communities Council" to coordinate the activities of various state agencies that aim to improve air and water quality, natural resource protection, affordable housing, and transportation through land use planning.

AB 31 (De Leon) expands the definition of "heavily urbanized county" for the purposes of park funding under Prop. 84. The bill is part of the ongoing discussions among legislative leadership on how to allocate park bond dollars from the ballot measure.

Proposition 1E: This measure allocates \$4.09 billion in bond funding for critical river levee repair and construction, flood control projects and the updating and repair of old water mains and sewer systems. It also includes \$290 million to create flood protection corridors and floodplain mapping.

Related Legislation and Current Status:

The Joint Senate-Assembly Budget Conference Committee has created a Water Working Group that will address most, if not all of the Prop. 1E and Prop. 84 flood and water issues in the budget process. This group may also address flood management issues. Also, there is an effort to include water storage into funding categories as well as the addition of liability to link to allocation of levee improvement funds.

Proposition 1D: This bond establishes \$10.5 billion for performing school building repairs and providing innovative learning facilities for California students, including seismic retrofitting and classroom repairs.

Related Legislation and Current Status:

One of the open issues is the allocation of \$29 million to fund joint-use projects for construction of K-12 school facilities. SB 35 (Torkelson) proposes to expand expands the definition of projects and what is considered local contributions under the school facilities joint use program. The bill is now with the Assembly Education Committee.

There are a large number of other bills that could adjust the manner in which school districts are eligible for Prop. 1D money. Assembly Member Mullin is authoring AB 100, the Kindergarten-University Public Education Facilities Bond Act of 2008. If approved it would provide \$ 9.08 billion of bonds to provide aid to the public education system.

Workers' Compensation Legislation: League-Opposed Measures

An Update on Bills that Would Adversely Impact California Cities

The area of workers' compensation is abuzz with activity during the current legislative session. The League of California Cities opposes a number of bills this year due to the potential extreme costs to cities if the legislation is passed.

Below is a brief summary on some of the workers' compensation bills the League opposes. Cities are encouraged to review the measures and send letters of opposition to the bills' authors and your respective senator/assembly member.

- **AB 419 (Lieber).** This measure would provide extended temporary disability workers' compensation benefits to specified public safety employees for 100 percent of salary for up to one year of disability. The un-reimbursed state mandate costs resulting from expansion of Labor Code 4850 benefits would be substantial to cities.

- **AB 807 (Hancock).** This bill would limit an employer's ability to effectively apply the cap of 24 treatment visits for post-surgical workers' comp. claims that currently exists for chiropractic, occupation and physical therapy.
- **AB 1636 (Mendoza).** AB 1636 would require the provision of a voucher 74 days after temporary disability is terminated, although not all injuries would need to have reached a permanent and stationary level. Employers would be required to provide vouchers for numerous injured workers whose injuries may not warrant retraining skills for which the voucher is designated. The minimum voucher is \$4,000 with some upwards to \$10,000.
- **AB 1073 (Nava).** This legislation would remove the cap of 24 chiropractic, occupational, and physical therapy visits per industrial injury, when applied to visits for post-surgical physical medicine and rehabilitative services.
- **SB 942 (Migden).** This measure would require an employer to reinstate an employee to their pre-injury job within five working days upon release of the treating physician or reimburse the worker for the lost wages and work benefits. SB 942 would prohibit additional physical duty assignments not performed prior to injuries condition of return to work.

For more information on these bills, look up the measures at www.cacities.org/billsearch, www.assembly.ca.gov or www.senate.ca.gov. If you have questions, please contact League Legislative Representative P. Anthony Thomas at (916) 658-8279.

Transient Occupancy Tax – Is Your City Owed Unpaid Past Taxes?

A growing portion of hotel bookings are now being conducted through online booking services such as Hotels.com, Expedia.com and Travelocity.com. As rooms are booked, transient occupancy taxes (TOT) are collected by the online booking services, transmitted to hotels and are ultimately passed on to the respective city and county.

Some online hotel booking services are withholding millions of dollars of TOT collections and the matter is currently being litigated in *Los Angeles v. Hotels.com, Inc. et al.* City officials are encouraged to bring this matter to the attention of their city attorney and TOT auditor, as attorneys representing Los Angeles in the case have petitioned the court to grant class action status - with the class including all California cities that have TOT ordinances.

If the court declines to grant class action status, individual cities may need to act very quickly to preserve their rights to recover all past unpaid taxes, and to avoid the four-year statute of limitations in Revenue and Taxation Code section 7283.51.

For background information on how TOT works, visit www.cacities.org/tot.

Details on the Case

In *Los Angeles*, the city charges that 16 named online booking agencies violated the Uniform Transient Occupancy Tax Ordinance of the city of Los Angeles. Specifically, the lawsuit states that the defendants violated the Los Angeles TOT Ordinance and similar ordinances of other California cities with respect to the charges to and remittance of amounts to cover taxes under such ordinances.

The complaint also alleges that such violations also constitute acts of unfair competition under California Business and Professions Codes Section 17200, et seq.

The named defendants in the suit are:

- Hotels.com L.P.
- Hotel.com GP, LLC
- Hotwire, Inc.
- Cheaptickets, Inc.
- Cendant Travel Distribution Services Group, Inc.

- Expedia, Inc.
- Internet Publishing Corp. (d/b/a Lodging.com)
- Lowestfare.com
- Maupintour Holding LLC
- Orbitz, Inc.
- Orbitz, LLC
- Site59.com LLC
- Travelocity.com LP
- Travelweb, LLC
- Travelnow.com, Inc.

Los Angeles is being represented by Paul Kiesel of Kiesel, Boucher, & Larson LLP, of Beverly Hills. A copy of the complaint is available at www.kbla.com/files/LA%20city.pdf.

A National Issue

Similar lawsuits have been filed by the cities of San Antonio, Texas; Chicago, Ill.; San Diego, Calif.; Philadelphia, Pa.; Atlanta, Ga.; and others. In addition, a class action consumer fraud lawsuit has been filed on behalf of travelers who have booked hotels with such companies (*Bush et al v Cheaptickets, Inc. et al*). Sabrina S. Kim and Jeff S. Westerman of Milberg Weiss Bershad and Schulman, LLP of Los Angeles are representing the plaintiffs.

The loss is substantial to cities which rely on TOT as a significant source of revenue. We estimate that TOT losses to California cities are nearly \$100 million and that past losses statewide through FY 2006-07 exceed \$500 million.

Legal Procedures

As mentioned previously, the attorneys for the city of Los Angeles are seeking class action status on behalf of California cities. If the court denies class action status, individual cities will need to decide whether to bring their own court action against these companies.

To do so, a city may first need to exhaust the administrative collection procedure contained in its TOT ordinance. The attorneys for the city of Los Angeles have informed the League of California Cities that if cities want to avoid falling within the four-year statute of limitations on unpaid TOT (i.e., the city may collect back taxes as far back as can be documented), cities will need to submit demand letters to the companies within five days of the court's decision on class action status.

Paul Kiesel, the attorney for the city of Los Angeles, has drafted a sample demand letter that cities may be interested in using. Kiesel is also available to discuss the particular legal issues involved in the litigation. He may be reached at Kiesel@kbla.com.

The League is also monitoring this litigation, and will provide an update as additional information is available.

Annual Conference Resolutions Introduction Deadline Approaching

The deadline to introduce a League of California Cities Annual Conference Resolution is quickly drawing near. The deadline is Friday, July 6, at 5 p.m. for submittals by mail and Saturday, July 7 at midnight for submittals by e-mail or fax.

Policy development is a key part of the League's legislative effectiveness and the League's Annual Conference Resolutions process is one way that city officials can directly participate in the development of League policy. Any elected or appointed city official, individual city, division, department, policy committee, or the board of directors may submit a resolution for consideration at the conference.

Resolutions submitted by the deadline will be distributed to cities in mid-to-late July and considered at the Annual Conference. More information about the resolutions process, including key deadlines and an explanation of the review process at the Annual Conference is available on the League Web site at www.cacities.org/resolutions.

Leadership Applications for Mayors and Council Members Dept. Due Next Week

The Mayors and Council Members Department of the League of California Cities is seeking enthusiastic, committed elected officials who are interested in becoming Second Vice President of the Department. Due to a vacancy, two second vice president positions are currently open.

One will be filled at the department's business meeting at the Mayors and Council Members Executive Forum in Monterey in July. The second vacancy will be filled the Annual Conference in Sacramento in September.

Applications can be found at the League's Web site at www.cacities.org/mc.

All applications must be received in the League Offices by 5 p.m. on Friday, June 29. Please direct all applications to Amy O'Gorman at aogorman@cacities.org.

Flood Conference Planned for Sacramento

A flood conference entitled "California's Flood Policy: How Safe is Safe?" is planned for July 27 in Sacramento at the Sacramento Holiday Inn. This free conference is aimed at stakeholders and policy makers to discuss the appropriate level of flood protection for communities in the Central Valley.

Check-in begins promptly at 8 a.m. with a continental breakfast. During the course of the forum, attendees will hear case study presentations regarding the Katrina disaster in New Orleans, La., learn the concerns of policy makers in California, take part in discussions of flood management choices in California, and much more.

The conference is free and sponsored by The Water Education Foundation and co-sponsored by the California Department of Water Resources. Prospective attendees are encouraged to register prior to the event, in order to guarantee a seat.

For more information and to register, visit www.watereducation.org.

Summit on Municipal Financial Stability to be Held in San Francisco

The EITC and Beyond: 2007 Leadership Summit is set for July 11-13 at the Westin St. Francis Hotel in San Francisco. The event is an opportunity to exchange ideas, promising practices, and develop strong partnerships in the area of financial stability. Participants will learn how to transform communities through targeted financial stability initiatives, beginning with the Earned Income Tax Credit (EITC).

Mayors, council members and city staff members are encouraged to attend the event, which is co-sponsored by the National League of Cities (NLC) and the United Way of America (UWA).

Other goals of the summit include:

- Developing a deeper understanding of the critical role that financial stability plays in the long-term success of low- to moderate-income individuals, families, and communities nationwide
- Building new local, regional, and national networks between elected officials, United Way leaders, and other strategic partners

NLC is offering a limited number of competitive scholarships for elected officials to cover registration costs. Visit www.unitedway.org/eitc for additional details and to download an application form.

Find a Bill, Legislators, Leg Committee, or Ask League Leg Staff

Visit (and bookmark!) the League's [Legislative Resources](http://www.cacities.org/legresources) Web page (www.cacities.org/legresources). You'll find a roster and contact information for the League's legislative staff; the online Bill Search program, background materials on lobbying your legislators, and more.
