

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

# PRIORITY FOCUS



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### **SB 303 MOVES TO ASSEMBLY: TIME TO LOOK AT THIS BILL AGAIN**

SB 303 (Ducheny), a bill with significant land use implications for cities, passed off the Senate floor to the Assembly last week, with amendments that would address open space issues. The bill has had a rocky road in part because of the numerous letters cities sent in opposition. *For more, see Page 2.*



### **CITY SUPPORT NEEDED ON H.R. 2447 – THE ENERGY AND ENVIRONMENT BLOCK GRANT PROGRAM**

H.R. 2447, the Energy and Environment Block Grant Program (EEBG), was introduced in May by Rep. Albert Wynn, D-Md. Sponsored by the U.S. Conference of Mayors, H.R. 2447 would assist local and state governments in the development and implementation of a comprehensive energy efficiency strategy.

This is an important program for cities, as EEBG would provide funds to cities, counties and states for a variety of building, transportation and energy efficiency programs. The League is asking city officials to send a letter of support to your congressman supporting H.R. 2447.

A sample letter is located at [www.cacities.org/federalresources](http://www.cacities.org/federalresources). *For more, see Page 2.*



### **COMPETING LEGISLATION EMERGING FOR INFILL FUNDS IN PROPOSITION 1C**

Two bills – AB 1053 (Núñez) and SB 46 (Perata) have emerged as the main contenders for how the \$850 million in Proposition 1C for infill infrastructure will be spent. These funds are particularly important for cities because they represent a unique source of funding to address critical infrastructure issues that otherwise could not be addressed through typical development fees. *For more, see Page 3.*

'SB 303' Continued from Page 1...

The basic intent of the legislation is to require local agencies to complete all zoning for their regional housing needs allocation (RHNA) at the beginning of the five-year planning period instead of the current 10-year timeframe. The general plan consistency requirement would be applied to all charter cities as well.

There are many problems with this bill, including how all of these new mandates will be funded. This issue has not been addressed by Sen. Ducheny or the bill's sponsors.

The bill was amended in the Senate Environmental Quality Committee in order to place the open space element of the general plan on par with the housing element. If SB 303 is adopted, it would essentially "mirror" the housing element.

The open space changes in the bill seem extreme. For example, local agencies will have to develop inventories, programs, and determine the open space needs for each income category. Moreover, open space elements would have to be submitted to the state Department of Resources for a substantial compliance determination at the same time the local agency submits its housing element to the California Department of Housing and Community Development (HCD).

Supporters of SB 303 argue the legislation is needed because local agencies are slow to comply with housing laws, which slows project approvals. However, a new HCD report negates this argument, finding that 79 percent of all local agencies (representing 88 percent of the state's population) have an approved housing element. These findings beg the question: why does the state need expensive new mandates when the overwhelming majority of cities are meeting state requirements?

The bill is currently at the Assembly Desk awaiting committee assignment. The League continues to oppose this measure. Because of the significant new amendments, local agencies—even those that have submitted a letter in opposition—should send in a new letter of opposition addressed to Senator Denise Ducheny with a "cc" to your Assembly Member.

A sample letter is available by looking up SB 303 using the League of California Cities Web site's bill search program, located at [www.cacities.org/billsearch](http://www.cacities.org/billsearch).

Please look for continued monitoring of SB 303 in future issues of *Priority Focus*. For additional background on SB 303, see "SB 303 Amended, League Still Opposed" at [www.cacities.org/hced](http://www.cacities.org/hced).

'H.R. 2447' Continued from Page 1...

### **Details of the EEBG Program**

H.R. 2447 emphasizes a community-based approach to help the nation meet its energy and climate protection goals. Below is a short summary of the EEBG Program put together by the US Conference of Mayors:

- Eligible Communities: Funds would be directed to cities, counties and states by the Department of Energy through a formula program
- Eligible Activities Include:
  - Expanding weatherization programs, adopting energy efficient building codes and conducting energy audits
  - Implementing fuel conservation and alternative fuels programs; and
  - Developing and further expanding the use of alternative energy sources
- Authorization Levels
  - \$4 billion in FY 2008-09

- \$5 billion in FY 2010 and 2011
- \$6 billion in FY 2012

### Key Benefits of EEBG

- *Significant Energy Savings in the New Building Sector:* The updating and revision of building codes within cities and counties will result in significant increases in energy efficiency
- *Energy Audits and Retrofits for Existing Buildings:* Existing buildings utilize significantly less-efficient energy technology, accounting for the majority of energy consumed by building sectors. Local energy audits to identify cost-efficient retrofits in the public, residential and business sectors would increase energy efficiency
- *Community-based Transportation Programs:* President Bush has asked the public to reduce gasoline consumption by 10 percent. Cities and counties are well-positioned to launch programs that encourage activities such as car pooling, increased transit ridership, flex-time by employers, and other initiatives to reduce vehicle miles traveled
- *Promotion of Alternative Energy Technologies:* Cities and communities are laboratories for new energy technologies that can serve as models prior to public use. Cities can expedite the acceptance of new and innovative technologies resulting in significant energy
- *Design for Energy Efficient Communities:* Cities can increase energy efficiency through transit-oriented and mixed-use development; alternative transportation use; pedestrian-oriented communities; and other design approaches that encourage fewer vehicle miles traveled

### Where the Legislation Stands

H.R. 2447 has been referred to both the House committee on Energy and Commerce and also the Committee on Science and Technology. For more information on H.R. 2447, contact League Legislative Analyst Genevieve Morelos at [gmorelos@cacities.org](mailto:gmorelos@cacities.org).

### 'Infill Funds in Prop. 1C' Continued from Page 1...

Both SB 1053 and SB 46 contemplate a combination of basic threshold criteria (such as having a certified housing element, general plan consistency, and a basic percentage of affordable housing) and optional preferences (number of units of housing created, increased affordability levels, proximity to mass transit, consistency with reduction in greenhouse gases).

### How the Bills Differ

The major difference between these bills is how the funds will be allocated and who will be eligible to receive the funding. AB 1053 divides the funds into five separate pots:

- \$450 million for infill related to housing administered by the California Department of Housing and Community Development (HCD)
- \$100 million to the state Infrastructure Bank for infill infrastructure
- \$100 million for the California ReUse (Brownfield) Program
- \$100 million for a Workforce Housing Reward Program to reward smart growth projects
- \$100 million to the Multifamily Housing Program for infill affordable housing projects

SB 46, on the other hand, allocates the entire fund to one program administered by HCD for infrastructure and housing.

Another difference between the two measures is whether the \$850 million should be used solely for infrastructure projects related to housing or for actual housing projects. SB 46 allows nonprofit and for-profit developers to compete with cities, counties and redevelopment agencies for the funds and to use the money directly for housing projects. AB 1053, however, allocates \$100 million directly to the Multifamily Housing Program, but reserves the remaining \$750 million in competitive loans and grants for local agencies.

Another significant difference is how the two bills intend to leverage other funds. AB 1053 specifically seeks to leverage additional matching funds to increase the funding availability for

infrastructure. One analysis estimates that the leverage requirement would increase the amount available for infill infrastructure to \$1.3 billion or more.

### **Current Status**

AB 1053 was last heard in the Assembly Committee of Housing and Community Development on June 6. The bill is now in the Assembly Committee on Rules, awaiting a first hearing and then assignment to a Senate committee. SB 46 was last heard in the Senate Rules Committee. It is now in the Assembly awaiting assignment to a committee.

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### **Group Home Facilities Discussed by Legislators and Governor's Staff**

On Tuesday, June 12, several California legislators met with key members of Gov. Arnold Schwarzenegger's Administration to open a dialogue on how the Governor could help alleviate problems at the local level with respect to siting and operations of group home facilities.

Led by Assembly Member Bill Emmerson, R-Redlands; Assembly Member John Benoit, R-Palm Desert; Assembly Member Todd Spitzer, R-Orange; and Sen. Bob Dutton, R-Inland Empire; the members discussed their frustrations with not being able to address the concerns of constituents in their districts with group homes facilities.

Ideas were presented on how the Administration could help, including the need for an adoption of policies and practices that would improve the coordination and communication between the various agencies and local governments.

The meeting is a result of a letter that was sent to the Governor with signatures from all Republican members of the Assembly and the Senate requesting that the Governor adopt a "Good Neighbor Policy" that would improve interaction between state agencies and local communities.

Legislators were hopeful that their conversation with the Governor would be a starting point to work with the Administration to begin to make needed improvements to the operation of group home facilities. The League appreciates the efforts of Assembly Members Emmerson, Benoit, Spitzer and Sen. Dutton on this important issue that affects so many of our local communities.

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### **Annual Conference Resolutions Introduction Deadline Approaching**

The deadline to introduce a League of California Cities Annual Conference Resolution is quickly drawing near. The deadline is Friday, July 6, at 5 p.m. for submittals by mail and Saturday, July 7 at midnight for submittals by e-mail or fax.

Policy development is a key part of the League's legislative effectiveness and the League's Annual Conference Resolutions process is one way that city officials can directly participate in the development of League policy. Any elected or appointed city official, individual city, division, department, policy committee, or the board of directors may submit a resolution for consideration at the conference.

Resolutions submitted by the deadline will be distributed to cities in mid-to-late July and considered at the Annual Conference. More information about the resolutions process, including key deadlines and an explanation of the review process at the Annual Conference is available on the League Web site at [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

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## **Legal Decision Reaffirms Cities' Right to Zone Property to Promote Business Activity**

In a decision handed down last week in *Hernandez v. City of Hanford*, the California Supreme Court unanimously upheld a city's right to zone property in a way that promotes business activity in one area of the city, by limiting the same activity in another area.

This is an important case for cities because it affirms cities' right to choose where particular types of businesses are located in order to promote a valid public purpose such as economic vitality.

*Hernandez v. City of Hanford* focused on a city ordinance that generally prohibits the sale of furniture in one part of the city (the Commercial District), but allows furniture sales in another part of the city (the Downtown District). The city enacted the ordinance, in part, to protect the economic viability of its Downtown District.

The ordinance exempts "large department stores" from the prohibition and allows them to sell furniture in Hanford's Commercial District. The rationale behind the exemption was to ensure the Commercial District remained an attractive location for these stores because loss of these types of businesses would have a detrimental effect on the economic vitality of the city as a whole.

The owners of a small store in the Commercial District sued the city, arguing it was improper for Hanford to prohibit their business from selling furniture in order to foster sales in the Downtown District. The owners also argued it was improper for the city to allow "large department stores" to sell furniture in the Commercial District, while prohibiting small stores in the district, such as theirs, from doing the same.

The court rejected the owners' arguments, overturning a lower court's decision that limited cities' ability to make these determinations. In its decision, the California Supreme Court concluded that as long as the ultimate objective of a zoning ordinance was to achieve a valid public purpose, the ordinance would not be struck down merely because it effects business competition.

The court held that furthering a municipality's general plan for controlled growth or for localized commercial development is a valid public purpose and that Hanford acted accordingly.

In addition, the court concluded there was a rational basis for allowing "large department stores" to sell furniture in the Commercial District, while not allowing small stores in the district to do the same. If not allowed to sell furniture, these businesses may choose to leave Hanford, an effect the city determined was not in the best interest of its citizens.

The League of California Cities, along with the California State Association of Counties (CSAC), submitted a "friend of the court" brief in *Hernandez v. City of Hanford* (Cal.Rptr.3d, 2007 WL 1629830) in support of cities' right to make these zoning choices. The League thanks Thomas B. Brown of Hanson Bridgett Marcus Vlahos & Rudy LLP for drafting an amicus brief on behalf of the League and CSAC.

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## **Greenlight Initiative Seeking Grant Applicants**

The Greenlight Initiative, a program started by AAA of Northern California, Nevada and Utah to promote the development and understanding of new automotive fuels and fuel-efficiency-related technologies, has launched the Greenlight Initiative Grant Program. The program is looking to award grants to qualified applicants working on projects related to alternative fuels.

The Greenlight Initiative Grant Program is seeking applications from individuals and organizations pursuing projects in three key areas:

- Awareness: Increase awareness and promote use of alternative fuels among a defined population of residents in Northern California, Nevada and Utah.

- Vehicle Conversion(s): Conversion of conventionally fueled vehicles to run on alternative fuels with the ultimate goal of increasing awareness and promote use of alternative fuels among a defined population of residents in Northern California, Nevada and Utah.
- Dedicated Research: Existing or planned research which directly focuses on the development and understanding of new automotive fuels and fuel-related technologies.

AAA is seeking qualified applications from three distinct groups:

- Higher Education, including graduate and undergraduate students and programs focusing on the field of alternative fuels and vehicle technology related to efficiency.
- Government Organizations, including municipalities, townships, and counties.
- Not-for-profits, including qualified 501(c)(3) organizations specifically working in the areas of alternative fuels and vehicle efficiency technology.

For more information and application materials, send an e-mail to [greenlightgrants@csaa.com](mailto:greenlightgrants@csaa.com). Please note the deadline for proposal submission is July 20.

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### **Find a Bill, Legislators, Leg Committee, or Ask League Leg Staff**

Visit (and bookmark!) the League's [Legislative Resources](http://www.cacities.org/legresources) Web page ([www.cacities.org/legresources](http://www.cacities.org/legresources)). You'll find a roster and contact information for the League's legislative staff; the online Bill Search program, background materials on lobbying your legislators, and more.

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