C/CAG

CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

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AGENDA

The next meeting of the Legislative Committee
will be as follows.

PLEASE NOTE THAT WE WILL BE MEETING AT 6:00 P.M.
in the 2nd Floor Auditorium!!

Date: Thursday, January 12, 2006 – 6:00 p.m. to 7:00 p.m. (dinner will be served)

Place: San Mateo County Transit District Office[1]
1250 San Carlos Avenue
2nd Floor Auditorium
San Carlos, California

PLEASE CALL WALTER MARTONE (599-1465) IF YOU ARE UNABLE TO ATTEND.

1.	PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA	Presentations are limited to 3 minutes.		6:00 p.m. 5 minutes.

REGULAR AGENDA

2.	Selection of a temporary Chair for this meeting.	Action		6:05 p.m. 1 minute
3.	Minutes of the meeting of August 11, 2005.	Action (Martone)	Pages 1-3	6:06 p.m. 4 minutes

[1]From Route 101 take the Holly Street (west) exit. Two blocks past El Camino Real go left on Walnut. The entrance to the parking lot is at the end of the block on the left, immediately before the ramp that goes under the building. Enter the parking lot by driving between the buildings and making a left into the elevated lot. Follow the signs up to the levels for public parking.

For public transit access use SamTrans Bus lines 390, 391, 292, KX, PX, RX, or take CalTrain to the San Carlos Station and walk two blocks up San Carlos Avenue.

4.	Update from C/CAG's Lobbyist in Sacramento (via conference call). • NPDES funding and ACA 13 • Housing and land use issues • Eminent Domain • Infrastructure Bond • Telecommunications reform • Other items A position may be taken on any legislation, including legislation not previously identified.	Potential Action (Wes Lujan)	Pages 5-24	6:10 p.m. 30 minutes
5.	Discussion and potential action on various bills • SB 843 (Dunn) General Plans: housing elements. • AB 438 (Parra) Sex Offenders • AB 315 (Hancock) School Facilities: energy efficiency	Potential Action (Martone)	Page 25-60	6:40 p.m. 15 minutes
6.	Establish date and time for next meeting (February 9, 2006).	Action		6:55 p.m. 1 minute
7.	Other Items/Comments from Guests.	Potential Action		6:56 p.m. 4 minutes
8.	Adjournment.	Action		7:00 p.m.

NOTE: All items appearing on the agenda are subject to action by the Committee. Actions recommended by staff are subject to change by the Committee.

<u>Other enclosures/Correspondence</u>

- None

CITY/COUNTY ASSOCIATION OF GOVERNMENTS
LEGISLATIVE COMMITTEE

MINUTES
MEETING OF AUGUST 11, 2005

At 5:40 p.m. Chairman Lee Panza called the meeting to order in the Fourth Floor Dining Room at the San Mateo Transit District Office.

Members Attending: Chairman Lee Panza, Marc Hershman, Vice Chair Sue Lempert, Irene O'Connell, and Jim Vreeland.

Staff/ Guests Attending: Linda Koelling (Foster City - representing Deborah Wilder), Mary McMillan (County Legislative Director), David Burruto (Speaker Pro Tem Leland Yee's Office), Richard Napier (C/CAG Executive Director), Rosalie O'Mahony (C/CAG Member - City of Burlingame), Walter Martone (C/CAG Staff), and Wes Lujan (Advocation).

1. Public comment on items not on the agenda.

- None.

2. Minutes of the Meeting of June 9, 2004.

Motion: To approve the minutes of June 9, 2005 as presented. O'Connell/Lempert, unanimous.

3. Update from C/CAG's Lobbyist in Sacramento (in person).

Wes Lujan reported:

- Local Governments fared very well during the last budget process.
- There is a potential surplus of transportation funds of five billion dollars. The Administration is considering using these funds to pay back some of the Proposition 42 funds that had been borrowed. Sue Lempert noted that two areas where San Mateo County could use extra transportation funding are for grade separations and for the Route 101 Auxiliary Lane project (3rd Avenue to Millbrae Avenue).
- The Special Election appears to be going forward. Both political parties have drawn a line in the sand and are unwilling to compromise.
- The business community (with leadership from Chevron and others) is proposing an initiative for the June 2006 election. It is being tentatively called "Save the 2/3 rd Vote."
- Republican Senators McClintock and Flores have introduced SCA 15 in response to the Supreme Court ruling about the use of eminent domain for economic development purposes. This Constitutional Amendment would put severe limits on the use of the ability of local governments to take land for any purpose. Senator McClintock is vowing to go the Initiative Process if his bill is not

successful in the Legislature. The Democrats have offered an alternative proposal (SB 1026 and AB 1433). This proposal is to:

- Place a moratorium on the taking of single-family homes for economic development purposes.
- Calls for a study of condemnations that have occurred in the past.
- These proposals would be done as statutory changes and not as an amendment to the Constitution.

- Senator Speier has introduced SB 105 to eliminate the so-called "Chief's Disease" as qualifying for disability retirement.
- In the area of telecommunications, the Federal Government is attempting to establish a program of national franchising.
  - Many of the cities that are currently in negotiation with telecommunications companies for local franchises are having their hands tied by this Federal involvement.
  - The League of California Cities is becoming very involved in fighting this issue at the Federal level. They contend that the companies are just passing on costs to customers in order to ensure that their profits are maximized.
  - This issue needs to be brought to the attention of more people and local jurisdictions need to begin fighting back.
- The Governor does not appear to be interested in pursuing an infrastructure bond during this Legislative Session. This may become an item that he would consider in the future as he begins to consider developing his legacy.
- This is the time of year when we need to be watching for gut and amend bills. If action is required quickly on any of these bills, C/CAG staff will consult with the Legislative Committee Chair and the C/CAG Chair, and prepare letters of support/opposition/concern that are consistent with C/CAG's already adopted policies.

Mary McMillan, the County's Legislative Director provided the following information:

- A bill may be introduced to reorganize all State funding for county hospitals. This proposal, as it is currently being discussed, would result in substantial funding for San Mateo County General Hospital being redirected to other county hospitals. This could call into question the continued viability of San Mateo County continuing to operate its hospital.
- County Assessors are looking into proposals that would distribute the total cost of property tax collection among the various cities and counties. Such a distribution may not be fair considering that 65% of the collected tax is turned over to the State.
- The County is continuing to fight a recent ruling by the Commission on State Mandates which states that the cost of preparing the Regional Housing Needs Allocation is not a reimbursable mandate because the agencies that do this work can charge the cities and counties for this service. C/CAG had previously taken a position opposing this ruling. Staff was instructed to work with the County to continue the fight against this ruling.

4. Consideration of positions on various bills:

SCA 15, introduced by Senator McClintock, will severely limit the ability of local jurisdictions to use eminent domain for redevelopment or other purposes. The Senator has indicated that he will pursue placing this measure on the ballot if he is not successful in moving SCA 15 through the Legislature.

The Legislative Committee requested that staff work through the League and CSAC to determine how these bodies will be addressing the issue of eminent domain. Staff was also requested to contact the City of El Cerrito to see how they responded to the Supreme Court ruling on eminent domain.

5. Establish date and time for next meeting (September 8, 2005).

The next meeting was tentatively set for Thursday, September 8, 2005 at the San Mateo County Transit District Office.

6. Other Items/Comments from Guests.

- None.

7. Adjournment.

The meeting was adjourned at 6:40 p.m.

C/CAG AGENDA REPORT

Date: January 12, 2006

To: City/County Association of Governments Legislative Committee

From: Richard Napier, C/CAG Executive Director

Subject: UPDATE FROM C/CAG'S LOBBYIST IN SACRAMENTO

A position may be taken on any legislation, including legislation not previously identified.

(For further information contact Walter Martone at 599-1465 or Richard Napier at 599-1420)

RECOMMENDATION

That the Legislative Committee accept the attached report on State legislation and receive an oral update from Advocation.

FISCAL IMPACT

Not applicable.

SOURCE OF FUNDS

Not applicable.

BACKGROUND/DISCUSSION

Attached is a list of the bills that appear to be most related to the legislative priorities established by the C/CAG Board. C/CAG staff is also be tracking approximately 135 other bills that have subject matter consistent with C/CAG's legislative priorities. The Legislature reconvened on January 4, 2006.

As you have likely heard in the news, there appears to be a great deal of momentum by the Governor and the Legislature to move forward with a massive State Infrastructure Bond. It is still unclear whether the voters will support a huge funding effort like what is being proposed. However, C/CAG staff is working with the County to coordinate the preparation of a list of possible infrastructure projects that could be funded with such a bonding effort. Attached is a copy of a message we sent out to all City Managers, and a copy of the three projects that C/CAG staff is proposing to be included.

ATTACHMENTS

- E-mail to City Managers and Transportation Authority regarding potential infrastructure projects.
- Potential infrastructure projects identified by C/CAG staff.
- League of CA Cities – Key issues for 2006.
- Action Report With Summary By Subject.

From: Walter Martone
To: city managers; Joe Hurley
Date: 12/27/2005 3:33:51 PM
Subject: Potential projects to be funded with State Infrastructure Bonds

As you are all aware, the State Administration and certain members of the State Legislature are exploring the possibility of enacting one or more bonds to rebuild and restore infrastructure and complete one time only projects. Senator Don Perata introduced SB 1024 last year which was a $10 billion bond for this purpose. It appears that this bond and possibly others will be one of the major hot topics during the early parts of the 2006 Legislative Session. There is also talk about greatly expanding the bond to $50 or even $100 billion and expanding the types of one time only projects eligible.

C/CAG and the County are both developing lists of candidate projects to provide to our Legislative Delegation in the expectation that they will be asked by the Sacramento Leadership for their input on high priority projects to be included in a possible bond measure. To the extent that it is possible and makes sense, we would like to coordinate the input from the County, C/CAG, and the local jurisdictions. This will allow us to join forces in advocating for a packages of projects that benefits all of San Mateo County. It will also allow us to use our lobbyists more effectively.

If your jurisdiction has an existing or potential project that you think would be a good candidate for one time only bond funding, please submit it to me by no later than Friday, January 6, 2006. We must compile our list and merge it with the County's list by January 9th. You may submit multiple project ideas. The information required should be pulled together in one paragraph per project (about 4 to 5 sentances) and include a description of the project, justification, benefits, cost estimate, how much of the cost proposed to be covered by the bond, and how much of the cost to be covered by other funding sources.

Please do not hesitate to contact me if you have any questions.

Walter Martone
650 599-1465
wmartone@co.sanmateo.ca.us

CC: Mary McMillan; Ross Nakasone; Sandy Wong

IDEAS FOR STATE BOND PROJECTS

Submitted by C/CAG

Title: San Mateo Countywide Intelligent Transportation System (ITS) improvements.

Description: Design and implement Intelligent Transportation System (ITS) improvements to increase the operational efficiencies in various arterials in the County such as the El Camino Real, the freeways (U.S. 101, Interstate 280, and Highway 84 & 92) and transit services. Install equipment including but not limited to detection units, dynamic message signs, cameras, communication systems, emergency vehicle preemption system, transit signal priority system, Traffic Management Center, and upgrade existing traffic signal systems, signal interconnect.

Lead Sponsor: City/County Association of Governments of San Mateo County (C/CAG)
Partner jurisdictions: 10+ cities, San Mateo County, Caltrans, SamTrans.

Benefits: Increase inter-agency coordination and communication, improve traffic operations, reduce congestion, reduce incident response time, improve transit on-time service, and improve air quality.

Cost estimates:	$10 million
Bond:	$5 million
Others:	$5 million

Title: Expressway connection between the Dumbarton Bridge (CA-84) and the Bayshore Freeway (US-101).

Description: Design and construct a modified depressed expressway or tunnel expressway that provides a direct connection between the Dumbarton Bridge and the Bayshore Freeway both north and south directions. If the depressed expressway option is selected, it will be constructed with cantilevered inboard (surface roads that partially suspend over the depressed roadway) and surface level crossings for local traffic. This will minimize the footprint of the project and the impact on the local community.

Lead Sponsor: City/County Association of Governments of San Mateo County (C/CAG)
Partner jurisdictions: Caltrans.

Benefits: Significantly reduce travel times from/to the Dumbarton Bridge and the Bayshore Freeway both north and south directions during peak commute times. This will greatly improve the ability for workers and products to move to and from the Silicon Valley. Commute and freight traffic that currently cuts through the main downtown road (University Avenue) of East Palo Alto would be diverted to the new expressway. This City is one of the most economically disadvantaged communities in the Bay Area. The project would address an important issue of Environmental Justice.

Cost estimates:	$900 million
Bond:	$825 million
Others:	$75 million

Title: Implementation of a comprehensive transportation and land use plan for the El Camino Real (CA-82) Corridor.

Description: Design and implement a comprehensive transportation and land use plan for the El Camino Real (ECR) Corridor. This will include transit oriented development projects, bus system improvements, in-fill development, increased affordable housing and commercial densities, roadway improvements (signalization, median strip enhancements, parking, turning movements), pedestrian improvements (safety, crossings and electronic signals, walkways, lighting), and other aesthetic improvements (facades, landscaping).

Lead Sponsor: City/County Association of Governments of San Mateo County (C/CAG)
Partner jurisdictions: 14+ cities, San Mateo County, Caltrans, SamTrans, San Mateo County Transportation Authority, Peninsula Corridor Joint Powers Board (CalTrain), ABAG, MTC.

Benefits: Improve the movement of people and goods along the El Camino Real Corridor. Increase the availability of affordable housing in San Mateo County. Provide options for individuals to live near the communities where they work by increasing the stock of affordable housing in areas where job growth is occurring.

Cost estimates:	$20 million
Bond:	$10 million
Others:	$10 million

2006-01-04

League Prepares for Busy 2006 Legislative Year

The legislative and policy-making apparatus in Sacramento is revving up for what could be a very busy 2006. Here is a summary of the key issues the League has been working on - issues that again appear at the forefront of the administration's and Legislature's agenda.

HOUSING AND LANDUSE/INFRASTRUCTURE

Discussions continue on legislative proposals to address the state's housing crisis.

League-Builders Housing/General Plan Task Force

Last month the League's board of directors adopted, a housing proposal recommended by city officials who had participated with the League-Builders Housing/General Plan Task Force.

The goal of the proposal is to respond - through an incentive-based approach - to provide greater certainty about where and under what conditions houses can be built, while preserving local decision-making authority and identifying new funding to pay for infrastructure and service needs.

League officers have since met with representatives of the California Building Industry Association. Both parties "agreed to disagree" about some matters, but to keep the lines of communication open as the League and the builders work their preferred legislative proposals.

Task Forces: Possible Legislation

The Schwarzenegger Administration is exploring its options through a series of task forces. In October, the secretaries of Business, Transportation and Housing (BT&H), Resources, Food and Agriculture and State and Consumer Services met with representatives of other organizations involved in land use (local government, environmental groups, housing advocates, farmland preservationists and others). The administration representatives asked for advice and consultation on elements that they believe should be included in a housing/planning reform package, including possible reforms to the California Environmental Quality Act (CEQA). The administration representatives said that while consensus was desirable, it was not a requirement for a final package.

As a follow-up to that meeting the League is working with other stakeholders to develop a package of financial incentives for communities that accept housing. This role is consistent with the concerns about funding for services and infrastructure that the League has stressed in its discussions with the builders.

Conclusion

2006 will be a year when numerous housing/land use proposals are introduced. The League is committed to working toward meaningful solutions - but will insist on proposals that preserve local decision-making and which address cities' critical need for funding to pay for services and infrastructure.

INFRASTRUCTURE/TRANSPORTATION

There are several efforts at play to find more money to pay for the state's infrastructure needs, particularly as they relate to transportation. The League is participating in discussions with a coalition of transportation stakeholders to explore the potential for a ballot measure or initiative that would permanently dedicate Prop. 42 funds - the sales tax on gasoline - to transportation. Such a constitutional amendment would put an end to the annual fight to make sure these transportation-derived revenues are always directed to transportation needs.

So far, however, the only proposed legislative measure in print is Senate Pro Tem Don Perata's SB 1024, a $10.2 billion package that includes $2.5 billion to repay Prop. 42 funds to projects that lost Prop. 42 money in 2003 and 2004, when the funds were transferred to other state needs.

SB 1024 also outlines proposed funding for several other areas including: $2.3 billion to improve the state's ports and trade corridors; $1.2 billion for flood protection; $1 billion for high-speed rail; $425 million for improvements to local streets and roads for local governments that have housing elements that have been approved by the State Department of Housing and Community Development, and met other requirements.

Sen. Perata was joined this week by Sen. Tom Torlakson (Antioch) in a press conference at the Port of Oakland, during which they talked about the need for this measure.

The League is also working on SAFETEA-LU, the recently passed federal reauthorization for distribution of the 18-cent federal gas tax to states for transportation.

Under this new act, California will receive a 34 percent increase in revenues over TEA 21 (was the previous federal transportation authorization). This increase will result in approximately $5 billion more in revenues for California's transportation needs, above those received in the six years of the previous federal act.

SAFETEA-LU must now be implemented at the state level through implementation legislation. The League is working with a statewide coalition of transportation stakeholders to collaborate and provide input to ensure that an equitable approach for distribution of the

SAFETEA-LU revenues is adopted.

We're just getting started in this process, but can anticipate that SAFETEA-LU will be a focus of our efforts next year.

REDEVELOPMENT AND EMINENT DOMAIN

Protection of redevelopment funds was a key priority for the League in 2005. While concerns about protecting this funding from possible legislative action remains high, concern has shifted since the Supreme Court decision in *Kelo v. City of New London* to possible legislative action that could impact the ability of redevelopment agencies to use eminent domain to acquire property needed for affordable housing and other redevelopment projects.

The Senate Local Government Committee held a joint hearing this week involving four other committees, to explore reforms to the state's rules regarding the use of eminent domain. Reforms could include changing the definition of a finding of blight, which can trigger the involvement of a redevelopment agency in a project where eminent domain could be used. More action on this issue could occur in January, when the Legislature reconvenes.

Federal Action on Eminent Domain

Congress has also taken up the eminent domain issue. Last week, the House of Representatives overwhelmingly passed H.R. 4128, which pre-empts local government from receiving federal funds for any project involving the use of eminent domain.

The Senate has not yet acted on the issue. They could take up a different measure, adopt the House measure, or take not action at all.

The League is working closely with the National League of Cities (NLC) and other national and regional local government organizations to educate senators about the importance of preserving this critical redevelopment tool.

TELECOMMUNICATIONS REFORM

The legislative session shut down in September without the Legislature having moved any telecom reform measure. Assemblymember Levine, chair of the Assembly Utilities and Commerce Committee, had committed to continue discussions among all stakeholders throughout the fall.

At the national level, there was sudden movement the week of November 7, when the House Commerce Committee released a new version that was friendlier to the telephone industry than a previous draft, and scheduled a hearing to consider it on less than a week's notice.

The League, NLC and other local government partners do not support the new draft. As reported by NLC, cities' suggestions for changes to the first draft were ignored and the bill, as Rep. John Dingell (Mich.) explained, "shifted in the direction of a selected group of stakeholders," the telephone companies.

NLC identified two major concerns with the new draft:

? Local government has fewer means to enforce public safety under the new draft than the old draft. The industry sets public safety standards, not local government.

? Video franchise fees are limited to 5 percent of subscriber revenue, not the 5 percent of gross revenues that is standard today. There is also no recovery over 5 percent for public access channels or institutional networks.

The League of California Cities is working closely with NLC on responses to this latest development, including urging that the committee work in a bipartisan way to consider proposals that take local government concerns into account. We will keep members apprised as these discussions continue.

City Officials Need to "Get Smart" on Telecom!

These recent developments underscore the urgent need for California city officials to educate themselves about the telecom issue, and how reforms could affect local franchising authority. The current issue of *Western City* magazine includes a cover story on the telecom issue ("How the Telecommunications Revolution Will Affect Your City"). You may view a copy of the story on the *Western City* website. Reprints of the story are also available by contacting League staff member Adrienne Sprenger.

PENSION REFORM

While pension reform stalled in 2005, the issue is by no means dead. In September Assemblymember Keith Richman introduced ACA 23, a "hybrid" version of the measures he introduced last January (ACA 5 and ACAX1 3). Those proposals incorporated the governor's plan, by offering to new state and local employees only a defined contribution plan (like a 401k), rather the defined benefit plan available to public employees today.

Richman's new proposal would again apply to both state and local agencies, but this time would offer a defined benefit plan coupled with a defined contribution pension plan. He has stated that if the Legislature will not pass his measure, he will take it to the ballot through the initiative process, probably for the November 2006 election.

The League's Pension Reform Task Force met this week to confer about the new Richman proposal, and to discuss the likelihood of

legislative action this year. The League's position on pension reform is that it must be based upon sound actuarial analysis of what approaches will demonstrate cost savings to local government in the long-term.

The League also supports the task force recommendations, reached last spring, which state that any reform proposal should provide caree employees with a fair retirement benefit that will maintain their standard of living in retirement; and that defined benefit programs should be maintained as the "central pension plan for retirees in California".

The entire League Pension Reform Task Force report is available in the Issues and Legislation - Employee Relations section of the League's website.

FLOOD CONTROL

In this post-Hurricane Katrina environment, flood control and development promises to be one of the more lively topics of the 2006 session.

While the issue was on the middle-burner during the 2005 session, the administration- sponsored AB 1665 (Laird) and ACA 13 (Harman), as well as AB 802 (Wolk), all stalled. In 2006, the issue of flood control and development in flood prone areas will definitely be a front burner concern.

Issues will include the status of levees in California, whether flood insurance should be mandatory or voluntary, property owner notification, improved mapping of flood zones, liability, and development in flood prone areas. The latter issue is the one that will be of most interest to and have the greatest impact on cities. The League is participating in the stakeholder meetings that have already begun on the topic of flood control and testified at a joint hearing of the Assembly Water Parks and Wildlife, Insurance and Judiciary Committee earlier this fall.

In order to thoughtfully participate in the legislative process, the League will form a working group of representatives from the League's Environmental Quality and Housing, Community and Economic Development policy committees, as well as other city experts. The working group will evaluate the issues and propose guiding principles to the policy committees and League board for League staff to use as these issues move through the Legislature.

Key to any proposal to improve the state's flood control system is funding. Thus, ACA 13, which deals with storm water and flood control fees and Proposition 218, is integral to any legislative proposal.

The League will be working with the administration, Assemblymember Harman's office and city officials to build the necessary legislative support to move the bill out of committee, and to secure the two-thirds vote necessary to pass it in the Assembly and Senate and place it on the ballot.

last updated : 11/18/2005

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Budget

ACA 1 **(Calderon) Two-Year Budget.** I - 12/06/2004

Status:

04/14/2005 - ASM 2 YEAR Referred to Coms. on BUDGET and APPR.

Calendar:

Summary

The California Constitution requires that a budget be submitted by the Governor, and that a Budget Bill be passed by the Legislature, for each fiscal year . This measure would express the intent of the Legislature to enact the necessary statutory changes, and to propose to the people the necessary constitutional changes, to enact a budget for a two -year fiscal period .

C/CAG *1* *Budget*

Environment

AB 315 **(Hancock) School facilities: energy efficiency: design standards.** A - 07/11/2005

Status:

08/30/2005 - SEN THIRD READING Read second time. To third reading.

Calendar:

01/04/06 83 SEN THIRD READING FILE

Summary

Existing law, the Leroy F . Greene School Facilities Act of 1998 (the Greene Act of 1998), establishes a program in which the State Allocation Board is required to provide state per -pupil funding, including hardship funding, for new school facilities construction and school facilities modernization for applicant school districts . This bill would require the State Allocation Board, by July 1, 2007 , to adopt regulations to ensure that design standards for new school facilities constructed in whole or in part with state funds are in accordance with, among other requirements, the minimum design and construction criteria, as defined, in the specified Collaborative for High Performance Schools Best Practices Manual . The bill would also require the board to review other high performance building organizations' standards and any guidelines adopted pursuant to a specified executive order, and to adopt the standards that it deems appropriate . This bill contains other related provisions and other existing laws .

C/CAG *1* *Environment*

Housing

AB 1203 **(Mullin) Housing: regional job growth.** I - 02/22/2005

Status:

02/24/2005 - ASM H. & C.D. From printer. May be heard in committee March 26.

Calendar:

01/11/06 9 a.m. - Room 126 ASM HOUSING AND COMMUNITY DEVELOPMENT

Summary

Existing law requires a city or county to include a housing element in its general plan, and, for that purpose, prescribes criteria for determining the city or county share of the regional housing needs, including a requirement that the distribution of regional housing needs take into account, among other things, market demand for housing and employment opportunities . This bill would declare the Legislature's intent to authorize local governments to create Greyfield housing and investment zones in coordination with a regional process, in specific areas where additional job growth and high density housing is desired to match transportation, air quality, and other regional priorities. The created zones shall have tax increment authority, access to transportation funds, future infrastructure improvement funds, and affordable housing funds .

C/CAG *Watch* *1* *Housing*

SB 832 **(Perata) CEQA: infill development.** A - 05/04/2005

Status:

08/31/2005 - ASM INACTIVE FILE Placed on inactive file on request of Assembly Member Frommer.

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Calendar:

Summary:

The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect . Existing law exempts from CEQA a residential project located on an infill site within an urbanized area that meets specified criteria, including that the site of the project is not more than 4 acres in total area and the project does not contain more than 100 residential units. This bill would provide an alternative to those criteria if the site is located in a city with a population of more than 200,000 persons , the site is not more than 10 acres , and the project does not have less than 200 or more than 300 residential units , as adopted by a resolution of the city council .

C/CAG *1* *Housing*

SB 843 **(Dunn) General plans: housing elements.** A - 09/07/2005

Status:

09/07/2005 - SEN 2 YEAR From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Calendar:

Summary:

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element, and to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with state law governing housing elements . This bill would require a court, on a finding by the department that there is not substantial compliance with that law, to levy a fine and award attorney fees as specified . The bill would require the Controller to levy a fine of $ 5,000 per month or $ 0.25 per month per person in the jurisdiction, whichever is greater and subject to specified limits, upon a city, county, or city and county if specified conditions are met . The bill would provide that all fines shall accrue to the Housing Supply Account, which the bill would create in the Housing Rehabilitation Loan Fund, and that no money in that account shall be expended except upon appropriation by the Legislature .

C/CAG *1* *Housing*

Land Use Authority

AB 590 **(Walters) Eminent domain: private property.** A - 09/07/2005

Status:

09/08/2005 - ASM H. & C.D. Re-referred to Com. on H. & C.D.

Calendar:

01/11/06 9 a.m. - Room 126 ASM HOUSING AND COMMUNITY DEVELOPMENT

Summary:

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner . This bill would provide that "public use" does not include the taking or damaging of property for private use, including, but not limited to, the condemnation of property for economic development . This bill contains other existing laws.

C/CAG *1* *Land Use Authority*

AB 1162 **(Mullin) Eminent domain.** A - 09/02/2005

Status:

09/06/2005 - SEN RLS. Re-referred to Com. on RLS.

Calendar:

Summary:

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Existing law authorizes public entities to seize private property under the power of eminent domain . This bill would prohibit, until January 1, 2008, a community redevelopment agency, or community development commission or joint powers agency, as specified, from exercising the power of eminent domain to acquire owner -occupied residential real property if ownership of the property will be transferred to a private party or private entity . This bill contains other related provisions .

C/CAG *1* *Land Use Authority* *CSAC-support*

ACA 15 **(Mullin) Eminent domain: redevelopment.** A - 08/23/2005

Status:

08/24/2005 - ASM G.O. Re-referred to Com. on G.O.

Calendar:

Summary

redevelopment . This measure would set forth a constitutional provision prohibiting a redevelopment agency from acquiring property through the exercise of the power of eminent domain unless it first makes a written finding that the property contains conditions of both physical and economic blight . This bill contains other existing laws .

C/CAG *1* *Land Use Authority*

ACA 22 **(La Malfa) Eminent domain: condemnation proceedings.** I - 07/13/2005

Status:

07/14/2005 - ASM PRINT From printer. May be heard in committee August 13.

Calendar:

Summary

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner . It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt release to the owner, of the money determined by the court to be the probable amount of the just compensation . This measure would add a condition that private property may be taken or damaged by eminent domain proceedings only for a stated public use and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists . The measure would require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use . This bill contains other related provisions .

C/CAG *1* *Land Use Authority* *League-oppose*

SB 44 **(Kehoe) General plans: air quality element.** A - 05/17/2005

Status:

09/08/2005 - ASM UNFINISHED BUSINESS Read third time. Refused passage (Ayes 34. Noes 38. Page 3666.) Motion to reconsider on next legislative day made by Assembly Member Pavley

Calendar:

01/04/06 159 ASM UNFINISHED BUSINESS RECONSIDERATION

Summary

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Existing law requires the legislative body of each county and city to adopt a comprehensive, long -term general plan for the physical development of the county or city, and of any land outside its boundaries that bears relation to its planning. The law requires the plan to include a specified land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, and other categories of public and private uses of land . Existing law specifically requires the legislative body of each city and county within the jurisdictional boundaries of the San Joaquin Valley Air Pollution Control District to amend appropriate elements of its general plan to include specified information to improve air quality, including a report describing local air quality conditions . This bill would make a legislative finding that air pollution is a serious problem in this state . The bill would require the legislative body of each city and county located in specified areas to either adopt an air quality element as part of its general plan, as specified, or amend the appropriate elements of its general plan to include data and analysis, comprehensive goals, policies, and feasible implementation strategies intended to contribute to and complement other local, regional, state, and federal strategies to improve air quality no later than one year from the date specified for the next revision of its housing element that occurs after January 1, 2007. The bill would require all other cities and counties to comply with these provisions, as specified, during their next general plan update but no later than the date specified for the 5th revision of their housing element that occurs after January 1, 2007. This bill contains other related provisions and other existing laws.

C/CAG *Watch* *1* *Land Use Authority*

SB 53 **(Kehoe) Redevelopment.** A - 08/15/2005

Status:

08/15/2005 - ASM 2 YEAR From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Calendar:

Summary

The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities in order to address the effects of blight, as defined, in those communities and requires those agencies to prepare, or cause to be prepared, and approve a redevelopment plan for each project area . Existing law requires that a redevelopment plan contain certain provisions and authorizes a plan to provide for the agency to acquire by gift, purchase, lease, or condemnation all or part of the real property in the project area . This bill would require redevelopment plans to contain a description of the agency's program to acquire real property by eminent domain, including prohibitions, if any, on the use of eminent domain, and a time limit for the commencement of eminent domain proceedings. This bill contains other related provisions and other existing laws .

C/CAG *1* *Land Use Authority*

SB 321 **(Morrow) Development: fees.** A - 04/14/2005

Status:

04/18/2005 - SEN 2 YEAR Set, second hearing. Hearing canceled at the request of author.

Calendar:

Summary

Existing law authorizes a local agency to charge a variety of fees in connection with the approval of a development project, as defined . Existing law provides that in specified actions imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between, among other things, the fee's use and the type of development project on which the fee is imposed or the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed . This bill would, provide that these requirements apply in any action establishing, increasing, or imposing a fee by a local agency as a condition of approval of a development project and would place the burden on the local agency of producing evidence to establish that the fee does not exceed the cost of the public facility, service, or regulatory activity, except as specified .

C/CAG *1* *Land Use Authority*

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

SB 1059 (Escutia) Electric transmission corridors. A - 05/27/2005

Status:
06/02/2005 - ASM 2 YEAR In Assembly. Read first time. Held at Desk.
Calendar:

Summary
Existing law requires the State Energy Resources Conservation and Development Commission to adopt a strategic plan for the state's electric transmission grid using existing resources . Existing law requires that the plan identify and recommend actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in load and generation, including, but not limited to, renewable resources, energy efficiency, and other demand reduction measures . This bill would authorize the commission to designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high -voltage electric transmission line within the state . The bill would provide that the designation of a transmission corridor shall serve to identify a feasible corridor in which can be built a future transmission line that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the commission . The bill would prescribe procedures for the designation of a transmission corridor, including publication of the request for designation and request for comments, coordination with federal agencies and California Native American governments, informational hearings, and requirements for a proposed decision . This bill contains other related provisions and other existing laws .

C/CAG	*Oppose unless 1 amended*	*Land Use Authority*

SB 1099 (Hollingsworth) Eminent domain: agricultural property. A - 08/15/2005

Status:
12/14/2005 - SEN AGRI. Set for hearing January 10.
Calendar:
01/10/06 4 p.m. - Room 113 SEN AGRICULTURE
Summary
The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner . This bill would prohibit the exercise of the power of eminent domain to acquire agricultural property, as defined, for public use unless one of 2 specified conditions is met . This bill contains other existing laws .

C/CAG	*1*	*Land Use Authority*

SCA 12 (Torlakson) Eminent domain. A - 08/15/2005

Status:
08/31/2005- SEN JUD From committeeThat the bill be retained in committee, and that the subject matter be referred to the Committee on Rules for assignment to the proper committee for study
Calendar:

Summary
The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to the owner, or into court for the owner. It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings, upon deposit in court and prompt release to the owner of the money determined by the court to be the probable amount of the just compensation . This measure would declare, for this purposes, that public use does not include the taking of owner -occupied residential property for private use .

C/CAG	*1*	*Land Use Authority*

SCA 15 (McClintock) Eminent domain: condemnation proceedings. A - 08/23/2005

Status:
08/30/2005 - SEN JUD. Set, first hearing. Failed passage in committee. (Ayes 2. Noes 3. Page 2452.) Reconsideration granted.
Calendar:

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Summary

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner . It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt release to the owner, of the money determined by the court to be the probable amount of the just compensation . This measure would provide that private property may be taken or damaged only for a stated public use . The measure would also require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use . This bill contains other related provisions .

C/CAG	*1*	*Land Use Authority*	*League-oppose*

Local Govt Finance

ACR 79 (Aghazarian) Fee Payers Bill of Rights. I - 07/13/2005

Status:

08/25/2005 - ASM APPR. SUSPENSE FILE In committee: Held under submission. In committee: Referred to APPR. suspense file.

Calendar:

Summary

This measure would state that a bill that would impose, increase, or extend the duration of an existing fee, or authorize the imposition of a new fee should, among other things, be approved by a 2/3 vote of the entire membership of each of the 2 houses of the Legislature .

C/CAG	*1*	*Local Govt Finance*

Meetings of Public Bodies

AB 194 (Dymally) Brown Act violations: remedy. A - 04/07/2005

Status:

05/04/2005 - ASM 2 YEAR In committee: Set, first hearing. Hearing canceled at the request of author.

Calendar:

Summary

The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend . The act authorizes the district attorney or any interested person to commence an action by mandamus or injunction for a judicial determination that an action of a legislative body of a local agency taken in violation of the act is null and void but requires that the body have an opportunity to cure or correct the alleged violation prior to commencement of the legal action . The act provides that an action of the body alleged to violate specified provisions of the act shall not be determined to be null and void if the action was taken in substantial compliance with those provisions and in other specified circumstances . The act requires the district attorney or interested person to make a written demand of the legislative body to cure or correct the alleged violation within 90 days from the date the action was taken unless the action was taken in open session and in violation of a specified provision of the act . This bill would also permit the district attorney or any interested person to commence an action by declaratory relief and would reduce the time period that the district attorney or interested person has to make a written demand of the legislative body to cure or correct an alleged violation prior to commencement of a legal action to within 60 days from the date the action was taken, except as specified . Under this bill the burden of proof would be by clear and convincing evidence on the legislative body that its action taken was not in violation of specified provisions of the act .

C/CAG	*1*	*Meetings of Public Bodies*

Other Local Govt Interest

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

AB 438 (Parra) Sex offenders. A - 04/13/2005

Status:

12/16/2005 - ASM PUB. S. In committee: Hearing postponed by committee. (Refers to 4/26/2005 hearing)

Calendar:

01/10/06 9:00 a.m. - Room 126 ASM PUBLIC SAFETY

Summary:

Existing law provides that the Department of Justice shall make available information concerning specified registered sex offenders to the public via an Internet Web site . Existing law provides, with respect to certain sex offenders, that the address at which the person resides shall be made available . Existing law requires that every lease or rental agreement for residential real property and every contract for sale of residential real property, as specified, contain a notice that this information is maintained by law enforcement authorities . This bill would provide that based upon the information made available to the public via the department Web site, a lessor of residential real property may refuse to provide housing to, or evict, a sex offender whose residence address is made available on the Web site . This bill would also provide that a lessor may inform other residents of that residential real property that a person whose residence address is made available on the Internet Web site also resides in the residential real property . This bill contains other related provisions and other existing laws .

C/CAG *1* *Other Local Govt Interest*

AB 867 (Liu) Vote by mail. A - 05/04/2005

Status:

05/25/2005 - ASM 2 YEAR In committee: Set, second hearing. Held under submission.

Calendar:

Summary:

Existing law authorizes a local, special, or consolidated election to be conducted wholly by mail if the governing body of the local agency authorizes the use of all mailed ballots for the election, the election is held on an established mailed ballot election date, and the election meets certain other specified requirements . This bill would, until January 1, 2011, authorize 7 specified counties, , to participate in a vote -by-mail pilot project . The bill would require the 7 selected counties to provide the voters in that county, for any local, special, primary, or general election to be held in the county for the duration of this pilot program, with ballots that may be returned by mail . This bill contains other related provisions .

C/CAG *1* *Other Local Govt Interest*

Sales Tax

AB 1282 (Mullin) Local sales and use tax: jet fuel: place of sale. A - 04/19/2005

Status:

04/25/2005 - ASM REV. & TAX In committee: Set, second hearing. Hearing canceled at the request of author.

Calendar:

01/09/06 1:30 p.m. - Room 126 ASM REVENUE AND TAXATION

Summary:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose sales and use taxes pursuant to the adoption of local ordinances . That law provides, for purposes of applying a local sales tax imposed under the Bradley -Burns Uniform Local Sales and Use Tax Law to sales of jet fuel, with respect to a retailer that has more than one place of business in the state, that the point of sale of that fuel is the point of delivery of that fuel to the aircraft, if the principal negotiations for that sale are conducted in this state . This bill would provide that the point of sale of jet fuel is the point of delivery of that jet fuel to the aircraft . This bill would delete those provisions that provide, for purposes of determining the point of sale of jet fuel with respect to sales by a retailer with more than one place of business in this state, that the point of sale of that fuel is the point of delivery of that fuel only if the principal negotiations for that sale are conducted in this state . This bill would also provide, with respect to nonretail purchases of jet fuel, that the first functional use of the jet fuel shall be deemed to occur at the point of delivery of the jet fuel to the aircraft .

C/CAG *1* *Sales Tax*

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Smart Growth

AB 1020 (Hancock) Planning: smart growth models. I - 02/22/2005

Status:

04/25/2005 - ASM TRANS. In committee: Set, first hearing. Hearing canceled at the request of author.

Calendar:

01/09/06 1:30 p.m. - Room 4202 ASM TRANSPORTATION

Summary:

Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional agencies. This bill would require certain federally -designated metropolitan planning organizations and certain state -designated regional transportation planning agencies to develop and implement improved regional travel models incorporating smart growth concepts and to undertake other related planning activities, thereby imposing a state -mandated local program. The bill would require the department to provide all necessary financial assistance to these agencies. The bill would require all transportation models used by state or regional agencies to be usable on personal computers and to be made available to the public. The bill would enact other related provisions. This bill contains other related provisions and other existing laws.

C/CAG		*1*	*Smart Growth*

SB 521 (Torlakson) Local planning: transit village plans. A - 09/02/2005

Status:

09/02/2005 - ASM 2 YEAR From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Calendar:

Summary:

The Transit Village Development Planning Act of 1994 authorizes a city or county to prepare a transit village plan for a transit village development district that includes all land within not more than 1/4 mile of the exterior boundary of the parcel on which is located a transit station, as defined, and addresses specified characteristics, including a neighborhood centered around a transit station and a mix of housing types, including apartments, that is planned and designed, as specified, and any 5 of demonstrable public benefits that reduce traffic congestion. This bill would require a transit village plan to include a transit station and a parcel, at least 1/2 of which is within not more than 1/4 mile of the exterior boundary of the parcel on which the transit station is located or parcels located in an area equal to the area encompassed by a 1/4 mile radius from the exterior boundary of the parcel on which the station is located. This bill contains other related provisions and other existing laws.

C/CAG	*Support with amendments*	*1*	*Smart Growth*

Stormwater (NPDES)

ACA 13 (Harman) Local government: assessments and fees or charges. A - 04/21/2005

Status:

05/04/2005 - ASM 2 YEAR In committee: Set, first hearing. Hearing canceled at the request of author.

Calendar:

Summary:

(1) The California Constitution conditions the imposition or increase of an assessment by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest. The California Constitution exempts the imposition of a flood control assessment existing on November 6, 1996, from these requirements. This measure would instead exempt from these requirements an assessment for the purposes of financing the capital costs or maintenance and operation expenses of flood control, whether the assessment existed on November 6, 1996, or is imposed after that date. This bill contains other related provisions and other existing laws.

C/CAG	*Support with amendments*	*1*	*Stormwater (NPDES)*

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Telecommunications

AB 1547 **(Levine) Telecommunications: communications companies: state policies.** A - 07/12/2005

Status:

08/25/2005 - SEN INACTIVE FILE To inactive file - Senate Rule 29.

Calendar:

Summary

Existing law, the Public Utilities Act, sets forth the findings and declarations of the Legislature regarding described policies for telecommunications in California . This bill would state the intent of the Legislature to establish rules for the provision of communications services that encourage fair competition .

C/CAG *1* *Telecommunications*

SB 909 **(Escutia) Telecommunications: video services: fair competition.** A - 08/18/2005

Status:

09/08/2005 - ASM SECOND READING From committee: Do pass as amended. (Ayes 10. Noes 0.)

Calendar:

01/04/06 1 ASM SECOND READING FILE

Summary

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Existing law declares the policies for telecommunications in this state . This bill would declare establishing fair competition in the areas of telecommunications and video services as a policy for telecommunications in this state .

C/CAG *1* *Telecommunications*

Transportation - Roads

AB 1714 **(Plescia) Toll Bridge Seismic Retrofit Program.** A - 05/03/2005

Status:

05/25/2005 - ASM 2 YEAR In committee: Set, second hearing. Held under submission.

Calendar:

Summary

Existing law estimates the cost to seismically retrofit the state -owned toll bridges and to replace the east span of the San Francisco -Oakland Bay Bridge at $ 4,637,000,000, including $ 2,600,000,000 for the east span replacement. Existing law identifies funding to be made available for this purpose from various funding sources, including a $1 per vehicle toll surcharge on Bay Area state -owned toll bridges and Proposition 192 seismic repair bond funds, among other sources . This bill would state the intent of the Legislature to develop a funding solution for the Toll Bridge Seismic Retrofit Program .

C/CAG *1* *Transportation-Roads*

SB 172 **(Torlakson) Bay area state-owned toll bridges: financing.** A - 05/27/2005

Status:

06/13/2005 - ASM TRANS. To Com. on TRANS.

Calendar:

Summary

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Existing law specifies the powers and duties of the Department of Transportation, the Metropolitan Transportation Commission, and the Bay Area Toll Authority with respect to the collection and expenditure of toll revenue from the state-owned toll bridges within the geographic jurisdiction of the commission . Under existing law, this toll revenue, other than revenue from the $ 1 seismic surcharge, is deposited into the Bay Area Toll Account and controlled by the authority . Existing law requires the department and the authority to enter into a cooperative agreement that makes the department responsible for operating the bridges and for constructing improvements to the bridges financed by toll revenues . Existing law estimates the cost to seismically retrofit the state -owned bay area toll bridges and identifies funding to be made available for this purpose from various sources, including imposition of a $1 seismic retrofit surcharge . Under existing law, this surcharge revenue is deposited into the Toll Bridge Seismic Retrofit Account for expenditure by the department until completion of the seismic projects and payment of the bonds issued to finance those projects . This bill would state the Legislature's findings that the amount identified for the seismic retrofit of the state -owned toll bridges is insufficient and would state its intent to identify additional funding sources for those projects . The bill would require the seismic retrofit surcharge to be paid to the authority and deposited into the Bay Area Toll Account, and would require the department to transfer to the authority, for deposit into that account, all revenue from the surcharge . The bill would continuously appropriate all seismic surcharge revenues in the account to the authority for purposes specified by law . The bill would authorize on or after January 1, 2009, the authority to increase the seismic retrofit surcharge by $ 1. This bill contains other related provisions and other existing laws .

C/CAG *Support* *1* *Transportation- MTC*
Roads *Staff-support*

SB 371 **(Torlakson) Public contracts: design-build contracting: transportation entities.** A - 04/26/2005

Status:

05/26/2005 - SEN 2 YEAR Set, second hearing. Held in committee and under submission.

Calendar:

Summary:

Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement . Existing law also authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design -build basis. Existing law, until January 1, 2007, authorizes transit operators to enter into a design -build contract, as defined, according to specified procedures. This bill would authorize, until January 1, 2011, certain state and local transportation entities to use a design-build process for bidding on highway construction projects, as specified . This bill would establish a procedure for submitting bids that includes a requirement that design -build entity bidders provide certain information in a questionnaire submitted to the transportation entity that is verified under oath . Because a verification under oath is made under penalty of perjury, the bill would, by requiring a verification, create a new crime and thereby impose a state -mandated local program . The bill would require these transportation entities to report to the Legislature regarding implementation of the design -build process. This bill would also state the intent of the Legislature that a transportation entity implement a labor compliance program for design -build projects. This bill contains other related provisions and other existing laws .

C/CAG *Support* *1* *Transportation- MTC-support*
Roads

SB 1024 **(Perata) Public works and improvements: bond measure.** A - 09/08/2005

Status:

09/08/2005 - SEN THIRD READING Read third time. Amended. To third reading.

Calendar:

01/04/06 82 SEN THIRD READING FILE

Summary:

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Existing law provides various funding sources for transportation purposes . This bill would enact the Safe Facilities, Improved Mobility, and Clean Air Bond Act of 2005 to authorize $10,275,000,000 in state general obligation bonds for specified purposes, including the state transportation improvement program, passenger rail improvements, levee improvements, flood control, restoration of Proposition 42 transportation funds, port infrastructure and security projects, trade corridors of significance, emissions reduction projects, environmental enhancement projects, transit-oriented development, transportation needs in cities, counties, and cities and counties that meet certain requirements relative to provisions of housing needs in their communities, and housing, regional growth, and infill development purposes, subject to voter approval . This bill contains other related provisions .

C/CAG *Support* *1* *Transportation-Roads* *MTC Staff-support*

Transportation-All

ACA 4 (Plescia) Transportation Investment Fund. A - 05/09/2005

Status:
05/10/2005 - ASM TRANS. Re-referred to Com. on TRANS.
Calendar:
01/09/06 1:30 p.m. - Room 4202 ASM TRANSPORTATION
Summary:
Article XIX B of the California Constitution requires, commencing with the 2003-04 fiscal year, that sales taxes on motor vehicle fuel that are deposited into the General Fund be transferred to the Transportation Investment Fund for allocation to various transportation purposes . Article XIX B authorizes this transfer to the Transportation Investment Fund to be suspended in whole or in part for a fiscal year during a fiscal emergency pursuant to a proclamation by the Governor and the enactment of a statute by a 2/3 vote in each house of the Legislature if the statute does not contain any unrelated provision . This measure would delete the provision authorizing the Governor and the Legislature to suspend the transfer of revenues from the General Fund to the Transportation Investment Fund for a fiscal year during a fiscal emergency .

C/CAG *Support* *1* *Transportation-All*

ACA 9 (Bogh) Motor vehicle fuel sales tax revenue. I - 01/24/2005

Status:
04/21/2005 - ASM TRANS. Referred to Coms. on TRANS. and APPR.
Calendar:
01/09/06 1:30 p.m. - Room 4202 ASM TRANSPORTATION
Summary:
Existing provisions of the California Constitution require that sales taxes on motor vehicle fuel that are deposited into the General Fund be transferred to the Transportation Investment Fund and used for transportation purposes, but allow the transfer of these revenues to be suspended in whole or in part for a fiscal year under specified circumstances by a statute enacted by a 2/3 vote of the membership of each house of the Legislature . This measure would change the vote requirement to 4/5 of the membership of each house of the Legislature in order to enact a statute suspending in whole or in part the transfer of this particular revenue from the General Fund to the Transportation Investment Fund .

C/CAG *Support* *1* *Transportation-All*

ACA 11 (Oropeza) Transportation funds: loans. I - 02/16/2005

Status:
04/21/2005 - ASM TRANS. Referred to Com. on TRANS.
Calendar:
01/09/06 1:30 p.m. - Room 4202 ASM TRANSPORTATION
Summary:

ACTION REPORT WITH SUMMARY BY SUBJECT

C/CAG Priority 1 Bills

Bills to take a position on

Article XIX of the California Constitution requires excise taxes on motor vehicle fuel and certain fees imposed on motor vehicles to be used only for specified transportation and vehicle -related purposes, but authorizes these excise tax revenues to be loaned to the General Fund under certain conditions, including a requirement that the funds be repaid within 3 years. Article XIX A of the California Constitution provides that funds in the Public Transportation Account, which are derived from certain sales taxes on motor vehicle fuels, may be loaned to the General Fund or any other state fund or account under certain conditions, including a requirement that the funds be repaid within 3 years. This measure would require interest to be paid on a loan of revenues subject to either Article XIX or XIX A if the loan is not repaid during the same fiscal year in which it was made . The measure would require a loan made pursuant to Article XIX or XIX A to be made pursuant to a statute establishing the terms for repayment and would prohibit the enactment of a statute making a new loan pursuant to Article XIX or XIX A prior to the full repayment of each previous loan under Article XIX or XIX A, respectively . The measure would also prohibit a loan from being authorized by a statute during more than 2 fiscal years within any period of 10 consecutive fiscal years . The measure would also authorize tax revenues subject to Article XIX or XIX A to be loaned to other state funds or accounts in addition to the General Fund . This bill contains other related provisions and other existing laws .

C/CAG *Support* *1* *Transportation*
All

SCA 7 **(Torlakson) Loans of transportation revenues and funds.** I - 02/15/2005

Status:

05/26/2005 - SEN 2 YEAR Set, first hearing. Held in committee and under submission.

Calendar:

Summary:

The California Constitution restricts the expenditure of certain motor vehicle fuel and vehicle -related revenues to specified transportation purposes, but authorizes these revenues to be loaned to the General Fund under certain conditions. The California Constitution further provides that the trust funds in the Public Transportation Account in the State Transportation Fund may be loaned to the General Fund under certain conditions . This measure would require any loan of these motor vehicle fuel and vehicle -related revenues or trust funds that is not repaid within the same fiscal year in which the loan was made, or by a date not more than 30 days after the enactment date of the Budget Bill for the subsequent fiscal year, to be repaid with interest at a specified rate . The measure would provide that a loan of these funds may also be made to other state funds or accounts under the conditions applicable to loans to the General Fund .

C/CAG *1* *Transportation*
All

C/CAG AGENDA REPORT

Date: January 12, 2006

To: City/County Association of Governments Legislative Committee

From: Richard Napier, C/CAG Executive Director

Subject: DISCUSSION AND POTENTIAL ACTION ON VARIOUS BILLS

A position may be taken on any legislation, including legislation not previously identified.

(For further information contact Walter Martone at 599-1465 or Richard Napier at 599-1420)

RECOMMENDATION

That the Legislative Committee consider providing a recommendation to the C/CAG Board on the following bills:

1. SB 843 (Dunn) General plans: housing elements
2. AB 438 (Parra) Sex offenders
3. AB 315 (Hancock) School facilities: energy efficiency: design standards

FISCAL IMPACT

Not applicable.

SOURCE OF FUNDS

Not applicable.

BACKGROUND/DISCUSSION

The following are bills that the Committee may want to consider recommending a position to the full C/CAG Board.

1. **SB 843 (Dunn) General plans: housing elements** (From text dated: 09/07/05)

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element, and to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with State law governing housing elements. This bill would require a court, on a finding by the

department that there is not substantial compliance with that law, to levy a fine and award attorney fees. The bill would require the Controller to levy a fine of $5,000 per month or $0.25 per month per person in the jurisdiction, whichever is greater and subject to specified limits, upon a city, county, or city and county if specified conditions are met. The bill would provide that all fines shall accrue to the Housing Supply Account, which the bill would create in the Housing Rehabilitation Loan Fund, and that no money in that account shall be expended except upon appropriation by the Legislature.

2. **AB 438 (Parra) Sex offenders** (From text dated: 04/13/05)

Existing law provides that the Department of Justice shall make available information concerning specified registered sex offenders to the public via an Internet Web site. Existing law provides, with respect to certain sex offenders, that the address at which the person resides shall be made available. Existing law requires that every lease or rental agreement for residential real property and every contract for sale of residential real property, contain a notice that this information is maintained by law enforcement authorities. This bill would provide that based upon the information made available to the public via the department Web site, a lessor of residential real property may refuse to provide housing to, or evict, a sex offender whose residence address is made available on the Web site. This bill would also provide that a lessor may inform other residents of that residential real property that a person whose residence address is made available on the Internet Web site also resides in the residential real property.

3. **AB 315 (Hancock) School facilities: energy efficiency: design standards** (From text dated: 07/11/05)

Existing law, the Leroy F. Greene School Facilities Act of 1998, establishes a program in which the State Allocation Board is required to provide State per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization for applicant school districts. This bill would require the State Allocation Board, by July 1, 2007, to adopt regulations to ensure that design standards for new school facilities constructed in whole or in part with State funds are in accordance with the minimum design and construction criteria in the specified Collaborative for High Performance Schools Best Practices Manual. The bill would also require the board to review other high performance building organizations' standards and any guidelines adopted pursuant to a specified executive order, and to adopt the standards that it deems appropriate.

ATTACHMENTS

- SB 843
  - Complete bill text
- AB 438
  - Complete bill text
  - Bill analysis before Assembly Committee on Public Safety
- AB 315
  - Fact sheet
  - Complete bill text
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BILL NUMBER: SB 843 AMENDED
BILL TEXT

AMENDED IN SENATE SEPTEMBER 7, 2005

INTRODUCED BY Senator Dunn

FEBRUARY 22, 2005

~~An act to amend Section 1305 of the Penal Code, relating to bail.~~ *An act to amend Sections 65587 and 65589.3 of, and to add Section 65585.5 to, the Government Code, relating to general plans.*

LEGISLATIVE COUNSEL'S DIGEST

SB 843, as amended, Dunn ~~Bail.~~ *General plans: housing elements.*

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element, and to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with state law governing housing elements.

This bill would require a court, on a finding by the department that there is not substantial compliance with that law, to levy a fine and award attorney fees as specified. The bill would require the Controller to levy a fine of $5,000 per month or $0.25 per month per person in the jurisdiction, whichever is greater and subject to specified limits, upon a city, county, or city and county if specified conditions are met. The bill would provide that all fines shall accrue to the Housing Supply Account, which the bill would create in the Housing Rehabilitation Loan Fund, and that no money in that account shall be expended except upon appropriation by the Legislature.

~~Existing law prescribes the procedure for forfeiture of bail.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes* . State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65585.5 is added to the Government Code , to read:

65585.5. (a) On or after January 1, 2007, 45 days after the department sends notice to a city, county, or city and county that the jurisdiction is subject to fines pursuant to this section, the department shall request and the Controller shall levy a fine on a city, county, or city and county if the city, county, or city and county, during the previous housing element cycle, did not adopt a housing element that the department determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article and, with respect to the third or subsequent revision of its housing element, any of the following conditions are met:

(1) The city, county, or city and county has failed to submit an

adopted housing element or amendment to the department within six months of the deadline established by Section 65588.

(2) The department has determined that the adopted housing element or amendment of the city, county, or city and county does not substantially comply with the requirements of this article.

(b) If a city, county, or city and county subjects the department's determination to judicial review, the collection of fines shall be stayed pending the outcome of the action. If the city, county, or city or county does not prevail in the action, the city, county, or city and county shall be liable for the total amount of fines that would have accrued had the action not been filed.

(c) The fine levied by the Controller shall be five thousand dollars ($5,000) per month or twenty-five cents ($0.25) per month per person based on the most recent official estimate of population for the jurisdiction as determined by the Department of Finance, whichever is greater. For the purposes of this section, the population of a county shall only include the population residing in unincorporated areas. The fine shall be levied each month until the city, county, or city and county adopts a housing element or amendment that is determined by the department pursuant to Section 65585 to be in substantial compliance with the requirements of this article.

(d) A court may reduce the fine based on mitigating factors if the department certifies that its finding of noncompliance for the community's adopted housing element or amendment is not based in whole or in part either on the unavailability of adequate sites or on a failure to analyze and address governmental constraints. A court may also defer the onset of fines if the city, county, or city and county can show that it was precluded from submitting an adopted housing element or amendment to the department due to a state of emergency in the community declared by the Governor or due to bankruptcy.

(e) Any fines shall accrue to the Housing Supply Account, which is hereby created in the Housing Rehabilitation Loan Fund established by Section 50661 of the Health and Safety Code. Notwithstanding Section 50661 of the Health and Safety Code, no money in the Housing Supply Account shall be expended except upon appropriation by the Legislature in the annual Budget Act or other legislation. Funds in the account shall be used for the purposes of providing assistance to multifamily rental housing developments pursuant to the Multifamily Housing Program established by Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code in the respective region which includes the fined jurisdiction.

(f) For purposes of this section, an adopted housing element that has been self-certified pursuant to Section 65585.1 shall be deemed to have been approved by the department, unless a court finds that the jurisdiction's housing element does not substantially comply with this article.

(g) If a city, county, or city and county fails to remit to the Controller the full amount of any fine levied pursuant to this section within 30 days, the Controller's office shall offset the amount from the subsequent monthly allocation of funds due to the city, county, or city and county pursuant to Section 11005 of the Revenue and Taxation Code.

(h) The remedies prescribed by this section are in addition to any other remedy provided under law.

SEC. 2. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the

Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with ~~the provisions of~~ this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil ~~Procedure; the~~ *Procedure. The* court's review of compliance with ~~the provisions of~~ this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article. *If a court finds that any housing element or portion thereof does not substantially comply with the requirements of this article, the court, in addition to any other remedy allowed by law, shall (1) levy a fine consistent with Section 65585.5 and (2) award reasonable attorney's fees and costs of suit to a plaintiff who is a person of lower income, is an organization representing persons of lower income as described in subdivision (b) of Section 65915, or who may be entitled to fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure.*

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

SEC. 3. Section 65589.3 of the Government Code is amended to read:

65589.3. *(a)* In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

(b) In any action filed on or after January 1, 2007, that is taken to challenge the validity of a housing element or amendment, if, pursuant to Section 65585, the department finds that the element or amendment does not substantially comply with the requirements of this article, the findings of the department shall be entitled to deference and given great weight. The Legislature finds and declares that this subdivision is declaratory of existing law.

~~SECTION 1. Section 1305 of the Penal Code is amended to read:~~

~~1305. (a) A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:~~

~~(1) Arraignment.~~

~~(2) Trial.~~

~~(3) Judgment.~~

~~(4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.~~

~~(5) To surrender himself or herself in execution of the judgment after appeal.~~

~~However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.~~

~~(b) If the amount of the bond or money or property deposited exceeds four hundred dollars ($400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the~~

~~same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.~~

~~If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to both the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.~~

~~The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:~~

~~(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.~~

~~(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.~~

~~(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.~~

~~(c) (1) If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.~~

~~(2) If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.~~

~~(3) If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.~~

~~(4) In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:~~

~~(A) The bail is given prior notice of the reinstatement.~~

~~(B) The bail has not surrendered the defendant.~~

~~(d) In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if notice is required under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:~~

~~(1) The defendant is deceased or otherwise permanently unable to~~

~~appear in the court due to illness, insanity, or detention by military or civil authorities.~~

~~(2) The absence of the defendant is without the connivance of the bail.~~

~~(e) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:~~

~~(1) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.~~

~~(2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.~~

~~(3) The absence of the defendant is without the connivance of the bail.~~

~~The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court.~~

~~(f) In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.~~

~~(g) In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.~~

~~(h) As used in this section, "arrest" includes a hold placed on the defendant in the underlying case while he or she is in custody on other charges.~~

~~(i) A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. The court, in its discretion, may require that the moving party provide 10 days prior notice to the applicable prosecuting agency, as a condition precedent to granting the motion.~~

BILL NUMBER: AB 438 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 13, 2005

INTRODUCED BY Assembly Member Parra

FEBRUARY 15, 2005

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as amended, Parra. Sex offenders.

Existing law provides that the Department of Justice shall make available information concerning specified registered sex offenders to the public via an Internet Web site. Existing law provides, with respect to certain sex offenders, that the address at which the person resides shall be made available. Existing *law requires that every lease or rental agreement for residential real property and every contract for sale of residential real property, as specified, contain a notice that this information is maintained by law enforcement authorities.*

This bill would provide that based upon the information made available to the public via the department Web site, a lessor of residential real property may refuse to provide housing to, or evict, a sex offender whose residence address is made available on the Web site. This bill would also provide that a lessor may inform other residents of that residential real property that a person whose residence address is made available on the Internet Web site also resides in the residential real property.

Existing law ~~also~~ requires the department to update the Web site on an ongoing basis.

This bill would require ~~the department~~ *local law enforcement* to update the Web site ~~when appropriate to correct the address of a registered sex offender within 30 days of receiving notice from a residential property owner that the registered sex offender no longer resides at the address listed on the Web site~~ *and to seek to verify whether a registered sex offender no longer resides at the address listed on the Web site within a reasonable time after receiving a written notice indicati ng that the registered sex offender no longer resides at the address from the current owner of the residential real property that is listed on the Web site as the home address of the registered sex offender .*

Because this bill would require local official to perform new duties, this bill would create a state-mandated, local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ *yes* .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 290.46 of the Penal Code is amended to read:

290.46. (a) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Web site. The Web site shall be translated into languages other than English as determined by the department.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

(2) This subdivision shall apply to the following offenses:

(A) Subdivision (b) of Section 207.

(B) Subdivision (b) of Section 209, except kidnapping to commit robbery.

(C) Paragraph (2) or (6) of subdivision (a) of Section 261.

(D) Section 264.1.

(E) Section 269.

(F) Subdivision (c) or (d) of Section 286.

(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(H) Subdivision (c) or (d) of Section 288a.

(I) Section 288.5.

(J) Subdivision (a) or (j) of Section 289.

(3) This subdivision shall also apply to any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2) or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision. On or

before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides.

(2) This subdivision shall apply to the following offenses, provided that the person has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(B) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(D) Section 266, provided that the offense is a felony.

(E) Section 266c, provided that the offense is a felony.

(F) Section 266j.

(G) Section 267.

(H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(I) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(K) Subdivision (b), (d), (e), or (i) of Section 289, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(L) Section 647.6.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the

offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application for exclusion from the Internet Web site with the Department of Justice. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning him or her shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, provided the offense is a misdemeanor.

(C) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available pursuant to subdivision (e).

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(h) (1) Any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).

(2) Any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(i) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(j) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) *(A) Based upon the information disclosed pursuant to this section, a lessor or an agent of a lessor of residential real property may, but is not required to, refuse to provide housing to or evict a sex offender whose residence address must be made available to the public pursuant to this section. Based upon the information disclosed pursuant to this section, a lessor or an agent of the lesso r of residential real property may, but is not required to, inform other residents that a person whose residence address must be made available to the public pursuant to this section also resides in the residential real property.*

(B) However, nothing in subparagraph (A) shall be construed to do any of the following:

(i) Diminish in any way any power or right that any person, including, but not limited to, any service provider or lessor of residential real property, may have, pursuant to paragraph (1) of subdivision (j) of this section, to use information disclosed pursuant to this section to protect a person at risk from a an individual who is required to register as a sex offender pursuant to Section 290, including those persons who whose residence address is not made available to the public pursuant to this section.

(ii) Diminish in any way any power or right that any person, including, but not limited to, any service provider or lessor of residential real property, may have, pursuant to this section, or any other provision of statutory or decisional law to deny services, housing, privileges, benefits, or otherwise discriminate against persons who are required to register pursuant to this section, including those persons whose address of residence is not made available to the public pursuant to this section.

(3) Except as authorized under paragraph (1) *or (2),* or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.
(B) Insurance.
(C) Loans.
(D) Credit.
(E) Employment.
(F) Education, scholarships, or fellowships.
(G) Housing or accommodations.
(H) Benefits, privileges, or services provided by any business establishment.

~~(3)~~

(4) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

~~(4)~~

(5) This section shall not be construed to make a persons who is required to register as a sex offender pursuant to Section 290 a member of a protected class or to make registered sex offenders a protected class under any provision of statutory or decisional law, nor shall it be construed to otherwise confer any right or privilege on any person that is required to register as a sex offender pursuant to Section 290.

(6) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by ~~paragraph (1) or in violation of paragraph (2)~~ *paragraph (1) or (2), or in violation of paragraph (3)* shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via the Internet Web site in violation of paragraph ~~(2)~~ *(3)* , the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining

order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

~~(k) The Department of Justice shall update the Web site when appropriate to correct the address of a registered sex offender within 30 days of receiving notice from a residential property owner, on a form as may be determined by the department, that the registered sex offender no longer resides at the address listed on the Web site.~~

(k) Local law enforcement agencies shall update the sex offender database and seek to verify whether a registered sex offender no longer resides at the address listed on the Web site within a reasonable time after receiving a written notice indicating that the registered sex offender no longer resides at the address from the current owner of the residential real property that is listed on the Web site as the home address of the registered sex offender.

(l) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(m) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section.

(n) Other than the duty to provide a notice in every lease or rental agreement for residential real property and every contract for sale of residential real property pursuant to Section 2079.10a of the Civil Code, a lessor, seller, or broker of residential real property has no duty to inquire, investigate, or disclose any information regarding a person who is required ro register as a sex offender pursuant to this section. Notwithstanding this section nor any other provision of law, a lessor of residential real property has no duty to evict, deny housing, to, or to otherwise discriminate against a person because that person is required to register pursuant to Section 290.

(o) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

BILL ANALYSIS AB 438

Date of Hearing: April 19, 2005
Counsel: Kathleen Ragan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Mark Leno, Chair

AB 438 (Parra) - As Amended: April 13, 2005

SUMMARY : Allows a lessor of residential real property to refuse to provide housing to, or to evict, registered sex offenders whose address must be made public pursuant to the Megan's Law Internet website. Specifically, this bill:

1)Allows a lessor of rental property to inform other residents that a registered sex offender resides in the rental property.

2)Provides that nothing in this bill shall be construed to diminish the power or right of any person to use the information in the Megan's Law website to protect a person at risk from a registered sex offender, including those offenders whose address is not made available to the public on the website.

3)States that this bill shall not diminish in any way the power or right of any person to deny services, housing, privileges, or benefits, or to otherwise discriminate against registered sex offenders, including those whose address of residence is not made available to the public via the Internet website.

4)States that this section shall not be construed to make persons who are required to register as sex offenders a protected class under any statute or decisional law, or to make any person required to register as a sex offender a member of a protected class under any statute or decisional law, or otherwise confer any right or privilege on any registered sex offender.

5)Requires local law enforcement agencies to update the sex offender database and seek to verify that a registered sex offender no longer resides at the address listed on the website, within a reasonable time after receiving notice from the current owner of the real property that is listed as the address of the registered sex offender.

6)States that, other than the duty to provide a notice in every lease or rental agreement regarding the Megan's Law database, a lessor, seller, or broker of residential real property has no duty to inquire, investigate, or disclose any information regarding persons required to register as sex offenders.

7)Provides that a lessor of residential real property has no duty to evict, deny housing to, or otherwise discriminate against a person because that person is a registered sex offender.

EXISTING LAW:

1)Establishes a three-tiered system for providing the public with information via an Internet website maintained by the Department of Justice (DOJ) regarding persons required to register as sex offenders (hereinafter called the Megan's Law database.) Depending upon the severity of the sex offense, information is available as to some sex offenders with their specific home addresses, while others are identified only by zip code and community of residence: (Penal Code Section
290.46)
a) Provides that DOJ shall make available to the public via the Internet web site the following information regarding specified sex offenders:
b) His or her name or names and known aliases;
c) A photograph;
d) A physical description, including gender and race;
e) Date of birth;
f) Criminal history;
g) The address at which the person resides; or the person's zip code and community of residence, as specified; and,
h) Any other information the DOJ considers relevant and is not excluded by law.

2)States that, except as otherwise provided, it is unlawful to use any of the information that is disclosed pursuant to this section for purposes related to health insurance, insurance, loans, credit, employment, education, scholarships or fellowships, housing or accommodations, and benefits, privileges or services provided by any business establishment. [Penal Code Section 290.46(j)(2).]

3)Provides that a person is authorized to use information disclosed pursuant to the Megan's Law database may be disclosed only to protect a person at risk. [Penal Code Section 290.46(j)(1).]

FISCAL EFFECT : Unknown

COMMENTS :

1)Author's Statement : According to the author: "The Legislature has consistently treated convicted sex offenders differently because it has found that convicted sex offenders 'pose a high risk of engaging in further offenses after release' and that 'protection of the public from these offenders is a paramount public interest.' [Fredenburg v. City of Fremont, (2004) 119 Cal. App. 4th 408, 412.] As the United States Supreme Court noted when reviewing the legality of Alaska's internet based sex offender database, '[t]he risk posed by sex offenders is 'frightening and high.' [Smith v. Doe I , 538 U.S. 84, 103 (2003).] The risk posed by convicted sex offenders is further amplified by the impact sex offenders have on their victims, whom statistics show are overwhelmingly women and children. According to the California Legislative Analyst Office (LAO), '[a]cademic studies and California Department of Corrections (CDC) data confirm that a single child molester can abuse hundreds of children and that his crimes often go unreported and unpunished over many years.'"

"The goal of Megan's Law, like other laws imposing restrictions on sex offenders such as prohibiting them from residing within a certain

distance of schools or disallowing them from Section 8 subsidized housing, is to allow families to protect their loved ones from potentially dangerous sex offenders. Families should have the right to demand that they are safe in their residences. Individuals that live in buildings with common areas, including hallways and laundry rooms should not have to live in fear of the sex offender they know lives in the building as well.

"This bill seeks to clarify the law in order to make clear that housing providers can use the Megan's Law database to act decisively in the interests and safety of other tenants. Rental housing providers should be able to protect their residents by refusing to house high-risk sex offenders, by evicting high-risk sex offenders, or by notifying other tenants. At the same time, this bill seeks to strike a balance in the law by clarifying that a rental housing provider is not required to evict or deny housing to registered sex offenders. Under this bill tenants will be empowered to demand that a high risk sex offender be 'moved out' and the owner will be able to say that he cannot legally evict the high risk sex offender. On the other hand, if the high risk sex offender lives in an appropriate residence, this bill will make it clear that the housing provider is not required to evict or deny housing to the sex offender."

2)Background : According to background information supplied by the author, "the rental housing industry support the original intent of the Megan's Law website, but it has placed rental property owners, managers, and residents in a difficult position. This easy access to the Megan's Law registry has heightened public interest and awareness of convicted sex offenders in communities throughout California. residents are discovering that their families might be living next to convicted sex offenders, including pedophiles and rapists. Media outlets throughout the state have published articles and aired stories regarding the impact of the new Internet based sex offender registry. The entire California Apartment Association (CAA) Network has received a substantial number of questions regarding the challenges the Internet sex registry has created for rental property owners, managers, and residents.

"The fact, for example, that the sex offender information is easily available on the Internet and includes the sex offender's home address has substantially increased the number of situations where the public, including tenants and neighboring property owners, discover the sex offender status of existing and prospective tenants. After using the Megan's Law database to determine that a fellow tenant is a convicted child molester or rapist, tenants are demanding that rental property managers or owners evict the sex offenders or else, the other tenants will leave. The tenants' fears are understandable, particularly if the tenants are parents or women. So what can the owner or manager do? Nothing until Megan's Law is clarified to allow rental housing providers to use the Megan's Law database to act decisively in the interests and safety of other tenants."

3)The CAA Position: CAA members want to provide a safe living environment for their residents. California law has given rental property owners and managers a conflicting directive. residential rental property owner or manager learns from the database that someone is a sex offender, he or she cannot deny the sex offender housing or

warn other residents based on this knowledge, without the risk of being sued by the sex offender. At the same time, the law also exposes rental property owners to lawsuits if they fail to protect residents against a known risk - in this case, someone with a documented criminal history of sexual assault against children, women, and other residents.

"Rental housing providers are being forced to choose between either evicting the sex offender (thereby facing potential lawsuits for discriminating against the sex offender), or allow the sex offender to stay on the property (thereby encouraging an exodus of existing tenants who refuse to live in close proximity to a potentially dangerous sex offender.) "Moreover, by allowing the sex offender to live on their property, the owner may expose the property and other residents to vandalism, public protest, and other forms of public scorn that will jeopardize the owner's ability to perate the property safely and profitably. Unfortunately, because of the heavy fines that may be imposed for unlawfully using the Megan's Law database, many rental housing providers are being forced to weigh in favor of housing the high risk sex offender instead of families and children. Clarification of the law is desperately needed in order to empower residents to demand that owners act to protect them by refusing to house high risk sex offenders."

4)Affirmative Restraint: In determining that sex offender registration statutes are, in general, constitutional, the United States Supreme Court identified a number of factors to be considered in determining whether the sex offender requirements were punitive in nature, or merely a civil regulatory scheme. [Smith v. Doe, 538 U.S.84 (2003)] The factors are whether the regulatory scheme: (a) has historically been regarded as punishment; (b) imposes an affirmative disability or restraint; (c) promotes the traditional aims of punishment; (d) has a rational connection to a non-punitive purpose; or, (e) is excessive with respect to this purpose. In analyzing Alaska's sex offender registration requirements, the United States Supreme Court found that "our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment. In contrast to the colonial shaming punishments, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme. The purpose and principle effect of notification are to inform the public for its own safety " (Id. at page 99.) The Supreme Court noted that the act does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences, stating "the record in this case contains no evidence that the [sex offender registration laws] have led to substantial occupational or housing disadvantages for former sex offenders that would not otherwise have occurred through the use of routine background checks " (Id. at page 100.) The clear implication from this discussion is that to the extent the sex offender registration and public notification laws impose substantial housing disadvantages on former sex offenders, the effect of such laws might more easily be determined to be punitive rather than regulatory. To the extent use of the Megan's Law database information imposes an affirmative duty or restraint on registrants which is greater than minor or indirect, the effect is more likely to be determined punitive. If the law is determined to be punitive in nature, constitutional validity under the ex post facto provisions is called into

question.[Id. at page 99, citing Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963).]

The Smith Court concluded that "whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion. It suffices to say the registration requirements make a valid regulatory program effective and do not impose punitive restraints in violation of the Ex Post Facto Clause." (Smith, supra, at page 102.)

Inasmuch as the United States Supreme Court specifically discussed affirmative restraints on housing in its consideration of the constitutionality of the Alaska sex offender notification laws, and also left the door open to "whether other constitutional objections can be raised to a mandatory reporting requirement," it appears reasonable that this bill's expression of the right of any person, including rental housing providers, to deny housing, services, benefits or otherwise discriminate against registered sex offenders, would be subject to constitutional challenge.

5)Other Issues Raised By This Bill: As reported in the Daily Journal of February 11, 2005, "Employers must beware of dangers in using Megan's Law web site." Although The Daily Journal article pertained to employment, the same arguments are applicable to housing decisions. The article states, "Employers are cautioned to avoid making precipitous employment decisions based on information obtained about a job applicant or current employee through California's Megan's Law web site. Misuse of registry information is actionable, and it may expose the user to actual and exemplary damages, attorney fees, and a civil fine. Likewise, a hasty decision to terminate an employee whose name is found on the site could lead to a claim for damages, a civil fine, and costly litigation expenses."

The Daily Journal article reports that California employers may understandably find themselves "scratching their heads, wondering why this statute has the practical effect of making convicted sex offenders in certain respects a 'protected class' of employees in California." Further, California employers can also expect to face a delicate situation - "they may learn from the Megan's Law Web site that a current employee is registered as a convicted sex offender. An employer may learn of this information from the web site directly, by personally accessing the site, for example - or indirectly, perhaps through notification by someone else who has accessed the site. This situation presents a risk-tolerance issue for the employer.

"To avoid liability under Penal Code Section 290.46, the employer should evaluate any potential risk the employee may pose to fellow employees or customers before deciding to take an adverse employment action." (Emphasis added.) The article suggests possible methods of evaluating potential risk, but concludes that the plain language of the statute does not make clear whether a line of inquiry from the employer, prompted by information disclosed on the Megan's Law Web site, is permissible.

Although the author opines that "it seems unreasonable that a court would conclude that the employer was compelled to do nothing when

confronted with a potential risk to his or her employees and customers," the article fails to discuss what may be a serious issue regarding the employer's qualifications and expertise in making such risk assessments. The California Coalition on Sexual Offending (CCOSO) has a number of articles on risk assessment on its Internet web site; there is no consensus among professional treatment providers and researchers on assessing risk levels.

Is it a good policy to permit owners of rental housing to deny admission to, evict, or otherwise discriminate, against persons who are listed on the Megan's Law database as registered sex offenders, without a reasonable basis that the person poses a risk to other tenants? This is a particularly important issue in California, which has far more registered sex offenders than any other state.

6)California Registered Sex Offenders : According to a CCOSO report entitled Using the Internet to Provide Passive Community Notification About Registered Sex Offenders, "because California has been requiring certain sex offenders to register since the mid 1940's, far longer than any other state, California's cumulative total of registered sex offenders is much larger, both in absolute numbers and proportionately, than the total for any other state." According to the report, approximately one out of every 180 adult males in California could be posted on the Internet as sex offenders.

As of May 2003 (citing Department of Justice Statistics) the report states there were 100,501 registered sex offenders in California. Of that number, 1,836 were classified as "high risk" and 82,190 as "serious." It is those two groups who are subject to the current Internet notification system. A third group of registered sex offenders were convicted of crimes not currently subject to public notification.

According to CCOSO, of the high risk and serious groups, 55,902 were living in the community, 14,556 had returned to jail or prison, 10,800 had left the state, and 2,768 had been deported. Altogether, 70,458 California residents (almost all of them adult males) are subject to notification under the present system. According to the CCOSO report, approximately one of every 123 adult males in California is a registered sex offender, although some of these have left the state or failed to re-register as required.

The CCOSO report notes that in addition to the registered sex offenders, there is a potentially large number of additional individuals who are also impacted by Internet notification and related actions, including parents, children, siblings, other relatives, employers, landlords, associates, etc. By permitting the denial of housing to registered sex offenders, this bill affects a much larger group of innocent persons, such as their spouses, domestic partners, and minor children. By evicting a registered sex offender from his rental housing, the apartment owner effectively may be causing an entire family to become homeless.

According to the CCOSO report, "widespread notification is making it increasingly difficult for registrants to find housing. This tends to drive them into poorer neighborhoods, where more dysfunctional families tend to live. Children from these families are more easily victimized

than children in more affluent, better organized neighborhoods. The Third National Incidence Study of Child Abuse and Neglect showed that children living below the poverty line are 18 times as likely to be sexually abused as children living at or above the median income. National Incidence Study on Child Abuse and Neglect (1996) Department of Health and Human Services, Administration for Children and Families, National Center on Child Abuse and Neglect.

7) Practices in Other States : Research conducted in September 2004 on the Megan's Law databases of all 50 states disclosed that most states do not provide information on so many persons who are registered sex offenders as does California. There are a variety of reasons for this difference, including California's lifetime registration requirement, lack of a washout period, lack of a risk assessment prior to listing a sex offender, the number of offenses required to be listed on the California Megan's Law database, and lack of a hearing prior to being subjected to public notification.

For example, Hawaii requires persons convicted of sex offenses against children to register, and provides these persons with a court hearing for the purpose of determining whether the information should be publicly disclosed. Iowa's Internet website lists only those offenders determined "at risk" to re-offend; Nebraska lists only approximately 500 "high risk" offenders; New York has a similar "high risk" public access database; Virginia's and Wyoming's Internet websites include only violent or "high risk" sex offenders; Wisconsin also has a risk assessment program, and their public database includes only offenders determined to be at high risk for re-offending.

Lifetime registration and public disclosure is not the norm for most other states. For example, Georgia has a 10-year washout for all offenders except sexually violent predators (SVPs.) Kentucky has a two-tiered system; some offenders must register for 10 years and some are subject to lifetime registration. Nevada's public access database includes only the top two tiers of sex offenders, and Tier 2 offenders, deemed "moderate risk" are removed from the public access database after 10 years without re-offending. Oklahoma provides public access only as to habitual and aggravated sex offenders. A comparison of the numbers of sex offenders listed on other states' Megan's Law databases discloses that California lists a far greater number of offenders than other states. For example, Arizona lists about 12,000 sex offenders; Illinois lists about 13,000 sex offenders; and has a 10-year washout period for all but sexually violent predators. Maryland lists approximately 3,500; and Nebraska lists approximately 500. New Jersey listed approximately 2,700, and only lists those determined as "moderate" or "high" risk. South Carolina listed approximately 6,400 offenders, Washington, D.C., lists only "Class A" registered sex offenders, which consists of 11 crimes. Texas had 38,502 (of a total 41,175) sex offenders listed on their web site; not all are subject to lifetime registration. Ohio requires sexually violent predators to register for life, and most other registrants are required to register for 10 years.

By comparison, California's new Megan's Law Internet web site provides the public with information on more than 63,000 persons required to register in California as sex offenders. Currently, specific home addresses are listed for more than 33, 500 sex offenders in California.

Under existing law, an additional 30,500 offenders are included only by zip code, and community of residence. Information on 22,000 other offenders is not included on the current Megan's Law web site under current law but is known to law enforcement.

Therefore, the sheer numbers of potential registrants, and their innocent family members, including children, who would be subject to becoming homeless due to this bill, are disturbing, particularly in view of California's already existent homeless problems. Due to the broad language of this bill, these same large numbers of people would also be subject to loss of benefits, services, and other unspecified forms of discrimination.

Are there any other laws that specifically sanction discrimination in their statutory language?

8)Re-Victimization : According to the CCOSO report, incest offenders are unlikely to target strangers. Therefore, widespread notification causes their victims embarrassment at best and at worst, causes them to be actively harassed in their schools and neighborhoods. This problem, while most obvious in incest cases, is not always limited to incest cases. It can occur in any circumstances where publicly identified sex offenders can be linked to their victims. CCOSO concludes that this could lead to reduced reporting of sexual offenses and consequent decreases in public safety.

9)Legislative Counsel Opinion on Megan's Law and Rental Property Discrimination : According to Legislative Counsel Opinion No. 0501030, "An owner of residential property is prohibited from using information obtained through the [Megan's Law Web site] as the basis for refusing to rent to a registered sex offender, unless it is to protect a person at risk."The Legislative Counsel opinion further states that "the 'at-risk' argument becomes more difficult for a property owner to make if the offender's crimes were perpetrated against children and the property in question houses only adult tenants. If there are no persons arguably 'at-risk' of harm by the sex offender on the property, the property owner would be unable to use the information obtained from the Web site for any 'purpose relating to housing or accommodations' and could not refuse to rent to the offender applicant."

Offenders identified on the Web site may have committed offenses ranging from the violent rape of an adult to a misdemeanor annoying a child, may have one offense or multiple offenses, and may have been recently convicted or convicted decades ago. Determining whether there are persons on the property 'at risk' of victimization by the offender will depend upon the offender's previous victim or victims, the type of offense he or she has committed, and the nature of the tenants in the building where the offender is seeking to reside."

The Legislative Counsel Opinion also discussed the eviction of tenants due to discovery of the tenant's sex offender registrant status through the Internet Web site. The opinion states "in our opinion, use of the information to evict a sex offender would be subject to the same 'at-risk' standard as used in determining whether or not to rent to a sex offender in the first place. Based upon the offender's crime, previous victim or victims, and the nature of the tenants presumably at risk,

the property owner must be able to make a reasonable claim that he or she evicted the tenant to protect someone who would be placed at risk by the sex offender's continued presence in the dwelling."

The Legislative Counsel Opinion also discussed whether an apartment owner or landlord may inform other tenants that a tenant is a sex offender. Again, the opinion cites the necessity of making at "at-risk" determination, stating "any use of the information including giving information to other tenants is prohibited unless it is to protect a person at risk. Disclosure for the sake of disclosure, or mere gossip, would clearly be prohibited. As discussed [above], the determination of who is 'at risk' depends on the facts of the case and the same standard would be used in the property owner's argument that tenants have been notified of a sex offender's status to protect the tenants from harm because they are 'at risk' due to the presence of the sex offender.

"Penal Code Section 290.46 imposes various penalties for misuse of the information obtained through the Web site. Use of the information [for purposes relating to housing] could expose a property owner to liability for actual damages, up to three times the amount of actual damages, attorney fees, exemplary damages, or a civil penalty of up to $25,000. [Penal Code Section 290.46(j)(4)(A.)]

"In summary, it is our opinion that if an owner of residential property discovers through the Web site that a tenant is a registered sex offender, the property owner may not, on the basis of that information, evict the tenant or disclose the information to other tenants, unless it is to protect persons at risk."

10) Information Not Obtained from the Megan's Law Web Site : The Legislative Counsel opinion concluded that if information that the applicant or tenant is a registered sex offender is not derived from the Megan's Law Web site, an owner of residential property is not otherwise restricted from refusing to rent to the person for that reason. However, the opinion points out that "courts have historically held that the Unruh Civil Rights Act (Civil Code Sections 51 and 52) prohibits discrimination based on classifications that are not enumerated in the statute, such as unconventional dress, families with children, homosexuality, and minors. [Hessians Motorcycle Club v. Flanagans (2001) 86 Cal. App. 4th 833, 836.] Subsequent opinions by courts of appeal have elaborated and a three-step inquiry has developed for use when considering whether a 'new' classification should be eligible for protection under the Unruh Act. The three-part test includes analysis of: (a) the statute's language, (b) the legitimate business interests of the defendant, and (c) the consequences of allowing the new discrimination claim."

In applying this three-step analysis in the Hessians Motorcycle Club case, supra, the court held that a business could have a policy of excluding from its establishment bike riders who wear gang insignia or colors. Although the Legislative Counsel opinion did not raise the issue of the significant distinction between bike riders and elderly or disabled sex offender registrants needing skilled nursing care, it is likely that an appellate court, in considering the issue of the elderly or disabled sex offender registrants as a protected class, might reach an entirely different conclusion. Certainly the legitimate business

interests of the apartment owners in protecting their residents would merit a different analysis of the issue of admission to the facility of a sex offender whose offense was against a related child (intra-familial) than the analysis of an offender who targeted strangers. Similarly, the owner of a housing complex for the elderly would be required to conduct a different risk analysis as to a sex offender registrant who committed one offense, in an intra-familial setting, against a child.

Moreover, the consequences of allowing the new discrimination claim would be far different when considering bike riders wearing gang colors than the consideration of thousands of sex offenders and their families being forced to become homeless and deprived of one of life's basic needs, the need for shelter. In the case involving the bikers and their gang colors, the court found that allowing a discrimination claim of this type would lead to frivolous lawsuits challenging other neutral business policies. It would be harder to make a persuasive argument that a lawsuit by a sex offender, his spouse and minor children, all of whom were made homeless by the provisions of this bill was frivolous. This is particularly true if their homelessness was caused by an eviction unaccompanied by an honest assessment of the risk posed by the sex offender in question.

11) Legally-Sanctioned Discrimination : By providing that this bill shall not be construed to diminish in any way any person's right to deny housing or otherwise discriminate against persons required to register as sex offenders, what effect does this bill have on the Unruh Civil Rights Act (Civil Code Sections 51 and 52)? That law provides for the civil rights of persons in business establishments and protects against discrimination on specified grounds. On the other hand, this bill specifically permits discrimination against sex offenders, who are not an enumerated protected class under the Unruh Act, but are a group for whom, arguably, a Court could create a new classification of protection under the Unruh Act, or, in the alternative, determine that some sex offenders are protected by the provisions prohibiting discrimination on the basis of a medical condition or disability.

By specifically sanctioning discrimination in the provision of housing, services and benefits, does this bill implicitly erode the protections provided by the Unruh Act, the California Fair Employment and Housing Act, and the Federal Fair Housing Act?

12) Policy Issues : To the extent that future legislation results in greater numbers of sex offender registrants becoming homeless, the issue will almost certainly be litigated. If sex offender registrants are denied basic necessities, such as shelter, there are likely to be accompanying consequences such as loss of employment, loss of income denying the offender's family of other necessities such as food and clothing, and additional negative impacts on their innocent children, including numerous changes of schools and community humiliation.

Are such consequences so serious as to cause a Court to create a new basis for a discrimination claim under the three-prong test enunciated in the *Hessions* case? As the consequences to sex offenders of having their names and addresses posted on the Internet website become increasingly damaging to the offenders and their families, is the overall scheme of public notification placed in jeopardy? Is it in the

public interest to create an entire new class of permanently homeless families? Is it reasonable to expect that any person, apartment owner, or tenant can insulate themselves from any proximity to registered sex offenders? Even a cursory look at the Megan's Law website indicates that registered sex offenders live in large numbers in most areas of the state. The supporters of this bill state their concern that their tenants will move out of their apartment complexes. Is there anywhere these tenants can move that will place them a "safe" distance from the residence of a sex offender?

If all of the sex offenders are evicted from a particular apartment complex, is that apartment complex really any safer? It may be devoid of registered sex offenders, but still populated by murderers, armed robbers, drug sellers and users, drunk drivers, and others who arguably also pose a risk to other tenants. Moreover, it may still be populated by sexual predators who have not yet been apprehended for their crimes. Arguably, these unidentified, unknown serious criminals living next door pose a far greater risk than a registered sex offender who committed a sex offense 40 years ago and has lived a crime-free existence ever since.

13) The Impact of Sex Offender Residence Restrictions : In an article published in the International Journal of Offender Therapy and Comparative Criminology, Vol. 49, pp. 168 - 178, entitled The Impact of Sex Offender Registration Restrictions: 1,000 Feet From Danger Or One Step From Absurd? , it was stated "Several states have enacted public policies that prohibit sex offenders who have abused children from living within close proximity to a school, park, day care center, or school bus stop. The purpose of this exploratory study was to describe the impact of residence restrictions on sex offender re-integration and to better understand sex offenders' perceptions of these laws. A survey of 135 sex offenders in Florida was conducted. Most of the molesters who responded to the survey indicated that housing restrictions increased isolation, created financial and emotional stress, and led to decreased stability. Respondents also indicated that they did not perceive residence restrictions as helpful in risk management and, in fact, reported that such restrictions may inadvertently increase triggers for re-offense."

Is it good public policy to not only create a new class of homeless families, and to thereby decrease their stability and increase the likelihood of recidivist behavior?

14) Arguments in Support :

a) According to the California Apartment Association , "This bill is intended to clarify that rental housing providers can use the Megan's Law database to act decisively in the interests and safety of other tenants. [It] will clarify and update housing law as it relates to the sex offender registry in order to allow rental housing providers and their residents to protect themselves from high risk sex offenders."

b) According to the Director of Property Management of Spruce Grove in Santa Ana, "I personally have experienced this legal quagmire in a situation in which a serious sex offender was residing at one of our properties, and this information was known by several tenants. Our

hands have been effectively tied, preventing any eviction actions against the offender. Unfortunately, this situation was compounded by the fact that this individual conducted Bible study classes for a group of residents. Bible study was the offender's previous M.O. for attracting young boys / victims. We had petitions to evict from one group of residents, while the Bible study group refused to believe his past (which was a serious one) or they felt that he should be forgiven. We were further chastised by our attorneys for researching this individual's history on Megan's Law website to confirm the resident's allegations. Now we had the information, yet were cautioned not to use it to warn, inform, or protect our residents. This is truly a dilemma.

"While I support the public database, I have been left to face angry tenants who learn that a sex offender lives on site. My refusal to respond to their demands to 'correct the situation' is not an acceptable answer to them nor is it for me."

c) According to Ross Miller Rentals , Sandy Adams & Associates Property Management , and others, "The rental housing industry in a bind. Current state law effectively prohibits use of the Megan's Law website to deny housing to listed sex offenders. At the same time, I have legal liability if I fail to protect residents against a known risk - in this case someone with a documented criminal history of sexual [abuse] against children, women, and ther residents."

d) According to Motteri Properties , LLC, "My units are in a neighborhood with a very high population of people listed in the [Megan's Law] database. I desperately need the ability to prudently manage my business by being able to screen out sex offenders and not be exposed to liability arising from disclosing or not disclosing information to prospective and existing tenants about offenders living on my property or in the neighborhood."

15)Arguments in Opposition :

a) According to the American Civil Liberties Union , "Discrimination in the rental of housing based on the fact that the individual is an ex-offender is a denial of basic civil rights. Housing may be denied on the basis of an individual's behavior, but not because of his or her status as an ex-offender. This bill will result in large numbers of sex offenders and their families becoming homeless, creating the increased likelihood that the state will not know the whereabouts of these individuals - the primary intent and purpose of the registration laws. This proposal is particularly bad and counterproductive public policy."

b) According to the California Public Defenders Association , this bill "creates an incentive for property owners to discriminate against registered sex offenders. In communities without 'just cause' eviction, property owners will have an incentive to evict sex offenders in order to have their address removed from the internet website. [This bill] is bad public policy and creates a de jure system of discrimination. Along with at least 5 other pending bills in the current legislature, this is part of a trend to make it difficult, if not impossible for sex offenders to live anywhere in the community. It is mean spirited, and punishes the families and loved ones of individuals who have already served their time and paid their debt to society."

c) According to a Board Member of the California Coalition on Sexual Offending (CCOSO), who surveyed sex offender treatment providers on the issues raised by this bill, "The overwhelming majority in the field of treating sexual abusers opines against this bill. Not only would it likely increase the stress of the ex-offender and thereby increase his risk for re-offense, it would also undermine the morale of the treatment providers, who may view their work as hopeless given the extreme response of the community (in this case voiced by the renters.)"

d) According to the Director of Forensic Services, Relationship Training Institute, San Diego , "I am very much a victim advocate in this field. At the same time, I am seriously concerned about the community attempts to [make 'lepers' of] people who are, otherwise, successfully working toward reintegration into the community. [This bill] seems very counterproductive and denies the quality or possibility of 'redemption'. It also lumps together every person convicted of a sexual offense as if they are either a rapist or a child molester, and denies the potential for change. Obviously, making life more difficult for convicted sexual offenders very likely will lead to greater (rather than lesser) rates of recidivism.

On a side note, it is also disheartening to face a group of sexual offenders who are attempting to better their lives and avoid re-offense, and tell them of another obstacle placed in their path."

e) According to A Helping Hand Counseling , San Diego, "The majority of men in sex offender treatment want to change. As they look at their lives and make significant changes, it is difficult for them to have sanction after sanction placed on them from society. We do live in a reactive world."

f) According to an Ohio-Licensed Social Worker and Homeowner's Association President , "Many [home owners associations] are now putting in their bylaws that registered sex offenders cannot live in the condo or [housing development.] For all of those who were in favor of Megan's Law, we began a very slippery slope which I predict will get so out of hand that it will become unenforceable."

16) Related Legislation : AB 217 (Vargas) proposes requiring specified notice to long-term care facilities, their staff, and their residents that a sex offender was residing there. AB 217 failed passage in this Committee.

AB 1422 (Bogh) proposes allowing the denial of admission to, and eviction from, long-term care facilities of registered sex offenders. AB 1422 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Apartment Association (Sponsor)
American Eagle Properties
California Apartment Association
California State Sheriff's Association

Equity Residential
Essex Property Trust, Inc.
Exlnt Property Management Company
Hedgerow Property Management
John Stewart Company
Lewis Operating Corp
Los Osos Management
Motteri Properties, LLC
Peace Officers Research Association of California
Ross Miller Rentals
Sandy Adams and Associates Property Management
Spruce Grove
Vintage Properties, L.P.
12 private citizens

Opposition

California Public Defenders Association
California Coalition on Sexual Offending
The American Civil Liberties Union
Relationship Training Institute
A Helping Hand Counseling
Three Private Citizens

Analysis Prepared by : Kathleen Ragan / PUB. S. / (916) 319-3744

AB 315 (HANCOCK) FACT SHEET
Efficient and Healthy School Buildings

PURPOSE OF THE BILL

To ensure that schools built with state funds have lower operating and maintenance costs and are healthy and comfortable for students and staff.

PROBLEM & NEED FOR THE BILL

Projections indicate that California will need 46,000 new classrooms during the next five years. Over the next 10 years, the state will invest well over $50 billion in new school construction. Population growth, budget limitations and class size reductions place tremendous pressure on school districts to build schools quickly and cheaply. This pressure can lead to low quality school facilities where the health and productivity of students and staff may be compromised and water, energy and materials are unnecessarily wasted.

A growing body of research shows that school facilities affect learning and student performance. ("Do School Facilities Affect Academic Outcomes?", National Clearinghouse for Educational Facilities, 2002). Moreover, the American Lung Association found that *American children miss more than ten million school days each year because of asthma exacerbated by poor indoor air quality (ALA 2002).*

School buildings designed and built to the highest standards in terms of indoor air quality, ventilation, thermal comfort, lighting and acoustics are best for students and teachers.

The demand for new schools presents the state with an opportunity to design and build classrooms that have lower operating costs and that boost the productivity, health and well-being of students and staff.

The Collaborative for High Performing Schools (CHPS) has developed sustainable design criteria that foster energy efficiency, water conservation, material reuse, indoor environmental quality, siting issues and a comprehensive maintenance and operations plan.

WHAT THIS BILL DOES

Requires the State Allocation Board (SAB) to adopt regulations to ensure that design standards for new school facilities meet the minimum criteria developed by the Collaborative for High Performance Schools (CHPS). The board may consider other high performance building criteria, as it deems appropriate.

The regulations must address: energy, water and material efficiency, indoor air quality measures, and environmental and community-sensitive facility siting measures.

Eligibility for future school facilities bond funding would be based on a school district's compliance with regulations adopted by the board.

The bill also directs the SAB to adjust grants to school districts to cover any increased costs for complying with high performance design standards.

DISTRICTS USING CHPS

The following twelve districts have adopted resolutions to ensure all future school buildings meet CHPS guidelines:
Los Angeles USD, Santa Ana USD, San Rafael City Schools, Coast Unified School District, Coast Community College District, Dry Creek Joint Elementary SD, San Marcos USD, San Francisco USD, San Diego USD, Burbank USD, Visalia USD and New Haven USD.

SUPPORT

Natural Resources Defense Council (Sponsor)
Global Green USA (Sponsor)
American Lung Association (Sponsor)
Collaborative for High Performance Schools
Urban Ecology
American Federation of State, County and Municipal Employees (AFSCME)
Planning and Conservation League
East Bay Municipal Utility District
Literacy for Environmental Justice
Sempra Energy

BILL NUMBER: AB 315 AMENDED
BILL TEXT

AMENDED IN SENATE JULY 11, 2005
AMENDED IN ASSEMBLY MAY 26, 2005
AMENDED IN ASSEMBLY APRIL 5, 2005

INTRODUCED BY Assembly Member Hancock
(Coauthor: Assembly Member Pavley)
(Coauthor: Senator Lowenthal)

FEBRUARY 10, 2005

An act to add Section 17077.36 to the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 315, as amended, Hancock School facilities: energy efficiency: design standards.

Existing law, the Leroy F. Greene School Facilities Act of 1998 (the Greene Act of 1998), establishes a program in which the State Allocation Board is required to provide state per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization for applicant school districts.

Existing law requires all new state public buildings and publicly funded schools to be models of energy efficiency and to be designed, constructed, and equipped with all energy-efficiency measures, materials, and devices that are feasible and cost-effective over the life of the building.

Existing law authorizes, as part of the requirements for submission of an application to the State Allocation Board for new construction funding pursuant to the Greene Act of 1998, the applicant school district to certify that an energy analysis and report has been prepared. Existing law requires the report to set forth the utility savings that would be generated if the facilities were designed, constructed, and equipped with the energy efficiency and renewable energy technology that would make the facilities, as designed, exceed the minimum building energy-efficiency standards mandated for new public buildings, through the use of energy efficiency and renewable energy technologies.

This bill would require the State Allocation Board, by July 1, ~~2006~~ *2007* , to adopt regulations to ensure that design standards for new school facilities constructed in whole or in part with state funds are in accordance with, among other requirements, the minimum design and construction criteria, as defined, in the specified Collaborative for High Performance Schools Best Practices Manual. The bill would also require the board to review other high performance building organizations' standards and any guidelines adopted pursuant to a specified executive order, and to adopt the standards that it deems appropriate.

The bill would make eligibility for funding for new construction projects applied for on or after a certain date, as provided, pursuant to the Greene Act of 1998 contingent on the applicant school district meeting design standards pursuant to the regulations adopted by the board and on the approval by the voters of a general obligation bond measure after January 1, 2006, that provides funds for that purpose.

The Greene Act of 1998 requires the State Allocation Board to allocate to applicant school districts prescribed per-unhoused-pupil

state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition. Existing law requires the board to determine an applicant's maximum total new construction grant eligibility under a specified calculation and requires the board to annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes.

This bill would require the board to adjust the per-unhoused-pupil grant amount, described above, as necessary to provide 50% of any increased costs identified by the board to comply with the above-described design and construction standards. The bill would also require the board to establish a method to provide up to 100% of increased costs identified by the board to comply with the above-described design and construction standards for school districts that qualify for hardship assistance, as specified, and would authorize the board to use any funds authorized for school facility energy-efficiency grants, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The Collaborative for High Performance Schools (CHPS) has developed a set of criteria for new school design and modernization that, if adopted, will lead to school buildings that enhance pupil performance and teacher satisfaction, reduce operating costs, and minimize environmental impacts.

(2) CHPS is a nonprofit entity that includes, but is not limited to, state agencies, investor-owned and municipal utilities, school districts, and nongovernmental organizations that promote high performance standards in public facilities.

(3) CHPS's goal is to assist school districts in the design and construction of school facilities that enhance pupil performance and teacher satisfaction, reduce operating costs, and minimize environmental impacts.

(4) CHPS has published a four-volume best practices manual to provide school districts with technical assistance tools to design, construct, operate, and maintain high-performance school facilities. CHPS has also trained hundreds of school district staff, architects, contractors, and engineers that work on educational facilities.

(5) The criteria developed by CHPS have been adapted for use by the State of Massachusetts, the State of Washington, the United States Department of Energy, and the New York State Energy Research and Development Authority. Twelve different California school districts have passed district resolutions to ensure that all school buildings built in the future meet the CHPS criteria.

(6) Governor Arnold Schwarzenegger issued an executive order on December 14, 2004, that encourages resource and energy efficiency and conservation in state buildings, including schools built with state funds.

(b) It is, therefore, the intent of the Legislature to enact legislation that would require the State Allocation Board, under the direction of Executive Order S-20-04, to adopt regulations to enable and encourage schools built with state funds to be resource and energy efficient, and that would also require the State Allocation Board, in developing the regulations, to consider the recommendations of the Collaborative for High Performance Schools.

SEC. 2. Section 17077.36 is added to the Education Code, to read:

17077.36. (a) By July 1, ~~2006~~ *2007*, the board shall adopt regulations to ensure that design standards for new school facilities constructed in whole or in part with state funds are in accordance with, among other requirements, the minimum design and construction criteria in the Best Practices Manual produced by the Collaborative for High Performance Schools (CHPS). *The regulations shall not apply to a project for which an apportionment has been approved by the board, or a project using the proceeds of a general obligation bond act approved by the voters, before the date on which the board adopts those regulations.* The board shall also review the standards of other high performance building organizations, and any guidelines adopted by the Division of the State Architect within the Department of General Services pursuant to Executive Order S-20-04, and shall adopt the standards that it deems appropriate.

(b) The regulations shall address the following project components:

(1) Energy-efficiency, conservation, or renewable generation measures.

(2) Water efficiency, conservation, and reuse measures.

(3) Material efficiency, conservation, and reuse measures.

(4) Indoor environmental quality measures, including indoor air quality.

(5) Environmentally and community-sensitive facility siting measures.

(6) A comprehensive maintenance and operations plan that incorporates high-performance ideals.

(c) If a general obligation bond measure is approved by the voters at a statewide election held after January 1, 2006, that provides funding for improvements specified in this section, an applicant school district seeking, on and after the January 1 next occuring after that general obligation bond measure is approved, funding for new construction projects pursuant to this chapter from the proceeds of that general obligation bond measure shall ensure that the project meets the design and construction standards adopted pursuant to the regulations adopted by the board pursuant to subdivision (a).

(d) (1) The board shall adjust the per-unhoused-pupil grant amount set forth in Section 17072.10 as necessary to provide 50 percent of any increased costs identified by the board to comply with the design and construction standards required by subdivision (c).

(2) The board shall establish a method to provide up to 100 percent of any increased costs identified by the board to comply with the design and construction standards required by subdivision (c) for school districts that qualify for hardship assistance pursuant to paragraph (1) of subdivision (b) of Section 17075.10.

(e) In adjusting grant amounts to assist school districts to meet the requirements of paragraphs (1) and (2) of subdivision (d), the board is authorized to use any funds authorized for energy-efficiency grants as set forth in Section 17077.35.

(f) This section does not apply to Article 1.5 (commencing with Section 17592.70) of Chapter 5 of Part 10.5.

(g) For purposes of this section, "minimum design and construction criteria" means the minimum points required to be considered a CHPS school as described in the Best Practices Manual produced by CHPS as of July 1, 2005.

BILL ANALYSIS

SENATE RULES COMMITTEE	AB 315
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916) 327-4478	

THIRD READING

Bill No: AB 315
Author: Hancock (D), et al
Amended: 7/11/05 in Senate
Vote: 21

SENATE EDUCATION COMMITTEE : 8-2, 6/30/05
AYES: Scott, Alquist, Lowenthal, Romero, Simitian, Soto, Speier, Torlakson
NOES: Denham, Dutton
NO VOTE RECORDED: Maldonado, Morrow

SENATE APPROPRIATIONS COMMITTEE : 8-5, 8/25/05
AYES: Migden, Alarcon, Alquist, Escutia, Florez, Murray, Ortiz, Romero
NOES: Aanestad, Ashburn, Battin, Dutton, Poochigian

ASSEMBLY FLOOR : 47-32, 5/31/05 - See last page for vote

SUBJECT : School facilities: energy efficiency: design standards

SOURCE : Natural Resources Defense Council

DIGEST : This bill requires the State Allocation Board, by July 1, 2007, to adopt regulations for design standards for energy efficient school facilities that meet the minimum design and construction criteria established by the Collaborative for High Performance Schools.

ANALYSIS :

Existing law:

1. The Leroy F. Greene School Facilities Act, requires the

State Allocation Board (SAB) to allocate to applicant school districts, prescribe per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition.

2. Requires SAB to determine an applicant's maximum total new construction and modernization grant eligibility under specified calculations.

3. Requires a 50 percent local match for new school facility projects, and requires a 40 percent local match for school facility modernization projects.

4. Authorizes a school district applying for new school facility construction or school facility modernization project that includes energy efficiency components to seek a grant adjustment for the state's share of the increased costs associated with those components. This grant adjustment is limited to an increase of five percent of the applicant's state grant.

This bill:

1. Requires SAB to review design standards for high performance school buildings and any guidelines adopted by the Division of State Architect (DSA), as specified, and adopt regulations for high performance school buildings that meet the minimum design and construction criteria in the Best Practices Manual produced by the Collaborative for High Performance Schools (CHPS). The regulations must address the following major components: energy efficiency, water efficiency, and indoor environmental quality measures.

2. Clarifies that the regulations developed pursuant to this bill only apply to future projects using future bond funds.

3. Requires a school district seeking funding for new construction projects, paid for by any general obligation bond approved by the voters after January 1, 2006, that provides funding for energy efficiency practices, to ensure that the project meets the design and construction standards pursuant to the regulations adopted by SAB.

4. Requires SAB to adjust the per-unhoused-student grant amount as necessary to provide 50 percent of any increased costs to comply with the design and construction standards adopted pursuant to the regulations, if funds are authorized for this purpose in a bond approved after January 1, 2006.
5. Requires SAB to establish a method to provide up to 100 percent of any increased costs to comply with the design and construction standards for school districts that qualify for hardship funding, if funds are authorized

for this purpose in a bond approved after January 1, 2006.

6. Authorizes SAB to utilize any funds authorized for energy efficiency grants in adjusting grant amounts.

7. Does not apply to the School Facilities Needs Assessment Grant Program and Emergency Repairs Grant Program.

Comments

CHPS is a nonprofit organization that includes a range of state government agencies, utilities and other school facilities stakeholders. CHPS developed a series of "best practices" manuals for school planning, design and a scoring system to determine if a school meets the CHPS criteria. The criteria are performance standards related to siting, energy, water, materials, indoor environmental quality and community affairs.

Related legislation . AB 1297 (Evans) requires a school district to ensure that school facilities have heating and ventilation and air-conditioning systems that meet the minimum requirements of occupational safety and health standards for indoor air quality. AB 1297 is on the Senate Third Reading File.

Prior legislation . AB 736 (Hancock, 2004), which was similar to this bill, was vetoed by the Governor. The Governor's veto message stated:

> "This bill is premature, in that it places conditions on school districts' use of funding of school facilities bond measures passed after January 1, 2006. While I am very supportive of efforts to improve the environment of California's classrooms, as well as promoting energy efficiency and conservation, this policy discussion more appropriately should be considered within the context of a comprehensive environment policy involving energy efficient housing, schools and commercial properties."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

Fiscal Impact (in thousands)

Major Provisions	Fund	2005-06	2006-07	2007-08
SAB regulations	General	$150 one-time		
CHPS construction	Bond	Unknown, multimillions		

The bill requires the SAB to review other high performance

building organizations' standards and any guidelines and to adopt the standards that it deems appropriate. The Division of the State Architect has indicated it needs 25 to 30 staff to validate district compliance with the standards at a cost of $4 million annually. This cost will be borne by districts via plan check fees.

If the CHPS design and construction criteria increases construction costs by $3.00 per square foot, the result will be to increase the cost of a 50,000 square foot school by $150,000. The increase will be shared equally by the state and the school district. The school district will benefit from a reduction in energy costs.

SUPPORT : (Verified 8/29/05)

Natural Resources Defense Council (source)
American Federation of State, County, and Municipal Employees
American Institute of Architects, California Council
American Lung Association
Association of California School Administrators
California Federation of Teachers
California School Boards Association
California Teachers Association
Clean Power Campaign
Coalition for Adequate School Housing
East Bay Municipal Utility District
Global Green USA
Literacy for Environmental Justice
Los Angeles Unified School District
Pacific Gas and Electric Company
Planning and Conservation League
Sacramento Municipal Utility District
San Diego Unified School District
San Francisco Unified School District
Sempra Energy
Sierra Club California
Warner Bros. Entertainment, Inc.

ASSEMBLY FLOOR :
AYES: Arambula, Baca, Bass, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, De La Torre, Dymally, Evans, Frommer, Goldberg, Hancock, Jerome Horton, Jones, Karnette, Klehs, Koretz, Laird, Leno, Levine, Lieber, Liu, Matthews, Montanez, Mullin, Nation, Nava, Negrete McLeod, Oropeza, Parra, Pavley, Ridley-Thomas, Ruskin, Saldana, Salinas, Torrico, Umberg, Vargas, Wolk, Yee, Nunez
NOES: Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, Daucher, DeVore, Emmerson, Garcia, Harman, Haynes, Shirley Horton, Houston, Huff, Keene, La Malfa, La Suer, Leslie, Maze, McCarthy, Mountjoy, Nakanishi, Niello, Plescia, Richman, Sharon Runner, Spitzer, Strickland, Tran, Villines, Walters, Wyland
NO VOTE RECORDED: Gordon