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FOCUS

June 11, 2004
Issue #23-2004

LOCAL LEADERS TELL LEGISLATURE: PASS OUR BUDGET COMPROMISE

More than 60 local government representatives, public safety officials and others from the nine county Bay Area region gathered June 7 in Oakland to urge their state legislators to support a budget package proposed by Gov. Arnold Schwarzenegger. *For more, see page 4.*



BUDGET UPDATE: SUGGESTED "AGGREGATE" PROPOSAL WOULD PERPETUATE LEGISLATIVE STRANGLEHOLD OVER LOCAL REVENUES

The Legislative Budget Conference Committee discussed the local government budget/constitutional amendment package this week – but only in the context of dramatically rewriting the constitutional protection piece to accommodate the priorities of a few outspoken legislators. *For more, see page 5.*



TRANSPORTATION FUNDING/BUDGET ACTIONS

This week the Budget Conference Committee adopted an allocation plan predicated on the ongoing State/Tribal negotiations generating \$1 billion. As previously reported, the Governor's May Revise allocated \$383 million from the anticipated gaming monies, but the legislature has increased that amount to \$1 billion. *For more, see page 3.*

Hot Bills

Act Now

- **SB 494 (Escutia).**
Medi-Cal Liens.
League Position:
Oppose.
- **SB 493 (Cedillo).**
Brownfields.
League Position:
Support.
- **SB 1477 (Sher).**
Wetlands. Water
Quality. League
Position: Oppose.

Want more details on these and other bills? Log on to the League of California Cities Web site at www.cacities.org/legtracking.

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CITY OF MILPITAS ADOPTS CODE OF ETHICS
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CAPIO OFFERS JULY 8 WORKSHOP FOR PUBLIC SAFETY PROFESSIONALS

Recent changes to HIPAA (Health Insurance Portability and Accountability Act) can affect the way police officers and firefighters carry out their duties and may impact the way your city releases information about injured or ill people.

Police officers and firefighters deal with injured people every day. How much can they tell the media about an injured person's medical status and injuries? How much investigative medical information can find its way into a news release? What are some of the common misconceptions that can get you in trouble?

These and other questions will be answered on **July 8 at Children's Hospital Central California in Madera**, during a half-day workshop about HIPAA co-sponsored by the California Association of Public Information Officials (CAPIO) and Children's Hospital. The workshop is specifically targeted to public safety information officers.

Presenters from Children's Hospital Central California and news industries will share some guidelines and ideas to help public safety PIOs meet HIPAA compliance.

Highlights include:

- The five basic patient conditions and how they can help public safety PIOs during interviews.
- Summary of the changes to privacy laws and what they mean to public safety PIOs.
- How hospitals have had to make changes and what that means for PIOs.
- When medical information can be shared and when it can't.

Any public safety professional that routinely answers media questions about injured or ill people should attend this half day HIPAA workshop. The cost for the workshop is \$25 in advance and \$30 at the door. Registration forms are available on CAPIO's website at www.capio.org.

For questions about the workshop contact Micheline Golden at 559-353-7049 or email mgolden@childrenscentralcal.org.

CITY OF MILPITAS ADOPTS CODE OF ETHICS AND SHARES WEALTH OF INFORMATION

The City of Milpitas is the latest addition to the growing list of cities adopting positive, values-based codes of ethics. The League's board of directors is encouraging cities to consider adoption of such codes as part of the League's work on the goal of promoting public confidence in city government.

The League's nonprofit research arm, the Institute for Local Self Government (ILSG), has produced a process-oriented guide on adopting such codes. The Institute's guide includes a sample menu of code provisions from other jurisdictions. The guide is available in electronic form without charge at www.ils.org/trust (click on "ethics codes" tab and then click on publication cover to pull up text of publication).

A link to Milpitas' code is available from the "Ethics Code Hall of Fame" section on the Institute's website, along with the texts of other city ethics code. In addition, the city's website contains extensive information about the process the city used in adopting its code: www.ci.milpitas.ca.gov/. Also available on the city's website is its implementation plan for the code: www.ci.milpitas.ca.gov/.

Has your city or agency adopted or updated its ethics code in the last year? If so, we want to help spread the word about your commitment to ethics in public service by including information on the Institute for Local Self Government's website. Contact JoAnne Speers at speersj@cacities.org to let us know.

Our Mission

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

**COMMUNITY SERVICES CONFERENCE, JULY 28-30
AT THE MONTEREY CONFERENCE CENTER
CONCURRENT CONFERENCE WITH THE MAYORS AND COUNCIL MEMBERS EXECUTIVE FORUM**

City officials interested in protecting and expanding community services programs will want to attend the Community Services Conference, to be held July 28-30 in the City of Monterey, concurrently with the League's Mayors and Council Members Executive Forum.

Designed for elected officials, commissioners and community services professionals working in the areas of human services, recreation and parks, cultural arts and libraries, the conference is a unique opportunity to explore the diverse issues and factors affecting community services policies and programs.

By attending this conference you'll learn about the trends that will affect your city and how the communities of the future are being created. Several opportunities to lead your city successfully into the future will be presented for community services professionals.

You Will Benefit From This Conference By...

- Learning how your community services programs can gain greater respect and resources in your city's work program
- Getting ideas on how to demonstrate your community services as vital economic resources and assets to your city
- Making contacts that will enhance your knowledge and improve your services to the public
- Gaining insights from the experiences of others that will help you make your programs more effective
- Developing ideas and plans to make your community services programs more inclusive

This year's meeting will be held jointly with the Mayors and Council Members Executive Forum in Monterey, July 28-30. Joint receptions on Wednesday and Thursday evenings and joint sessions will allow for you to shape the future of your local communities through collaborative sessions and networking opportunities with your colleagues.

Online registration and a current program are available at www.cacities.org/events. For more information call Kanat Tibet at 916.658.8261.

TRANSPORTATION from page 1•••••

The allocation plan adopted by the legislature would partially repay the initial \$1.383 billion loan as well as advance repayment of the Proposition 42 monies suspended or loaned in the current budget year 2003-04. More specifically, the Budget Conference Committee's allocation plan would dedicate:

- \$335 million to the 141 Traffic Congestion Relief Projects
- \$279 million (plus interest) to the State Highway Account (SHA)
- \$239 to the Public Transportation Account or transit, and
- \$147 million to cities and counties for local streets and roads.

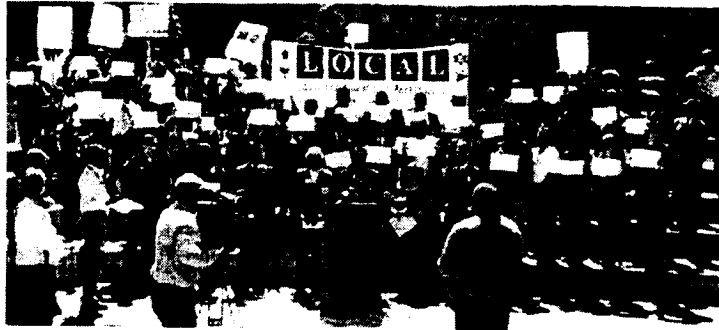
It should be noted that due to the fact that the SHA will receive interest the local government portion may be reduced by that amount (estimated to be \$10 to \$12 million) should the gaming revenues total only \$1 billion.

In adopting the allocation plan outlined above, the legislature departed slightly from the Governor's priorities outlined in the May Revise by advancing some of the Proposition 42 monies, rather than paying back the initial \$1.383 billion in its entirety. This resulted in providing some monies to cities and counties for local streets and roads, as we did not contribute to the initial loan of \$1.383 billion. (Only the State Highway Account, Traffic Congestion Relief Projects and Public Transportation Account contributed to that loan.)

This plan adopted by the Budget Conference Committee remains very fluid and entirely dependent upon the closure and ultimate outcome of the tribal gaming negotiations. Those are expected to conclude in time to be included in the budget, now targeted for completion July 1.

EAST BAY PRESS CONFERENCE from page 1

The San Francisco Chronicle reported that Oakland City Attorney (and past League President) John Russo said that although the package contains short-term cuts to cities, counties and special districts, it would prohibit the state from taking local government funds in the future.



Local officials gather for an East Bay press conference on June 7.

"This will give us some stability and predictability in how we fund local services."

Others who spoke in support of the package were Oakland Police Chief Richard Word, Novato Mayor and League First Vice President Pat Eklund, and Alameda County Fire Chief Bill McCammon.

Russo said, "No one is happy with the cuts we will absorb in the next two years because it will mean less services," but he said local leaders are supporting the package to protect local funds in the long run."

Alameda County Supervisor Keith Carson said

The Oakland Tribune reported that officials who spoke in favor of the deal at a news conference in front of Oakland City Hall said it will end the state's decade-old practice of taking property tax revenue from local coffers and will bring stability to funding.



Oakland City Attorney and League Past President John Russo addresses the media.

KCBS Radio reported that cities, counties and special districts will accept a \$350 million funding cut over (two) years in exchange for constitutional protections barring the state from seizing local funds in the future.

"Beginning in 2006 we will never be standing before you again facing the kind of cuts that we are facing right now," said Oakland City Attorney John Russo.

Russo and Alameda County Supervisor Keith Carson joined several elected officials and public safety representatives today to call on the legislature to accept the compromise. They want the reform measure on the November ballot.

"We stand here today experiencing an historic opportunity to change the dysfunctional relationship between our state and local transit," said Russo.

The Oakland event was sponsored by the LOCAL coalition ("Leave Our Community Assets Local") as part of ongoing media outreach in support of the local government budget/constitutional amendment package currently under consideration by the legislative Budget Conference Committee. City officials interested in participating in additional media activities should contact their League regional representative.

AGGREGATE PROPOSAL from page 1

In doing so they expressed an interest in considering an alternative to the constitutional protection measure that the League and its LOCAL partners had negotiated with the Governor Schwarzenegger, and the reform principles which local government representatives had worked weeks, months and years to analyze, research, draft and negotiate among dozens, even hundreds of stakeholders.

With Assemblyman Darrell Steinberg chairing, the committee assigned to the Legislative Analyst the task of writing **in one day** a new constitutional protection measure for local government revenue that protects the "aggregate" amount of local government revenues, but permits the legislature to move revenue around among local government jurisdictions. The proposal is one that was originally proposed in conceptual form by the Legislative Analyst's Office (LAO) in their review and analysis, (www.lao.ca.gov), of the Governor's May Revision of the budget.

The idea surfaced again on Thursday in a Capitol news conference called by only three legislators (Steinberg, Torlakson and Ducheny), one city official, one county official, and a handful of housing and environmental groups. Ignoring the support of thousands of other local officials and speaking as three of the 120 state legislators, they called for retaining the ability of the legislature to manipulate local revenue sources in the future while providing some degree of overall protection.

By the end of the day Thursday the LAO had produced a one page conceptual description of the proposal and indicated they had asked the Legislative Counsel to draft the proposal in bill form.

League Concerns

This last-minute suggested approach is disturbingly similar to the current dysfunctional state-local finance system that permits the state legislature to manipulate local government funding to accomplish state purposes — whatever those might be. It would thwart local officials' long-

sought goal of achieving greater stability and predictability in local government financing. Local governments would continue to be at the mercy of legislative whims.

This is no protection whatsoever!

Proposal Is "A Day Late And A Dollar Short"

- **Protecting local government revenues 'in aggregate' provides no protection at all.** It means that the state retains control over local government resources, and the state would be free to continue manipulating funding sources for individual local governments. An approach that keeps the state in charge of the purse strings fails to provide the predictability and stability that is needed at the local level.

- **Protection of aggregate revenues could result in a significant loss of future revenues for local governments.** History shows that allowing continued state legislative control of the aggregate amounts of property tax, sales tax and remaining VLF will inevitably lead to the state legislature securing for the state the benefits of the most stable revenue sources and forcing local governments to rely on the least stable ones. Protection of aggregate revenues, as a result, could result in a significant loss of future revenues for local governments.

- **"Aggregate" protection of local revenues may actually decrease fiscal incentives for new housing.** Under the "aggregate" revenue proposal, local governments would presumably be assured of some level of revenue each year with a guaranteed revenue growth factor. This could have the ironic effect of actually eliminating any connection whatsoever between the approval of new housing land uses and the resulting revenues received by local governments. It is important to understand that when the VLF backfill—property tax swap in the Local Government Agreement is fully implemented, cities on a statewide basis will receive **more** of their general revenues from property taxes than from sales taxes for the first time since before Proposition 13. This is a signifi-

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WHAT'S NEW ON THE LEAGUE WEBSITE (WWW.CACITIES.ORG)

Since the League's new website launched two weeks ago, the League, *Western City* magazine and the Institute for Local Self Government have continued to expand the site with new features and up-to-date information on a wide range of issues affecting cities. Here are few things to look for:

Updates on State Budget Developments.

The website home page was updated last Monday with a report and photos within hours of a LOCAL-sponsored press conference Oakland, where city officials and their LOCAL coalition partners urged legislators to quickly pass the local government budget/constitutional protection package. Another report and analysis was posted Wednesday shortly after the Legislative Budget Conference Committee discussed an alternative ballot measure that would protect local revenues "in the aggregate".

California Citizens for Local Control. An information network designed to inform concerned California citizens about proposed or pending state legislative or other actions which would limit the ability of California communities to address land use and other issues. Visit www.cacities.org/clc.

Local Official's Ethics Resource Center.

The Institute for Local Self Government (ILSG) has developed "The Local Official's Ethics Resource Center" to assist local officials with a broad range of ethical issues. These issues include: Campaign Ethics, Conflicting Interests, Use of Public Resources, Ethics Codes and more. Visit www.ilsg.org/ethicsresources.

Ruth Vreeland Public Participation Guide.

The guide was developed by the Institute for Local Self Government (ILSG), and is dedicated to the life and public service of former ILSG board member and Monterey city council member Ruth Vreeland (1935-2004). Vreeland was also a former teacher and a member of the League board of directors. She was passionate about the importance of keeping the public informed about governmental decisions and creating opportunities for public involvement in government. The guide offers helpful information on public participation, including "How Public Hearings Work", and "Legal Issues Pertaining to Public Hearings". Visit www.ilsg.org/vreeland.

AGGREGATE PROPOSAL from page 5 • • •

cant change in the revenue mix of cities and responds to concerns about fiscal incentives for housing.

- **The LOCAL government agreement provides a solid basis for future reform of the flawed state-local fiscal relationship.** Comprehensive reform cannot be accomplished with the current system or any system that allows the state to continue to control local revenue sources. The governor's local government package is a key first step to more comprehensive fiscal reform, because local governments that are less vulnerable to state raids on their revenues will have a solid basis from which to engage in reform discussions. Further, once local revenue sources are protected, the state-wide local government associations have stated that they intend to continue to pursue further fiscal reform.

The League urges cities to contact their legislators and the members of the Budget Conference Committee to ask them to OPPOSE this untested, flawed approach to reform, and to SUPPORT immediate passage of the local government budget/constitutional reform package negotiated by local governments with Governor Schwarzenegger. For a sample letter visit the League Advocacy Center at www.cacities.org/advocacycenter.

The Budget Conference Committee members are: Senator Wesley Chesbro (D-Arcata); Senator Dede Alpert (D-San Diego); Senator Ross Johnson (R-Irvine); Assembly Member Darrell Steinberg (D-Sacramento); Assembly Member Judy Chu (D-Monterey Park); and Assembly Member Rick Keene (R-Chico).

Legislative Bill Action

The following are summaries of just a few of the legislative bills that are currently being acted upon by the League of California Cities. For more information about these and other bills, please visit the League website's to access information about legislation, policy issues and related developments. You can track information on bills (www.cacities.org/legtracking), 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.

ADMINISTRATIVE

SB 494 (Escutia). Medi-Cal Liens. SB 494 passed the Assembly Health Committee this week and will be heard next in the Assembly Judiciary Committee. The League remains strongly opposed to this bill that will result in higher insurance costs and higher lawsuit awards.

Under existing law and practice, many health insurers have contracts with health providers that pay a reduced rate from what health providers bill as their "reasonable or full retail rate." The provider is then precluded from balance billing the beneficiary for any difference between the contract price and the full retail rate.

SB 494 would change this practice for Medi-Cal patients and permit cost recovery beyond the negotiated rate. In doing so, the bill could make a local government, either through its own self-insurance policy or through an outside insurance provider, liable for the inflated phantom medical bills. And, it would do so without an opportunity for medical review to determine the appropriateness of those costs.

In addition, the League believes that SB 494 is premature. If enacted, it would prejudice the outcome of the Parnell case (*Parnell v. Adventist Health Systems*), which is now before the Supreme Court. The case has been briefed, but oral arguments have not even been set. In addition, it could set a precedent for Medi-Cal cases which could form the basis of subsequent legislation to expand the issue to all insured, or give the courts a direction to go in awarding settlements.

Cities should send letters of opposition to members of the Assembly Judiciary Committee and their own Assembly Members. **Staff:** Yvonne Hunter; **Bill Status:** Pending in Assembly Judiciary; **League Position:** Oppose

AB 2782 (Benoit). Public Agencies. Joint Powers Agencies. Meetings. The League of California Cities asks that you send letters in support of AB 2782 (Benoit) to your senator today! The bill recently passed out of the Senate Local Government Committee and is headed to the Senate Floor.

AB 2782 would provide that a joint powers agency may authorize that any member of the legislative body of the joint powers agency, who is also a member of the legislative body of one of the local agencies comprising the joint powers agency, to disclose information obtained in a closed session of the joint powers agency to other members of the legislative body of the local agency in a closed session of that body.

When forming Joint Powers Agencies (JPAs), cities commonly provide that a board, appointed by the creating cities, governs the agency. However, this method of providing supervision and oversight over the JPA is frustrated by Attorney General rulings that prevent JPA board members from sharing confidential JPA information with their city council members. The result is that cities are impeded in their obligation to adequately supervise and direct the joint powers agencies they have created. AB 2782 will ensure that elected officials are permitted access to information necessary to be kept fully informed on decisions they will be called upon to decide.

Legislative Bill Action

A support letter is available to download at www.cacities.org/legtracking. Please fax letters of support to your Senator ASAP! Please also send a copy to League Policy Analyst Liisa Lawson at llawson@cacities.org. **Staff:** Amy Brown; **Status:** Sen; **Position:** Support.

Finally, by expanding the definition of wetlands to all waters, including ephemeral, intermittent and perennial streams that may be water bodies for only a very brief period during the year, the bill could be construed to require no net loss for these areas and thus significantly increase the regulatory burden on projects in these areas.

ENVIRONMENTAL

SB 1477 (Sher). Wetlands. Water Quality. SB 1477 would establish a new regulatory framework for wetlands and other water bodies not previously regulated by either the State Water Resources Control Board or the federal government. Although SB 1477 seeks to fill the regulatory gap created by a court decision regarding the authority of the Army Corps of Engineers, the League believes that in reality, the bill goes far beyond this goal. Instead, it would create not only a new California-only regulatory scheme for wetlands, it would expand the authority of the state and regional boards to regulate and require NPDES permits in areas never before covered. If the bill were amended to narrowly limit its applicability to only the limited area previously regulated by the Army Corps, the League would not object.

SB 1477 will be heard next week in the Assembly Water Parks and Wildlife Committee and if passed, by the Assembly Environmental Safety and Toxic Materials Committee. Interested cities should send letters of opposition to members of these committees and their Assembly Members. **Staff:** Yvonne Hunter; **Status:** AsWP&Wild and AsEnvSafe&ToxMat; **Position:** Oppose.

SB 493 (Cedillo). Brownfields. At long last, the amended version of SB 493 is in print. The amendments are the result of lengthy and extensive discussions among numerous stakeholders, including the League. Sponsored by the Homeowners Advancement Foundation and the California Building Industry Association and supported by the League, SB 493 would enact the "California Land Reuse and Revitalization Act of 2004". It would establish a new, voluntary program to encourage re-development of brownfields by providing, under certain circumstances, new purchasers and innocent property owners who did not cause the contamination liability protection from requirements for further clean up or action. In order to be eligible for this immunity, the bona fide purchaser and innocent landowner would be required to prepare and implement a response plan approved by the State Department of Toxic Substances Control or the State Water Resources Control Board. Under SB 493, the actual polluter would still retain the responsibility for total clean up of the site.

The League has several objections to SB 1477. One concern is that the bill would expand the authority of the state and regional water quality control boards into upland riparian areas 100 meters away from water bodies that were never regulated by the Army Corps. It also would expand the range of areas considered "waters of the state" and thus requiring an NPDES permit.

In addition, the League objects to the new regulatory framework given to the State Board to protect "habitat connectivity", including the scope of this term and how broadly it could be interpreted. This could potentially increase project costs, and would establish expansive regulatory duplication for areas that previously were not subject to Water Board regulatory authority. The League also believes that SB 1477 has serious problems that will result in regulatory duplication and overlap between different state agencies as they relate to regulation of wetlands.

Under SB 493, eligible sites must be within an incorporated city, or unincorporated area surrounded by incorporated cities and densely populated. The site must be vacant or underutilized land served by existing physical installations including roads and power lines, and be zoned industrial, commercial, mixed use or in residential use for five years prior to approval of the response plan. It could not be zoned as open space or agricultural use. The bill would require a land use control (i.e.,

Legislative Bill Action

deed restriction) on the site that would limit a different use of the land in the future if a different clean up standard were necessary for the new land use.

The bill would designate that the state agencies with cleanup oversight are the Department of Toxic Substances Control, State Water Resources Control Board or a regional water quality control board. The bill does not delegate cleanup authority to local agencies

The bill creates a comprehensive state agency cleanup process requiring approval of a cleanup plan by the oversight agency to address an "unreasonable risk" at the site that eliminates a significant threat to human health or the environment, including impacts to groundwater. The cleanup plan must take into account the intended use of the property and the oversight agency can require a new cleanup plan if the use of the property changes. Once the oversight agency approves the cleanup plan, the new buyer or innocent landowner is granted liability protection from specified state statutes and third party actions, but only if they are in continuous compliance with the cleanup plan.

The bill provides for a re-opener after the cleanup is completed and approved by the oversight agency if the condition at the site presents an "endangerment" to human health and safety, and the oversight agency cannot find any other potential responsible parties to remediate the condition. Finally, the bill specifically provides that it does not impact the authority of a redevelopment agency to continue to require and implement brownfield cleanups through the so-called Polanco Act.

The measure sunsets in five years, although the immunity conferred by the bill would continue beyond that period as long as the owner is in compliance with the requirements of the clean up plan.

The League has worked extensively with the author's office, sponsors and other stakeholders, as well as with the California Redevelopment Agency throughout the last five months. The author's office and sponsors have been extremely

open to our concerns and has accepted numerous substantive and technical amendments requested by the League and CRA. The League supports SB 493 as an appropriate and innovative way to encourage the clean up of contaminated brownfields that would most likely otherwise remain contaminated, unused and unproductive.

Cities should send letters of support to the author and members of the Assembly Environmental Safety and Toxic Materials Committee and Assembly Judiciary Committee, where the bill soon will be heard. **Staff:** Yvonne Hunter; **Status:** AsEnvSafe&ToxMat and AsJud; **Position:** Support.

PUBLIC SAFETY

AB 1924 (Bogh). Fire Prevention. Penalties. AB 1924 increases the fines for Public Resources Code violations relating to fire and the danger associated with the spread of fire. Specifically, AB 1924 1) Increases the minimum fine from \$50 to \$100, and the maximum fine from \$1,000 to \$2,000, for any person convicted of entering upon any land which has been closed to the public by Governor's proclamation due to conditions tending to cause or allow the rapid spread of fire; 2) Increases the fine from a maximum of \$200 to \$500 for a first conviction for violating flammable waste restrictions relating to solid waste facilities; and, 3) Increases the minimum fine from \$250 to \$500 and the maximum fine from \$1,000 to \$2,000 for a second or subsequent conviction of violating flammable waste restrictions relating to solid waste facilities. AB 1924 will increase the fines for activities associated with contributing to wildfires, and make state law tougher to deter the illegal burning that occurs across California. AB 1924 gives cities and counties more authority to enforce laws prohibiting illegal burning. **Staff:** Liisa Lawson; **Status:** SenPubSfty, Hrg. June 15; **Position:** Support.