

FOCUS

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

August 5, 2005
Issue #31-2005

**The Legislature is
in recess until
August 15.**

LOCAL GOVERNMENTS DEFEAT MTBE 'JAILBREAK' IN FEDERAL ENERGY BILL

Taxpayers and local governments throughout the nation won a major victory last week, as Congress adopted an energy bill that rejected language that would have imposed a multi-billion dollar unfunded mandate on local governments by preventing municipalities from suing the producers of the gas additive, Methyl Tertiary Butyl Ether (MTBE), a major contaminate of drinking water. *For more, see Page 6.*

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FEDERAL BILLS SEEK TO LIMIT USE OF EMINENT DOMAIN

In response to the Supreme Court's *Kelo v. City of New London* decision, several measures have been introduced in Congress that would impact California cities' ability to complete important community revitalization projects. If signed into law, they all would restrict the use of federal funds on projects where eminent domain was used. *For more, see Page 6.*

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TELECOM REFORM HEATS UP BOARD APPROVES GUIDING PRINCIPLES

Members of Congress continued to introduce new bills impacting telecommunications, right up to the start of their recess on August 1. *For more, see Page 3.*

**WANT MORE DETAILS
ON BILLS?**

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

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MICHAEL GOLD NAMED EXECUTIVE DIRECTOR OF OC DIVISION

Michael Gold has been named executive director of the League's Orange County Division. Michael previously served as the division's deputy director, and will continue to serve as the League's regional representative for the Orange County division.

Gold replaces Janet Huston, who spent 10 years in the position before becoming as the director of communications and governmental affairs for the state's Department of Housing and Community Development.

The League congratulates Michael on his new position, and looks forward to working with him in his new role.

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IN MEMORIAM: TOM COOKE

Tom Cooke, mayor of Fortuna and board member of the League of California Cities, passed away on Saturday, July 30, at the home of his brother in Santa Cruz.

Mayor Cooke had been an active member of the League for a number of years. In addition to serving on the board of directors, he was also Vice-Chair of the League's Environmental Quality policy committee. The League expresses its heartfelt condolences to Mayor Cooke's family, friends and colleagues.

A memorial service for Mayor Cooke will be held at 2 p.m. on Sunday, August 14, at the River Lodge Conference Center, 1800 Riverwalk Drive, Fortuna. The family is setting up a memorial fund at Umpqua Bank, where donations can be made in lieu of flowers.

PAT DANDO MOVES TO SAN JOSE CHAMBER OF COMMERCE

Pat Dando, former Vice Mayor of San Jose and the current Director of Local Government Affairs for Gov. Schwarzenegger, announced this week that she has accepted the position of President and CEO of the San Jose Silicon Valley Chamber of Commerce.

Dando joined the governor's staff in February of this year, tasked with building and enhancing the governor's relationship with local governments. A former League board member and member of several National League of Cities committees, Dando brought extensive experience with local issues and a deep understanding of local officials' concerns about protecting their ability to provide quality local services.

"Pat has been an outstanding representative for the governor," said League President Pat Eklund, councilmember in the city of Novato. "She understands local issues, and she understands how to work with local governmental organizations like the League."

League Executive Director Chris McKenzie agreed.

"She's done a terrific job of keeping us informed about developments that could affect us, and creating the opportunities for local concerns to be heard," he said.

He continued: "It's been a pleasure to work with such a solid professional. I know she'll do an outstanding job for the San Jose Chamber of Commerce. I'm sure that the businesses and the cities in that area will benefit from her knowledge and insight."

2005 LEAGUE ANNUAL CONFERENCE: OCTOBER 5-8, MOSCONE CONVENTION CENTER, SAN FRANCISCO

Plan now to attend the League's 2005 Annual Conference this fall - the first time it has been in San Francisco since 1997.

Make you reservations through our online system at www.cacities.org/ac.

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Bills regarding franchises, municipal utilities and other issues have been introduced. None have seen formal legislative action, and it is too early to determine which of the many vehicles will become major items of discussion. But each touches upon an issue that is likely to be discussed once Congress begins in earnest with the rewrite of the 1996 Telecommunications Act.

It is unclear at this point what form, if any, telecommunications reform will take in California this year. The Legislature remains on recess, and meetings regarding telecommunications reform have been halted until the Legislature returns the week of August 15. Legislators then have only four weeks to finish their work before recessing on September 9.

In the meantime, the League's board of directors unanimously approved a set of broad telecommunications principles during their July 29-30 meeting in Monterey. These principles broadly outline the direction cities want to promote when discussing potential changes in telecommunications regulations and laws. (See "Telecommunications Principles," right.)

What You Can Do. The League remains an active participant in discussions surrounding telecommunications at the state and national levels. It's important for city officials to become educated about this issue so you can respond when we call upon you to advocate.

Get Smart About the Telecommunications Issue. Review the principles following this story. Get to know the details of your local franchises and utility user taxes — the process, the revenues, what these revenues support. Be prepared to let your representatives know how changes in this area could impact your citizens and the services you provide. We'll need your help as legislation evolves and our representatives are asked to take positions on issues of great concern to our cities.

Complete the League's Telecommunications Survey. Your city will also soon receive a Telecommunications Survey from the League. Please be sure to give it your immediate attention,

and fill it out and return it to us. The information we collect will allow the League to better understand and communicate to policy makers about the impacts to local services if franchise fees and Utility User Taxes (UUT's) are threatened.

TELECOMMUNICATIONS PRINCIPLES (ADOPTED BY THE LEAGUE BOARD OF DIRECTORS, JULY 30, 2005)

Introduction

Over the next five years, the transformation of telecommunications policy at the federal, state and local level will have a profound effect on the delivery of public services, the quality of life and the economic development of local communities in California. It is critical that the League of California Cities take a leadership role in the public debate over communications policy and that the League makes every effort to encourage local city officials to lead in the development of communications policies in their local communities. To establish a framework to accomplish these goals, the League sets forth the following base principles to begin this effort and debate:

- As landlords of the public right-of-way in our local communities, the League supports measures that recognize, strengthen and protect local control over the taxpayer's public right-of-way.
- Access to the public right-of-way by all companies providing communications should first require the acquisition of a franchise agreement from the appropriate public agency. The franchise agreement gives a regulatory uniformity for all competing companies.

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- Any communications company obtaining a franchise should pay the appropriate franchise fee to protect and maintain the taxpayer's interest in the public right-of-way.
 - Any company providing communications services to a local community should also be required to provide or support Public, Educational, and Governmental (PEG) access to new networks including PEG equipment, funding and support.
 - Local communities should provide an equitable regulatory and taxation framework for all companies seeking to provide communications services to a community.
 - The authority to generate revenues to provide for the public interest is vital to state and local governments and should be preserved. Reform should allow for solutions that preserve state and local revenue.
- 1) Competing communication services that are either equivalent or viewed as viable substitutes by consumers (hereinafter "functionally equivalent services"¹) should be treated on a non-discriminatory basis for taxes or special purpose fees, rent and costs, if any by state and local governments regardless of technologies used to deliver them.
 - Technology Neutral: Regardless of method of delivery, transactional taxes and fees will be assessed equally.
 - 2) A time of transition should be incorporated for all parties to adjust to any agreed-upon communications tax reform.
 - 3) State and local revenues on communications services should reflect major recent changes in this industry, which is rapidly evolving.
- General communications taxes such as UUT would be applied to communications providers across the board, including but not limited to providers of cable, video services, wireless, wireline (phone line), satellite or any other platform.
- 4) State and local communications policy should allow for consumer selection of service providers and technology.
 - 5) State and local taxation should not advantage one communications service provider over another provider of a functionally equivalent service.
 - 6) Reforms should strive to simplify the collection, reporting and auditing of state and local taxes on communications services.
 - 7) Tax obligation should not be based on the provider's presence in a taxing jurisdiction.²

(more...)

¹ Define functionally equivalent services.

² This principle addresses the nexus problem created by *Bellas Hess* and *Quill* Supreme Court decisions. These decisions prohibit state and local governments from requiring out-of-state merchants to collect their taxes.

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- State and local role in preserving public interest obligations must be respected by the industry. All parties should embrace the goal of meeting public interest obligations with special purpose fees.
- 8) Special purpose obligations and surcharges, including but not limited to universal service, public, education and government access (PEG) and 911 surcharge and 911 access fees, should be applied on a nondiscriminatory basis between providers of functionally equivalent services.
 - 9) Any company providing video services to a local community should also be required to provide or support public, education and government (PEG) access to new networks including PEG equipment, funding and support.
 - 10) Local communities should provide an equitable regulatory framework for all companies seeking to provide telecommunications services to a community.
- Industry must respect the rights of local governments to act in the best interests of their citizens as the owners/trustees of the local rights-of-way. As landlords of the public rights-of-way, the League supports measures that recognize and strengthen local control over the public rights-of-way. Local governments must retain the right to manage their rights-of-way and to receive compensation/rental fees for use of the rights-of-way by any communications providers.
- 11) Rental payment for the use and occupancy of the public rights-of-way should be applied on a competitively neutral and nondiscriminatory basis among providers of communications services that use the public rights-of-way.
 - 12) Access to the public right-of-way by all companies providing communications services should first require the acquisition of a franchise agreement from the appropriate public agency.
 - 13) Any communications company obtaining a franchise should pay the appropriate franchise fee for the privilege granted by the public entity.
 - 14) Costs incurred by state and local governments associated with communications companies' provision of services should be borne by that company.
 - 15) The rights of local government to provide telecommunication and other communication services to their citizens should be respected. These rights should not be impaired by legislation or regulation that restricts such rights.
 - 16) The League will oppose any legislation or regulation that would adversely affect the right of local government to provide telecommunication or communication services that the local government determines is in the best interest of the local community.

MTBE from page 1

The League joined with the National League of Cities (NLC) and other municipal leagues in successfully lobbying for new language that preserves the ability of cities to bring their legal suits in state court while permitting MTBE producers to request that their cases be heard in federal court.

“NLC and its coalition partners applaud the efforts of a bipartisan group of House and Senate leaders who rejected this onerous proposal,” said NLC President Anthony A. Williams, mayor of Washington, D.C. “Cities will continue to have the ability to recoup the clean-up costs directly from the polluters.”

Nationwide cleanup costs for drinking water sources polluted by MTBE is estimated in the range of \$25 to \$85 billion. During the past two years, NLC opposed numerous efforts by the House to limit the liability of MTBE producers — efforts that would have ultimately passed along billions of dollars in cleanup costs to the taxpayers. MTBE has been known to contaminate large quantities of surface and ground water through leaking underground storage tanks and pipelines to ground and surface water. More than 28 states have detected MTBE contamination in their water supply with the most extensive contaminations found in California, New England and the Mid-Atlantic states.

In April, the House of Representatives included the MTBE provision in its version of the energy bill over the objections of local governments, water utilities and the Senate, which had twice rejected the language under the threat of filibuster. Most recently, NLC and coalition partners worked to defeat a deal brokered between House Energy and Commerce Chairman Joe Barton (R-Texas) and Rep. Charles Bass (R-NH) that would have invalidated any MTBE-related lawsuit filed by localities since September 5, 2003, with the exception of Bass’ home state of New Hampshire, which would have retained the right to sue. The Barton-Bass deal would have also preempted the ability of states to ban MTBE, forced all claims into federal court, and placed a financial cap on the amount that cities and water utilities could collect from the MTBE producers.

“The earlier House MTBE-liability waiver protecting MTBE producers would have been the ‘mother of all unfunded mandates’,” said NLC Executive Director Donald J. Borut. “We would have seen a billion-dollar bailout for many of the same oil and gas industry suppliers who are now seeing record profits.”

MTBE came under common use following the adoption of the Clean Air Act Amendments in 1990. Court suits brought by states and localities against MTBE manufacturers have already resulted in settlements of more than \$320 million in California and Texas, and more than 100 other cases are outstanding. In one of those lawsuits, documents produced in the trial proved that MTBE producers have known since the late 1980s that MTBE contaminated the water supply and knew it was enormously expensive to clean up.

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EMINENT DOMAIN from page 1

While many California agencies use eminent domain rarely, if at all, this last-resort tool is sometimes needed to revitalize communities, eliminate blight, provide safe, affordable housing and clean up environmental pollution. In addition, federal funds such as Community Development Block Grants (CDBG) often make up part of the financing package for redevelopment projects.

The congressional measures are summarized below as well as steps city officials can take to help educate their congressional representatives about this issue.

Summary of Bills

H.R. 3058 (the Senate Appropriations Bill) left the Senate Appropriations Committee without an amendment that would have prevented the use of federal funds in economic development projects in which eminent domain was used. California Senator Dianne Feinstein and Louisiana Senator Mary Landrieu were able to get action on this amendment deferred until the bill goes to the Senate Floor for debate and a vote.

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Status: The full Senate is expected to consider H.R. 3058 and any amendments, including this potentially harmful one, in the Fall.

H.R. 3135, the *Private Property Rights Act of 2005* (Rep. F. James Sensenbrenner, R-WI), prohibits states from receiving federal funds (none specified, leading to the conclusion that it could be any and all federal funds) for public sector economic development projects if eminent domain is exercised. Ten California Representatives are co-sponsors: Mary Bono, Ken Calvert, John Doolittle, Bob Filner, Elton Gallegly, Wally Herger, Darrell Issa, Daniel Lungren, Richard Pombo, George Radanovich, and Maxine Waters. **Status:** Assigned to House Judiciary Committee, no hearing date set.

H.R. 3268 (Rep. Gingrey, R-GA) excludes compensation for property taken by eminent domain from a property owner's gross income for tax purposes. **Status:** Referred to the House Committee on Ways and Means.

H.R. 3315 (Rep. Waters, D-CA) specifically bars CDBG funds to any state or community that does not prohibit the use of eminent domain for economic development. **Status:** Referred to the House Committee on Financial Services.

H.R. 3405 (Rep. Bonilla, R-TX) prohibits "economic development assistance" and defines that to include programs under 10 federal agencies and commissions including HUD, HHS, Commerce and Treasury. **Status:** Referred to House Education and the Workforce.

S. 1313, the *Protection of Homes, Small Businesses and Private Property Act of 2005*, (Sen. John Cornyn, R-TX) attempts to do the same thing as H.R. 3135 – again, without specifying the federal funds affected, leading to the conclusion that it could apply to all federal funds. California Senator Barbara Boxer has signed on as a co-sponsor. **Status:** Assigned to Senate Judiciary Committee, no hearing date set.

What You Can Do

California's U.S. Congressional Delegation is back in California for the summer recess that began August 2 and needs to hear from local government officials on how these measures will have real life consequences here in their state if they become law. We recommend you set up a meeting with your congressional members during this time and stress the following points:

- **California is not Connecticut.** We have strong laws already on the books in California that limit the use of eminent domain by redevelopment agencies as a last resort and in instances where there are findings of blight. Our laws already provide property owners ample due process protections. Yet, these measures will impose a one-size-fits-all national approach that will harm California.

- Eminent Domain is a rarely used - but important - authority that allows communities to condemn rundown properties to convert to safe, affordable housing, to takeover and clean up environmentally toxic areas, and to transform impoverished, economically depressed neighborhoods and provide jobs, businesses, housing and economic growth.

- Restricting federal funds will only hurt our efforts here in California to build affordable housing, remove blight, create jobs, and revitalize the most downtrodden neighborhoods in need of help.

- Be prepared to tell the story of why eminent domain was a necessary last resort in your community. Describe the condition of the property before redevelopment. Be specific with the number of code violations, health and safety violations, crime statistics, pollution levels, etc. Also prepare a list of all the steps you took to work with the property owner and describe how you tried to get them to fix the problems before eminent domain. Describe how the area is better today because of redevelopment.