

FOCUS

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

March 10, 2006
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AN INTENSE WEEK OF INFRASTRUCTURE BOND NEGOTIATIONS CONCLUDES WITH NO DEAL ... YET!

Negotiations over an infrastructure bond proposal switched from the conference committee that was assigned the issue, to the highest levels of legislative leadership and the governor. There has been an intense effort this week on the part of the "Big 5" to meet the March 10 deadline (today) for placing an infrastructure package on the June ballot. At this writing, however, no deal had been reached. *For more, see Page 10.*

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INFRASTRUCTURE COALITION CONTINUES PUSH FOR JUNE BALLOT

The California Infrastructure Coalition (CIC) — of which the League is a member — continued its push this week to encourage the governor and legislators to work together to pass an infrastructure bond that would be placed on the June 2006 ballot. *For more, see Page 9.*

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LEAGUE URGES SUPPORT OF AB 2158

The League of California Cities and the California Association of Local Agency Formation Commissions (LAFCO) is sponsoring AB 2158 — a bill drafted by Assemblymember Noreen Evans regarding improved coordination with LAFCO on housing allocations. *For more, see Page 4.*

WANT MORE DETAILS ON BILLS?

Visit the League of
California Cities
website at
[www.cacities.org/
billsearch](http://www.cacities.org/billsearch).

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TELECOM IN THE NEWS

AT&T-BellSouth Merger Could Slow Telecom Debate

A proposed merger between AT&T and BellSouth may slow the process for telecommunications reform this year.

The merger will undergo extensive scrutiny, particularly as it comes on the heels of AT&T acquiring SBC four months ago, and removes another competitor from the industry.

For the complete story, visit www.njtelecomupdate.com, and search for the article titled "**Proposed AT&T-BellSouth Merger Could Slow Telecom Bill Debate.**"

AT&T Consultant Criticizes Build-Out Requirements

Bruce Fein, former general counsel of the Federal Communications Commission and a consultant to AT&T, has written a commentary piece for *The Washington Times*, lashing out at local government build-out requirements for broadband access.

Fein argues that Congress should do-away with municipal build-out requirements in favor of a "consumer-friendly" federal statute that would allow phone companies to compete on the video market with cable because of the public advantages provided by broadband access.

To read Fein's commentary, visit www.washingtontimes.com/commentary/ and search for "**Build-out follies.**"

Video Franchising Discussions Increase at State Level

Legislation to streamline the processes for authorizing franchise agreements at the state level are increasing. Once Texas passed its law last year, a number of states have followed suit.

Virginia and Indiana only need gubernatorial signatures for their new telecommunications

franchising legislation to become law, while Kansas, Missouri, New Jersey and South Carolina have proposals on the table. California, Florida, Louisiana, Michigan and North Carolina are also involved in telecommunications reform discussion.

For the complete story, visit www.njtelecomupdate.com and search for the article titled "**Video Franchising Debate Accelerates At State Level.**"

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STATE AGENCIES PROVIDE GUIDANCE ON UNIVERSAL WASTE HANDLING

The California Integrated Waste Management Board (CIWMB) and the Department of Toxic Substances Control (DTSC) have issued a joint guidance letter on handling universal wastes, as well as a list of Frequently Asked Questions (FAQ).

The temporary exemption to dispose of universal wastes in landfills ended on February 8. Many questions about the disposal prohibition of universal wastes have been posed by local governments, waste haulers and others organization including the League. The guidance materials were issued to provide clarity in response to those questions and are available on the DTSC website at www.dtsc.ca.gov.

Universal wastes are hazardous wastes that are generated by a wide variety of people. Examples include batteries and fluorescent tubes. Universal waste rules allow common, low-hazard wastes to be managed under less stringent requirements than other hazardous wastes.

CIWMB and DTSC indicate that they will update the FAQ resource to respond to new questions that arise. The February 2006 joint CIWB-DTSC letter provide indicates the contacts to be used to pose new questions.

2006 CALIFORNIA COMMUNITIES TRAN PROGRAM AVAILABLE ONLINE

The League of California Cities is pleased to announce the availability of the 2006 California Communities Tax and Revenue Anticipation Note (TRAN) Program online. California Communities is the Joint Powers Authority (JPA) sponsored by the League and the California State Association of Counties (CSAC) that provides low-cost financing options to local government and public entities.

To enroll in the 2006 TRAN program, visit www.cscda.qwikdox.com.

In addition, California Communities is offering a new product through the 2006 TRAN Program called Discount Prepayment Notes. Cities can issue TRANs to finance the prepayment of certain costs at the beginning of the fiscal year and leverage the benefits of available discounts.

A web-hosted conference call with information about Discount Prepayment Notes will be available on **Wednesday, March 22, from 10 a.m. to 11 a.m.** To view the web-hosted presentation, visit www.callinfo.com.

To access the audio portion of the call dial (866) 365-4406 and enter access code 3624137#.

The 2006 TRAN Program represents the 14th year that the League has sponsored a TRAN program through the California Statewide Communities Development Authority. The program has provided nearly \$6 billion in cash flow financing to nearly 150 California cities, counties and special districts since 1993.

For more information, please contact Dan Harrison at (916) 658-8267 and dharrison@cacities.org, or Catherine Bando, the program financial advisor of RBC Capital Markets, at (213) 362-4137 and catherine.bando@rbcdain.com. Additional details on the TRAN program can be found at www.cacommunities.org or www.cscda.qwikdox.com.

SUPREME COURT UPHOLDS CITY ENFORCEMENT OF NON-DISCRIMINATION POLICY

In a unanimous decision, the California Supreme Court has ruled that the City of Berkeley's enforcement of its non-discrimination policy, adopted as part of the City's program to provide free marina berths to non-profit organizations, did not violate the constitutional rights of an organization whose parent group had a policy of excluding homosexuals and atheists.

Berkeley, in the past, had provided free berth space to the Sea Scout local chapter, an organization whose parent group is the regional council of the Boy Scouts of America. In 1997, Berkeley adopted a policy governing the award of free berths to non-profit organizations.

In order to qualify for a free berth, the organization must not limit a person's access to marina facilities on any of several improper bases, including the person's religion or sexual orientation.

The Sea Scouts, given their affiliation with the Boy Scouts of America, were unable to unambiguously represent that they would not discriminate against homosexuals or atheists in the future.

Berkeley determined that the Sea Scouts could not comply with the City's non-discrimination policy, and therefore, declined to provide the Sea Scout's with a free berth. Members of the Sea Scouts sued Berkeley, alleging violations of their constitutional rights of free speech and association.

The Supreme Court disagreed, and held that a city may constitutionally require someone receiving public funding or a public subsidy to provide written, unambiguous assurances that they will comply with the city's generally applicable nondiscrimination policy. The Court held that Berkeley reasonably concluded that the Sea Scouts had not provided those unambiguous assurances, and therefore, Berkeley was not

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2006 PERSONNEL AND EMPLOYEE RELATIONS SEMINAR REGISTER NOW!

Are you involved in personnel and employee relations? Then don't miss the League of California Cities' 2006 Personnel and Employee Relations Seminar!

The seminar will be held in two locations this year – April 20, at the Civic and Cultural Center in Brea and April 25, at the Foster City Recreation Center in Foster City.

Human resources and personnel directors and analysts, and employee relations officers will want to attend this program, which is organized in an information-packed one-day format. This year's seminar will cover the latest issues in health care, industrial disability retirement and workers compensation, along with briefings on key legal and PERS development, legislative updates, and networking opportunities with other human resources professionals.

Cost of this seminar is \$105 for city officials, \$125 for other public officials, and \$145 for all other registrants. More information and registration is available online at www.cacities.org/events. Registration forms may also be printed and mailed, or faxed, but all forms must be postmarked or received by April 14.

AB 2158 from page 1

The League has taken a support position on AB 2158 and encourages cities to do so as well.

The measure requires Councils of Governments (COGs) to consider LAFCO policies relating to logical and orderly growth when development a methodology to distribute regional housing needs assessments (RHNA) to local governments under state Housing Element law.

Current law allows LAFCOs to review, approve or deny proposals for boundary changes and incorporations for cities, counties and special districts. The RHNA process is a separate state process where COGs allocate housing zoning quotas to individual cities and counties.

The difficulty is that there is no coordination required between LAFCOs and COGs on these issues, which can lead to unrealistic housing allocations to cities, and increased pressure to expand housing development within counties on prime farmland.

AB 2158's requirement of better coordination between COGs and LAFCOs will lead to more informed decisions regarding the RHNA process, resulting in better and smarter land use planning in California.

To read the text of the bill, as introduced, please visit the League website at www.cacities.org. Click "Bill Search" and search for AB 2158.

SUPREME COURT from page 3

legally obligated to provide the Sea Scouts with free berths.

The case is *Evans v. City of Berkeley*, 2006 WL 560613 (March 9, 2006). As this case has the potential to be appealed to the United States Supreme Court, the Legal Advocacy Committee will continue to monitor it.

The League appreciates the San Francisco City Attorney's office for drafting the friend of the court brief in this case on the League's behalf.

Our Mission

Restore and protect local control for cities
through education and advocacy to
enhance the quality of life for all Californians.

2006 FLOOD CONTROL BILLS INTRODUCED

A large number of flood control bills have been introduced in the California Legislature in this session. The bills range from providing funding for specific flood management projects to establishing a user fee system for levee maintenance and proving that adequate flood control exists prior to approving development in flood prone areas.

See below for an overview of the flood control bills that are currently in the Legislature.

Please note that many of these bills are in spot form and will change substantially. **Except as noted, the League of California Cities has a watch position on these bills** and is involved in negotiations on many of them.

2006 FLOOD CONTROL BILLS

- **AB 797 (Wolk) Sacramento-San Joaquin Delta.** This bill would increase the membership of the Delta Protection Commission from 19 to 23 members.
- **AB 798 (Wolk) Delta Levee Maintenance.** The intent of this bill is to extend the current Sacramento-San Joaquin Delta levee maintenance and improvement program, which allows for 75 percent of the local agency costs, in excess of \$1,000 per levee mile, to be reimbursed by the state until July 1, 2006. This bill will likely be a vehicle to extend this program until July 1, 2008.
- **AB 802 (Wolk) Flood Protection and Safety Element.** Although this bill currently addresses the conservation and safety elements of the general plan, it is anticipated that this bill will ultimately be the vehicle to enhance provisions in the safety element that address flood safety. The League is working closely with the author's office and other stakeholders to craft a bill that is acceptable.
- **AB 1665 (Laird) Flood Control.** This bill would rename the Reclamation Board the Central Valley Flood Management Board. It would make a variety of changes to how the Reclamation Board currently operates. This bill stalled at the end of the 2005 session and it is anticipated that this bill may become the vehicle for other flood control related issues.
- **AB 1839 (Laird) Water: Flood Protection.** This bill is identical to SB 1166 and contains the governor's flood and water bond program.
- **AB 1877 (Nakanishi) Streambed Alteration Agreements: Levee or Flood Control Systems: Notification.** For routine maintenance of a levee or flood control system that is substantially equivalent to prior activities with the levee or flood control system, this bill would require the agency proposing the maintenance to provide written notice to the Department of Fish and Game prior to beginning the maintenance.
- **AB 1898 (Jones) Flood Insurance.** This bill would require property owners to purchase federal flood insurance if their property is in a levee protection/inundation zones with less than 200 year flood protection.

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2006 FLOOD CONTROL BILLS from page 5

- **AB 1899 (Wolk) Land Use: Flood Protection.** This bill is the vehicle for the ongoing discussions regarding the so-called “show me the flood protection” concept, which would require demonstration of adequate flood protection before local governments can approve development. The League is closely involved in stakeholder meetings regarding AB 1899.
- **AB 2026 (Aghazarian) Flood Control.** This bill would require the Reclamation Board to give highest consideration to projects that would protect the health and safety of the public when establishing and enforcing standards for the maintenance and operation of levees, channels and other flood control works.
- **AB 2027 (La Malfa) Flood Control Projects.** This bill would allow projects that may result in a net long-term loss of riparian, fisheries or wildlife habitat to be eligible for delta levees maintenance subventions and financing through the special delta flood protection program.
- **AB 2029 (Villines) State of Emergency: Imminent Breach/Failure Flood Threat Emergency.** This bill would include an imminent breach or failure flood threat emergency within the items that the governor may declare a State of Emergency for.
- **AB 2162 (Maze) Flood Control & Environmental Restoration Projects: Levees: Transfers.** This bill would prohibit the Department of Water Resources, the Reclamation Board or the California Bay Delta Authority from authorizing funds on behalf of a flood control or environmental restoration project that would transfer all or part of the ownership of a levee or flood control facility to a non-public entity.
- **AB 2208 (Jones) Delta Levee and Conveyance System: Water Use Fees.** This is currently a spot bill. The intent is that it will become a bill to impose a fee on water users of delta water to fund improvements to the system.
- **AB 2348 (Laird) Flood Control: Pajaro River.** This bill would authorize a flood control project on the Pajaro River to be paid for by the state, if recommended by the Department of Water Resources. The project itself would be carried out by Monterey and Santa Cruz Counties.
- **AB 2500 (Laird) Project Levees: Upgrade Funds: Local Safety Plans.** This bill would prohibit the state from spending funds for the upgrade of a project area that protects an urban area with more than 10,000 people unless the beneficiary city or county agrees to adopt a safety plan within three years.

If the beneficiary city or county is not responsible for the maintenance of the project levee, they may require the local flood control agency to carry out the safety plan.
- **AB 2518 (Houston) CEQA.** This bill would exempt an activity or approval by the Reclamation Board, State Water Resources Control Board or a local agency for a project to maintain levees from CEQA.

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2006 FLOOD CONTROL BILLS from page 6

- **AB 2598 (Houston) Reclamation Districts.** This is currently a spot bill.
- **AB 3022 (Umberg) Flood Control: Safety Element.** This bill would require a General Plan Safety Element to address flood management factors for residential units within a 100-year flood plain, and require that the local agency consider requiring developers to pay the cost of the first four years of flood insurance for new residential units.

The bill would also require a notification at the time of sale or lease that the residential property is within a 100-year flood plain.

- **AB 3025 (La Malfa) Reclamation Board: Mitigation Plans.** This bill would prohibit a mitigation plan from requiring the acquisition or designation of a total amount of land for riparian, fishery or wildlife habitat that exceeds the total acreage of riparian, fishery or wildlife habitat adversely affected by a project.
- **AB 3050 (Judiciary Committee) Flood Control Liability.** This bill is a vehicle to require local governments that approve development in flood zones to share the state's liability for damages caused by flooding, to the extent that the local agency increased the state's exposure to liability by approving new development in a previously undeveloped area, defined as land zone for agriculture or open space.
- **ACA 13 (Harman) Local Government: Assessments and fees or charges.** If passed by the legislature, ACA 13 would appear on the next statewide general election. If passed by the voters, it would authorize cities and counties to adopt storm water and flood control fees without voter approval.

This is similar to fees that are already exempt from the voter approval process of Proposition 218 for sewer, water or refuse collection services. The League supports ACA 13.

- **SB 1166 (Aenstad & Machado) Water: Flood Protection.** This bill is identical to AB 1839 and contains the governor's flood and water bond program.
- **SB 1251 (Alquist) Flood and Stormwater Management Planning.** This bill would reconvene the California Floodplain Management Task Force, or a similar broad stakeholder group, to prepare a comprehensive statewide flood and stormwater management plan similar to the California Water Plan.
- **SB 1343 (Chesbro) Flood Control: Middle Creek Ecosystem Restoration Project.** This bill would authorize the Department of Water Resources to pay 50 percent of the non-federal capital costs for a flood control and habitat restoration project of the Middle Creek Ecosystem in Lake County.

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2006 FLOOD CONTROL BILLS from page 7

- **SB 1446 (Torlakson) User Fees and Assessments: Sacramento-San Joaquin Delta Flood Control.** This is currently a spot bill. The intent is that it will become a bill to authorize the Reclamation Board to establish a beneficiary pays system to collect user fees and assessments for levee maintenance and other flood control purposes in the Delta.
- **SB 1527 (Aanestad) Flood Control.** This bill would require the Reclamation Board to prepare a master Environmental Impact Report in connection with routine operation and maintenance activities, and rehabilitation and repair activities undertaken by the Board or local agencies on behalf of the Sacramento River Flood Control Project.
- **SB 1612 (Simitian) SF Bay - Sacramento - San Joaquin Delta.** This is currently a spot bill.
- **SB 1617 (McClintock) Streambed Alteration Agreements: Emergency Work.** This bill would expand CEQA emergency work exemptions to include emergency work declared by the governing body of a local governmental agency, by resolution adopted by a majority vote, if necessary to prevent or mitigate immediate future loss or damage to life, health, property or essential public services that are likely to occur as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement or landslide.

There is currently a similar exemption for areas declared a state of emergency by the governor.

- **SB 1647 (Kuehl) Reclamation Board.** This is currently a spot bill.
- **SB 1796 (Flores) Reclamation Board.** This bill would rename the Reclamation Board the Central Valley Flood Protection Board, and would change the composition of the Board members. The Board would be required to prepare and adopt a strategic flood control plan by January 1, 2008, and to update standards for levee construction, operation and maintenance every five years.

The Board would also be authorized to review local and regional land use plans, review and revise local flood control plans. Finally, the Board would be prohibited from allocating any funds to a local public agency for flood control unless the Board determines that the project ensures adequate flood protection.

CIC from page 1

The group held press conferences in San Francisco and the Coachella Valley, even as city officials and other members of the coalition organizations were contacting their legislators and the government to encourage action before March 10 – the cut-off date to bring a measure to the June ballot.

With growing indications that state leaders were working hard on a consensus bond package, the CIC message continued to focus on encouraging leaders to act collaboratively and not pressing one approach over another.

Speaking at the San Francisco press conference on March 7, CIC Chair and League of California Cities Executive Director Chris McKenzie stressed the importance of investing in infrastructure now, as opposed to waiting for the November ballot, when election year politics may make it even more difficult to reach consensus on a package.

“Our leaders are working together to address California’s pressing infrastructure needs, but we urge them to keep up their efforts and agree on a solution,” McKenzie said.

San Francisco Supervisor Sophie Maxwell, Bill Nack, executive officer of the Building and Construction Trades Council of San Mateo County, and Jim Wunderman, president and chief executive officer of the Bay Area Council, joined McKenzie in addressing the media and getting out the message.

“We thank our state leaders for their hard work to date, but now we’re asking them to continue that work to pass a package that can get to the June ballot,” added Maxwell. “Our citizens can’t afford to wait. We need progress on infrastructure, and we need it this year.”

Coachella Valley Leaders and CIC Members Gather in Palm Desert

On Wednesday, March 8, the message continued with the theme “3 Days to Take Care of the

Next Generation,” as Coachella Valley elected officials and civic leaders joined the statewide effort to have a bi-partisan infrastructure bond measure passed in time for placement on the June ballot.

Speaking at a news conference in Palm Desert, Palm Springs Mayor Pro Tem Dick Kelly said that infrastructure was as important in Coachella Valley as it is in all parts of the state – a comment echoed by La Quinta City Council Member Terry Henderson.

“It doesn’t matter where you live – the lack of funding for infrastructure is holding us back as a state,” Henderson said.

Joining Kelly and Henderson were Chris McKenzie, Joe Mulleneaux, business representative of Operating Engineers Local 12, and California School Board Association Member Barbara Tooker.

CALLING ALL CALIFORNIA CITIES!

SING Your City’s Praises by entering the 2006 Helen Putnam Award for Excellence Program.

This program recognizes outstanding cities that deliver the highest quality and level of service in the most effective manner possible. Particular credit and attention is given to applications specifically advancing the League’s strategic priorities.

Visit www.cacities.org/helenputnam for details on the program and how to enter!

INFRASTRUCTURE from page 1

This week, the Secretary of State indicated that there was a possibility to move the deadline until no later than Monday. Information on progress regarding an infrastructure package is changing by the minute. It is uncertain what the priorities for funding will be and how large a bond package will emerge if a deal can be reached.

When visiting legislative offices this week, League staff heard similar messages to those reported in the news: that a deal among the governor, Senate and Assembly Democrats and Senate Republicans appears close.

In the midst of this intense debate, the Assembly Republican Caucus smoothly changed its leadership. After Assembly Minority Leader Kevin McCarthy announced his plans to run for Congress and step down as minority leader, the caucus elected George Plescia from the San Diego area to replace McCarthy.

The Senate appears to be the house where most of the initiative is coming from to put a bond measure on the ballot. At a League meeting on March 7, Sen. Bob Dutton, a key player for the Senate Republican Caucus, offered hope that a deal would be reached in time for the June ballot.

At an Oakland Chamber of Commerce event on March 8, Senate Leader pro Tem Don Perata commented that there is no reason an infrastructure package shouldn't be on the June ballot. He stated that the bond negotiations have been taking place because of the pressure people have put on the Capitol.

Last evening, a 6 p.m. legislative session in both houses was cancelled when it became apparent that no deal could be reached in time to act. After the cancellation of the session, all parties continued to sound optimistic that a deal could be struck on an infrastructure package.

Sen. Don Perata indicated that he intends to have the Senate vote on a bill before midnight on March 10 (today). The Assembly has recessed for the weekend, but the Speaker has put members

on notice that they may be called back to Sacramento if a deal comes together. The Senate session scheduled for March 10 at noon was also cancelled. If a deal "happens," it is building up to a real cliff-hanger.

The League remains hopeful that a deal will be reached to place an infrastructure package on the June ballot, where polling indicates that chances of it passing are favorable. The November ballot will likely be crowded with numerous other initiatives as well as candidate elections for major statewide offices, which always changes the political landscape and clouds the outcome of any measure.

For more information on efforts being made statewide to encourage getting an infrastructure bond on the June ballot, see **"Infrastructure Coalition Continues Push for June Ballot."**

Editor's Note: At press time, the deadline for a bi-partisan consensus on an infrastructure package was still pending. For the most recent developments on this issue, please check the League's website at www.cacities.org.

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