

PRIORITY FOCUS



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Issue #36-2007**

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INFRASTRUCTURE BOND IMPLEMENTATION UPDATE

The following is an update on the implementation of each of the infrastructure bonds (Prop. 1B, 1C, 1D, 1E and 84) passed by the voters on the Nov. 2006 ballot. As new developments occur with each bond, updates will be distributed through the League of California Cities' Web site and *Priority Focus*. For more, see Page 2.

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HOUSE AND SENATE CONSIDER EXTENSION OF THE INTERNET TAX MORATORIUM: LETTERS OF SUPPORT NEEDED

With the temporary extension on Internet taxes set to expire on Nov. 1, the U.S. House of Representatives and U.S. Senate are considering legislation to either permanently or temporarily extend the current moratorium. For more, see Page 4.

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LEAGUE EFFORTS ON SB 2 HELP RETAIN LOCAL CONTROL ON ZONING FOR HOMELESS SHELTERS

One of the bills of interest to local officials concerned with homeless and homeless housing issues is SB 2 (Cedillo). Currently on Gov. Arnold Schwarzenegger's desk, if signed into law, the bill would require local agencies to zone for homeless shelters according to need. For more, see Page 6.

Transportation Bond: Proposition 1B: This measure provides \$19.92 billion for various transportation projects to rebuild California. Priority programs of significant interest to California cities are:

- **Local Street and Road Funds:** \$950 million has been allocated in FY 2007-08 to cities and counties from the Local Street and Road Program. SB 78, the Budget Conference Committee bill, allocates \$600 million (Item #9350-104-6065), and SB 88, the bond implementation trailer bill, allocates an additional \$350 million.

AB 193 and AB 196, both budget cleanup measures, enact the provisions and amendments that the League and the California State Association of Counties (CSAC) sought to ensure accountable, efficient and effective transportation project delivery. AB 196 specifies that the \$950 million is to be appropriated with \$550 million for cities and \$400 million for counties. This division is consistent with the budget requests made by both the League and CSAC.

The allocation of \$550 million to cities in FY 2007-08 guarantees that each city receives a minimum of \$400,000, or half of their total bond funds, whichever is greater. City by city allocation estimates are available at www.cacities.org/infrastructure.

Prop. 1B funds will be allocated by State Controller John Chiang and directly dispersed to cities. Prior to receiving an allocation, however, local governments must submit a list of projects they expect to be funded with these funds to the Department of Finance (DOF). DOF will report monthly to the state controller on which agencies have submitted project lists.

The League is working with CSAC to develop guidelines for cities and counties regarding access to these funds, project eligibility and reporting requirements. We will make this available to city officials as soon as it is complete on the League's Web site and also through electronic communication.

- **Trade Corridor Goods Movement and Emission Reduction:** The development of allocation criteria for the \$3.1 billion "goods movement" and air quality improvement programs remains underway. SB 9 (Lowenthal) and SB 19 (Lowenthal) were the main legislative vehicles.

Although these bills stalled for the year, the Legislature is committed to continuing discussions when it returns in Jan. 2008. \$250 million (SB 77, item #3900-001-6054) was allocated in the budget to the Air Resources Board to fund projects in FY 2007-08 intended to improve air quality along four of California's major transportation corridors.

Those corridors are the Los Angeles ports to the Inland Empire, State Route 99 in the Central Valley, the San Francisco Bay Area, and the San Diego border region. \$193 million (SB 77, item #3900-001-6053) was also included in the budget for school bus retrofits.

- **State-Local Partnership:** 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 transportation 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 League supports SB 748, because it provides the most flexibility for the local match.

While these bills were not sent to Gov. Arnold Schwarzenegger this year, the Legislature will continue to work on this program when it returns in Jan. 2008. \$200 million was allocated (SB 77, item #2660-104-6060) to the California Transportation Commission for this program, to be allocated prior to June 30, 2010.

- **Local Bridge Seismic Retrofit:** \$13.5 million was allocated (SB 77, item #2660-104-6062) to the California Transportation Commission for this program, to be dispersed prior to June 30, 2010. An additional \$2.8 million may be expended for this program with the approval of DOF.

Funds will be administered by the California Department of Transportation (Caltrans) to provide the federal match requirement for local agencies for work on bridges, overpasses, and ramps. Cities are encouraged to work with Caltrans to access these funds.

- **High-Priority Grade Separation Projects:** \$122.5 million (SB 77, item #2660-104-6063) was set aside for high-priority grade separation projects. Guidelines for this program must be adopted by Feb. 15, 2008. Prior to adoption, the California Transportation Commission will hold two hearings, one in Northern California and one in Southern California, to get public input on the draft guidelines.

Cities should check the Transportation Commission's Web site (www.catc.ca.gov) for hearing information seeking project funding.

- **Public Transportation Capital Improvements:** Prop. 1B designated \$4 billion for various transit improvements, of which \$3.6 billion will be distributed per formula among the state's transit agencies. SB 88 contains additional allocation criteria. The budget (SB 77, item #2640-104-6059) appropriates \$600 million for these transit capital improvements projects.

Housing and Infrastructure Bond: Proposition 1C: This measure allocates \$2.85 billion for housing and infrastructure projects to be allocated by the Department of Housing and Community Development (HCD). Approximately half of the bond, \$1.4 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 \$1.45 billion is designated for infill infrastructure (\$850 million), parks (\$200 million), transit-oriented development (\$300 million), and innovative programs (\$100 million).

- **Funding for Infill Infrastructure:** \$240 million has been made available for a wide variety of capital improvements to support infill development. Grants are available to local agencies, nonprofit or for profit developers for developing in qualifying infill areas. Housing element compliance is a precondition.

Fifteen percent of housing units must be affordable (for very-low income households if the units are rental, or for moderate income households if the units are owner-occupied). Priorities will be given to projects that can demonstrate project readiness, completion of necessary environmental reviews, higher density, proximity to transit, parks, schools and jobs, consistency with adopted regional blueprints, and demonstrated local support.

Additional guidelines are to be developed by HCD. SB 86 sections 27, 28 and 39 contain definitions and criteria. SB 77, the budget bill, contains the appropriation (item #2240-101-6069). The Legislature passed AB 1053 (Núñez), which if signed by the Governor, would extend eligibility to business improvement districts submitting a joint application with a city or county.

- **Brownfield Remediation:** \$60 million is allocated for loans and grants to cleanup brownfields that promote infill residential and mixed use development consistent with regional and local land use plans. This program is required to be administered, in consultation with HCD, through the California Recycle Underutilized Sites (CALReUse) program operated under the California State Treasurer's Office.

Sections 29 and 39 of SB 86 contain definitions and criteria. SB 77, the budget bill, contains the appropriation (item #2240-101-6069).

- **Transit Oriented Development:** \$95 million is allocated to a program created under Prop. 1C designed to provide assistance to public agencies and developers with developing higher density housing within one-quarter mile of a transit station (SB 77, item #2240-101-9736). The

Legislature passed AB 1091 (Bass), which if signed by the Governor, would extend the distance requirement to one-half mile of a transit station.

- **Parks and Housing:** The budget did not contain an allocation for the \$200 million that was included in Prop. 1C for parks. AB 1252 (Caballero), a bill the League originally supported, contained implementation criteria for this program. This bill was held in the Senate Appropriations Committee.

The bill was then the subject of a late-session “gut and amend” and now addresses allocation criteria for \$400 million in parks funding in Prop. 84. Despite the late movement, this bill remained in the Senate and will be considered next year.

Cities should note that parks development is an eligible use of funds under the infill infrastructure program listed above.

Proposition 84: Environmental Quality Bond: This measure designates \$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. No funding was appropriated for these purposes in the budget. Several measures remain to be debated, including:

- \$400 Million in Park Funds: AB 31 (De Leon) and AB 1252 (Caballero) are the vehicles for allocating these funds, as other bills have either been amended or stopped. Both bills are now two-year bills.
- \$90 Million in Planning Funds and \$90 Million in Urban Greening: SB 732 (Steinberg) creates 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. The bill stalled on the Assembly floor and is now a two-year bill.

Proposition 1D: Education Facilities Bond: 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. 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), which is on the Governor's desk, would expand the definition of projects and what is considered local contributions under the school facilities joint use program.

Proposition 1E: Levee Bond: This measure designates \$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.

SB 85, a budget trailer bill, establishes several reporting requirement related to the expenditure of bond funds for levees, and limits local cost share requirements for facilities part of the State Plan of Flood Control and specified urban areas.

'Internet Moratorium' Continued from Page 1...

The Senate Commerce, Science and Transportation Committee is expected to vote on a temporary Internet tax moratorium extension bill (S. 1453) on Thursday, Sept. 27. The legislation would extend the current moratorium on Internet taxes from Nov. 1, 2007 to Nov. 1, 2011 and is co-sponsored by California Sen. Dianne Feinstein. California Sen. Barbara Boxer, who sits on the Senate Commerce, Science and Transportation Committee, has not yet endorsed the bill.

Take Action!

The League of California Cities is in support of S. 1453 and is asking all California cities to write letters to Sen. Boxer urging her to support this legislation. Please support this effort and send a letter to Sen. Boxer today!

A sample letter is located at www.cacities.org/federalresources.

Meanwhile, the House Judiciary Committee is discussing whether or not to consider a permanent Internet tax moratorium bill, as temporary Internet tax extension legislation has not been introduced in the House.

Take Action!

Several measures designed to permanently extend the moratorium on Internet access taxes have been introduced in the House, though no temporary extension bills have yet.

The League is in support of a temporary extension and is asking Utility Users Tax (UUT) cities with members on the House Judiciary Committee to write their representatives to urge them to work with the House Judiciary Committee leadership to introduce legislation that would extend the Internet Moratorium.

A list of all of the California Members on the House Judiciary Committee is below, and a sample letter is located at www.cacities.org/federalresources.

The Honorable Howard Berman
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Zoe Lofgren
U.S. House of Representative
102 Cannon House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Linda Sanchez
U.S. House of Representatives
1222 Longworth House Office Building
Washington, D.C. 20515

The Honorable Brad Sherman
U.S. House of Representatives
2242 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Adam Schiff
U.S. House of Representatives
326 Cannon House Office Building
Washington, D.C. 20515

The Honorable Elton Gallegly
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Dan Lungren
U.S. House of Representatives
2448 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Darrell Issa

'SB 2' Continued from Page 1...

SB 2 evolved out of last year's SB 1322 (also authored by Sen. Cedillo), which the League of California Cities opposed. SB 1322 would have required have severely curtailed local agency discretionary authority over emergency shelters and large residential care facilities (seven beds or more). That bill was vetoed by the Governor, who was generally concerned about homeless issues.

Accordingly, the League was successful in defeating SB 1322, but political forecasters suggested that a different course of action was needed to address SB 2. (The League's November edition of *Focus on Housing* – www.imakenews.com/focusonhousing – will include a more detailed account of the political dynamics behind this bill).

As a result, the League's Housing, Community, and Economic Development Committee formed a subcommittee on homeless issues and developed policy. Based on this policy, the League began negotiating with Sen. Cedillo and other stakeholders on language on SB 2.

Impact of SB 2

SB 2 is not perfect for local government, but it is a great deal better than its predecessor. The bill would preserve discretion for local agencies to locate shelters in their communities and to adopt a set of development standards to address things like security, lighting, loitering, and other site management issues for emergency shelters only. The language related to large residential care facilities has been taken out of the bill.

The measure would also allow the agency to take credit for pro-active programs already in place (like transitional and supportive housing) to reduce homelessness in the community. Another part of SB 2 authorizes up to three agencies to enter into an agreement to provide homeless services and share the credit proportionately.

On the other hand, if it becomes law, SB 2 would require every local agency to have zoning in place that would allow an emergency shelter. In addition, the bill says that local agencies must approve at least one homeless shelter. Local agencies must approve a shelter that is consistent with zoning as long as there is still a need in their communities.

There is some good actor language as well; local agencies that have at least one shelter within their communities and can show that there is no further need, do not have to approve further shelters.

While SB 2 is a large improvement over the previous version of the bill, some cities with larger homeless populations were uncomfortable with its language. The cities of Santa Monica, Oakland, and San Jose all expressed concerns about the bill. The city of Los Angeles, on the other hand, supported the bill.

Accordingly, the League was in a tough position. Sen. Cedillo had amended the bill several times at the League's suggestion to address our biggest concerns, but individual members still opposed. In the end, the League did not take a position.

What's Next

Currently, SB 2 is sitting on the Governor's desk. It is difficult to know what the Governor will do. On one hand, the bill got through both the Senate and the Assembly largely on party line votes and could be framed in a way that makes it look substantially similar to the bill that was vetoed last year. In addition, several "good actor" cities on this issue actually oppose the bill.

On the other hand, there are significant differences between SB 2 and last year's SB 1322 and this year, the California State Association of Counties (CSAC) and the California Chapter of the

American Planning Association are supporting the bill (last year they opposed). In addition, the Governor has his own Homeless Initiative, which includes an element to improve the siting opportunities for shelters around the state.

Regardless, this is a bill to watch. If signed, SB 2 will need to be incorporated into the next housing element change, or if it is vetoed, Sen. Cedillo will introduce the bill again next year.

For more information on the issue, contact League Legislative Representative Bill Higgins at bhiggins@cacities.org.

League Legislative Briefings Scheduled for November

The League of California Cities is hosting two briefing sessions in November. Scheduled for Wednesday, Nov. 28, in Pasadena and Thursday, Nov. 29, in San Jose, these identical briefings will focus on bills of note to city officials that passed in the previous legislative session.

Tentative session topics will include:

- Implementation of the State Infrastructure Bond Package
- The fate of ACA 8 and pending initiatives—What's next on eminent domain and regulatory takings
- Climate Change: ARB Regulations, SB 375 (Steinberg), the attorney general's lawsuits, California Environmental Quality Act (CEQA) Guidelines: Are you ready for this kind of "green heat?"
- Growing Pains: Legislation affecting redevelopment, flood control, environmental issues, housing and land use
- Employee relations and workers compensation
- Sex offender management, gang abatement, and prison overcrowding: local implications

The cost of attendance is \$140, which includes a luncheon. Registration and further information is available at www.cacities.org/events.

Legal Decision May Have a Profound Effect on Collective Bargaining

The collective bargaining process in California may be fundamentally altered, if the California Supreme Court declines to review *Lexin v. Superior Court*.

The case arose out of a decision by the San Diego Employees' Retirement System (SDCERS) board of administration to approve an increase in pension benefits for city employees and at the same time, allowed the pension fund to be underfunded. The San Diego County District Attorney brought a criminal proceeding against the certain members of the board, alleging a violation of Government Code section 1090.

Section 1090 is a draconian state law that prohibits a public official or employee from participating in a public agency decision in which the official or employee has a financial interest. In *Lexin*, the district attorney argued that the board members who are public employees have an indirect financial interest in the decision to increase the pension benefits because they are members of the bargaining units that would be affected by the change to the benefits.

The board members argued in response that their decision fell within the salary exception to section 1090, which provides that participating in a decision affecting the official or employees own salary does not constitute a 1090 violation. The board members argued that pension benefits are a component of their salary, and therefore, their participation in decision affecting their pension benefits would fall within the salary exception.

The 4th District Court of Appeal did agree that pension benefits are part of an employee's salary for purposes of the salary exception. The Court noted, however, that the salary exception

contained its own exception where the decision “directly involves the department of the government entity that employs the officer or employee....”

The Court reasoned the public employees serving on the board were participating in decisions that affected the department in which they were employed, because employees in those departments were members of the bargaining unit negotiating with the city and as a result, would receive the increased pension benefits. The Court concluded, therefore, the salary exception did not apply.

Impact of the Court’s Decision

The Court seemed unaware of the profound effect its interpretation of the salary exception will have. Typically in collective bargaining, a bargaining unit will select one or more employee representatives to represent the unit in negotiations with management over compensation and work conditions.

The negotiations will inherently involve the department or departments of the bargaining unit representatives because most, if not all, non-management employees of a department will be members of the same bargaining unit. So, under the Court’s interpretation of the salary exception, no member of the bargaining unit could participate in negotiations with management over salary and benefits.

To take the analysis further, often management employees who are charged with negotiating agreements with the bargaining units have their benefits tied to those benefits provided to employees within the bargaining units. If this is the case, these management employees may also be unable to participate in negotiations if the outcome of the negotiations would affect the management employee’s department because they will not be able to rely on the salary exception to section 1090.

The Court’s interpretation leaves an open question: if neither management nor a bargaining unit may be represented by city employees during salary negotiations, how is collective bargaining to work?

The League of California Cities was informed that the defendants will be petitioning the California Supreme Court for review. The League will likely be filing a letter with the Supreme Court in support of review. Stay tuned to future issues of *Priority Focus* for updates on this critical collective bargaining issue.

To read the 4th District Court of Appeal’s opinion, visit courtinfo.ca.gov, look up the court, and then the published opinion of *Lexin v. Superior Court*.

California Transit Association Sues Over State Budget

On Sept. 6, the California Transit Association (CTA) filed a lawsuit in the Sacramento Superior Court to prevent approximately \$1.3 billion of transit funds slated for bus and light rail service from being used to balance the FY 2007-08 state budget.

To help balance the budget, the Schwarzenegger Administration proposed diverting funds from the Public Transportation Account (PTA) to the general fund. The money is now earmarked for debt repayment and other transportation related programs including home-to-school transportation.

Part of PTA’s funding comes from the sales tax on gas and diesel and is supposed to be used for transit-related purposes. In recent years, high gas prices have helped increase the PTA’s balance. The Administration has asserted that these transit funds can be shifted because they are still being used for transportation purposes as well as paying off the state’s debt.

The CTA’s lawsuit (which was filed against California Director of Finance Michael G. Genest and State Controller John Chiang) contends however, that shifting these funds is illegal. In addition, it alleges that shifting the funds violates voter-supported constitutional amendments that designated

the PTA as a trust fund, with a legal requirement that revenues must be spent on mass transportation purposes.

Another aspect of this lawsuit involves a budget amendment through which half of the future sales tax revenues on gas diverted from one of PTA's revenue streams (spillover funds) would be transferred to the general fund. CTA is also trying to stop this permanent shift of funds.

As developments in the lawsuit occur, updates will be issued through *Priority Focus* and the League of California Cities' Web site, www.cacities.org.

Public-Private Partnerships Conference Coming Up in Sunnyvale

A one-day conference on the topic of public-private partnerships and how public agencies can use them for various projects is set for Oct. 17, in Sunnyvale.

Sponsored by the Silicon Valley Leadership Group (SVLG), the conference will feature presentations from public agencies around the world about their partnerships with private sector firms to speed the delivery of needed improvements while saving public funds and retaining high standards.

Case studies will include:

- Denver (Colorado) Regional Transportation District's plan to utilize a public-private partnership (P3) to realize its 12-year plan to build and operate high-speed rail lines and expand and improve bus service and Park-n-Rides throughout the eight-county region - the largest transit expansion project in the United States
- The city of the Carlsbad's plan to have Poseidon Resources develop a desalination plant that would produce about 50 million gallons per day of drinking (potable) water, or about 9 percent of the total potable water demand for San Diego County
- The San Jose school district's partnership with Chevron Energy Solutions and Bank of America to establish what is believed to be the largest solar power and energy-efficient facilities program in K-12 education in the United States

The conference will be held at The Commons, located at 1 AMD Drive in Sunnyvale. The cost of the conference is \$175 for non-SVLG members and \$100 for members. For more information and to register, visit www.svlg.net or contact Laura Stuchinsky at (408) 501-7851 or lstuchinsky@svlg.net.

\$52 Million Available for Improvement Projects through the State Safe Routes to School Program

Applications are now being accepted for project funding through the State Safe Routes to School program of the California Department of Transportation. This call for projects covers FY 2006-07 and FY 2007-08, with available amounts of approximately \$26.8 million and \$25.5 million each year, respectively. Cities are encouraged to review the program and apply for funding for appropriate projects.

The goals of the program are to reduce injuries and fatalities to school children and to encourage increased walking and bicycling among students. The program achieves these goals by constructing facilities that enhance the safety for pedestrians and bicyclists. Pathways, trails, sidewalks and crossings built with greater attention to safety, will increase the likelihood of attracting and encouraging students to walk and bike also increases.

Established in 1999, the State Safe Routes to School program came into effect from the passage and signing of AB 1475. The program was again extended in 2001 and 2004. Most recently, Assembly Member Nell Soto introduced AB 57 to extend the program until Jan. 1, 2013.

The deadline for applications is Friday, Nov.16. For more information including online application

forms and previous project funding awardees, please visit www.dot.ca.gov and search for “Safe Routes to School Program.”

Call for Education Session Ideas: 2008 Mayors & Council Members Academy, Executive Forum

Do you have a great idea for a session or speaker for the 2008 Mayors & Council Members Academy Executive Forum in Squaw Valley next year? If so, we want to know about it!

The League's 2008 Mayors and Council Members Executive Forum Planning Committee will be considering session ideas for any topic area. To submit your ideas, a fully-completed proposal form packet is due on or before noon on Monday, Oct. 15.

This packet is available at www.cacities.org/events. Any individual, group, business or organization may submit a proposal suggestion.

Who are the thought leaders that understand municipal government and the issues our cities face on a daily basis? What are the vital issues our membership must learn to succeed beyond 2008? This is an exciting opportunity to share your ideas, knowledge and expertise with local government staff, elected officials and decision makers.

The 2008 Mayors & Council Members Academy Executive Forum will be held at the Squaw Creek Resort in Squaw Valley on June 4-6, 2008.

Water Policies Conference Scheduled for October

The Western Governors' Association is hosting “Water Policies and Planning in the West: Ensuring a Sustainable Future” on Oct. 10-12 in Salt Lake City, Utah. City officials involved in the planning and management of western water policies are encouraged to attend.

The purpose of the conference is to develop policy options and identify case studies relating to:

- Water planning to deal with challenges resulting from growth
- Effective watershed approaches to water planning
- Responding to climate change and drought impacts

Invited keynote speakers include Gov. Jon Huntsman (Utah), Gov. Janet Napolitano (Ariz.), Sen. Jeff Bingaman (N.M.), Sen. Pete Domenici (N.M.), U.S. Department of the Interior Secretary Dirk Kempthorne, and U.S. Environmental Protection Agency Administrator Stephen Johnson.

Registration for the conference is \$250 for government or nongovernmental attendees. Further information, including how to register, is available online at www.westgov.org.

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.
