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

November 19, 2004  
Issue #45-2004

### Hot Bills

#### Act Now

The legislature is in Final Recess and will adjourn on November 30. The 2005-06 Regular Session will convene on December 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).

### A POLITICAL ANALYSES OF 2004 CALIFORNIA STATE INITIATIVES

The elections of November 2004 provided some interesting insight into the minds of California voters and possibly a view of what might be expected in the coming months. For the most part, California mirrored many of the national trends in terms of increased turnout and a highly divided electorate. *For more see page 7.*

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### GOVERNOR APPOINTS NEW DIRECTOR OF FINANCE

Governor Schwarzenegger has announced the appointment of Tom Campbell, currently dean of the Haas School of Business at UC Berkeley, as the director of the Department of Finance. Campbell, 52, was a member of the California State Senate from 1993 to 1995 and a United States Congressman representing a district in the Silicon Valley from 1989 to 1993 and again from 1995 to 2001. *For more see page 2.*

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### NEWLY ANNOUNCED GUBERNATORIAL APPOINTMENTS

Governor Schwarzenegger has in the past two weeks announced numerous appointments to significant posts within state government. In addition to the appointment of Tom Campbell as director of finance (see article "Governor Appoints New Director of Finance"), the following appointments have been announced: *For more see page 5.*

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## TITLE V COMMUNITY PREVENTION GRANTS AVAILABLE

In December, the Board of Corrections (BOC) will release a competitive Request for Proposal (RFP) to disburse over \$1.9 million in federal funds to units of Local Government (counties, cities and Indian tribes) for the Title V Community Prevention Grants Program. The grant program supports collaborative, neighborhood-community juvenile delinquency prevention efforts. Activities eligible for funding through the program include, but are not limited to: mentoring programs; tutoring and basic skills instruction; conflict resolution and violence prevention curricula; life skills training; effective parenting training; family therapy and preservation programs; vocational/job training; nurse home visitation programs; peer counseling and mediation programs; child and adolescent mental health services; after-school educational and development programs; alcohol and substance abuse prevention services; and youth leadership development activities

Please visit <http://www.bdcorr.ca.gov/publications/TitleVBulletin11-12-04.pdf> for more information regarding grant eligibility as well as the BOC's RFP process.

For additional information, please contact Title V Coordinators Susan King ([sking@bdcorr.ca.gov](mailto:sking@bdcorr.ca.gov)) or Lynda Frost ([lfrost@bdcorr.ca.gov](mailto:lfrost@bdcorr.ca.gov)).

### ENROLL IN THE LEAGUE'S E-CAMPUS ONLINE LEARNING PROGRAM

The LeagueE-campus is currently offering several program courses designed specifically for city officials. Visit the LeagueE-Campus Website at [www.cacities.org/ecampus](http://www.cacities.org/ecampus) and view the current class listing. Enrollment is open and a free demo for each class is available to preview.

LeagueE-Campus enables you to access quality programs anytime, anywhere.

## DIRECTOR OF FINANCE from page 1 . . .

The stated mission of the Department of Finance is to serve as the Governor's chief policy advisor and to promote the responsible allocation of resources through the state's annual budget. Campbell replaces former finance director Donna Arduin.

In a press release announcing the appointment last week, Governor Schwarzenegger was quoted as saying, "Tom is a brilliant economist with intricate, first-hand knowledge of public and fiscal policy who shares my commitment to getting California's fiscal house back in order." Job creation was listed in the release as one of Campbell's top priorities as he assumes the post.

Campbell holds a Ph.D. in economics from the University of Chicago and a Juris Doctorate from Harvard Law school, where he served on the Board of Editors of the Harvard Law Review. Before assuming the deanship at the Haas School, he served for 19 years as professor of law at Stanford University. His experience also includes several years as director of the Bureau of Competition for the Federal Trade Commission.

## DID YOU MISS THE LEAGUE'S EXECUTIVE FORUM CONFERENCE LAST JULY?

If you missed the Executive Forum Conference last July in Monterey then you missed a lot! Available by popular demand is a CD of the Executive Forum covering the sessions and presentation materials. Included on the CD is a presentation by Governor Schwarzenegger. After the Legislature passed the state budget, the Governor came directly to the Executive Forum to personally thank local city officials for their strong support during budget negotiations, and to share in the historic milestone of achieving a constitutional measure to protect local government.

Highlights on the CD include the general sessions on ethics, leadership and several concurrent sessions - plus any presentation materials submitted to the League for the Executive Forum.

The CD is available from the League for only \$149.00, and provides an excellent opportunity to share this information with other staff cost effectively. To order, contact CityBooks at 916-658-8257 or order online at [www.cacities.org/store](http://www.cacities.org/store).

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## LEAGUE ANNOUNCES 2005 POLICY COMMITTEE SCHEDULE

The 2005 meeting schedule has been announced for League policy committees. The eight standing policy committees will meet on Thursdays and Fridays in January, April and June in northern and southern California airport locations. As is the tradition, policy committees that met on Thursdays in 2004 will meet on Fridays in 2005 and committees that met on Fridays in 2004 will likewise meet on Thursdays in 2005.

We understand that some city officials prefer to avoid attending meetings at LAX. Unfortunately, the League was unable to secure space at other southern California locations for the January meetings, thus necessitating the LAX location. The June meeting in southern California will be in Ontario. In addition, we have done our best to avoid conflicting policy committee meetings with those of other organizations and the League's own events. In most cases we were successful, but there may be one or two conflicts which are unavoidable due to the time, date and space constraints under which we are operating. We apologize for any inconvenience to city officials.

It is easy to become a member of a policy committee. First, decide what policy areas interest you and thus on which policy committee you wish to serve. Second, ask your Division or Department President to appoint you to that policy committee. Third, if those slots are already filled, ask the League President to appoint you to a committee.

If you wish a League Presidential appointment, please write or email the League President with your request. It is helpful if you include a brief background statement about yourself. And, be sure to indicate on which committee you wish to serve. League Presidential requests should be sent to the League's Sacramento office, attention Linda Hicks ([lhicks@cacities.org](mailto:lhicks@cacities.org)). (Please note that the League By-Laws provide that each Division has two appointments and each Department has one appointment. The League President may appoint 14 members to each policy committee.)

The exact dates and locations for the 2005 meetings are as follows:

### January 20 - 21, 2005 Radisson Hotel, LAX

Thursday, January 20, 2005  
Community Services  
Employee Relations  
Housing, Community & Econ. Dev.  
Public Safety

Friday, January 21, 2005  
Administrative Services  
Environmental Quality  
Revenue and Taxation  
Transp., Commun. & Public Works

### April 7 - 8, 2005 Doubletree Hotel, San Jose Airport

Thursday, April 7, 2005  
Community Services  
Employee Relations  
Housing, Community & Econ. Dev.  
Public Safety

Friday, April 8, 2005  
Administrative Services  
Environmental Quality  
Revenue and Taxation  
Transp., Commun. & Public Works

### June 23 - 24, 2005 Ontario Convention Center

Thursday, June 23, 2005  
Community Services  
Employee Relations  
Housing, Community & Econ. Dev.  
Public Safety

Friday, June 24, 2005  
Administrative Services  
Environmental Quality  
Revenue and Taxation  
Transp., Commun. & Public Works

Committees may also meet at the Annual Conference in San Francisco, October 6-8, depending upon the need. The date for that meeting has not yet been determined.

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## LEGAL ADVOCACY FRIEND-OF-THE-COURT FILINGS

Learn more about League friend-of-the-court action in appellate cases affecting California cities. A brief summary of the case and thanks to volunteer writers appear below.

### Absence of Licensure and Recovery

May a contractor that had a lapse in licensure for a period of work recover for any work completed on a project, or is the contractor just barred from recovering for the period of non-licensure? The court of appeal concluded that the contractor was only barred from recovering during the period of non-licensure. The League argued that any absence of or lapse of licensure during work for a public work project barred any recovery for work completed. **Kimberly Hall Barlow, Jones & Mayer**, wrote a friend-of-the-court brief on behalf of the League to the California Supreme Court.

The name of the case is *MW Erectors v. Niederhauser Ornamental and Metal Works Company, Inc.* No. S123328 rev. granted (May 12, 2004), previously published at 115 Cal. App. 4<sup>th</sup> 512, 9 Cal. Rptr. 3d 351 (Jan. 30, 2004).

### Attorneys' Fees and the Telecommunications Act

The United States Supreme Court recently agreed to hear a case involving whether a local government may be required to pay damages and attorneys fees for violations of the Telecommunications Act of 1996 relating to the siting of wireless facilities even when good faith efforts to comply with the statute have been made. The district court denied the availability of attorneys' fees, and the Ninth Circuit reversed. **Roy Englert, with Robbins Russell, Englert, Orseck & Untereiner & James Horwood, Spiegel & McDiarmid** wrote a friend-of-the-court brief on behalf of the League to the U.S. Supreme Court.

The name of the case is *Abrams v. City of Rancho Palos Verdes*, 354 F.3d 1094 (9<sup>th</sup> Cir. Aug. 7, 2003), cert. granted (U.S. Sep. 28, 2004) (No. 03-1601).

### Inverse Condemnation and Valuation

This case involves undeveloped property owned by a resident, and the city's alleged duty to maintain a portion of the property as a public street. The trial court concluded that the city is liable for the fair market value of the property with access provided by maintenance of a road, as well as the cost of the road. The League weighed in on the issues of what liability a city has to maintain roads that have not been adopted into the city street system by the governing body, and whether a public entity may be ordered to pay for the enhanced value of the entire property, rather than simply the cost of the road construction associated with the property. **Phil Kohn, City Attorney, Laguna Beach**, wrote a friend-of-the-court brief on behalf of the League to the court of appeal.

The name of the case is *North Pacifica LLC v. City of Pacifica*, No. A104951 (1<sup>st</sup> Dist.).

### Limitations to Challenging EIRs

The League sought publication of a favorable court of appeal opinion to cities that addresses the scope of review of a supplemental Environmental Impact Report (EIR) or similar document prepared pursuant to court order in a case arising under the California Environmental Quality Act (CEQA). In such cases where the court has found the EIR prepared for a project to be inadequate under CEQA, but the problem and required correction are narrowly focused, the court concludes that the scope of review of the revised EIR is limited to the narrow scope of the revision ordered by the court. **Jennifer Henning, Litigation Counsel, CSAC**, wrote a friend-of-the-court letter supporting publication on behalf of the League and CSAC to the court of appeal.

The name of the case is *Riverwatch v. County of San Diego*, No. D042430, currently unpublished (4<sup>th</sup> Dist. Div. 1, Oct. 25, 2004).

### Ethical Screens from Conflicts of Interest

A court of appeal concluded that an attorney in a public agency who is disqualified from representing the city in a public matter does not disqualify the entire

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public office from representation when appropriate steps are taken by the public agency office to construct ethical walls separating the disqualified attorney from the matter involving the public office. The League opposed efforts to depublish the favorable opinion to cities. **League Staff**, wrote a friend-of-the-court letter opposing depublishing on behalf of the League to the court of appeal.

The name of the case is *City of Santa Barbara v. Superior Court (Stenson)*, 122 Cal.App.4th 17, 18 Cal.Rptr.3d 403 (Sept. 7, 2004, 4th Dist. Div. 3).

Copies of recent filings are available at: [www.cacities.org/recentfilings](http://www.cacities.org/recentfilings).

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.

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)

**LEAVING CITY OFFICE? RETIRING?**

The League wants to stay in touch! Just because you are leaving your position with the city doesn't mean you stop caring about or wanting to be involved in city issues. Keep abreast of developments affecting cities and the League by becoming part of the League's alumni group. Members will receive periodic updates on city issues and League activities. This is the League's way of saying "thank you" for your public service—there is no fee for this service.

To join, go to [www.cacities.org/alumni](http://www.cacities.org/alumni) or send your contact information to [dharrison@cacities.org](mailto:dharrison@cacities.org).

- **Terry Tamminen**, of Santa Monica, has been appointed as the **Governor's cabinet secretary**. Tamminen has a diverse range of experience giving him expertise in business, farming, education, non-profit management, the environment, arts and government. Since November 2003, he has served as a member of the Governor's cabinet as the secretary of the California Environmental Protection Agency. Prior to that, he served as the executive director of the Environment Now Foundation in Santa Monica. Tamminen attended California State University, Northridge and is a Coast Guard licensed ship captain. This position does not require Senate confirmation.

- **Patrick Henning**, of Sacramento, has been appointed as **director of the Employment Development Department (EDD)**. Henning has more than 34 years experience in the field of labor relations and labor law. For the past 17 years he has been the key labor policy consultant to the California Legislature, most recently serving as the staff director of the Senate Labor and Industrial Relations Committee. Henning earned a Bachelor of Arts in Philosophy from Catholic University in Washington, D.C. This position requires Senate confirmation.

- **Joan Borucki**, of Sacramento, has been appointed as **director of the Department of Motor Vehicles**. She has more than 24 years of experience working within state government on transportation issues. Most recently she served as a team leader for the California Performance Review. Prior to working with the Performance Review, Borucki served for nearly two years as chief deputy director of the California Transportation Commission. Borucki earned a master's degree in city and regional planning from Rutgers University and a Bachelor of Arts in urban planning and political science from Rutgers College. This position requires Senate confirmation.

- **Philippe Auclair**, of Walnut Creek, has been appointed **advisor on policy and planning for the California Public Utilities Commission**. Since 2001 he has served as manager of market and regulatory affairs at Mirant Technologies Inc. and the Mirant representative to the Public Utilities Commission. Auclair previously served as a regula-

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tory analyst for the Public Utilities Commission and as the Commission's advisory member for the Power Exchange Board of Governors. This position does not require Senate confirmation.

- **Linda Cabatic**, of Sacramento, has been appointed **chief deputy director of the Department of General Services**. She most recently served as chief counsel for the Office of the Secretary of State and prior to that was deputy attorney general in the Attorney General's Office. This position does not require Senate confirmation.

- **Loretta Doon**, of Belmont, has been appointed to the **State Lottery Commission**. She has been the associate executive director of the California Teachers Association since 1979. Doon is a certified public accountant and a member of the Council of the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants. This position requires Senate confirmation.

- **Karin Fish**, of Lincoln, has been appointed **assistant secretary of commerce and trade programs for the Business, Transportation and Housing Agency**. She has more than 23 years of experience in state government, most recently serving as chief of contracts, grants and loans for the Trade and Commerce Agency. This position does not require Senate confirmation.

- **Lilian Shek**, of Sacramento, has been appointed to the **Public Employment Relations Board**. She has served as an administrative law judge with the Unemployment Insurance Appeals Board since 1992 and previously owned and operated law firms representing clients in appellate practice, business and real estate transactions, and personal injury litigation. This position requires Senate confirmation.

- **Barbara Sheldon**, of Carmichael, has been appointed **chief counsel for the Office of the Inspector General**. Since 2001 she has served as a deputy attorney general in the Health, Education and Welfare Section of the Office of the Attorney General. Prior to that, Sheldon served as supervising counsel for the Department of Corrections for

three years. This position does not require Senate confirmation.

- **David Titus**, of Latrobe, has been appointed deputy director of legislation for the **Department of Forestry and Fire Protection**. He has served as chief of staff to Senator Rico Oller since 1997. This position does not require Senate confirmation.

More information on each of the appointed individuals is available in the "Press Room" (<http://www.governor.ca.gov>) of the Governor's website.

**DON'T MISS THE DECEMBER ISSUE OF WESTERN CITY MAGAZINE!**

Contents include:

- League President Pat Eklund's reflections on the League's accomplishments in 2004 and priorities for 2005;
- Online Ethics Resources for Local Officials;
- Best Practices for Promoting Good Relationships Between Your City Council and Staff;
- The Ethics of Council-Staff Teamwork;
- 2004 Annual Conference Review: "United We Win";
- And more!

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**INITIATIVES from page 1** .....

As has been typical in the state for nearly a decade, Californians have demonstrated a propensity to increase tax burdens and bond indebtedness when they are faced with measures they feel should be given priority, exhibited this year with measures concerning Mental Health, Stem Cell research and Children's Hospitals.

Slight voter advantages were also given to measures with a "pro-business" slant – a tort reform measure was passed and mandatory health insurance for some employers was narrowly defeated. While California's economy hasn't suffered as much as other regions of the country, it is likely that the discourse of the anemic economy played into voters concerns about economic sluggishness.

For the first time in recent memory, there was no net change in either the California State Assembly or Senate. While this can largely be attributed to the strict partisan gerrymandering we have been dealing with over the past two years, this uncanny event is particularly peculiar given the active involvement of Governor Schwarzenegger in legislative contests. In fact, the Governor's success and political coattails (or lack thereof) provide the most insight into what we are likely to see in terms of a strategy for the Governor going forward.

Governor Schwarzenegger took an unprecedented amount of risk in the 2004 elections. By placing his name on 12 different initiatives and a host of Republican candidates, the Governor expended a significant amount of political capital. The results of November 2 were mixed in terms of his success. The failure to unseat any incumbents and the inability to pick up any open seats for Republicans are likely to allay fears of many Democrats that 'crossing this Governor' are akin to a political kiss of death.

During the budget negotiations, Governor Schwarzenegger began to threaten legislators who did not support his measures by campaigning in their district. By many accounts, this active involvement by such a high profile Governor was

one of his main points of leverage with legislators in marginal districts.

Of the 12 measures where the Governor lent his name—he won 10 of them. This is unprecedented for a California Governor whose records on statewide measures are usually mixed at best. Most instructive was the Governor's support of the "No on 66" campaign (reform of "three strikes" in felony convictions). The proposition 66 campaign enjoyed significant support in all statewide public polls for six months prior to the election. In early October, Governor Schwarzenegger made public his opposition to the measure and proceeded to host a number of press conferences and fund a media campaign with his likeness. Subsequently, the measure's support levels dropped nearly 25 points in the span of one week.

Propositions 68 and 70 (Gaming measures) were also among the victories the Governor enjoyed. Nearly \$100 million was spent in support and opposition to both of these measures—the vast majority from card room and Indian interests. These two priorities for the Governor were evident throughout the election cycle, and although vastly outspent, Governor Schwarzenegger accomplished his goal of 'smashing' these measures – beating them soundly enough to not only claim victory but to also send a message to gaming and other interests seeking to best the Governor in the initiative arena.

Proposition 1A, another priority, also won a rather lopsided victory.

It's quite clear that while the Governor is popular and his opinions on ballot measures are well regarded, that sentiment is not translated to legislative campaigns. This is likely going to lead to less confrontational actions 'in district' and greater emphasis on initiative efforts as a means of leverage. The Governor's appeal as a populist is clearly relegated much more to the initiative arena than it is in legislative contests.