

**PUBLIC SAFETY POLICY COMMITTEE
HIGHLIGHTS
FRIDAY, MARCH 30, 2012
DoubleTree Hotel, Grove Room, Ontario, CA**

ATTENDANCE

Members: Arbuckle, Jan (Chair), Wapner, Alan (V.Chair), Allan, Dave; Allen, III, Walter; Baker, Jason; Bankhead, Don; Bixby, Scott; Coe, Frank; Constant, Pete; de Werk, Art; Derr, Michael; Dorst-Porada, Debra; Dupper, Phillip; Ferrara, Tony; Gingles, Jack; Henke, Kurt; Hill, Glenda; Hofbauer, Steven; Holloway, Marshall; Irwin, Jacqui; Kiefer, Steve; Layba, Mina; Lima, Nanci; Lotter, Scott; Marble, Bill; Morris, Paul; Nagel, Steve; Norman, David; Palla, Joe; Plass, Gary; Rad, Javan; Santoro, Joe; Terrell, Al; Trisler, Jay; Woiwode, Michael

League Partners: Green, David; Roberts, Dan

Staff: Dorothy Holzem, Associate Legislative Representative/Sr. Policy Analyst

I. Special order of Business: Post Redevelopment & State Budget Update

A general briefing of all policy committee members was held prior to each committee meeting. League President Mike Kasperzak, Mayor of the City of Mountain View, opened the briefing by welcoming the participants and thanking them for their involvement. He then introduced League Executive Director Chris McKenzie.

Mr. McKenzie outlined the work and initial recommendations of the League's Task Force on Next Generation of Economic Tools. He stated that some progress has been made in cleaning up issues with AB X1 26, the redevelopment dissolution legislation, with the introduction and movement of [AB 1585 \(Perez\)](#); he also encouraged cities to support the bill in the Senate. The task force continues to review and consider options for establishing new tools that local agencies can use for infrastructure and economic development, including [SB 214 \(Wolk\)](#) related to infrastructure finance districts. Mr. McKenzie gave an update on pension reform, stating that the League has remained engaged in the issue and had recently met with all of the legislators working on the issue in the Capitol, but it remained uncertain what would emerge from the legislature. Finally, he mentioned that the League's lawsuit over the loss of city shares of vehicle license fees (VLF) through SB 89 will be heard in early May in Sacramento Superior Court.

Legislative Director Dan Carrigg and Fiscal Policy Advisor Michael Coleman then provided an update on the state budget.

Mr. Carrigg outlined the new dynamics affecting state budget process derived from Propositions 25 and 26. Prop. 25 lowered the vote threshold to approve a budget from two-thirds to a majority, and also require legislators to forfeit salary when they fail to pass a budget by, June 15, the Constitutional deadline. Mr. Carrigg explained that legislative leadership had filed a lawsuit against the state Controller over whether he had the authority –he exercised in 2011--to determine if a budget approved by the Legislature was balanced. He also said that Democratic legislators were balking at accepting the Governor's budget cuts, and the Governor's proposed tax measures would not fully offset the projected deficit. Prop. 26 had closed off the previously-used tactic of the legislature attempting to fund state programs with "regulatory fees." He cautioned city officials to remain watchful.

Mr. Coleman presented an outline of the state budget and current state deficit, including the different deficit projections by the Legislative Analyst Office and Department of Finance. He also explained the contents of the Governor's two tax proposals intended for the November ballot, which seek to increase

personal income tax and sales tax. He said taxing high income earners made forecasting expected state revenues difficult to predict. <http://www.californiacityfinance.com/ConferenceMaterials.htm>

In addition, League Legislative Representative and Federal Liaison Jennifer Whiting, reported on the activities in Washington DC. She focused her comments on the federal transportation reauthorization bill and FY 2013 appropriations. The current SAFETEA-LU extension expires March 30, and Congress needed to act before then to extend the program provisions and the federal gas tax again while they continue to debate the longer-term solutions. During the policy committee meeting, Congress did approve a 90-day extension. Looking longer term, the Senate has approved a two-year bill, but the House is still in negotiations.

Ms. Whiting also encouraged city officials to contact their Congressional representatives about the importance of retaining funding for programs benefitting cities, like CDBG, in the FY 2013 appropriations process. She also encouraged cities to participate in the League's survey on the importance of federal funding for cities.

http://www.cacities.org/resource_files/30640.FederalUpdateMarch2012PolicyCommittees.pdf

Following the general briefing, each committee met for their respective meetings (individual committee agendas available at www.cacities.org/polcomm).

II. Welcome and Introductions

Chair Arbuckle welcomed the committee to Ontario and asked the committee and guests to introduce themselves.

III. Public Comment

While there was no one requesting to speak during the open comment period, a representative of Southern California Gas spoke at the end of the meeting and requested the League address at a future meeting or by staff efforts the wireless functionality for utility providers for natural gas, water, and other pipelined resources. Chair Arbuckle recommended he speak to the Transportation, Communication and Public Works Committee, as well.

IV. Approval of 2012 Committee Work Plan

Staff asked that the committee review and approve the work program that was developed based on the comments received in January. Staff reiterated that while the work program guides the areas of focus for the year, it does not limit the committee from taking on other issues. A motion to **APPROVE** the work plan was made and seconded. The motion passed unanimously via voice vote.

V. Civil Disturbance Readiness: What Should City Leaders Do to be Prepared

Speaker Jerry Harper presented to the committee recommendations to prepare for, and respond to, civil disturbances, both peaceful and non-peaceful, through a number of case studies. (See attachments). Incidents from California, the United States and foreign countries demonstrate the need to have plans in place to be as prepared as possible for planned and spontaneous civil disturbance events.

The committee asked if there is a difference in how cities should communicate with their law enforcement departments, depending on if they maintain their own police department or contract for law enforcement services. Mr. Harper offered that communication is incredibly important in both instances, but contract cities should be including both their local captains/deputies as well as the administrative body (usually the county).

The committee also asked about the challenges of when law enforcement in a region see eye to eye, but the various elected officials have different agendas. Mr. Harper offered again that having a clear

understanding of roles for each department and also their mission statements is vital. Otherwise, resources will be wasted.

VI. Board Report – February Action Items

Staff reported on the actions taken by the League Board in February on the recommendations from the committee. The first was to take no position on SB 1351 and have it return to the committee in March. This was approved. The second was to continue monitoring the development of federal FEMA threshold legislation to make disaster recovery funds more accessible to California's cities and counties, who have to meet a very high minimum damage threshold. This was also approved.

VII. Legislative Agenda (*in order of discussion*)

1) SB 1351 (Rubio). Peace Officer. Community Correctional Facilities.

Per the request of the committee in January, the sponsors of SB 1351 presented to the committee to answer questions about what peace officer status means in the context of community correctional facilities, how CCFs are run, and requirements for training CCF custodial officers. Paul Lozano, Chief of Corrections, Shafter Community Correctional Facility, and Cherylee Wegmen, Immediate Past President for ACCAPS and Mayor, City of Wasco, gave an overview of the measure and answered questions from the committee.

CCFs were established in 1987 to ease overcrowding in California prisons and were established in six cities and one county. ACCAPS introduced SB 1351 because through the 2011 Public Safety Realignment program (AB 109 and subsequent budget trailers bills), the Department of Corrections and Rehabilitation no longer maintains custody over CCF eligible low-level felony offenders. Instead, counties now have custody over that population segment. While the authority to contract with counties was maintained, CCF custody officers lost their peace officer status while on duty through the transition.

This bill has numerous co-authors, both in the Senate and Assembly and from both Democrat and Republican members. The bill has no opposition and is supported by the California State Association of Counties, California State Sheriff's Association, and several other public safety associations. The California Correctional Peace Officers Association is neutral, and they have been the biggest opponents in CCF issues in the past. In addition, the POST Commission is neutral and reaffirmed their study conducted in 1990 that CCF custody staff should have peace officer status while on duty. They expressed to the ACCAPS representatives that they were surprised this status was not already bestowed to the custody officers and support the change.

The committee asked questions about required training and screening standards to ensure they meet POST standards, which Mr. Lozano verified were extensive and meaningful.

The committee also asked if anyone else can open a CCF. Mr. Lozano confirmed that the seven originally provided for are the only ones approved to run as a public CCF.

In reference to questions raised in the January committee meeting on this bill, the committee thanked the ACCAPS representative for confirming that these custody officers are not receiving any new authority that they did not already have when the CCFs were in contract with the state.

A motion was made to **SUPPORT** SB 1351 and it was seconded.

Mr. Lozano, in response to the further discussion, stated that this bill would not affect booking facilities in other cities. The CCFs only deal with those who have already been booked and adjudicated to serve up to a five year sentence. CCFs do not book offenders off the street nor hold offenders prior to their sentencing.

He also confirmed that employees in the CCFs are not classified as public safety employees for benefit purposes and the individual cities are responsible for the benefits offered to their employees. While labor could negotiate to seek a public safety classification, it is not an issue on the table at this time. Also, it's up to the individual cities to decide.

The committee asked why custody staff even needs to be given peace officer status. In response, Mr. Lozano stated that it's important for both the county and the CCF administrators. For the counties, it means the custody staff can investigate crimes, make arrests, with authority extending to the perimeter of their property. It helps them crack down on contraband and even helps with arrests of offenses by non-incarcerated individuals. From the CCF Chiefs' perspective, it's important that the custody staff can defend themselves through use of force authority for the safety of that officer

The final comments addressed the difference between a police officer and a peace officer, and how their training requirements, responsibilities, and duties are very different. They both, however, have POST training requirements to ensure they have the skills to be effective in their position.

The chair called for the vote for the motion on the floor (to support) and the committee voted to recommend a **SUPPORT** position unanimously but for one "no" via voice vote.

2) AB 801 (Swanson). Code Enforcement Officers.

Staff reviewed the bill related to code enforcement officers and expanding the powers of arrest to all code enforcement officers upon entering into an MOU with the chief of police or sheriff of the local law enforcement agency. This would expand powers of felony arrest, as well. A motion was made to **OPPOSE** the measure, and it was seconded.

The committee discussed the point that two associations that are often partners on legislation, California Police Chiefs Association and the California Narcotics Officers Association are supporting the bill. However, members from those associations noted they may have needed further review of the bill before offering a support position, as it does much more than they understood during the initial review with their colleagues.

The committee noted that while local control is totally maintained, larger public safety issues may be more pressing, even if cities retain the ability to choose who may or may not have these new powers. Also, committee members stated that they are not worried about the expansion of felony arrest powers but have serious concerns that part-time and temporary employees would have access to criminal history information.

The committee reported that in conversations with their contacts at POST that there were significant concerns about the potential associated costs of training for these positions and that greater review may be needed with some of the other law enforcement associations. The committee member stated a neutral position would be appropriate at this time based on the POST recommendations.

As discussion continued, members spoke in favor of having additional officers with felony arrest powers to help with financial hardship in the city. If they have code enforcement officers who will not require police backup it could reduce redundancy and unnecessary requests for a police officer or deputy to come to the scene. Because this is not a carte-blanche extension of powers, cities can make that decision themselves on a case-by-case basis, as needed and as appropriate. A substitute motion was made to recommend a **NEUTRAL** position and it was seconded.

The committee discussion continued and included concerns about this bill opening the door to other enforcement positions seeking powers of arrest, peace officer status and other higher ranking positions requiring more training and increased benefits packages.

The conversation concluded with committee comments that offered local agencies already have the authority to confer misdemeanor arrest authority to their code enforcement officers. They questioned if felony powers of arrest are truly needed, so that code enforcement officers may make arrests for crimes committed outside their presence. The bill was deemed unnecessary as local jurisdictions already make arrangements for when non-illegal dumping code enforcement officers require additional police assistance.

The substitute motion was taken first, to recommend a **NEUTRAL** position. It failed, by hand vote, 14 to 16. The original motion was then considered, to recommend an **OPPOSE** position. It carried, with a vote by hand of 18 to 11.

3) SB TBD (Calderon). Fireworks.

Staff gave a brief overview of legislation that would expand the sale of safe and sane fireworks over the New Year's holiday and allow local agencies to collect up to 7% of gross sales from those entities selling fireworks during the locally approved sales period. Without such approval, sales are by default banned.

Staff also shared an update on the recently convened fireworks stakeholder group convened by the Joint Legislative Committee on Emergency Management. This group includes the State Fire Marshall's office, local stakeholders in fire and law enforcement, Department of Toxic Substances Control, fireworks industry representatives, and other key legislative staff and stakeholders. They are addressing the growing problem in the collection, disposal, and transportation of both safe and sane and dangerous fireworks. The current system has several disconnects between local and state responsibility, funding levels, and conflicts with environmental quality laws.

The committee members expressed both positive and negative views on expanding fireworks sales. While the League has taken positions on a number of previous bills in this area, this is the first bill that maintains local control and also offers a direct funding source for education, mitigation, and response in jurisdictions where sales are approved.

The Fire Chiefs Department comments were reflected upon by the committee, specifically that there is little data supporting that safe and sane fireworks are causing costs to local jurisdictions for emergency response and fire suppression. The bigger concern are those dangerous fireworks. Also, while southern California may have fire risks all year round, northern California jurisdictions are relative fire safe in the winter months. There was an expressed need to keep working with the Committee on Emergency Management stakeholder group to resolve the problems posed by fireworks sales. A motion was made to recommend a **NEUTRAL** position and have staff seek amendments that reflect the findings of the stakeholder group. The motion was seconded.

However, other committee members expressed frustration with the cost of enforcement and the likely pressure that non-profits would place on cities to approve fireworks sales. From a city perspective, it's easier to enforce all or none when it comes to fireworks, rather than try to determine the legal status of the products. Furthermore, if there is any revenue it only goes to those communities that approve fireworks sales and cities have seen fireworks cross jurisdictional boundaries easily into prohibited areas.

A substitute motion to **OPPOSE** the measure was made and was seconded. Cities spend great effort to enforce fireworks prohibitions. This bill will only increase those costs to cities.

Further discussion revealed how individual cities manage fireworks sales and the importance of education and enforcement. Additional comments also countered the claim that neighboring jurisdictions will see a greater influx of fireworks than they do now.

A friendly amendment to the **OPPOSE** motion was accepted and changed the substitute motion to an **OPPOSE unless AMENDED** recommendation. Those amendments would include:

- 1) Posting requirements on fireworks booths stating where fireworks use is legal and illegal in neighboring jurisdictions;
- 2) Greater equity of funds for education, enforcement, and suppression activities between all jurisdictions, regardless if fireworks sales are permitted or not; and
- 3) Clarification regarding responsibility of disposal and transport of fireworks either as products or hazardous waste, reflecting the findings of the stakeholder group.

The motion to **OPPOSE unless AMENDED** passed narrowly via voice vote. The motion to take a neutral position was not considered because the substitute motion carried.

4) SB 1330 (Simitian). License Plate Recognition Data.

Following the staff summary, the committee quickly assessed the problems with this bill and stated it was a major move to restrict law enforcement to do their job. A motion was made to **OPPOSE** the bill and it was seconded.

In addition to the numerous new requirements imposed on local agencies using LPR data, it was seen as only tying the hands of local law enforcement. Questions were raised about permissible retention of other digital recordings and personal identifying information, such as fingerprints and DNA.

Staff requested that the committee consider what, if any, possible amendments could be considered, especially as it relates to how commercial vendors are using the data. The committee acknowledged that there may be some standards for vendors but it may indirectly impact access to this important data tool. The motion to recommend an **OPPOSE** position passed unanimously but for one “no” via voice vote.

5) Metal Theft Legislative Package

Committee staff provided an overview of the legislative package related to metal theft introduced this year and the growing interest to establish metal theft mitigation and reduction methods. Legislators are looking at issues surrounding enforcement, penalty levels, and restricted payments to reduce the frequency and severity of metal theft in cities and counties, both urban and rural.

The committee expressed frustration over the proliferation of metal theft and the need for action in this area. They reported that thieves have targeted everything from bronze plaques and statutes to copper wiring in lighting systems to fire hydrants parts as well as entire truckloads of construction equipment.

Committee members shared that forklifts and other construction equipment have been an easy target because they do not require a bill of sale or have a vehicle number to track the change of possession.

The committee acknowledged the need not to discourage recycling, but that can be avoided perhaps by carefully crafting legislation to target specific materials and goods most popular with thieves.

Committee suggestions also included adding a requirement of capturing digital images of the materials brought by sellers for better tracking. Staff confirmed that personal identifying information is required already for sellers and fingerprinting is required for junk dealers.

6) Registered Positions on Legislation

Staff directed the committee to the attachment showing bills that have registered League positions in the public safety field. Position letters and sample letters can be found at www.cacities.org/billsearch. Staff noted the short list is largely due to the fact that the deadline for bill language on spot bills just passed the week prior.

VIII. Assemblywoman Norma Torres – Legislation and Budget Issues Impact 9-1-1 Emergency Communications Service

Assembly Member Norma Torres joined the committee to share an update on the 9-1-1- Select Committee that she chairs and the importance of entire 9-1-1 service, from when the phone call is placed to the time an emergency responder is dispatched.

She recapped recent activities in the select committee, including legislation changing the policy on how “warm lines” or lines that do not have active subscriber status, are maintained. In addition, she recalled the success of securing grants for local governments through the existing 9-1-1 surcharge for the training of 911 dispatchers, through Assembly Bill 912.

She also addressed several bills that she has authored this year or is currently developing for introduction next year. Those were:

- AB 1275 requires emergency medical calls that include medical condition and personal identifying information to be blocked from public records release.
- AB 2003 requires payments by recyclers for scrap metal materials are only made by checks. This exempts small transactions under \$20 and hopes to stem the ongoing metal theft problems.
- AB 2343 allows local agencies to provide and seek felony conviction information about potential employees during the 30 day background check period conducted by the DOJ. Currently, if a potential employee commits a felony offense while the background check is being conducted, it is provided to the potential employer.
- In the long term, the Assemblywoman is looking at cracking down on driving while intoxicated by marijuana. They need to collect further data to determine what, if any, difference there is between marijuana staying in a person’s blood stream and their intoxication levels.

In response to AB 1275, the committee asked if the HIPPA privacy protections apply to 9-1-1 calls. The Assemblywoman provided that while health care professionals must adhere to those standards, it does not apply to all police, fire, and others receiving dispatch instructions.

The committee asked that the member look into the issue of repeated false 9-1-1 calls that report serious emergency incidents that either have no actual emergency or have a less urgent need. The Assemblywoman agreed this was a problem and urged the committee to speak with their local telecom providers to track those calling repeatedly with false information or those from non-tracked cell phone numbers.

Related to the marijuana legislation proposal, the committee also asked that the Assemblywoman take note of AB 2312, the Marijuana Regulation and Control Act, that would undermine local control of dispensaries and permit the for-profit operation of dispensaries. The Assemblywoman pledged to closely review that bill when it comes before her on the Assembly Floor. League staff stated that an oppose letter would be sent to Assemblyman Ammiano’s office next week, based on existing League medical marijuana regulation policy adopted this year.

IX. National League of Cities Public Safety and Crime Prevention Committee Update

Committee Vice-Chair and NLC Committee member Alan Wapner reported on activities at the most recent meeting. The NLC voted to support a national policy on emergency medical technicians to clarify this should be regulated locally and not be federal government. Currently, federal law is silent on the issue, but future action could be taken to establish federal guidelines or requirements.

The committee also voted to oppose legislation that would establish current FEMA grants as a state block grant and provide funding to the state for distribution, rather than directly to local agencies. They are also opposing a cyber-communications bill because of the undue burden it creates for local agencies.

Current efforts to secure the D-block spectrum for public safety communications have been successful and the committee is monitoring the issue as it evolves.

Finally, California committee members are encouraged to seek out a position on the NLC committee due to recent vacancies by previous California representatives.

X. Subcommittee Reports

Staff provided updates on the three subcommittees established at the January meeting.

- Emergency Response/Disaster Preparedness Subcommittee is working with the League partners program to create an educational webinar series on this topic and will use the southern California windstorms in 2011 as a case study. The focus on “after action” reports will address staff training, resources/mutual aid, responder communication and coordination, and public information.

The budget proposal to eliminate the CalEMA California Specialized Training Institute (CSTI) was heard in committee recently and faced concerns from committee members and stakeholders. While more details are anticipated in the May Revise, comments included concerns regarding the actual savings that will be realized, maintaining adequate training programs, and use of the CSTI campus following dissolution.

- Realignment Subcommittee has not yet met but staff asked members to anticipate a conference call following the May Revise release the week of May 14 to review the updated proposals for the Division of Juvenile Justice and Board of State and Local Corrections.
- Technology Subcommittee met via conference call to discuss several legislative items for possible review by the entire committee. In addition, subcommittee member Mina Layba reported on the preemption of local land use authority through the creation of the D-block National Public Safety Broadband Network. While the communications tool is a “win” for local public safety communications, cities must approve certain locations for co-location of wireless facilities. (See attachment).

XI. Next Meeting: Friday, June 15, 2012 – Sacramento Convention Center

With no further business to address, Chair Arbuckle announced the next meeting date and location and adjourned the meeting.

California League of Cities Conference
Ontario, California
March 30, 2012

RECOMMENDATIONS TO MAYORS, COUNCILS AND CITY MANAGERS
ON CIVIL DISTURBANCE READINESS

I recommend that discussions with the chief or sheriff cover the following:

- ◆ The department's "readiness assessment" to deal with a wide variety of crowd management scenarios that fall along a continuum of rising intensities, non-violent to explosively violent. What about the city's other departments' readiness posture?
- ◆ How confident is the chief/sheriff of the leadership, experience and training, and special skills of his staff to cope with civil disturbances?
- ◆ Ask if there are standing orders, plans, or manuals on crowd and riot control and if they are current. Are the policies reinforced by relevant training? Are the policies widely understood throughout the department?
- ◆ Will the department be fielding a "Mobile Field Force" and can the appearance of the officers become an issue? (Officers in full riot attire have been subjects of past controversy)
- ◆ Evaluate whether there is a mechanism for effectively sharing information/intelligence from both law enforcement and community sources between the city and the department. What are the chief's plans about monitoring open "social media" sources?
- ◆ Ask about the "rules of engagement" and the arrest guidelines the chief will issue. In what situations would various types of force be used? What non-lethal or "intermediate weapons" are the police equipped with, such as tear gas and pepper spray, and how would they likely be used? (Note: Federal case law pertaining to the "use of force" does not change in disturbance situations compared to normal police operations)
- ◆ Are there escalation and de-escalation scenarios the police have considered that keep operational and post-operational costs at a minimum and consistent with public safety?

- ◆ Discuss the circumstances where mutual aid may be requested. Have Memorandums of Agreement (MOA's) with likely providers of assistance been put in place? Ask about the likelihood of your city's police agency being called upon to render mutual aid to other jurisdictions. Discuss cost implications.
- ◆ What is the understanding as to who will be representing the city and the police agency to the media? How will they coordinate official statements? Will the media be restricted, facilitated or even embedded with the mobile field force or at the "incident command center" or elsewhere?
- ◆ In planning for unforeseen risks, have the roles of the city attorney, prosecutors, medical providers, community activists, business leaders, fire department and others, been considered?
- ◆ Have plans been laid to document events by video or by other methods? This may include the planning process itself, as well as the event and post-event conditions. Will arresting officers be photographed or video recorded with their arrestees?
- ◆ Where will the mayor and the chief and their key staff be located during planned or unusual events? What are the means and backup means of communicating with each other? What about communications in developing SPONTANEOUS EVENTS? What are the Mayor's expectations on the reporting process from the chief to the mayor or city staff?

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SB 1351 (Rubio)

Peace Officer Status Designation

SPONSOR OF LEGISLATION

- The Association of California Cities Allied with Public Safety (ACCAPS) is the sponsor of SB 1351 (Rubio)
- ACCAPS is a nonprofit organization established in 1988
- ACCAPS is governed by a seven-member Board of local elected officials
- ACCAPS' Membership is comprised of:
 - Local municipalities who host State prisons, medical and mental health correctional institutions in their communities
 - Cities that operate and staff public Community Correctional Facilities (CCFs)
 - Local government agencies, law enforcement and public safety organizations

ACCAPS MISSION

- Promote and encourage a better understanding of local municipalities who host State prisons, medical and mental health institutions and cities that operate and staff public CCFs and for local jurisdictions considering bringing a State prison/correctional institution and/or a public CCF to their community
- Seek reforms for issues and concerns raised by communities that host State prisons/correctional institutions/public CCFs and to disseminate accurate and reliable information in a timely manner
- Provide methods and a means to coordinate and unify activities of its membership by establishing important networks and key partnerships necessary in the pursuit of critical issues and priorities

WHAT IS A PUBLIC CCF

- Public Community Correctional Facilities (CCFs) were created by legislation (SB 1591) in 1987 to assist the State with its prison overcrowding
- Public CCFs are most often located in and operated by cities and staffed with city employees
- Public CCF custody staff are correctional officers at the local level and are members of local unions
- Public CCFs can house between 450-600 low-level inmates
- Public CCFs house non violent, non sex offender inmates for terms of up to 60 months
- In 1990, the Commission on Peace Officer Standards and Training (POST) recommended peace officer status for public CCFs
- Based on the POST recommendation, public CCFs were provided with peace officer status in 1990 with the passage of AB 3401

PUBLIC CCFs – CURRENT/FORMER

- Originally seven public agencies entered into 20-year contracts with the California Dept. of Corrections and Rehabilitation (CDCR):
 - City of Adelanto
 - City of Delano
 - Lassen County
 - City of Folsom
 - City of Shafter
 - City of Coalinga
 - City of Taft
- Five public CCFs completed their 20-year contracts which expired on or before November 2011:
 - City of Coalinga
 - City of Shafter
 - Lassen County
 - City of Delano
 - City of Taft
- The City of Folsom is considering reactivating its public CCF if a there is demonstrated need for additional beds by counties and sheriffs

WHY IS SB 1351 (RUBIO) NEEDED

- Only public CCFs were authorized to contract with counties and sheriffs to assist with overcrowding of local inmates as stipulated in AB 109, the Public Safety Realignment Program of 2011 that shifted the housing and supervision of low-level inmates from the State to local government
- Realignment plans being developed across California by local jurisdictions require peace officer status for any custody staff supervising local inmates
- During the drafting of Realignment language, overlooked in the process was the need to amend Penal Code 830.55, which authorizes public CCFs to have peace officer status when in contracts with the CDCR to house State inmates
- Legislation is now needed to make a technical amendment that would continue peace officer status for public CCFs and extend the same powers and authority when contracting with counties and sheriffs to house local inmates that the public CCFs had when contracting with the CDCR for the housing of State inmates

WHAT WILL SB 1351 DO

- Passage of SB 1351 will amend Penal Code 830.55 to continue peace officer status for public CCFs, a designation they have had for 20 years
- Ensure Realignment in California is successful by extending peace officer status to public CCFs when they enter into contracts with counties and sheriffs so that they can assist local government with inmate overcrowding in local jails, which are already beginning to swell beyond design capacity
- Will restore over 300 well-paying jobs in the Central Valley, and potentially upwards of 65 jobs in Northern California, which were lost when public CCF facilities were closed due to the implementation of Realignment
- Continued peace officer status for public CCFs also means that custody staff will only have peace officer status while on duty

LEGISLATIVE CO-AUTHORS

- SB 1351 was introduced by Senator Michael Rubio (D-Fresno/Kern) on February 24, 2012 as an urgency measure, requiring a two-thirds vote of the Legislature. Since its introduction, several legislators have signed-on to the bill and many more are expected to join the bill as co-authors as the bill makes its way through the legislative process:
 - Senator Jean Fuller (R-Kern/Tulare), signed-on
 - Assembly Member David Valadao (R-Kings/Kern), signed-on
 - Assembly Member Shannon Grove (R-Bakersfield), expected
 - Assembly Member Richard Pan, (D-Sacramento) expected

SUPPORT

- SB 1351 has received broad support, the following organizations have taken official positions of support:
 - ACCAPS (sponsor)
 - California Correctional Supervisors Organization
 - Kern County Sheriff Youngblood
 - Cities of Coalinga, Delano, Folsom, Shafter, Taft and Wasco
 - California State Association of Counties (CSAC)
 - California State Sheriffs' Association (CSSA)
- ACCAPS has been meeting with statewide organizations, discussing issues and concerns and is now working within their internal review processes in an effort to attain official positions of support:
 - California Police Chief's Association
 - Chief Probation Officers of California
 - League of California Cities

NEUTRAL

- ACCAPS has been meeting with many governmental and other entities, briefing them on the background, history and necessity of SB 1351. The entities below understand why SB 1351 was introduced and has an urgency clause and have no issues or concerns with the bill:
 - Legislative Leadership
 - Senate and Assembly Budget Committees
 - California Correctional Peace Officers Association (CCPOA)
 - POST

OPPOSITION

- There is no opposition.

CONTACT INFORMATION

- For more information regarding SB 1351 (Rubio), please feel free to contact any of the individuals listed below:
 - Martin Radosevich, Legislative Director for Senator Michael Rubio
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 - Suzanne Fox, Consultant for ACCAPS
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NEWS RELEASE

SENATOR MICHAEL J. RUBIO SIXTEENTH SENATE DISTRICT

Immediate Release
February 24, 2012

Contact: Sergio Reyes
(661) 932-1966

Rubio Bill Protects Over 200 CCF Jobs

SB 1351 Will Help Displaced CCF Officers, Local Jobless Rates

SACRAMENTO – Senator Michael J. Rubio (D – Shafter) has introduced SB 1351 that will help restore over 200 well-paying jobs in the Central Valley. This important bill will clarify existing law to ensure employees of public Community Correctional Facilities (CCFs) in California are granted sworn peace officer status and make them eligible to be rehired upon CCFs contracting with counties.

In the Central Valley, four CCFs in Delano, Shafter, Taft and Coalinga each employed approximately 60 employees, though all were laid off in line with the current ‘realignment’ plan that shifts many criminal justice responsibilities and costs from the state to counties. Each CCF is able to house about 550 inmates. The four affected communities all have high unemployment rates ranging from 14.2% to 35.2%.

With the elimination of existing funding streams for these local correctional institutions during ‘realignment’, CCFs have sought to contract with counties that are receiving state inmates. Unfortunately, many counties are reluctant to contract with CCFs whose guards do not maintain sworn peace officer status, which they previously held for the last 21 years when they contracted directly with the state.

“SB 1351 allows laid off CCF officers to be rehired as sworn peace officers, a critical missing link in these facilities finalizing contracts with counties that wish to use these underutilized jails in the Central Valley,” Rubio said. “For example, Los Angeles County will run out of jail bed space in May and is looking to contract with Valley CCFs, though they will only agree to work with them if and when their officers have sworn peace officer status. SB 1351 will clarify that guards at CCFs have the same power and responsibilities as they did when they worked under contract with the California Department of Corrections and Rehabilitation.”

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March 6, 2012

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Steve Miklos
Vice Mayor
City of Folsom

VICE PRESIDENT

Danny Espitia
Council Member
City of Wasco

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Cherylee Wegman
Mayor
City of Wasco

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Wasco

Hon. Michael Rubio
Senator, 16th District
State Capitol, Room 2066
Sacramento, CA 95814

Dear Senator Rubio:

As the sponsor of your bill, SB 1351 regarding peace officer status for public Community Correctional Facility (CCF) custody staff, the Association of California Cities Allied with Public Safety (ACCAPS) is in strong support. This bill seeks to add clarifying language to Penal Code 830.55 that would continue peace officer designation for local correctional officers at public CCFs. Public CCFs are city-operated and staffed with municipal employees.

Public CCFs were created by SB 1591 in 1987 and were provided with peace officer status with the passage of AB 3401 in 1990. CCFs were originally established to assist the California Dept. of Corrections and Rehabilitation (CDCR) with its prison overcrowding and housing of the State's low level inmate population. Public CCFs have operated with peace officer status for more than 20 years. The Commission on Peace Officer Standards and Training (POST) issued a report in 1990 to the Legislature recommending that the duties and responsibilities of local correctional officers at public CCFs were deemed appropriate and sufficient for peace officer status designation as outlined in Penal Code 830.55.

With passage of AB 109 and AB 117, the Public Safety Realignment Program that took effect on Oct. 1, 2011; all public CCFs were closed due to the State transferring its responsibilities to counties for the supervision and housing of low level inmates who are designated as non-sex, non-drug and non-violent offenders. Through trailer bill language, public CCFs are the only entities currently authorized to contract with counties and sheriff departments to house local inmates, however; during the structuring of Realignment, the transfer and continued peace officer status designation for public CCFs was overlooked and now needs addressing.

There are currently four public CCFs located in the Central Valley in the cities of Coalinga, Delano, Shafter and Taft and there is the possibility of re-activating a fifth CCF located in the City of Folsom in Northern California. The combination of these facilities would provide upwards of 2,000-2,500 inmate beds to counties and sheriff departments. Already, larger counties in California are seeing their local jails reach design capacity limits as their inmate population continues to increase and are pursuing contracts with public CCFs for additional inmate beds they soon will need. Public CCFs meet the necessary standards and requirements for housing local inmates and provide educational and vocational programming in an effort to curb recidivism.

For the reasons stated above, ACCAPS is in strong support of your bill, SB 1531 and seeks its immediate passage.

Sincerely,

Steve Miklos
President

RE: SB 1351 – SUPPORT

c: Martin Radosevich, Legislative Director, Office of Senator Michael Rubio
Senate Public Safety Committee
Assembly Public Safety Committee
Suzanne Fox, Consultant, ACCAPS

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TO: National League of Cities
Information, Technology and Communications Policy Committee

FROM: Ken Fellman

DATE: March 11, 2012

RE: H.R. 3630 – Creation of a National Public Safety Broadband Network and Preemption of Local Land Use Authority for Some Co-locations of Wireless Facilities

On February 22, 2012, President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012 – H.R. 3630. While most of the press reports have focused on social security tax breaks and the extension of unemployment compensation through the end of 2012, just over half of the 101 page bill covers provisions involving spectrum auctions, the creation and funding of a nationwide interoperable public safety communications network, and a requirement that local governments *must approve* certain applications for co-locations of wireless facilities in your communities.

NATIONAL INTEROPERABLE PUBLIC SAFETY COMMUNICATIONS NETWORK

H.R. 3630 allocates what is known as the D Block Spectrum to public safety. The nation's first responders will have 20 MHz of continuous spectrum for this interoperable wireless broadband network. The new law creates the First Responder Network Authority (FirstNet) to manage the buildout of the public safety network, and provides a \$7 billion grant program to fund network construction. There is an additional \$135 million grant program to assist state and local planning and implementation of the public safety network. The funding will come from the proceeds of FCC auctions of spectrum to commercial wireless providers. The spectrum to be auctioned will come from frequencies currently allocated to broadcast entities.

FirstNet members will be the Secretary of Homeland Security, the U.S. Attorney General, the Director of the Office of Management and Budget and 12 individuals appointed by the Secretary of Commerce. Of the Secretary's 12 appointments, at least 3 will be individuals that represent the collective interests of states, local governments, Indian tribes and U. S. territories and at least 3 will be individuals who have served as public safety professionals. FirstNet will develop a network buildout plan in consultation with the states, and will work with the FCC to develop and implement technical standards for the network. The spectrum auctions will take place over the next 3 years. The network is expected to be completed within 10 years.

Local governments will be required to upgrade local networks to incorporate Next Generation 9-1-1 (NG 9-1-1), and H.R. 3630 provides \$115 million in grants related to 9-1-1 infrastructure and operations. Network upgrades will be necessary to incorporate technologies so that public safety

answering points can receive 9-1-1 text, video, data and images in addition to voice calls. The grants can be used for a variety of 9-1-1 related expenditures, including migration to IP-enabled emergency networks, adoption and operation of NG 9-1-1 services, and 9-1-1 related training of public safety communications personnel. Your jurisdiction might be able to access some of the available funding to assist in that transition.

The FCC has two open rulemaking dockets dealing with NG 9-1-1 matters, one related to standards that will facilitate the ability to accept text and video, and the other addressing standards to ensure location accurate technologies. The record in these proceedings is closed and decisions are expected by summer. However, the FCC may issue a further notice seeking additional information before adopting final rules.

MANDATORY APPROVALS OF SOME CO-LOCATION APPLICATIONS

While the creation of the public safety network is a big win for local governments, Section 6409 of the statute, titled "Wireless Facilities Deployment," creates a significant problem. It reads, in pertinent part: *"Notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."*

Section 704 of the Telecommunications Act (47 U.S.C. Sec. 332 (c)(7)) generally preserves local land use authority in connection with wireless facilities siting. Section 6409 of the new legislation is a Congressional gift to the wireless industry that will trump some of the local control found in Section 704 of the Telecom Act. While Section 6409 appears in the Title of the legislation related to public safety communications, it is not limited to public safety network facilities. Rather, it applies to all wireless facilities. The only term within the new statutory language that is defined is "eligible facilities request" which means *"any request for modification of an existing wireless tower or base station that involves (A) colocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment."* In other words, key terms like "wireless tower," "base station," and "substantially change" are *not* defined in the new law.

Expect some wireless providers to inform local governments that all applications for co-locations must be approved unless they significantly increase the height or width of a facility. Don't buy it. Unfortunately, Congress' failure to define key terms in this section of the statute likely means that it will be necessary to muddle through litigation, appellate court decisions, and perhaps FCC rulemaking, in order to gain a clearer understanding of how best this new law will be interpreted. In the meantime, there are a number of things local governments should do.

1. Review your existing code provisions. Many jurisdictions define "tower" differently when compared to other structures where antennas may be attached. For example, if you have previously approved wireless attachments to the sides of buildings, on flagpoles, in church steeples, etc., and if these structures do not fall within your code's definition of "tower," then you can likely claim that Section 6409 does not apply to co-locations on these other structures. However, if your

code broadly defines “tower” to include a variety of other structures, you probably want to amend and narrow your code provisions quickly.

2. Review code provisions for definitions and other language addressing treatment of modifications. It can be argued that new antennas that are not significantly larger than existing antennas may still be large enough to cause a safety hazard regarding conditions like wind loads, ice loads, etc. Therefore, a change in the physical dimensions that is small in size, may still be large enough to cause non-compliance with safety codes, and as a result be considered a “substantial change” in the physical dimensions of the facilities. Consider amending local codes to define “substantially change,” and tie that to changes which cause an otherwise compliant facility to be non-compliant with local, state and/or federal standards.

A number of local governments require applicants to certify that wireless facilities are compliant with FCC radio frequency (RF) emissions standards. New antennas, regardless of actual size, might also be considered a “substantial change” in physical dimensions, if that change results in a site that exceeds federal RF emissions standards.

The lack of definition of the term “base station” is also important. If a site has a “base station” that is a metal building housing two communications cabinets, and the applicant wants to add two new cabinets within that structure, this would not appear to substantially change the physical dimensions. But if the “base station” is two cabinets located on concrete pads at the base of a tower, and the applicant wants to add two more concrete pads with two new cabinets, that may very well be a substantial change to the physical dimensions of the base station.

RECOMMENDATIONS

A review of an application’s details is still important. If you have forms in place for wireless applications, you’ll want to review those forms and add sections for the applicant to check whether the co-location will meet all applicable state and local safety codes and federal RF regulations. It is appropriate to continue to require this kind of information from applicants, and especially important to do so after passage of H.R. 3630. If your code requires these certifications at the time of application, and the applicant does not provide it, then the applicant has not submitted a “complete” application, and the FCC imposed shot clock will not begin until the application is supplemented with complete information. In response to wireless applicants who claim that the local government must simply rubber stamp an approval if the applicants “certify” that there will be no substantial change in physical dimensions, local governments should respond by demanding that all initial application requirements be met, and are subject to local government review. It will not be possible for you to determine whether the application is “an eligible facilities request” that does not “substantially change the physical dimensions” of a tower or base station, until staff reviews all of the application materials. Your code should be checked to determine whether any changes are needed to be able to protect local interests within the preemptory framework of Section 6409.