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ANALYSIS, COMMENTARY & UPDATES  
**PRIORITY FOCUS**  
ON LEGISLATIVE AND POLICY ISSUES THAT AFFECT CALIFORNIA CITIES

June 25, 2004  
Issue #25-2004

**LEADERSHIP DISCUSSIONS CONTINUE ON STATE BUDGET  
CITIES, LOCAL GOVERNMENTS PRESS FOR BUDGET RESOLUTION**

Discussions on the budget continued this week among the legislative leaders and Governor Schwarzenegger, as the clock ticks down on the opportunity to adopt an on-time budget. How close is endgame? It's difficult to say at this writing. We understand that the "Big 5" (Governor Schwarzenegger, Senate President Pro Tem John Burton, Senate Minority Leader Dick Ackerman, Assembly Speaker Fabian Nunez and Assembly Minority Leader Kevin McCarthy) are meeting on the budget this weekend. Speaker Fabian Nunez indicated Thursday that a deal could come together over the next few days. In recessing the Assembly on Thursday he instructed members to be available to reconvene with four hours notice. *For more, see page 9.*

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**SB 1212: YET ANOTHER LOCAL FINANCE PROPOSAL**

City officials will understandably be puzzled about recent amendments to SB 1212 (Ducheny – San Diego), which has been heard and passed by both the Assembly Revenue and Taxation Committee and the Assembly Local Government Committee. The bill goes next to the Assembly Appropriations Committee. These recent amendments are intended to provide an alternative to the governor's budget proposal to swap VLF for property tax. They introduce new and very interesting "takes" on the debate over the "fiscalization" of land use. *For more, see page 4.*

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**CONGRESS CONSIDERS NEW FUNDING TO HELP CITIES  
END CHRONIC HOMELESSNESS**

The Bush Administration has proposed new federal funding through a "Samaritan Initiative" that would create an opportunity for cities to reduce the number of chronically homeless persons living on the streets and in shelters and achieve potential savings in city budgets. This legislative effort to bring new resources to cities is one more step toward meeting the goal of ending chronic homelessness. *For more, see page 5.*

**Hot Bills**

**Act Now**

■ ■ **AB 2690 (Hancock).  
Public Works.  
Funds. Position:  
Support.**

■ ■ **AB 2404  
(Steinberg). Gen-  
der Equity in Local  
Recreation Pro-  
grams. Position:  
Neutral.**

■ ■ **SB 494 (Escutia).  
Medi-Cal Liens.  
Insurance. Posi-  
tion: Oppose.**

■ ■ *Want more details on  
these and other bills?  
Log on to the League of  
California Cities Web site  
at [www.cacities.org/legtracking](http://www.cacities.org/legtracking).*

- Page 2** COMING IN JULY IN WESTERN CITY MAGAZINE  
CERRITOS "TRIPLE FLIP" LAWSUIT  
NEW ON THE LEAGUE'S WEBPAGES!
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- Page 10** LEAGUE FIRE CHIEF APPOINTED TO STATE FIRE MARSHALL POSITION

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## COMING IN JULY IN WESTERN CITY MAGAZINE

**"What I Learned About Housing and Life From Sharing a Room With My Big Brother"** by **Chris McKenzie**. A recent study about the effects of trends on California's housing needs raises some interesting issues.

**"San Jose Is Home to the World's First 'Green' Library"** by **J. Lindsey Wolf, Lorraine Oback and Jane Christophersen**. A look at why "green" buildings in California are winning national recognition.

**"Partners in Democracy: Local Firefighters Play Major Role in Signature Gathering"** by **Megan Taylor and Robert Korinke**. The contributions of local firefighters are proving invaluable in the effort to protect local services.

**"Economies, Efficiencies and Darned Good Ideas: Protecting Water Quality Through Stormwater Management."** How cities are working to protect water quality and manage stormwater runoff.

**"Can California Avoid Another Energy Crisis?"** by **William J. Keese and Rob Schlichting**. Energy projections from the California Energy Commission.

**"Zoning Churches: An Update on Religious Land Use Litigation"** by **Helene Leichter**. Public agencies are increasingly being caught in the middle of land use conflicts created when expanding church and temple complexes offer a broad range of social services.

Plus:  
**San Diego's "Think Blue" Campaign Is Cleaning Up Beaches**

**Apple Valley's Regional Master Composter Program Goes "Grassroots"**

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### LOOKING FOR CALIFORNIA'S BEST TO FILL A POSITION IN YOUR CITY?

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reader survey, the job opportunity section is the best read section of our magazine!

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### CERRITOS "TRIPLE FLIP" LAWSUIT

Earlier this year, the city of Cerritos and a number of other cities across the state filed a lawsuit challenging the sales and use tax reduction involved in the "triple flip." The cities sought a petition for writ of mandate that would prohibit the Board of Equalization from implementing the reduction. In June, the Alameda County Superior Court denied the cities' petition. The court failed to provide a reason for its ruling. Although no final decision has yet been made, it is anticipated that the cities will appeal the court's ruling. The League will continue to keep our members advised of the lawsuit as events develop.

**NEW ON THE LEAGUE'S WEBPAGES!  
HABITAT CONSERVATION PLANNING GUIDE –  
WWW.ILSG.ORG  
A GUIDEBOOK FOR PROJECT AND REGIONAL  
CONSERVATION PLANNING**

*Understanding the Habitat Conservation Planning Process in California* is designed to provide those who are involved in projects or planning efforts an understanding of the regulations and issues affecting protected species, focusing on the requirements for habitat conservation plans, and advice and recommendations regarding best approaches to project planning and regional conservation planning for protected species.

## **GOVERNOR SCHWARZENEGGER SIGNS NEW COMPACTS WITH INDIAN GAMING TRIBES**

On June 21, 2004, the governor signed five new State/Tribal Compacts that he says provide a fair contribution of gaming revenues that will compensate the state for years to come. The governor also states that the agreements guarantee important and increased protections for local communities, the environment, and casino patrons and workers.

### **Fiscal Impacts**

Financial aspects of the compacts include a \$1 billion payment to the state, to be financed by a bond repaid over 18 years, to the five tribes who signed the re-negotiated agreement; United Auburn (Placer County), Rumsey Band (Yolo County) and three San Diego Tribes: Viejas, Pala, and Pauma. Upon repayment of the bond, the tribes then will make annual payments to the state for the duration of the compact, expected to total an additional \$700 million.

In addition to annual payments, the tribes are required to pay up to \$25,000 annually per slot machine exceeding the current 2,000 limit. This provision is considered self-limiting, as the net win per machine would have to be very high to make the additional slot machines financially viable. However, there is no cap on the number of machines that a tribal government may operate. The compacts also provide that each tribe must pay \$2 million annually into the Revenue Sharing Trust Fund to be distributed to non-gaming tribes.

### **Environmental Protection**

Under non-economic provisions of the new compacts, a tribal government undertaking a new project is required to prepare a Tribal Environmental Impact Report (TEIR). A project is defined as "any activity occurring on Indian Lands to serve the Tribe's gaming activities which may cause a direct or indirect physical change in the off-reservation environment."

Once a project is undertaken by a tribe, the new compact language requires a notice of preparation and development of a TEIR, which requires detailed information on significant off-reservation effects, mitigation and project alternatives. Failure by the tribe to prepare a TEIR could result in the state obtaining an injunction to stop the project.

### **Local Government Agreements**

Based on the TEIR, the new compact language requires negotiation and agreements to be undertaken with affected communities in relation to off-reservation mitigation and service responsibilities, including public safety services provided by local governments. Should impasse occur in reaching such agreements after 55 days, "baseball" arbitration would be triggered, ultimately requiring the arbitrator to consider the most reasonable offer from each party if agreement remains elusive. In addition, a waiver of sovereignty permits local governments to enforce the arbitration decision through execution of a judgment in a court of law.

Other provisions of the compacts include building code compliance based on state standards, slot machine compliance subject to state inspection and audits, and tort law compliance in relation to patron injury. Additionally, local government-related provisions appear to fulfill several policy objectives outlined in League policy in relation to Indian Gaming, including: 1) Mitigation of off-reservation impacts; 2) Service provision on tribal lands; and, 3) Protection of affected communities.

These compacts must now be ratified by the Legislature to become effective. For more information, please contact League staff Liisa Lawson at 916-658-8249, or visit the Governor's Web site at: <http://www.governor.ca.gov>.

**SB 1212 from page 1**.....

In its amended version the bill would retain the governor's proposal to swap VLF revenues for property tax on a dollar-for-dollar basis, but the growth on the new property tax revenues would be distributed within each county as follows:

- The county would receive a percentage of the growth on the property tax equal to the county's percentage of the initial swap.
- The remainder of the growth would be distributed to cities in the county on a per capita basis.

The Ducheny measure would also be contingent upon the voters approving a constitutional amendment on the November 2004 ballot to protect local government revenues, but there is no indication from the author if the Governor's proposed constitutional protection will suffice or if there is another proposal that is intended.

**Why Per Capita Distribution?**

A fact sheet from the senator's office expresses opposition to the VLF for property tax swap in the governor's proposal because the loss of VLF "actually reduces incentives local governments have to approve new housing development".

What would cities gain under the SB 1212 approach, in which they would give up one per capita revenue source (current VLF) for what is essentially another per capita revenue source (property tax)? The answer from the author: nothing, because "the bill in essence preserves the status quo rather than exacerbates the fiscalization of land use." This is a direct comparison to the swap of VLF revenue for property tax contained in the Governor's package.

**SB 1212 Contradicts Other Legislative Theories About Housing Incentives**

The underlying assumption of SB 1212, therefore, is that what motivates local governments to build more housing is not the revenue source, but the way that revenue is allocated. This approach conflicts with the theory put forward by Assembly Member Darrell Steinberg for the

past several years, who argues that the key to incentivizing local governments to approve more housing is to ensure that they have more property tax.

**Eleventh-Hour Solutions Dangerous for Local Governments**

It is clear from the arguments put forward in support of the SB 1212 amendments that while legislators are concerned about how to create incentives to encourage local approval of more housing, there are serious differences of opinion about how best to do that. These differences highlight a core concern for local officials: state legislators are willing to consider a range of untested theoretical approaches that manipulate revenues needed to pay for local services, but these approaches are not well understood – even by the people advocating for them. Further, legislators are willing to making sweeping changes in local financing that could seriously impact communities' abilities to provide local services, but are not willing to put state money on the table to achieve their goal of building more housing.

All of the theories put forward thus far by different parties are interesting and worth consideration – at a later time. All of the LOCAL-sponsoring associations have said that they are willing to engage in reform discussions – after constitutional protection for current local revenues has been achieved.

The opportunity legislators have today is to pass the reform that local officials themselves have researched, discussed and carefully analyzed among many stakeholders over weeks, months and even years. Eleventh-hour amendments of a sweeping nature run the serious risk of unintended consequences.

That's why we urge city officials to contact their Assembly Members to reject last minute proposals. SB 1212 and other proposals that have surfaced during the tail end of budget deliberations represent the best example of why all city officials should redouble their efforts to support the governor's proposal, creating the predictability and stability for local government finance that can provide the foundation for future reform discussions.

**SAMARITAN from page 1**.....

Resolutions passed by the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties endorse the Administration's goal of ending chronic homelessness and encourage communities to develop 10-Year Plans, an approach spearheaded by the United States Interagency Council on Homelessness ([www.ich.gov](http://www.ich.gov)). A target established by the U.S. Conference of Mayors to have 100 cities commit to 10-Year Plan processes has been surpassed as over 120 cities and counties are currently engaged in developing and implementing a 10-Year Plan.

are demonstrating tenancy sustainment rates of over 80% even among the most difficult to serve long-term homeless populations.

**Samaritan Initiative Builds on Collaborative Housing Program**

In October 2003, \$35 million in housing and supportive services funding focused on homeless people on the streets and long term in shelters was awarded to 11 communities across the country through an innovative funding collaboration by the U.S. Departments of Housing and Urban Development, Health and Human Services, and Veterans Affairs. The agencies were brought together as members of the United States Interagency Council on Homelessness which had been revitalized in 2002 after a six year dormancy. San Francisco, Los Angeles and Contra Costa County received nearly \$9 million through this Collaborative Initiative to End Chronic Homelessness, which these communities are using to end the homelessness of hundreds of persons who have been living on the streets and long term in shelters.

**New Research on Homelessness**

The Samaritan Initiative is the product of research findings and a unique federal interagency collaboration guided by the United States Interagency Council on Homelessness. Among the research findings: (1) persons experiencing chronic homelessness generally have a physical or developmental, substance abuse or mental health disability; and (2) chronically homeless persons cycle repeatedly through a variety of expensive community care systems including shelters, emergency rooms and hospitalizations, jails and other correctional facilities.

The Samaritan Initiative builds on this results-oriented collaborative initiative, further streamlining the application and reporting requirements for communities, and the FY'05 budget request of \$70 million doubles the amount of funds awarded in 2003. Legislation has been introduced in the Congress to authorize this initiative, H.R. 4057, the "Samaritan Initiative Act of 2004". The bipartisan bill, which is cosponsored by California Representative Jerry Lewis, is under consideration by the House Financial Services Committee. A hearing is tentatively scheduled on the bill for July 13. The \$70 million FY'05 appropriation request, which includes \$50 million for HUD and \$10 million each for HHS and the VA, will be considered by the VA-HUD and Labor-HHS Appropriations Subcommittees in the next few weeks.

**Local Agencies Bear Significant Costs**

As reported in the Winter 2003-2004 issue of the San Diego Law Enforcement Quarterly, a study by the UCSD Medical Center found that 15 chronically homeless inebriates living on the streets of San Diego made 299 trips to the emergency room in just eighteen months, at a cost of over \$967,000 to the community. When acute addiction and mental health services were added along with law enforcement interventions, the total cost for those 15 people in that period was \$3 million.

Cities can help move the effort forward by asking their representatives to co-sponsor the measure.

The research findings in San Diego and elsewhere in the country indicate that it is as costly for communities to maintain the status quo as it is to create an appropriate housing response—i.e., supportive housing. Supportive housing strategies combine clinically-based outreach with housing and supportive services including primary and behavioral health care. Such supportive housing efforts

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## 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](http://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](http://www.cacities.org/advocacycenter)), research League policy positions, access useful related links, and much more.

### TRANSPORTATION AND PUBLIC WORKS

**AB 2690 (Hancock). Public Works. Funds.** AB 2690 passed out of Senate Labor and Industrial Relations Committee on 6/23/04 by a vote of 7-0. The bill was amended in committee to include an urgency clause in the legislation. AB 2690 will now move to Senate Appropriations.

AB 2690 provides that the provisions of existing law dealing with the payment of prevailing wages on public works projects do not apply to work performed by a volunteer or a volunteer coordinator. In addition, the bill provides that the provisions of existing law dealing with the payment of prevailing wages on public works projects do not apply to work performed by members of the California Conservations Corps or a certified Community Services Corps.

As amended AB 2690 provides cities and counties the option to use volunteers as a creative option to provide public services with limited funding. AB 2690 is a valuable resource to circumvent onerous administrative regulations requiring prevailing wage rates be paid to volunteer and other workers on projects benefiting the public. **Staff:** Amy Brown; **Status:** SenApps, Pending; **Position:** Support.

### ENVIRONMENTAL

**AB 2006 (Nunez). Electricity Restructuring.** In a previous issue of Priority Focus, we reported that the League had adopted a "support in concept" position on AB 2006. After a lengthy discussion at the League's recent Environmental Quality Policy Committee meeting, the League has preliminarily moved to a full "support" position on the bill, pending action by the League's board of directors.

AB 2006 would establish the "Reliable Electric Service Act of 2004". It would put in place a number of important procedures that would facilitate and encourage investment in California's energy infrastructure – including generation and transmission facilities – in order to promote stable and reliable electric service in the future. The bill also would establish a procedure for very large electricity users to purchase power from a third party through direct access. This core/non-core approach, however, would be permitted only if the transaction does not result in stranded costs or cost shifting. The League does have a position on what the threshold should be for a non-core customer to purchase power from a third party.

AB 2006 would establish requirements of the investor owned utilities to plan for the future, while at the same time requiring them to invest in renewable, sustainable and diversified power. It would establish criteria for re-powering existing plants and maintain the requirements in existing law for renewable energy. Importantly, the bill does not impinge upon the ability of municipal electric utilities to provide service to their customers.

The League supports AB 2006 because we understand that California's economy and the welfare of our communities depend upon a reliable and stable energy supply. Clearly, California does not want to repeat the crisis situation that occurred in 2001 as a result of a failed restructuring system. AB 2006 would establish a framework to encourage investment in efficient and cost-effective energy infrastructure and the needed financing for that infrastructure. AB 2006 is pending in the Senate Energy, Utilities and Communications Committee where a hearing is likely soon. **Staff:** Yvonne

# Legislative Bill Action

Hunter; **Status:** SenEnUt&Comm; **Position:** Support.

**SB 1477 (Sher). Wetlands.** The League continues to oppose SB 1477 unless it is amended to narrow it to only address a recent court decision regarding federal regulation of wetlands. Although the author proposed a mock-up of the bill with new amendments in the Assembly Water Parks and Wildlife Committee, the committee chair would not permit the bill to be heard in the mocked up form because of the lateness of the amendments. It is also unclear whether or not the amendments actually did narrow the bill as the opposition requested. The bill failed passage this week and the status of the request for reconsideration is uncertain.

The problem with SB 1477 is that it would grant authority to the State Water Resources Control Board to regulate the issue of wetlands far beyond the so-called regulatory gap that has arisen as a result of a court decision that restricts the ability of the federal Army Corps of Engineers to address wetlands issues. If the bill is amended to limit it to actually filling the regulatory gap, the League would remove its opposition. **Staff:** Yvonne Hunter; **Status:** Reconsideration granted in AsWP&Wild; **Position:** Oppose Unless Amended.

**AB 2404 (Steinberg). Gender Equity in Local Recreation Programs.** AB 2404 would prohibit city, county and special district recreation programs from discriminating in the provision of recreation opportunities based upon gender – that is, whether the participant is a girl or boy. As amended in May, it would no longer require local agencies to provide extensive reporting information to the state, but would authorize individuals to file suit based upon gender discrimination and would spell out the criteria for assessing the validity of the suits.

The League's Community Services Policy Committee discussed the bill at its recent meeting. Based upon an analysis of the bill to evaluate how it relates to existing law regarding a local agency's legal obligations for gender equity in recreation programs, the Community Services Policy Committee is recommending to the League's Board of Directors that the League take a neutral position on AB 2404. This is

because, according to the research conducted, the bill is consistent with current law and nothing in the bill expands the requirements on cities for gender equity or creates new causes of action. The League will be seeking a few technical clarifying amendments. AB 2404 passed the Senate Judiciary Committee this week. **Staff:** Yvonne Hunter; **Status:** SenFir; **Position:** Neutral.

**SB 494 (Escutia). Medi-Cal Liens. Insurance.** SB 494 passed the Assembly Judiciary Committee this week. If enacted, this measure could result in higher insurance costs to public agencies, as it would enable Medi-Cal patients to sue and recover the medical costs above the Medi-Cal rates actually billed by the hospital provider. The bill would predetermine the outcome of an important court case, *Parnell*, and would establish a precedent that could be extended by subsequent legislation to all insured plaintiffs. Cities that are concerned about legislation that promotes lawsuits and that could increase insurance rates should write their Assembly Members and ask for a no vote on SB 494. **Staff:** Yvonne Hunter; **Status:** Pending on AsmFir; **Position:** Oppose; **League**

**SB 493 (Cedillo). Hazardous Materials: Liability.** Modeling the classic elements of Greek tragedy – complete with choruses of supporters and opponents – SB 493 (Cedillo) died a painful death late Thursday afternoon in the Assembly Environmental Safety and Toxic Materials Committee. While it actually did not fail passage, the bill is in reality dead, since the author will not proceed with it, given the hostile amendments placed into it by the committee over the author's objections.

SB 493 would enact a new process to encourage rehabilitation and development of contaminated brownfields by providing prospective purchasers who did not cause the contamination immunity for future clean up if they met a specific series of criteria and requirements established in the bill. The program would be administered by either the State Water Board or the State Department of Toxic Substances Control.

After more than six months of negotiations between the bill's sponsors (a coalition of home

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## Legislative Bill Action

builders), the administration (which supports the bill), the environmental community (which opposes it) and the League and the California Redevelopment Association (both of which support the bill), the bill's future came down to a last minute, intensive 48 hour negotiation marathon. Senator Cedillo correctly described the choice before the committee as between "progressive change and the status quo."

When the bill was initially heard Tuesday of this week in the Assembly Environmental Safety and Toxic Materials Committee, the committee declined the author's request for an "up or down" vote. Instead it delayed the vote for two days in order to permit negotiations to continue on the remaining four serious issues for which there was no agreement between the supporters and opposition and the various minor issues, which likely could be resolved. During the negotiations in which the League participated, which were skillfully facilitated by representatives from the Speaker's office, two of the four major issues were resolved, as were several minor issues.

However, there were still two key, open issues when the committee met again on Thursday. After several complicated procedural moves involving the attendance and interpretative guidance of the Chief Clerk of the Assembly, the committee finally granted the author's request to vote the bill "up or down". When that vote failed the committee then amended the bill over the author's objections. The amendment, handed out at the committee hearing, would essentially gut the bill to include only intent language and appropriate \$25 million to pay for brownfields cleanup costs. It is unclear from what account the funding will come and how it would be used. The intent of this procedure, according to committee members who supported it, was to permit the bill to move ahead and negotiations to continue in an attempt to resolve the remaining issues. After the hearing, however, the author's staff indicated that this procedure is not acceptable and that the author is dropping the bill.

"We will try again next year", the author's staff indicated. The League thanks Senator Cedillo and his staff for their outstanding work on this issue and for responding to the various issues raised by the League.

While SB 493 does appear dead, the issue of brownfields development remains alive this legislative session. Whether action on other brownfields bills will proceed and be successful remains to be seen. We'll keep you posted. **Staff:** Yvonne Hunter; **Status:** Dead; **Position:** Support.

### PUBLIC SAFETY

**AB 1814 (Oropesa). Grand Theft.** AB 1814 provides that every person who feloniously steals, takes, or carries away cargo of another is guilty of grand theft. AB 1814 also defines "cargo" as "any goods, wares, products, or manufactured merchandise that has been loaded into a trailer, rail car, or cargo container, awaiting or in transit, valued at more than \$400." AB 1814 will help affected law enforcement agencies accurately track this type of grand theft, and will assist in providing the necessary resources to the law enforcement agencies that protect our ports. **Staff:** Liisa Lawson; **Status:** SenApps, Hrg. June 28<sup>th</sup>; **Position:** Support.

**AB 1884 (Spitzer). Privacy Offenses. Immunity.** AB 1884 adds city attorney prosecutors to the designated list of law enforcement officers permitted to record or overhear communications when investigating violations of consumer protection laws. The ability to record confidential communications is an invaluable tool. Delays in investigations can be lost opportunities to conduct and gather important evidence. The net result is that public safety is unnecessarily jeopardized. **Staff:** Liisa Lawson, **Status:** SenFlr, **Position:** Support.

**AB 1907 (Pacheco). Arson.** AB 1907 would extend the repeal date for provisions relating to property damage as a result of aggravated arson until January 1, 2010.

Arson continues to be a major problem in California, which severely impacts the safety of our communities, including law enforcement, firefighters and other emergency responder personnel. AB 1907 ensures that arson suspects will be prosecuted, thus sending a clear message that engaging in arson will result in severe penalties and restitution. **Staff:** Liisa Lawson; **Status:** SenFlr; **Position:** Support.

# Legislative Bill Action

# BUDGET from page 1 .....

**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. 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:** To Gov; **Position:** Support.

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## WANT TO SEND A LETTER IN SUPPORT OF A LEAGUE POSITION? HERE'S WHO TO CALL:

### ASSEMBLY WATER, PARKS AND WILDLIFE:

2141 Canciamilla (Chair), 4164 Leslie (Vice Chair), 2137 Berg, 5135 Bermudez, 2158 Daucher, 3160 Frommer, 2003 Goldberg, 2174 S. Horton, 6027 Keene, 5150 Kehoe, 4146 Lowenthal, 5155 Matthews, 2160 Parra, 3126 Pavley, Plescia, 2111 Spitzer, 6012 Wolk. Consultant: Jeff Volberg. Secretary: Deborah Lott. 1020 N St, Rm 160; Ph: 319-2096, FAX: 319-2196.

### SENATE APPROPRIATIONS:

5050 Alpert (Chair), 3076 Battin (Vice Chair), 3056 Aanestad, 2068 Ashburn, 4040 Bowen, 205 Burton, 5080 Escutia, 3063 Johnson, 5066 Kamette, 3086 Machado, 4082 Murray, 5087 Poochigian, and 2032 Speier. Staff Director Anne Maitland. Deputy Director Bob Franzoia. Consultants: Maureen Ortiz, George Cate, Karen French, Mariam Barcellona Ingenito, Nora Lynn, and Lisa Matocq. Assistant: Sally Ann Romo. Ph: 445-3284; Rm 2206.

### SENATE ENERGY, UTILITIES AND COMMUNICATIONS:

4040 Bowen (Chair), 4048 Morrow (Vice Chair), 4035 Alarcon, 3076 Battin, 2080 Dunn, 3070 McClintock, 4082 Murray, 2082 Sher, and 5108 Vasconcellos. Chief Consultant: Randy Chinn. Consultant: Lawrence Lingbloom. Assistant: Melanie B. Gutierrez. PH; 445-9764, FX 445-1389, Rm 4040.

The local government agreement negotiated with the governor is one of the open issues in the budget, along with the governor's education package and questions about restructuring the pension obligation bonds from last year along with other pension reforms.

Concerns about the local government package reside primarily among some members of the Democratic caucus. These appear focused on: (1) the loss of legislative authority to deal with fiscal emergencies and change the revenue mixes of local governments; (2) placing the VLF cap into the constitution as opposed to statute where it could be raised later; and (3) suspending mandates as opposed to repealing them if the state does not keep its financial commitments.

In the discussions with legislative staff the League has explained the reasoning behind the package and attempted to address the concerns where possible within the framework of our agreement with the governor and our original initiative. Staff from the Governor's Office is also playing a role in these discussions. We understand from the governor's staff that in meetings with legislative leaders the governor is continuing to express his commitment to the local government package that he negotiated with the LOCAL coalition.

Hundreds of city officials and LOCAL coalition partners have contacted their legislators over the past two to three weeks, urging them to press for quick adoption of the Local Government Budget Agreement. The League and our coalition partners are preparing to move forward quickly with various grassroots activities, should those be needed, including ramping up the campaign for the already qualified LOCAL initiative. The League will distribute to city officials additional information on budget developments over the weekend if more news becomes available.

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## LEAGUE FIRE CHIEF APPOINTED TO STATE FIRE MARSHALL POSITION

Governor Schwarzenegger today announced the appointment of League Fire Chief Department Immediate Past President and Palo Alto Fire Chief Ruben Grijalva to the position of State Fire Marshall. The governor cites Chief Grijalva's diverse experience and passion for service as reasons he is confident that California's wildlands and fire protection needs are in able hands.

"I am grateful to have been asked to serve as state fire marshal in Governor Schwarzenegger's administration," said Grijalva. "It has been my life's work to protect life and property through fire prevention and education, and I am excited to have the opportunity to serve the people of California in this capacity."

Chief Grijalva has served as the fire chief for the City of Palo Alto Fire Department since 1994, where he also previously served as assistant fire chief from 1990 to 1994. Grijalva served in the Department of Public Safety for the City of Sunnyvale from 1976 to 1990. During this period he held positions in both the police and fire divisions before serving as fire marshal from 1985 to 1990. Grijalva is past president of the Fire Chiefs Department for the League of California Cities, past president of the Santa Clara County Fire Chiefs Association and a former member of the Uniform Fire Code Committee for the International Fire Code Institute. In addition to his involvement with the League, Chief Grijalva is also a member of the California Fire Chiefs Association and the International Association of Fire Chiefs.

As part of CDF, the Office of the State Fire Marshal (OSFM) supports the CDF mission to protect life and property through fire prevention engineering programs, law and code enforcement and education. The OSFM provides for fire prevention by enforcing fire-related laws in state-owned or operated buildings, investigating arson fires in California, licensing those who inspect and service fire protection systems, approving fireworks as safe and sane for use in California, regulating the use of chemical flame retardants, evaluating building materials against fire safety standards, regulating hazardous liquid pipelines, and tracking incident statistics for local and state government emergency response agencies.

**Revised Edition**

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***Deadlines, Procedures and  
Common Terms***

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July 2, 2004  
Issue #26-2004

### CONSTITUTIONAL PROTECTION FOR LOCAL REVENUES STILL UNCERTAIN

## Hot Bills

### Act Now

■ ■ ■ Please contact  
■ ■ ■ both your Sena-  
■ ■ ■ tor and Assembly  
■ ■ ■ Member and ask  
■ ■ ■ them to support  
■ ■ ■ bringing up the  
■ ■ ■ governor's  
■ ■ ■ original local  
■ ■ ■ government  
■ ■ ■ package for a  
■ ■ ■ vote.

While the final chapter has yet to be written, as of this writing a proposed revision to the Local Government Budget Agreement, ACA 9, has been stalled on the Senate Floor. Instead of a floor vote the Senate Constitutional Amendments Committee was expected to hear the bill late today, along with the Local Government Agreement negotiated with Governor Schwarzenegger. Both bills were expected to fail passage, eliminating hope of adopting a budget over the weekend. By late afternoon, however, the committee had not met, and both the Assembly and Senate recessed for the weekend with plans to reconvene if needed upon call by Speaker Nunez and Senate President Pro Tempore Burton.

Language for ACA 9 was released late yesterday, prompting mass confusion among legislators about the content of the bill and whether its provisions would be acceptable to local government. Strong grassroots and traditional lobbying today by city officials, the League, our LOCAL coalition partners, and contract lobbyists, legislators quickly figured out that this legislation didn't deserve their support.

The constitutional amendment proposal was released late Thursday, prompting mass confusion among legislators about the content of the bill. Analysis by the League and our LOCAL partners revealed that the measure falls far short of the agreement negotiated with the Governor. The analysis identified the following concerns:

- "Constitutional protection" under this proposal would be a fiction.
- √ Property tax "protections could be easily suspended. *For more, see page 6.*

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

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9.A-12

## TRANSITIONS

League Board Member **Ron Bates** has resigned from the Los Alamitos City Council to pursue personal and professional opportunities. In addition to his council duties, Ron has been very involved with League and other local government organizations over many years. He has served as League President, President of the Orange County Division of the League, President of the Southern California Association of Governments, President of the Association of Metropolitan Planning Organizations and as a board member of the National League of Cities. His contributions to the League of California cities will be greatly missed.

**San Jose Vice Mayor Pat Dando** and **Long Beach Mayor Beverly O'Neill** are among legislators, business executives, researchers and other public officials appointed by Governor Schwarzenegger to the California Performance Review Commission. The group will conduct statewide hearings on efficiency and cost saving recommendations now being prepared by state officials and other commission members. Dando is a current member of the League's board of directors; O'Neill is a past president. Congratulations to both members!

## E-WASTE RECYCLING FEE COLLECTIONS POSTPONED TO NOVEMBER

The California Integrated Waste Management Board (CIWMB) sent out an email this week to "urgently" announce to sellers of certain electronic devices that the start date for the collection of California's Electronic Waste Recycling Fee enacted by last year's SB 20 (Sher) has been postponed until November 1, 2004. This postponement has been anticipated for several months.

The Board's announcement states that due "to difficulties in establishing an efficient fee collection and remittal system for the Electronic Waste Recycling Fee, the Legislature passed AB 901 (Jackson) as an urgency measure and the Governor signed the bill into law on June 30, 2004. Its provisions go into effect immediately. AB 901 postpones the start date of the fee collection from July 1 until November 1, 2004. All other provisions of SB 20 and subsequent emergency regulations remain in effect." Additional technical and other changes to SB 20 are contained in SB 50 (Sher), which is moving through the Legislature.

Details about the fee extension may be found at Additional details can be found at: [www.ciwmb.ca.gov](http://www.ciwmb.ca.gov).

### NEW ON THE LEAGUE WEBSITE...

The League is constantly looking for ways to improve access to our website, and provide relevant, and up-to-date information on a wide range of issues affecting cities.

#### Shortcuts

Shortcuts provide an easy way to go directly to a page on the League's site. Here are just a few of them:

Advocacy Center: [www.cacities.org/advocacycenter](http://www.cacities.org/advocacycenter)  
Annual Conference: [www.cacities.org/ac](http://www.cacities.org/ac)  
Budget Information: [www.cacities.org/budget](http://www.cacities.org/budget)  
LeaguE-Campus: [www.cacities.org/ecampus](http://www.cacities.org/ecampus)  
Legislative Tracking: [www.cacities.org/legtracking](http://www.cacities.org/legtracking)  
Priority Focus: [www.cacities.org/priorityfocus](http://www.cacities.org/priorityfocus)

#### City Search

A complete listing of California city websites is available in list form and in a searchable database at [www.cacities.org/cityweb](http://www.cacities.org/cityweb), or by visiting the Information Resources section of the League website.

## LEAGUE PRESIDENT APPOINTS BOARD OF DIRECTORS NOMINATING COMMITTEE

Ron Loveridge, President and Mayor, Riverside, has appointed the 2004 Board of Directors Nominating Committee. Appointed to the committee and charged with the responsibility of nominating League officers and at-large directors, are: Chair, Jim Madaffer, Council Member, San Diego; Billy Wallen, Vice Mayor, Turlock; Ana Ventura Phares, Council Member Watsonville; Mike Segala, Vice Mayor, Suisun City; Bev Perry, Council Member, Brea; Robert Jehn, Council Member, Cloverdale; Sandra Hilliard, Vice Mayor, Yuba City; Art Madrid, Mayor, Las Mesa; and Ray Castillo, Mayor, El Centro.

The Nominating Committee will meet on July 30 before the July 30-31 Board meeting, to review the applications of potential nominees. The committee's recommendations will be announced during the Opening Plenary Session of the League's Annual Conference on September 17, 2004.

## INTERESTED IN SERVING ON THE LEAGUE BOARD OF DIRECTORS?

The League of California Cities welcomes nominations from elected officials interested in serving in **five** at-large positions (two-year term), or Second Vice President (one-year term). All nominees for Second Vice President must have previously served on the Board of Directors.

If you are interested in submitting your name (or another elected official's name) for nomination to the League Board of Directors, please provide the information requested on the Nomination Form, along with a bio and letter requesting consideration, to the League's Sacramento headquarters on or before end of business on **Wednesday, July 14, 2004**. Nomination materials can be found on the League's website at [www.cacities.org](http://www.cacities.org) or can be obtained by contacting League Staff Mimi Sharpe at 916/658-8232 or [sharpem@cacities.org](mailto:sharpem@cacities.org).

## HOUSE AND SENATE PASS ONE-MONTH EXTENSION OF TEA-21

On June 23, 2004, the House of Representatives and the Senate voted in favor of extending the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)-the federal law authorizing highway and transit expenditures nationwide until July 31, 2004 in order to continue to work on the multi-year reauthorization. Even with the extension, House and Senate conferees will have less than three weeks left to reconcile the House and Senate reauthorization measures before the August recess begins on July 23.

The effort to renew the expired TEA-21 with a 6-year reauthorization proposal has been delayed primarily due to disagreement over the overall cost of the rewrite. The House and Senate approved reauthorization bill totaling \$283 billion and \$318 billion respectively. Both have been deemed too expensive by Administration officials. The Administration has promoted a \$256 billion renewal alternative and object to any increases to the federal budget. Transportation leaders in Congress maintain that higher investments are critical to improving safety and reducing congestion on roads and highways. For additional information contact Genevieve Morelos at 916.658.8254.

### REMINDER: FILL OUT THE FUTURE OF PUBLIC FINANCE SURVEY!

City finance officers are asked to please fill out the League's survey on the *Future of Public Finance*. The survey is being conducted in conjunction with the National League of Cities and the Public Policy Institute of California. It was mailed out in early June and the due date has now been extended to **July 16**. An additional copy of the survey has recently been mailed out to you. If you have questions, please contact Chris Hoene, Research Manager at NLC, at [hoene@nlc.org](mailto:hoene@nlc.org) or (202) 626-3172. **Thanks for your help!**

9.A-14

## RECENT LEAGUE FRIEND-OF-THE-COURT FILINGS

The League would like to provide special thanks to the individuals listed below, who wrote friend-of-the-court letters or briefs, for their volunteer efforts on behalf of the League. Following guideline changes relating to the League's friend-of-the-court participation that were adopted in 2002, typically briefs are filed on behalf of the League rather than on behalf of joining cities.

League action and a brief summary of the case appear below. Copies of the filings are available at: [www.cacities.org/recentfilings](http://www.cacities.org/recentfilings).

### Access to Peace Officer Personnel Records

The League filed a friend-of-the-court letter seeking depublication of a court of appeal opinion concluding that the Attorney General may challenge the sufficiency of a motion requesting access to the personnel records of municipal peace officers, known as a *Pitchess* motion. The League argues that an attorney representing the municipality, as the custodian of the personnel records and representative of the police officer, should have had the opportunity to challenge the request, not the Attorney General.

The League thanks **Kim Westhoff, Deputy City Attorney, City of Los Angeles** for writing the letter on behalf of the League. The name of the case is *People v. Johnson*, 118 Cal.App.4th 292, 12 Cal.Rptr.3d 885 (4<sup>th</sup> Dist. May 4, 2004).

### Local Zoning Authority and Siting Telecommunication Antennas

The League filed a friend-of-the-court brief with the United States Supreme Court urging the Supreme Court to hear a case involving whether public agencies may regulate the use of private property to construct wireless facilities, and whether they are liable for attorney fees if they fail to issue permits. The Ninth Circuit Court of Appeals concluded the ability of local agencies to regulate in this area is preempted by the Telecommunications Act, and that they may be liable for attorneys fees.

The League thanks **William Sanders, Deputy City Attorney, City of San Francisco**, for writing the brief on behalf of the League, CSAC,

and state chapters of the National Association of Telecommunications Officers & Advisors. The name of the case is *Abrams v. City of Rancho Palos Verdes*, 354 F.3d 1094 (9<sup>th</sup> Cir. Jan. 15, 2004).

### Drug and Gang Related Activity on Rental Property and "No Fault" Evictions

The League filed a friend-of-the-court brief with the court of appeal at the request of the court urging the court to uphold a city ordinance that empowers the city and landlords with the ability to institute eviction proceedings against tenants if their rental unit is being used for illegal drug or gang activity.

The League thanks **Matt Gorman with Alvarez-Glasman & Colvin and Arnold Alvarez-Glasman, City Attorney, Bell Gardens, Montebello, Pomona, South El Monte and West Covina** for writing the brief on behalf of the League. The name of the case is *Cook v. City of Buena Park*, No. G031326 (4<sup>th</sup> Dist. Div. 3).

### Distribution of Free Tobacco Products

The League filed a friend-of-the-court brief urging the California Supreme court to uphold a court of appeal decision concluding that a tobacco company's distribution of free cigarettes at public events violated state law, and was subject to fines. The brief argues that federal law regulates the "promotion" of tobacco product, and state law may regulate distribution.

The League thanks **Hannah Bentley with Colantuono & Levin** for writing the brief on behalf of the League, CSAC and the Tobacco Assistance Legal Center. The name of the case is *People v. R.J. Reynolds Tobacco Company*, No S121009.

### Disclosure of Project End User Not Required Under CEQA

The League filed a friend-of-the-court brief with the court of appeal urging the court to uphold a lower court decision concluding that the disclosure or identity of the end user of a project is not required because it does not impact the environmental

*Continued on Page 7*

**NEW LEAGUE PUBLICATION: *COUNSEL AND COUNCIL: A GUIDE FOR BUILDING A PRODUCTIVE EMPLOYMENT RELATIONSHIP***

A new League publication is expected to become a must-have for city council members and city attorneys. *Counsel and Council* contains essential basic information defining the structure of the employment relationship between the city attorney and city council, and offers tips on how to build a productive employment relationship. The handbook serves as a starting point for discussions about how the relationship should be viewed and offers practical suggestions on structuring the employment relationship in an effort to achieve both parties' objectives and expectations.

*Counsel and Council* evolved from a March 2001 survey given to all California city attorneys, both contract and in-house. These results explore the basic aspects of the relationship between a city attorney and city council.

**Topics Include**

- ✓ The nature of the employment relationship; the recruitment and selection of a city attorney and defining his or her role;
- ✓ Suggested employment agreement provisions for both contract and in-house city attorneys;
- ✓ Maintaining a viable employment relationship;
- ✓ Effectuating an amicable and enforceable conclusion to the employment relationship.

*Counsel and Council* is posted on the League's website at [www.cacities.org/attorneys](http://www.cacities.org/attorneys) and is also available through the League's CityBooks bookstore by calling 916.658-8257. Visit the CityBooks Bookstore at [www.cacities.org/store](http://www.cacities.org/store) or call 916.658-8257 to order a copy or to get more information on League publications.

**HABITAT CONSERVATION GUIDE AVAILABLE ONLINE**

The Institute for Local Self Government is pleased to announce the publication of *Understanding the Habitat Conservation Planning Process in California: A Guidebook for Project and Regional Conservation Planning*. The guide is collaboration effort with the environmental planning firm of Jones and Stokes ([www.jonesandstokes.com](http://www.jonesandstokes.com))-which provided much of the background, expertise and graphics for the online publication.

The guide is now available on the Institute's website at [www.ilsq.org/habitat](http://www.ilsq.org/habitat).

Written for local officials, this handy and easy-to-read reference provides an overview of federal and California laws that protect threatened and endangered species. Compliance with these laws is an issue of growing concern for local officials throughout the state as California has more threatened and endangered species than any other state except Hawaii. As California continues to grow, pressure on endangered and threatened species will increase.

As a result, endangered species laws affect a wide variety of projects-from simple housing proposals to large regional planning efforts. By encouraging development projects to include measures to reduce the impact on wildlife, habitat conservation planning reconciles the goals of species protection and economic development.

The guide recommends approaches to both project planning and regional conservation planning where protected species could be adversely affected by private, local agency, and state agency actions. It also provides those who are involved in projects or planning efforts affecting protected species:

- an understanding of the regulations and issues surrounding federal and California protected species, specifically focusing on the requirement to prepare a habitat conservation plan;
- advice and recommendations regarding best approaches to project planning and regional conservation planning for protected species; and
- numerous Internet links to statutes, regulations, forms and other resources.

The Institute is grateful to the authors, Paul Cylinder, Kenneth Bogdan, and David Zippin, all with Jones & Stokes and Associates, for authoring this guide.

9.A-16

**ACA 9 from page 1** .....

- ✓ VLF fees could be lowered below their current constitutionally determined values, with no backfill requirements.
- ✓ Bradley-Burns sales tax revenues could be reduced and the authority to raise sales tax would be shifted to the state (similar to the "triple-flip").
- Redevelopment Agencies are left unprotected from future ERAF shifts.
- There was no guarantee for VLF gap loan repayment.
- Reconfigures the allocation of cuts to special districts, shifting part of the cuts to city and county dependent special districts.
- VLF sales for property tax "swap" leaves local revenues unprotected.

By mid-day the governor's office had issued the following press statement reiterating his support for the Local Government Agreement he had negotiated in May with the LOCAL coalition:

*"Six weeks ago I stood proudly with the leaders of local government in California to announce that we had come to agreement on a plan for them to contribute \$1.3 billion to the state's general fund during this fiscal crisis, for assurances that the state will never be able to raid their coffers again.*

*"We are now two days into the new fiscal year without a budget. Passing the local government agreement that I, along with Democrat and Republican local officials throughout the state, support is the right solution to the current budget debate. I urge the legislature to pass this plan quickly."*

The League also remains in full support of the original agreement made with the administration on a local government finance package. This proposal gives the legislature \$2.6 billion in local government revenue over the next two years to support state programs in exchange for a November ballot measure to constitutionally protect local revenues in the future.

**Why Support the Original Agreement?**

- It has the support of the Administration.
- It has the fully support of local government.
- It has been fully vetted for well over two months.
- It is not a last-minute proposal riddled with errors and unintended consequences.

As noted above, the final chapter on this story has yet to be written. Updated information will be provided in the days ahead on the League's website, [www.cacities.org](http://www.cacities.org).

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**WHAT'S IN THE ORIGINAL AGREEMENT?**

- **VLF Reduction/New Property Taxes to Cities.** Lower the VLF to 0.65% from 2%, and provides property taxes to cities and counties to offset VLF backfill (less \$700 million for 2 years—\$350 million city and \$350 million county). With this swap, cities, beginning in 2006-07 will have more property tax than sales in the mix of revenues for the first time since before Proposition 13.
- **VLF Repayment.** Requires repayment in 2006-07 of 2003-04 VLF Backfill Loan (\$520 million back to cities).
- **No Future Tax Raids.** Protects city and county revenues from future revenue shifts of the property tax, sales tax, and the remaining VLF.
- **Mandate Reimbursements.** Requires payment of deferred mandate reimbursements to local government, beginning in 2006-07.
- **Suspension of Mandates.** Requires that failure to pay mandate reimbursements in timely way will trigger a suspension of law imposing mandate.

*Continued on Page 7*

**ORIGINAL AGREEMENT from page 6 . . . .**

- **Property Tax Backfill.** Guarantee payment of the property tax backfill to cities and counties due to the Prop. 57 "triple flip" (which suspended ¼ cent local sales tax).
- **Sales Tax Returned.** Guarantee that the Bradley-Burns sales tax is restored to the full rate when the Prop. 57 bonds are repaid.
- **No Property-Sales Tax Exchange.** Oppose addition of property-sales tax exchange.
- **Governor to Chair Campaign.** Governor advocates legislative approval of the proposed amendment and serves as chairman of the campaign to secure voter approval in November 2004.
- **LOCAL Initiative Still on Ballot.** The *Local Taxpayers and Public Safety Protection Act* remains on the November 2004 ballot in the event legislature does not approve "agreement". If legislative approval were secured, the League and the LOCAL Coalition would devote all of our efforts to passage of the new constitutional amendment.

**LEGAL from page 4 . . . . .**

assessment of a project pursuant to the California Environmental Quality Act. The court of appeal upheld the decision in an unpublished opinion. The League is filing a friend-of-the-court letter seeking partial publication of decision.

The League thanks **Donna Black** and **Michael Zischke** with **Morrison & Forrester** for writing the brief on behalf of the League, and **Donna Black** for writing the letter in support of partial publication on behalf of the League. The name of the case is *Maintain Our Desert Environment v. Town of Apple Valley*, No. E033904 (4<sup>th</sup> Dist., Div. 2).

To request League amicus assistance visit: [www.cacities.org/requestamicus](http://www.cacities.org/requestamicus). For more information about the League's Legal Advocacy Program visit: [www.cacities.org/legaladvocacy](http://www.cacities.org/legaladvocacy).

## Economic Development Handbook

### Economic Development, Business Growth & Decline, and The Strategic Planning Process

**NEW: A tool to help educate city  
officials about ways to tackle serious  
economic policy issues.**

Plus:

- Best practices and case studies
- Secrets for developing economic development success
- Tools for understanding and analyzing a community's economic base
- Developing and implementing a strategic economic development plan
- Benchmarking tools and tips on putting it altogether.

This publication is available from the League for \$15. There is a ten percent discount on orders of five or more. Questions? Contact League Publications at 916/658-8257 or order online at: [www.cacities.org/store](http://www.cacities.org/store).

**FOR LEGISLATORS' PHONE NUMBERS,  
ADDRESSES AND E-MAIL PLEASE SEE THE  
LEAGUE'S WEBSITE ([WWW.CACITIES.ORG/  
ADVOCACYCENTER](http://WWW.CACITIES.ORG/ADVOCACYCENTER)).**