

FOCUS

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

January 27, 2006
Issue #4-2006

LEGISLATIVE HEARINGS SCRUTINIZE BOND PROPOSALS

Legislators and interest groups staked out initial positions this week on Gov. Schwarzenegger's Strategic Growth Plan, as policy committees in the Senate and the Assembly held initial informational hearings review the various bond proposals. *For more, see Page 7.*



SENATE BUDGET COMMITTEE HOLDS PRELIMINARY REVIEW OF GOVERNOR'S BUDGET

The Senate Budget Committee, chaired by Sen. Wes Chesbro (Arcata), met on January 26 to conduct a preliminary review of Gov. Schwarzenegger's proposed budget. The Department of Finance gave a short presentation on behalf of the governor, and the Legislative Analyst's Office (LAO), which serves as the non-partisan fiscal advisor to the California Legislature, also provided analysis on the proposal to committee members. *For more, see Page 9.*



LEGAL UPDATES: FREE SPEECH RIGHTS AND CITY CONTROL OF RIGHTS-OF-WAY

Two recent court decisions are of particular interest to city officials: *Vargas, City of Salinas*, and *Sprint PCS Assets v. City of La Canada Flintridge*. *For more, see Page 10.*

WANT MORE DETAILS ON BILLS?

Visit the League of California Cities website at www.cacities.org/billsearch.

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REGISTER FOR THE 2006 PUBLIC WORKS OFFICERS INSTITUTE

The February 6 registration deadline for the 2006 Public Works Officers Institute (PWOI) and Mini-Expo is rapidly approaching!

To be held on Wednesday, March 1, through Friday, March 3, at the Hyatt Regency Islandia in San Diego, the 2006 PWOI is an excellent opportunity for public works directors, assistant directors, city engineers, assistant city engineers, transportation managers, and assistant managers to reflect and learn about issues that continually impact them throughout the year.

The conference and mini-expo provides city and county officials in the public works fields to network and look ahead to the many challenges and successes in the coming years.

Features of the 2006 PWOI includes sessions on soaring construction costs, traffic calming issues, infrastructure, affordable housing, and an update on legal issues. *Sacramento Bee* Columnist Dan Walters and Ron McMillan, author of the book *Crucial Conversations*, are both featured speakers at the conference. An update on the future of transportation in the state will also be given from top officials in Caltrans.

Hotel reservations are filling up quickly! For more information and to register, please visit the League's events page on the website at www.cacities.org/events. A registration form is also included with this edition of *Priority Focus*.

FCC SEEKS COMMENT ON LOCAL CABLE FRANCHISING

Does your city have a cable franchisee? If so, the League of California Cities urges that your city file comments with the Federal Communications Commission (FCC), providing factual information about how franchising has worked to protect the citizens of your city.

The FCC is seeking comment on how it should implement Section 621(a)(1) of the Federal Telecommunications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992. Comments are due to the FCC by February 13 and Reply Comments are due by March 14.

Local government comments are vital in the struggle to protect local government control over rights-of-way and the cable franchising process. Your comments also stand to become part of the Telecommunications Act rewrite debate on Capitol Hill. It is imperative that local governments speak up in order to retain local control.

Visit www.natoa.org for the FCC Notice of Proposed Rulemaking (NPRM).

For more information about telecommunications issues, and how reform proposals could impact your city, please visit the League's special Telecommunications page on its website, at www.cacities.org/telecom.

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FLOOD LEGISLATION UPDATE

The week of January 23 was a big week for discussion of flood related issues in the California Legislature. "Subject matter" hearings on the flood and water bonds in Senate and Assembly policy committees were held and a package of bills was introduced at a press conference held by Assembly Democrats. The subject matter hearings will continue into next week.

The following is a brief summary of the key flood control bills that have been introduced or are anticipated to be introduced. Unless otherwise

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<h3>Our Mission</h3> <p>Restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.</p>
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LEAGUE COMMENTS AT TRANSPORTATION AND HOUSING HEARINGS

League Legislative Director Daniel Carrigg was among those invited to provide comments at two of the legislative "subject hearings" this week, dealing with the transportation bond (SB 1165 – Dutton) introduced as part of Gov. Schwarzenegger's Strategic Growth Plan (SGP); and whether funding for housing should be part of the bond package.

The first hearing occurred on January 24, sponsored by the Senate Transportation and Housing Committee (Sen. Alan Lowenthal, chair). The committee sought "an overview and reactions" from Secretary of Housing and Transportation Sunne McPeak, as well as comments from a number of key stakeholder groups, including the League of California Cities, the California State Association of Counties, the Clean Air Coalition, California Transit Association, Prop. 42 Coalition, Professional Engineers in California Government, the California Association of Councils of Government and others.

SB 1165, described in part as the "Congestion Reduction, Clean Air, and Trade Corridor Bond Act," would authorize placing before the voters bonds totaling \$26 billion: a \$6 billion bond in 2006 transportation and congestion relief projects; a 2008 bond to improve road capacity and reduce congestion (\$6 billion); and a 2012 bond for transportation and air quality improvements (\$14 billion).

While the League has no position on the proposal on this time, Carrigg presented the following observations:

Transportation Funding a Priority. Funding for infrastructure, including transportation infrastructure, is a priority for the state and California cities.

Prop. 42 Funding a Critical First Step. For cities, a constitutional amendment to "lock down" Prop. 42 funding for transportation purposes is a baseline priority, one that should be addressed before enacting a transportation bond measure.

Local Streets and Roads and Important Part of State Transportation System. Most of the

bond proposal is targeted toward state highways, with little funding allocated directly for the 81 percent of the state's maintained miles that are the responsibility of cities and counties.

Change in Super-Majority Vote Requirements for Local Ballot Measures Would Aid Local Funding Efforts. The state can pass a bond measure if it is approved with a majority vote of the state's voters, while local bond measures require a two-thirds vote to pass.

Determining Project Priorities. The proposed guideline process makes it unclear as to what projects will emerge as the state's priorities, and how regions can affect this process.

Design-Build and Design-Sequencing. The League has supported these concepts, which the bill authorizes CalTrans and transportation authorities to use.

Concerns About Need for Housing Funds

The second hearing, conducted on January 25 by the Assembly Committee on Housing and Community Development (Assemblymember Gene Mullin, chair), addressed the question, "Should housing be included in the infrastructure bond?"

Opinions varied on that specific question, but both the committee and those testifying agreed that the state needs more affordable housing, based on California's growing population.

Assemblymember Mullin opened the hearing by discussing the overall housing problem in the state, explaining that only 14 percent of the families in California can afford to buy a home and emphasizing that additional housing is needed in the state.

Assemblymember Bonnie Garcia, vice chair, commented that the question isn't necessarily the housing itself, but where that housing is built. She stressed the importance of transportation systems in close proximity to housing, and in

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CCLI NOMINATION DEADLINE APPROACHING

City officials have one week left to apply or nominate a colleague for the League of California Cities' California Civic Leadership Institute (CCLI). Nomination letters must be in to the League no later than 5 p.m. on Friday, February 3.

Sponsored by the League Partners Program, CCLI is designed to educate small groups of city officials on the pressing infrastructure issues facing cities across the state, including housing, energy and transportation, as well as on the history and primacy of local government in California, and the importance of maintaining local control. The program's goal is to help cultivate future legislators to have a better understanding of these issues, and develop lasting bonds among our state's rising leaders.

Knowing that 2006 is a busy electoral year, the League is offering its 2006 CCLI curriculum to city officials interested not only seeking higher office in this year's elections, but in those who may be planning to run for higher office several election cycles down the road. The program will be particularly useful for city officials currently involved with League leadership activities (policy committees, divisions, departments and caucuses).

Any mayor, council member or professional city staff may nominate a current city official to participate in CCLI. Nominations may also come from any of the League's constituency groups, or from the League Partners Program.

Nominations must successfully convey the governance skills and accomplishments of the nominee, and should highlight any and all contributions toward League goals and/or the League's mission of protecting local control. Nominees will then be mailed an application packet, in which they will be asked to compose an essay outlining their individual goals and interests in the program.

The nomination form is available at www.cacities.org/ccli. Nominations should be to the League's Public Affairs Department Director, Mike Madrid, at mmadrid@cacities.org. They can also be faxed to (916) 658-8240. Please contact Mike with any questions at (916) 658-8272.

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noted, the League is reviewing the bill and has no position at this time.

AB 802 (Wolk). Requires amendments to general plan to better address flood related issues. **League Position:** No position at this time; working with author to find appropriate ways to include flood related issues in conservation and safety elements of the general plan. **Status:** Passed the Assembly; Pending in Senate Rules for Committee Assignment

AB 798 (Wolk). Levee maintenance funds. Extends the sunset for the state-local share of flood funds to remain at 75 percent-25 percent. **Status:** Passed the Assembly; Pending in Senate Rules for Committee Assignment.

AB 1665 (Laird). Stalled two-year bill from last year. Anticipated to be amended to return it to something closer to its earlier version, which renamed the State Reclamation Board with clarified fee authority for levee maintenance in the Central Valley. **Status:** Pending in Senate Natural Resources and Water Committee.

AB 1898 (Jones). Mandatory flood insurance. **Status:** Introduced January 25.

AB 1899 (Wolk). "Show me the flood protection." Requires certification of adequate flood protection before development can occur. **Status:** Introduced January 25.

SB 1166 (Aanestad-Machado). AB 1839 (Laird). Flood and Water Bonds. Identical bills. **Status:** Subject matter hearings held in Senate and Assembly.

It is also anticipated that within a few weeks, Assemblymember Jones will introduce a bill dealing with liability and indemnification for flood control and development projects.

The League welcomes comments from cities about any of these bills, but especially newly-introduced AB 1899 and AB 1898.

See "League Testifies at Assembly Hearing on Flood Control Bond Bills" for more information.

LEAGUE TESTIFIES AT ASSEMBLY HEARING ON FLOOD CONTROL BOND BILLS

The League of California Cities was invited to participate in a panel at the January 24 Water Parks and Wildlife Committee "subject matter" hearing on the flood portion of SB 1166 and AB 1839.

While not taking a position on the proposed bond, League Legislative Representative Yvonne Hunter commended the Schwarzenegger Administration and Legislature for recognizing the serious need to address flood management through proposed funding for mapping, levee assessment, levee upgrade and maintenance.

Hunter emphasized three key points. The first relates to serious concerns about the provision to require any city or county that would enjoy flood protection from the bond funds to indemnify the state from liability. The state is interested in finding ways to share its liability in the aftermath of the *Paterno* decision, which held that the state is liable for damages due to a levee failure.

As a result of that decision, the state has paid about \$500 million in damages. The proposed shift would make cities and counties who approve development behind levees the "deep pocket" for future liability (even when they have no control of the actions of the agency that owns and operates the levee or other flood control infrastructure) is clearly unacceptable, and will be the subject of continued conversations.

The second provision, which the League supports, is to provide full funding for past and future flood control subventions that are owed to local governments. Whether it is appropriate to provide this funding through the bond or the general fund remains open for discussion. However, it is important that the state fully fund its flood control subvention program, since local governments depend upon this revenue.

Third, Hunter and several other speakers emphasized the need for more flexibility to raise funds locally for either the local match for state-federal funding of flood control project, or to raise money for stand-alone flood control projects. Both

the administration panelists and the League emphasized the importance of ACA 13 in order to achieve this goal. ACA 13 would exempt storm water and flood control fees from the current voter approval requirement of Proposition 218.

The League will continue to be an active participant in the legislative discussions surrounding flood control issues.



NEW LEAGUE TASK FORCE REVIEWS INFRASTRUCTURE PROPOSALS

With both the Legislature and Gov. Schwarzenegger working hard to advance infrastructure funding proposals for the June 2006 ballot, the League's Executive Committee has approved the formation of an Infrastructure Task Force to review the various bond proposals and to formulate a preliminary set of infrastructure policy recommendations to guide League advocacy.

The goal of the group is to evaluate the package of proposals and to advise the board of directors at its February 10-11 meeting on possible League policy in this area.

Task Force appointments were made by League President Alex Padilla, a member of the Los Angeles City Council. Chaired by League First Vice President Maria Alegria, City of Pinole councilmember and Mayor pro Tem of the city of Pinole, the 19-person task force consists of the leadership of four League policy committees plus representation by public works directors, a finance director and a city manager. Two additional League officers and two past presidents are on the Task Force as well (see "League Infrastructure Task Force" for a complete list of members).

The task force held its first meeting by conference call on January 26, during which it discussed the range of bond proposals introduced by legislators as part of the governor's Strategic Growth Plan, as well as proposals by Senate President pro Tem Don Perata (SB 1024), Assembly Speaker Fabian Nunez (AB 1703), and initiatives

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put forward by other groups. (See "Legislative Hearings to Start on Infrastructure Bonds" for a link to a listing of infrastructure-related bond proposals on the League's website at www.cacities.org.)

The task force will convene for at least one meeting to analyze the proposals in greater detail, and others meetings or conference calls as necessary.

**INFRASTRUCTURE TASK FORCE
JANUARY 2006**

Maria Alegria, Chair
Council Member, Pinole
1st Vice President, LCC Board

Jim Madaffer
Council Member, San Diego
2nd Vice President, LCC Board

Pat Eklund
Council Member, Novato
Immediate Past President, LCC Board

Ron Loveridge
Mayor, Riverside
LCC Board Member

John Russo
City Attorney, Oakland
LCC Board Member

Greg Devereaux
City Manager, Ontario
HCED Policy Committee

Dale Pfeiffer
Public Works Director, Vacaville
TCPW Policy Committee

Lisa Rapp
Public Works Director, Lakewood
President, Public Works Dept.

Judy Mitchell
Council Member Rolling Hills Estates
Chair, EQ Policy Committee

Jere Melo
Council Member, Fort Bragg
Vice Chair, EQ Policy Committee

Joe Garcia
Council Member, Monrovia
Chair, HCED Policy Committee

Dominic Dutra
Vice Mayor, Fremont
Vice Chair, HCED Policy Committee

Arne Simonsen
Council Member, Antioch
Chair, Rev & Tax Policy Committee

Richard Dixon
Mayor, Lake Forest
Vice Chair, Rev & Tax Policy Committee

Harry Armstrong
Council Member, Clovis
Chair, TCPW Policy Committee

Nora Campos
Council Member, San Jose
Vice Chair, TCPW Policy Committee

Bob Biery
Finance Director, Westlake Village

Chris McKenzie
Executive Director, LCC

Dan Carrigg
Legislative Director, LCC

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particular the need for infrastructure near affordable housing.

Following the opening comments by the committee chairs, Judy Nevis, acting director of the state's Department of Housing and Community Development (HCD) and Di Richardson, legislative director of the California Housing Finance Agency, provided an overview of the housing programs administered by their respective agencies, including those funded from Proposition 46, the housing bond measure passed in 2002.

According to HCD, the state has awarded approximately \$1 billion for affordable homes as of June 2005. It is anticipated that the remaining Prop. 46 funds will be exhausted later this year.

Representatives from a number of organizations and housing advocacy groups testified, with virtually all supporting the need for additional bond or other long-term, reliable funding for housing.

These groups included the California Association of Realtors, the California Building Industry Association, Housing California, California Legal Assistance Foundation, Western Center on Law and Poverty, the Legislative Analyst's Office (LAO) and the League of California Cities.

The LAO representative raised questions about administrative costs associated with Prop. 46 housing projects, saying that their analysis showed that 9-10 percent of the Prop. 46 monies set aside for the 21 programs of HCD and CalHFA went towards administrative costs, vs. the standard of 5 percent.

League testimony pointed out that affordable housing will not be built without public subsidies. While Prop. 46 housing bond funds helped to fill the gap over the past two years, the funds will soon be exhausted, and the gap must somehow be filled.

The governor has proposed a \$222 billion investment over 20 years in transportation and air quality, K-12 and higher education, water supply and flood control, and new or expanded prisons and courthouses. Funding for the infrastructure proposal would come from bonds, new fees, federal funds and existing general funds – and no new taxes. The budget anticipates that voters would be presented with a total of \$68 billion in bonds over the next decade, including bond measures totaling \$25.2 billion that would be presented this year on the June or possibly November ballots.

Several legislators have also been working for some time on bond proposals. These are: SB 1024 - Perata (transportation, housing, levee protection and other issues); SB 153 - Chesbro (park bond and restoration of agricultural, coastal, cultural, forest and other resources); SB 395 - Escutia (court facilities); and AB 1783 - Nunez (infrastructure funding from bonds, fees, assessments).

There are also two initiatives relating to infrastructure that have been filed with the Attorney General: a bond measure filed by an environmental coalition, to fund drinking water, water quality and supply, flood control, river and coastal protection; and a constitutional amendment that would end the transfer of Prop. 42 funds to purposes other than transportation. (The group sponsoring the Prop. 42 measure has now received their title and summary from the Attorney General, and plans to start their signature-gathering drive the week of January 30.)

Hearings Provide First Look at Governor's Proposals

This week's hearings represented legislators' first look at the specific bills that have been introduced to implement various aspects of the governor's bond package. In each hearing, administration representatives discussed their goals and intentions for each proposal, followed by comments and concerns of stakeholders.

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League legislative representatives were among the witnesses in several of the hearings, offering comments, but no formal positions on any of the measures. (See "League Comments at Transportation and Housing Hearings" and "League Testifies at Assembly Hearing on Flood Control Bond Bills.")

The League has formed a new Infrastructure Task Force to analyze the proposals and provide specific recommendations to the League board of directors, in time for the board's February 10-11 meeting. (See "League Task Force Reviews Infrastructure Proposals.")

Legislators Raise Questions, Concerns

While legislators on the various policy comments had many specific comments and concerns about each of the bond proposals, a few themes arose in all of the hearings. These included the following:

Lack of Legislative Oversight for Bond Programs. The Strategic Growth Plan assumes the passage of large, multi-billion dollar bond packages over several years, with little opportunity for legislative oversight to shape the funding package, ensure that funds are being spent effectively, and make course corrections if new funding priorities arise.

Bond Package Obligations Narrow Future Bonding Options. A number of legislators have raised concerns about committing too much of the state's bonding capacity to infrastructure bonds, and possibly threatening the ability of future policy makers to present bonds to respond to possible future crises, such as a major earthquake, or for other priority needs. (The governor's budget package also proposes a constitutional measure that would cap the state's bond obligations to 6 percent of the state general fund. If passed by the voters, the cap could further constrain future options.)

Concerns about Over-reliance on Bonds. While there is strong support for major invest-

ments in infrastructure, both Democrats and Republicans have raised questions about relying primarily upon state bonds to fund the state infrastructure programs. (Local bonds are anticipated to fund local education, transportation and water resources/flood control projects.) Democrats have expressed interest in special taxes to raise revenues for infrastructure.

The Assembly Republicans have introduced a constitutional amendment (ACA 27 – McCarthy) that would dedicate 1.5 percent or more of current general fund revenues to infrastructure on an ongoing basis, arguing that this "pay as you go approach" would be cheaper for the state than paying the interest on bonds.

Conclusion: The hearings demonstrated that, while there may be different ideas among legislators about how to craft an infrastructure bond package, there appears to be strong consensus that a package must be developed, and soon. Legislative leaders appear to strongly support developing a proposal in time for the June 2006 statewide ballot. Legislative policy committees will continue their overview hearings next week, with the goal of getting closer to agreement on specific proposals that can be moved to a conference committee.

For more information please see the following:

The Senate Budget Committee's Budget analysis at www.senate.ca.gov.

The Senate Republican Caucus analysis at www.republican.sen.ca.gov.

The Legislative Analyst's Office (LAO) will have their official analysis out on February 23. Until then, here's the preliminary analysis on the LAO website at www.lao.ca.gov.

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Overall, the governor's proposed budget drew a mixed response by the committee and those speaking at the hearing.

Sen. Chesbro announced that the Legislature is starting to review the budget proposals much earlier this year, which will aid in negotiations and potentially produce a timely budget. He felt, however, that the governor's budget proposal takes away areas of legislative oversight and asked committee members to think about whether the budget makes investments where they need to be made.

Senate Budget Vice Chair Dennis Hollingsworth (Murrieta) commended the governor on the early repayment of debt included in the budget proposal and the lack of new taxes, but he asked committee members to think about the effect of an ongoing deficit and noted his concern about when California would be able to plug its "deficit hole."

Legislative Analyst Liz Hill's comments were direct, stating that the governor's proposal goes in the wrong direction in getting the state's fiscal house in order. She announced that the full LAO budget analysis will be available online at www.lao.ca.gov on February 23, and then addressed a number of areas of concern, including:

- The budget proposal ratchets up ongoing spending by about \$2 billion.
- The budget proposes expansion of new programs when the state can't support existing programs.
- The erosion of legislative oversight included in the proposal.
- The proposal overlooks several potential large costs that may need to be addressed in the 2006/07 budget. This includes:
 - 1) A pending decision in the appeal of *Guillen v. Schwarzenegger*. (The budget assumes state will prevail on appeal of *Guillen* court case, avoiding \$460 million in additional costs.)
 - 2) Mandates are under-funded by

- 3) \$140 million. No funding for 18 bargaining units in negotiation currently. (Only three of the state's 21 employee bargaining units currently have agreements which extend past July 2, 2006. There are no funds set aside to pay for any potential costs related to new agreements with the other 18 units.)
- 4) The Deficit Reduction Act of 2005, which is currently being discussed at the federal level, could place significant fiscal pressure on California, particularly in the areas of student loans, Medi-Cal and CalWORKS.

The Department of Finance's presentation highlighted major program areas contained in the governor's proposal and provided the committee with an economic forecast. Vince Brown, chief deputy director of the Department of Finance described California's predicted growth for FY 2006-07 as "reasonable and modest" and explained that higher energy prices and the slowing of residential construction were potential factors in California's predicted slower growth.

Budget committee members questioned both the Department of Finance and the LAO about other budget areas including Proposition 42 repayments, SSI/SSP and CalWORKS cuts, and Proposition 49, the governor's After-School Initiative that was passed by voters in 2002, which will start to receive funding in the 2006-07 budget. Both the Assembly and Senate budget committees will continue to study these issues in depth.

For the latest information about the governor's budget proposal and Strategic Growth Plan, please visit the League's website at www.cacities.org.

For more information on this and other League issues, visit www.cacities.org.

LEGAL UPDATES from page 1

Court Upholds City's Free Speech Rights

A recent decision by the 6th District Court of Appeals resulted in a dismissal of a lawsuit that challenged whether the city of Salinas lawfully provided its residents with information regarding the fiscal impacts of a ballot measure that would have repealed the Salinas' utility users' tax (UUT).

After the measure had qualified for the ballot, city staff presented the Salinas City Council with a staff report regarding the fiscal impacts on Salinas if the measure passed, as well as recommendations on potential service cuts. The measure's proponents attended these hearings, and were given the opportunity to make presentations to the council. The information from these hearings was summarized in a one-page flyer that was mailed to residents, and the voters ultimately defeated the measure.

The proponents filed a lawsuit against the City of Salinas, claiming that the hearings and the flyer unlawfully interfered with the electoral process, and improperly used public money for partisan campaign purposes. The Superior Court ruled against the proponents, who then appealed to the 6th District Court of Appeals. The 6th District held that the proponent's lawsuit was a Strategic Lawsuit Against Public Participation (SLAPP) lawsuit.

Under the state's anti-SLAPP law, the 6th District also found that the city's speech regarding the measure arose from its protected free speech rights. Further, because the city did not expressly advocate a position on the measure, it did not cross the line into partisan campaigning, and therefore, the city's speech was not illegal.

The League congratulates the Salinas City Attorney's office, and thanks former League Assistant General Counsel Steve Traylor for authoring the friend of the court brief. The case is *Vargas v. City of Salinas* 2005 WL 3549476 (Cal.App. 6th Dist.). As the potential remains that the case could be appealed to the Supreme Court, the Legal Advocacy Committee will continue to monitor the case.

9th Circuit Limits City Control of Right-of-Way

In a decision that has both stunned and baffled city attorneys, the 9th Circuit has held that neither

federal nor state law allows cities to prohibit a telephone or cellular phone from locating facilities in the public right-of-way based solely on a city's concerns regarding the facilities' adverse visual impact.

The Court interpreted California Public Utilities Code section 7901 and 7901.1 to allow cities to control time, place, and manner access to the public right-of-way, but that time, place, and manner control did not allow a city (in this case La Canada Flintridge) to regulate based on visual impacts. Therefore, as the city did not have that regulatory authority, under federal, La Canada Flintridge could not reject an application to place facilities in the right-of-way under on the facilities' visual impacts alone.

No state court has ever held that 7901 or 7901.1 restricted a city from regulating telephone and cellular facilities in the public right-of-way with respect to visual impacts. The 9th Circuit's decision is unique. This decision means that a city cannot prohibit a telephone or cellular company from placing facilities in the public right-of-way if the facilities do not interference with the use of the right-of-way, and the facilities meet all applicable health and safety regulations.

In addition, cities cannot require these companies to "stealth" or otherwise reduce visual impacts as a condition for approval. The likely result is that telephone and cellular companies will look to increase their use of the public right-of-way as a way of avoiding costly private property leases and "stealth" requirements, thus increasing visual blight in the public right-of-way.

Please note, however, that the 9th Circuit's ruling does not affect regulation of facilities located solely on private property.

The case is *Sprint PCS Assets v. City of La Canada Flintridge*, 2006 WL 91541. La Canada Flintridge will be requesting that the 9th Circuit rehear the case, and the Legal Advocacy Committee has approved the League of California Cities filing a friend-of-the-court brief to support the La Canada Flintridge's request.

FOCUS

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

January 20, 2006
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**Legislature Starts
Overview Hearings
on Infrastructure
(See p.4)**

CITIES' WORKERS' COMP COSTS DECLINE AFTER SB 899 REFORMS

A survey conducted by the League of California Cities shows that cities' total workers' compensation costs have decreased by approximately 17 percent since workers' comp reform legislation was enacted in 2004 (SB 899, Ch. 34). *For more, see Page 3.*



LEGISLATIVE HEARINGS TO START ON INFRASTRUCTURE BONDS

Legislative leaders have agreed to take up the infrastructure bond proposals over the next few weeks, adhering the following general schedule: *For more, see Page 4.*



LEAGUE POLICY COMMITTEES APPROVE FLOOD CONTROL RECOMMENDATIONS

By near unanimous vote, the League of California Cities' Environmental Quality and Housing, Community and Economic Development Policy Committees approved recommendations regarding League policy and guiding principles on flood control issues. *For more, see Page 2.*

**WANT MORE DETAILS
ON BILLS?**

Visit the League of California Cities website at www.cacities.org/billsearch.

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TELECOM IN THE NEWS

Indiana Committee OKs Telecom Bill

The Indiana Senate's Homeland Security, Utilities and Public Policy Committee approved by an 8-2 vote proposed telecom reform legislation that reportedly could go before the full State Senate for a vote. The deadline for bills to advance out of the Indiana Senate is Feb. 2.

For the complete story, visit www.telecomweb.com and search for the article titled "Indiana Committee OKs Telecom Bill."

AT&T Set to Challenge Cable Companies

AT&T Inc. is looking to do battle with cable TV rivals through legislation that would enact a state-wide cable or video franchise system in Michigan, avoiding city-to-city agreements.

For the complete story, visit www.craigslist.com and search for the article titled "AT&T to Battle Cable Companies."

Consumer Groups Attack Bell 'Two Tier' Plan *Costs would be passed on to end-users*

The Consumer Federation of America and other consumer groups are urging Congress to pass legislation barring broadband providers from charging Internet content and service providers a fee to access their networks, in addition to regular charges to consumers (sometimes called a "tiered Internet").

The consumer advocates argue that the approach would ultimately undermine the Internet's open platform principles where all users have access to all services and content on the Internet.

For more information, visit www.freepress.net and search for the press release titled "New Survey: Consumers Want Congress to Protect Right to Access Information, Services on Internet."

FLOOD CONTROL from page 1

The recommendations were prepared by the League's Flood Control Working Group and cover topics ranging from insurance, mapping, funding, planning and development in flood plains. The recommendations (which will serve as a starting point for League policy and lobbying in this area) will be considered by the League board of directors at their February meeting.

The issue of flood control has been at the forefront of issues raised by both legislators and the governor. In order to fully engage in legislative discussions, the League formed a Flood Control Working Group consisting of elected officials and staff to propose the initial policies and guiding principles and to assist in reviewing legislation.

One of the key questions for cities is how to balance the need to build housing, with the need to avoid putting people in harm's way due to development in flood prone areas with inadequate levee and flood protection infrastructure. This is one of the major policy issues that will be the focus of legislative attention this year.

Some of the key bills that address flood control this year are: AB 1665 (Laird), AB 802 (Wolk), and SB 1166 (Aanestad).

The preliminary Flood Control Policies and Guiding Principles may be viewed on the League's website at www.cacities.org.

Our Mission

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

WORKERS' COMP from page 1.....

The League received survey responses from 352 of California's 478 cities, consisting of each city's workers' compensation costs for the following fiscal years: 2002-03, 2003-04 and 2004-05. The costs were divided into four expenditure categories: **Medical; Permanent Disability; Indemnity; and Total Costs.** Administrative costs and all other forms of miscellaneous costs were included into the Total Costs category. (For details, see "Findings of the League's Workers' Compensation Survey".)

Further good news: the trend of decreasing cost is continuing. The California Workers' Compensation Insurance Rating Bureau reported that the written premium of the first quarter of 2005 equaled \$5.9 billion, 8 percent less than the premium reported in the first quarter of 2004. The loss ratios of insurers (the amount they pay for claims compared to premium) dropped from 87 percent in 2002 to 41 percent in 2005.

In addition, the State Compensation Insurance Fund, California's largest workers' compensation insurance carrier with over half the state market, announced that it was reducing rates by an average of percent as of January 1. With the added savings, the League anticipates insurers to continue lifting the cost burden from public sector employers.

FINDINGS OF THE LEAGUE'S WORKERS' COMPENSATION COST SURVEY

The League's survey revealed that **total costs** started at \$410,614,865 in fiscal year 2002-03, and then increased to \$427,323,920 in 2003-04. After passage of SB 899, total costs decreased to \$355,814,691, \$54.8 million lower than the 2002-03 level. Most of the other expenditure categories experienced the same trend with the exception of medical costs.

Medical costs totaled \$223,563,729 in FY 2002-03, decreased to \$218,016,418 in FY 2003-04, and then decreased further to \$176,995,851 FY 2004-05. Medical cost is the largest expenditure category in workers' compensation, making up 54 percent of the total cost in 2002-03, 51 percent of the total cost in 2003-04, and decreased to 50 percent in 2004-05.

Indemnity, permanent disability and miscellaneous costs followed the same trend in increases and decreases. **Indemnity costs** totaled \$104,438,480 in FY 2002-03, increased to \$106,885,386 in FY 2003-04, and decreased to \$934,596,860 in FY 2004-05.

Indemnity cost is the second largest expenditure category, making up 25 percent of total cost from FY 2002-04, and 26 percent in FY 2004-05.

Permanent disability totaled \$76,014,747 in FY 2002-03, increased to \$84,112,067 in FY 2003-04, and then decreased to \$75,206,213 in FY 2004-05. Permanent disability is the third largest expenditure category, and that has been steadily increasing over time. It consisted of 19 percent of total cost in 2002-03, 20 percent in 2003-04, and 21 percent in 2004-05.

Miscellaneous costs are costs associated with administration/staff, purchasing capital equipment or materials, and any other expenditure necessary to implement California's workers' compensation law (Labor Code, Division 4). Miscellaneous costs totaled \$7,098,367 in 2002-03, increased to \$18,794,291 (2003-04), and decreased to \$10,572,720 (2004-05). Miscellaneous costs consisted of 2 percent of the total cost in 2002-03, 4 percent in 2003-04, and 3 percent in 2004-05.

INFRASTRUCTURE from page 1

• All the infrastructure bonds (those sponsored by the administration, as well as current and past legislative proposals, including resources bonds introduced last year) will be reviewed in informational hearings conducted by the appropriate policy committees over the next two weeks. (The Senate may extend that time frame a bit.)

• The policy committees will send a committee report on the bonds to a conference committee with their observations/findings.

• Bills are expected to be considered by the

conference committee in mid-late February where the details will be hashed out.

The goal is to place measures on the June 2006 ballot. Whether that goal is achieved remains to be seen.

For more information on these hearings, please see "Infrastructure Bond Measures: Preliminary Hearing Schedule."

For a listing of the bond measures, please see "Infrastructure Related Bond Measures."

INFRASTRUCTURE BOND MEASURES: PRELIMINARY HEARING SCHEDULE

(Subject to Change)

The Senate

Tuesday, Jan. 24 - Senate Transportation and Housing Committee, Sen. Alan Lowenthal, Chair. The committee will hold a series of hearings on the Governor's Strategic Growth Plan, starting Tuesday, January 24 with an "overview and reactions" by Secretary of Housing and Transportation Sunne McPeak, and key stakeholders, including the League of California Cities, the California State Association of Counties, the Clean Air Coalition, California Transit Association, Prop. 42 Coalition, Professional Engineers in California Government, the California Association of Councils of Government and other groups.

Three additional hearings are contemplated: 1) a focus on the funding priorities; 2) a focus on the new project selection process and the match requirements; and 3) a focus on the design-build, design-sequencing and public-private partnership proposals. [Note: the committee may push the first hearing to January 31 – depending upon the availability of administration spokespersons.]

In the first hearing, the administration will present their transportation proposals and the committee will hear general feedback from key interest groups. At the subsequent hearings, the committee will try to work through the specifics of the proposals with the aim of drafting majority and minority reports (assuming an overall consensus is not reached) to inform the conference committee.

Tuesday, Jan. 24 - Senate Natural Resources and Water Committee, Sen. Sheila Kuehl, Chair. Overview hearing on Gov. Schwarzenegger's water bond proposal.

Tuesday, Jan. 24 – Senate Judiciary Committee, Sen. Joe Dunn, Chair. Overview on Gov. Schwarzenegger's proposal for a trial court facilities bond measure.

Wednesday, Jan. 25 – Senate Education Committee, Sen. Jack Scott, Chair. Informational hearing on Gov. Schwarzenegger's Education Bond Proposal.

Friday, Jan. 27 – Select Committee on California Infrastructure, Sen. Tom Torlakson, Chair. Informational Hearing on Levees and Flood Control Systems in the Delta Region.

Wednesday, Feb. 1 – Senate Education Committee, Sen. Jack Scott, Chair. Informational Hearing on Gov. Schwarzenegger's Education Bond Proposal, K-12.

Continued on Page 5

BOND MEASURES from page 4

Wednesday, Feb. 8 – Senate Education Committee, Sen. Jack Scott, Chair. Review of Gov. Schwarzenegger's Education Bond Proposal for Higher Education.

The Assembly

Tuesday, Jan. 24 – Assembly Committee on Water, Parks and Wildlife, Assemblywoman Lois Wolk, Chair. Informational hearing on Gov. Schwarzenegger's proposed flood management bonds.

Wednesday, Jan. 25 – Assembly Education Committee, Assemblymember Jackie Goldberg, Chair. Informational Hearing on Education Infrastructure.

Wednesday, Jan. 25 – Assembly Committee on Housing and Community Development, Assemblymember Gene Mullin, Chair. Informational hearing: "Should Housing be included in the infrastructure bond?"

Wednesday, Jan. 25 – Assembly Public Safety Committee, Assemblymember Mark Leno, Chair. Informational Hearing on Public Safety Bond Acts of 2006 and 2010.

Wednesday, Jan. 25 – Assembly Water, Parks and Wildlife Committee, Assemblymember Lois Wolk, Chair. Review of Parks and Wildlife Bonds.

Monday, Jan. 30 – Assembly Transportation Committee, Assemblymember Jenny Oropeza, Chair. Review of Transportation Infrastructure Bonds.

Tuesday, Jan. 31 – Assembly Water, Parks and Wildlife Committee, Assemblymember Lois Wolk, Chair. Review of Integrated Regional Water Management Funding.

Wednesday, Feb. 1 – Assembly Education Committee, Assemblymember Jackie Goldberg, Chair. Informational Hearing on Education Infrastructure.

For a listing of bond measures, please see "Infrastructure Related Bond Measures."

FOCUS

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

February 3, 2006
Issue #5-2006

PROP. 42 FUNDING INITIATIVE TO START SIGNATURE-GATHERING

The League of California Cities is working with a broad-based coalition of business, labor, local government, and community leaders to kick off a signature-gathering effort next week to qualify a constitutional amendment for the November 2006 ballot that would "close the Prop. 42 loophole."

For more, see Page 5.

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LEGISLATIVE COMMITTEES CONTINUE TO REVIEW BOND PROPOSALS

Legislative policy committees continued to hold "subject matter" hearings the week of January 30 on the various infrastructure bond proposals pending in the California Legislature. While the hearings focused on the Schwarzenegger Administration's water/flood protection, trial court, transportation and education bond proposals, other bond proposals that have been introduced were also considered. *For more, see Page 6.*

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EMINENT DOMAIN UPDATE

Reactions to last year's U.S. Supreme Court decision upholding the ability of state and local governments to use eminent domain to further economic development (*Kelo v. City of New London*) continue to play out in California in the form of legislative proposals and proposed ballot measures. The following summarizes some recent key developments. *For more, see Page 4.*

WANT MORE DETAILS ON BILLS?

Visit the League of California Cities website at www.cacities.org/billsearch.

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REGISTER FOR THE 2006 PUBLIC WORKS OFFICERS INSTITUTE HOTEL ROOMS ALMOST SOLD OUT!

The February 6 registration deadline for the 2006 Public Works Officers Institute (PWOI) and Mini-Expo is rapidly approaching, with hotel rooms at the Hyatt Regency Islandia almost sold out!

The meeting will be held on Wednesday, March 1, through Friday, March 3, at the Hyatt Regency Islandia in San Diego. It presents an excellent opportunity for public works directors, assistant directors, city engineers, assistant city engineers, transportation managers, and assistant managers to reflect and learn about issues that continually impact them throughout the year.

The conference and mini-expo provides city and county officials in the public works fields to network and look ahead to the many challenges and successes in the coming years.

Features of the 2006 PWOI includes sessions on soaring construction costs, traffic calming issues, infrastructure, affordable housing, and an update on legal issues. *Sacramento Bee* Columnist Dan Walters and Ron McMillan, author of the book *Crucial Conversations*, are both featured speakers at the conference. An update on the future of transportation in the state will also be given from top officials in Caltrans.

For more information and to register, please visit the League's events page on the website at www.cacities.org/events, or contact Paul Flint at (916) 952-8238 or flint@cacities.org.

Our Mission

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

HELEN PUTNAM AWARDS – CALL FOR ENTRIES!

Entries for the 2006 Helen Putnam Award for Excellence are now being accepted! The deadline for all entries is Thursday, April 13.

Established in 1982, the program is named after the 1976-1977 League President, Helen Putnam, and recognizes outstanding cities that deliver the highest quality and level of service in the most effective manner possible.

Up to three awards are given in each of the following categories:

- Effective Advocacy, Intergovernmental Relations and Regional Cooperation
- Housing Programs and Innovations
- Enhancing Public Trust, Ethics and Community Involvement
- Planning and Environmental Quality
- Community Services and Economic Development
- Internal Administration
- Public Safety
- Public Works, Infrastructure, Transportation
- Ruth Vreeland Award for Engaging Youth in City Government
- League Partners Award for Excellence in City-Business Relations

In addition, the Cities, Counties and Schools (CCS) Partnership Award, established in 2005, will also be given to the award-winner that exhibits a proven effort in demonstrating a culture of collaboration among local jurisdictions.

To download a brochure and application, please visit the League website at www.cacities.org.

TELECOM IN THE NEWS

Verizon Letter-Writing Campaign Raises Suspicions

The mayor of Red Bank, N.J., Edward J. McKenna, thought it was odd that he received about 100 unsigned letters from Verizon last fall, all supporting more competition in cable television. His suspicions proved correct. Letters were found sent in peoples' names without permission and some without names at all.

Apparently Verizon isn't sure how so many letters could have been sent, and has started an internal investigation to uncover what happened in regard to its grassroots campaign for cable franchise reform.

For the complete story, visit www.bergen.com and search for the article titled "**Verizon Campaign Raises Questions.**"

Telecom Advances Impacting Cities

As Internet technology advances, combining phone and video services, local governments are concerned about the potential for regulatory changes that will restrict their ability to protect the "time, manner and place" of the use of public rights-of-way, as well as their ability to charge fees and taxes to pay for related local services.

For the complete story, visit www.pasadenastarnews.com and search for the article titled "**Telecom Upgrades Test Cities' Laws.**"

Lawmaker Urges Due Telecom Diligence By Cities

At a winter meeting of the U.S. Congress of Mayors, John Dingell, the top Democrat on the House Energy and Commerce Committee, cautioned that rewriting the Telecom Act would have an adverse effect on municipal interests.

Mayors commenting on the topic included John Hickenlooper from Denver, who stated that a

loss of franchising authority would impact local governments' ability to address the "digital divide" between low-income and wealthy neighborhoods.

For the complete story, visit www.njtelecomupdate.com and search for the article titled "**Dingell Warns Telecom Rewrite Could Hurt Municipal Interests.**"

DirectTV and EchoStar Team Up for Nationwide Wireless Broadband Service

Looking to mimic its peers in the cable TV and telecommunications industries, DirectTV has plans to partner with EchoStar to provide a nationwide wireless broadband service using WiMax.

To read two articles on the issue, visit www.thestreet.com and search for the article titled "**DirectTV, EchoStar Bundle Up,**" and visit www.techdirt.com and search for the article titled "**As If Throwing Up A WiMax Network Were That Easy.**"

Assault on Local Cable Franchises Heats Up

AT&T (formerly SBC) and Verizon Corp. have begun their push to eliminate local franchise agreements in the United States. Bills have been introduced in New York, New Jersey, Indiana, North Carolina, Virginia, and Missouri over the past few weeks, advocating for replacing local franchise agreements with statewide franchise agreements that many cities fear would significantly reduce their ability to manage local rights of way and ensure that build-out of services occurs without discriminating among neighborhoods.

For the complete story, visit www.mml.org and search for the article titled "**League Legislative Link.**"

EMINENT DOMAIN from page 1

New State Legislative Proposals

Three democratic legislators have introduced new proposals, following a series of combined Senate and Assembly policy committee oversight hearings late last year that examined both eminent domain and the practice of redevelopment in California. The bulk of the testimony at the oversight hearings from attorneys knowledgeable about the decision and the California laws governing the use of eminent domain concluded that, media reports to the contrary, the *Kelo* decision did not grant new powers to California public agencies regarding the use of eminent domain.

Nevertheless, measures intended to alter California's eminent domain laws and/or the laws governing redevelopment agencies have been introduced by Sen. Tom Torlakson, Senate Democratic Caucus Chair and the former chair of the Senate Local Government Committee; Sen. Christine Kehoe, Chair of Senate Local Government Committee; and Assemblymember Gene Mullin, Chair of the Assembly Housing and Community Development Committee.

The League urges city attorneys to carefully review these measures in light of the potential impacts they pose to city redevelopment plans.

Assembly Housing and Community Development Committee Chair Gene Mullin has deleted the content of two of his former housing bills, and amended them to address redevelopment. These are:

AB 773 (Mullin). This bill extends the time to file a referenda petition for redevelopment projects to 90 days in all cities and counties. It also sets the number of valid signatures is 10 percent of the number of voters in the last gubernatorial election. Currently, these requirements only apply in cities in counties with a population that exceeds 500,000.

AB 782 (Mullin). This bill would eliminate as one finding in the determination of "blight," the finding that *a project area includes subdivided lots in multiple*

Continued on Page 6

NLC TO SEEK 'AWARDS FOR MUNICIPAL EXCELLENCE' NOMINATIONS

Coming next month: your city's opportunity to compete for an Award for Municipal Excellence!

Given through a partnership between the National League of Cities (NLC) and CH2M HILL, the Awards for Municipal Excellence recognize outstanding programs that have improved the quality of life in America's communities. Formerly known as the James C. Howland Awards for Municipal Enrichment, the awards honor a range of population sizes, with two awards in each population category.

Nominated programs will be judged on several criteria, including: successful public-private partnership ventures; productive citizen and community collaborations; effective management of municipal resources (public or private); innovative government policies; project implementation with tangible results; and the ability to replicate the project in other cities.

Nomination forms will be available in March and the deadline for submission is June 21. Up to eight winners will be nationally recognized at a ceremony at NLC's Congress of Cities Conference and Exposition in Reno, Nev., in December.

Visit www.nlc.org for information about the Awards program, nomination forms and to learn about past Award winners. If you have any questions, send an e-mail to mrs@nlc.org or call (202) 626-3130.

LEAGUE LIBRARY IS LOOKING FOR TRIVIA

Do you have interesting or humorous factoids about California cities, the state or other local government "humor?" Share it with the League! Please email your trivia to Lorraine Okabe at lokabe@cacities.org.

PROP. 42 from page 1.....

Called "Californians to Improve Traffic Now," the coalition has been working for many months to draft an initiative that would prevent the governor and Legislature from diverting the sales taxes on gasoline to non-transportation state expenses. The measure also requires the state to reimburse \$2.5 billion in funds previously diverted from transportation projects to pay for other state program needs. It allows 10 years for repayment to avoid any immediate fiscal impact.

The League board of directors last year approved League participation in the coalition effort to stabilize Prop. 42 transportation funding. League regional representatives will help to organize press conferences to kick off the signature gathering effort.

City officials will be contacted by their League regional reps, and will be provided with information that will explain where and how they can support the signature gathering effort. As with any campaign activity, city officials can participate only on their personal time, and without using any public resources (city premises, equipment, supplies, e-mail systems and the like).

Prop. 42 Funds Vulnerable to Transfer

Prop. 42 passed in 2002 with the support of 69 percent of California voters. The measure dedicates the existing state sales tax on gasoline to fund transportation projects like congestion relief, road repairs, transit and safety improvements.

The measure includes a provision, however, that allows the Legislature and governor to divert funds to non-transportation expenses during fiscal emergencies. That provision was used in two of the last three budget years, resulting in the diversion of \$2.5 billion in these gas taxes to non-transportation state expenses. The lost funds for cities and counties has totaled \$384 million.

As a result, state and local agencies have had to delay or stop many critical safety improvements, congestion relief projects, road repairs and other pressing transportation needs.

The governor and Legislature fully dedicated Prop. 42 funding to transportation in the current fiscal year, and propose to do the same next year. Cities and counties are receiving \$254 million this year (split evenly between them) for maintenance and repair of local streets and roads. This amount is proposed at \$255 million for next year. The Prop. 42 formula calls for the city-county share to increase to \$560 million in FY 2008-09, on an ongoing basis.



**LEAGUE SUPPORTED PILOT PROJECT
BILL PASSES OUT OF THE ASSEMBLY**

A bill that would establish a pilot program to track public officials' actions on potential financial conflict of interests has passed out of the State Assembly on a bipartisan, 57-18 vote, with support from the League of California Cities.

Assembly Bill 1558 (Wolk-Davis) now heads to the Senate Rules Committee to begin its review by the upper house. AB 1558 would establish a "pilot project" by the Fair Political Practices Commission (FPPC) that will allow the FPPC to issue opinions with regard to financial interests of public officials who vote on employee contracts.

AB 1558 will begin the process of the FPPC, *implementing a better system of tracking and reporting anyone who stands to benefit from a contract made by them in their official capacity as a city official.* By enacting a pilot program, it allows for any glitches to be worked out prior to the program possibly becoming law.

The League supports this bill as a pilot project. The FPPC shall have "non-enforcement" authority and cannot mandate local agencies to participate, but will require consultation with the local city or district attorney prior to proceeding with a draft opinion.

BOND PROPOSALS from page 1 EMINENT DOMAIN from page 4

The Senate Natural Resources Committee hearing explored the various aspects of the administration's flood control infrastructure bond (SB 1166 and AB 1839). Of interest to the committee were questions about the relationship between flooding, land use, development and liability. The Assembly Water Parks and Wildlife Committee examined the water infrastructure portion of the bills and spent considerable time discussing the proposed water surcharge included in the bill, among other topics.

The Assembly Transportation Committee hearings focused on the various proposals for funding transportation infrastructure offered by the administration (AB 1838 Oropeza and SB 1165 Dutton), the Assembly Speaker (AB 1783 Nunez) and the Senate President Pro Tem (SB 1024 Perata). Constitutional protection for Proposition 42 transportation funds, project funding priorities, the state's debt capacity, design-build, design-sequencing and public-private partnerships were highlighted during the hearings.

At this time, it remains unclear when the committees will prepare their committee reports, which may include minority reports. The conference committee will then take up the various proposals. While the goal is to craft a bond package for the June ballot, it is not clear if an agreement can be reached in time to meet the mid-March deadline to place the package on the ballot.

The League of California Cities' Infrastructure Task Force is meeting to review the different proposals and recommend League principles and policy to the League board of directors in February.

**For more information on this and
other League issues, visit
www.cacities.org.**

ownership of irregular form and shape and inadequate size for proper usefulness and development.

SB 1206 (Kehoe). This measure proposes extensive changes to the Community Redevelopment Law, none of which deal directly with eminent domain. Some key provisions include the following:

- **New definition of blight.** The proposed legislation would delete many of the factors contained in existing law and relied upon by redevelopment agencies to show the existence of blight, such as "defective design or physical construction," "lack of parking," "impaired investments," "high turn-over rates, abandoned buildings and excessive vacant lots." Remaining blight factors would have to meet specific numerical or percentage tests. The adoption of new redevelopment plans and amendment of existing redevelopment plans to add territory would be made much more difficult.

- **Limitation on use of funds in merged redevelopment projects.** In a merged redevelopment project area, the bill would prohibit funds from one constituent project from being used in another constituent project unless all indebtedness from the first project has been repaid. If applied to existing merged redevelopment projects, this would result in defaults under bonds and other financial obligations of redevelopment agencies as well as abandonment of on-going projects and programs. If applied prospectively, this would eliminate the incentive for new mergers.

- **Limits establishment of indebtedness.** After 10 years from the adoption of the redevelopment plan, SB 1206 would require a finding that significant blight remains in the project area before the agency incurs indebtedness. This would create a new cause of action for project opponents permitting them to further delay financing of projects by filing litigation challenging the required finding. This also represents a policy reversal from existing law (SB 211), which permits agencies to eliminate time limits on establishing indebtedness.

Continued on Page 7

EMINENT DOMAIN from page 6

• **Makes legal challenges of redevelopment plans easier.** The statute of limitations on an action challenging a redevelopment plan would be increased from 60 to 90 days. The Attorney General and various state agencies would be given the right to intervene in an action challenging the adoption of a redevelopment plan after the otherwise applicable time limits have expired.

• **Makes referendum of redevelopment plans easier.** The time for submitting a referendum petition on an ordinance adopting or amending a redevelopment plan would be increased from 30 to 90 days.

• **Prohibits indemnity agreements.** Agencies would be prohibited from requiring developers or project proponents from indemnifying the agency and the local government from the costs of defending lawsuits challenging the adoption, amendment or implementation of a redevelopment plan. This could expose the general fund of cities or counties with limited financial resources to potentially ruinous costs of defending meritless lawsuits from project opponents.

• **Treatment of antiquated subdivisions.** The bill would eliminate: (1) the presence of antiquated subdivisions as a stand-alone condition justifying a determination of blight and (2) the antiquated subdivision exception to the requirement that redevelopment projects be predominantly urbanized. (CRA will not oppose this provision.)

SB 1210 (Torlakson). The chairman of the Senate Democratic Caucus, a former chair of the Senate Local Government Committee, is carrying this bill, which will amend sections of the eminent domain law, which are applicable to all public agencies that use the power of eminent domain. There are a few provisions that relate more specifically to redevelopment agencies. The following is a brief summary of the major features of the bill:

• **“Private-to-private land transfers.”** The eminent domain law would be amended to provide that a public use does not include the taking of property in order to transfer it to a non-governmental

entity for the purposes of economic development or increasing tax revenues, *except as specifically provided under the Community Redevelopment Law.* This provision of the bill responds to the holding in the *Kelo* case while at the same time preserving the use of eminent domain by redevelopment agencies.

• **Strengthened Protections for Property Owners.** The provisions of the eminent domain law dealing with orders for pre-judgment possession would be amended to make it easier for a property owner to obtain a stay of an order of prejudgment possession. This would be a problem where immediate possession of the property is critical.

• **Condemning Agency Pays Appraisal Costs.** Condemning authorities would be required to pay the cost of the property owner’s appraisal of their property, regardless of financial need.

• **Agencies penalized for below-market value offers.** If the court determines fair market value is greater than the public agency’s last offer, the public agency would be required to pay *twice the difference between the final offer and the market value.* This would penalize agencies that take a responsible, conservative approach to the expenditure of public funds. It would encourage public agencies to make offers well in excess of fair market value in order to avoid the risk of this penalty, resulting in a windfall to a few property owners at taxpayer expense.

• **Increased financial penalties if eminent domain proceedings halted.** Where an eminent domain action is abandoned, dismissed for any reason, or there is a judgment that the public entity cannot acquire the property, the public agency would be required to pay *three times the amount of all damages proximately caused by the proceeding.* Current law requires payment of damages proximately caused by the proceeding. The bill would create a penalty for abandoning eminent domain actions where, for example, a jury award of just compensation made the project financially infeasible.

Continued on Page 8

EMINENT DOMAIN from page 7

- **Broadened conflict of interest provisions.** The bill adds a new section to the Government Code dealing with apparent conflicts of interest associated with the use of eminent domain. For example, members of the governing body of a condemning authority would be forbidden from voting on a matter affecting an organization on whose board of directors the member sits, that has an interest in, or to which the public agency may transfer, property taken through eminent domain. Participation in such a decision would currently be prohibited by the provisions of the Political Reform Act.

- **Additional findings of “blight” for extended projects.** The bill would amend the Community Redevelopment Law to require that if the time limit on the exercise of eminent domain is extended, resolutions of necessity to condemn property adopted subsequent to the extension would have to find that substantial blight still exists in the project area, and the acquisition of the parcel is necessary for and will directly and substantially assist in eradicating the remaining blight.

SCA 20 (McClintock). Sen. Tom McClintock, vice-chairman of the Senate Transportation and Housing Committee and currently a November 2006 candidate for Lieutenant Governor, has been a strong and impassioned opponent of eminent domain for many years. He has been particularly active in proposing changes to eminent domain law since the *Kelo* decision came down last June.

Joined by CalTax representative Jon Coupal and Orange County Supervisor Chris Norby, Sen. McClintock currently has two anti-eminent domain initiatives awaiting title and summary from the State Attorney General. They are:

- The California Property Owner Protection Act
- The Homeowners and Private Property Protection Act of 2006

Two additional eminent domain measures have been filed by other parties, and they also await title and summary. They are “The California Eminent Domain Limitations Act,” filed by two individuals from

the Peninsula area, one of whom is a candidate for the State Assembly; and “Initiative re. Eminent Domain”, filed by an individual by the name of Anita Anderson.

Last month Sen. McClintock also introduced SCA 20, a constitutional amendment that would all but eliminate the authority of redevelopment agencies to use eminent domain. It contains the same language as The Homeowners and Private Property Protection Act of 2006, one of the voter initiatives he has filed with the Attorney General for “title and summary” prior to circulating petitions to qualify it for the November ballot.

Among other things, SCA 20 would change the legal definition of “just compensation,” significantly increasing the cost of building roads, highways, transit, schools, parks, libraries, and other public works projects. Its scope covers all government acquisitions and not just redevelopment.

Currently, if a governmental agency must condemn property to complete a public works project, it is required to pay “just compensation” to the displaced property owner. Under California law, just compensation is defined as “fair market value” of the property being acquired. However, this measure seeks to change the legal definition of “just compensation” and would require government agencies to pay significantly more—at the taxpayers’ expense. SCA 20 redefines “just compensation” to include:

- Cost of acquiring comparable property – even if “comparable property” is significantly more expensive than the fair market value of the property being condemned.
- Loss of income, relocation costs and loss of business goodwill would be embedded in the state constitution.
- Attorney’s fees in any case where a jury awards even one dollar more than the agency’s offer.