

ADMINISTRATIVE SERVICES POLICY COMMITTEE

Thursday, March 29, 2012

10:00 a.m. – 3:00 p.m.

DoubleTree Hotel, Lake Gregory Room, Ontario, CA

Individuals who wish to review the full text of bills included in this packet are encouraged to do so by visiting the League's website at www.cacities.org/billsearch. Be sure to review the most recent version of the bill.

REVISED A G E N D A

Special Order of Business Post Redevelopment & State Budget Update 10:00 – 10:45 a.m., Harvest Room, Doubletree Hotel, Ontario

- I. Welcome and Introductions**
- II. Public Comment**
- III. Review of California Forward Initiative: The Government Performance and Accountability Act – 11:00 a.m.** (*Attachments A & B*) (Action Item)
 - Fred Silva, Senior Fiscal Policy Advisor, California Forward
 - Mike Madrid, Campaign Manager, California Forward Action Fund
- IV. City Attorney's Department –FPPC Committee Update** Discussion
 - Eric Vail, City Attorney, City of Hemet and Temple City
- V. State Legislative Update**
 - a) Legislative Overview Discussion
 - b) Policy Discussion on Pending Legislation Action
 - c) Review of Past Legislation (*Attachment C*) Discussion
- VI. City Clerk's Legislative Proposal (*Attachment D*)** Discussion
- VII. Next Meeting: THURSDAY, June 14, 2012, League of California Cities, Sacramento**

Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:

- 1) Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or*
- 2) A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.*

A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state's Fair Political Practices Commission takes the position that the value of the lunch should be reported on city officials' statement of economic interests form. Because of the service you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift (note that this is not income for state or federal income tax purposes—just Political Reform Act reporting purposes). The League has been persistent, but unsuccessful, in attempting to change the FPPC's mind about this interpretation. As such, we feel we need to let you know about the issue so you can determine your course of action.

If you would prefer not to have to report the value of the lunches as income, we will let you know the amount so you can reimburse the League. The lunches tend to run in the \$30 to \$45 range. To review a copy of the FPPC's most recent letter on this issue, please go to www.cacities.org/FPPCletter on the League's Web site.

**Administrative Services Policy Committee
Proposed November Ballot Measure
March 2012¹**

Staff: Lobbyist: Dan Carrigg (916) 658-8222

1. Initiative Measure 11-0068: The Government Performance and Accountability Act

http://ag.ca.gov/cms_attachments/initiatives/pdfs/i1011_11-0068_%28government_performance%29.pdf

Summary: This ballot measure has been referred to both the League's Revenue and Taxation and Administrative Services policy committees for review at their January meetings. The measure would alter both state and local budget practices and makes other changes affecting the state legislative and budget-adoption process. The provisions with the most direct impact on cities are listed in paragraphs 9, 10 and 11. The measure's sponsor is California Forward, a non-profit organization focused on improving California governance. The proposal is currently awaiting title and summary with the Attorney General. Given that California Forward is engaged in outreach to city officials on this measure, it is important the League adopt and communicate a position to cities.

Initiative Summary:

- 1) Voter Intent: The Act's stated purpose is to bolster results and accountability to taxpayers by improving the budget process for State and local governments and encouraging local governments to work together. One consistent theme is that State and local governments would be more efficient, effective and transparent through a budget process that examines progress toward program goals. The Act declares that *"the shared purpose of State and local governments is to promote a prosperous economy, a quality environment, and community equity."* This purpose is advanced *"by achieving at least the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health."*
- 2) Findings: The Act's findings about California government (both state and local) include:
 - government has lost the confidence of its citizens and is not meeting their needs;
 - government at all levels must be transparent, willing to listen and accountable for results;
 - government must have a shared vision of public purpose, must collaborate regionally, and must work together to provide public services effectively and efficiently; and
 - a primary purpose of public budgets is to link dollars to goals and communicate progress toward goals.
- 3) State Budget Requirements: Changes in the State budget and legislative process comprise the majority of the Act. Most importantly, the Act:
 - (a) Requires a biennial (two-year) performance-based State budget consistent with the new purposes and goals outlined above in paragraph 1 and containing the following seven elements:
 - i. Estimate of total resources available for expenditures for the budget and succeeding fiscal year;
 - ii. Projection of anticipated expenditures and revenues for the three succeeding fiscal years;
 - iii. "A statement of how the budget will promote the purposes of achieving a prosperous economy, quality environment, and community equity, by working to achieve at least

¹ The only change to this analysis from the January version is the addition of footnote #6 on the three-day print rule.

the following goals: increasing employment; improving education; decreasing poverty, decreasing crime; and improving health.”

- iv. Performance standards and outcome measures to assess and report program progress;
- v. Outcome measures for each major expenditure and their relationship to the purposes and goals listed above in paragraph (iii).
- vi. A statement of how the State will align its expenditures with those of other government entities that implement State programs on its behalf to achieve the purposes and goals listed in paragraph (iii).
- vii. A public report on progress and effectiveness in achieving the purposes and goals in paragraph (iii) according to the prior year’s outcome measures.

(b) Requires the State to fully implement these budgeting changes by the 2015-16 fiscal year.

4) Legislative Oversight: Requires legislative oversight once every five years of the performance of State-funded programs whether implemented by the State or by local agencies. Performance standards will be set in statute and the budget. Oversight includes a review of local Community Strategic Actions Plans to: a) consider amending or repealing any locally-identified State obstacles, and b) assess whether the Action plans have improved delivery and effectiveness of services in all parts of the community.

5) Governor’s Budget, \$25 Million Threshold: Requires the Governor’s budget to propose offsetting state program reductions or equivalent additional revenue for if the Governor’s Budget² includes a proposal to either:

(a) Reduce state tax revenues by more than \$25 million in that fiscal year or succeeding fiscal year.³

(b) Establish a new state program or expand an existing state program, including a state mandated program, the effect of which would increase state costs by more than \$25 million, in that fiscal year or succeeding fiscal year. Numerous exemptions are provided. The following exemptions are not counted as expanding the scope of an existing State program:

- Restoring funding that was reduced in any fiscal year after 2008-09 to balance the budget;
 - Increases in funding to fund existing responsibilities, including increases in cost of living or workload and any increase authorized by a memorandum of understanding (MOU) approved by the Legislature;
 - Growth in State funding as required by federal law or a law in effect as of the Act’s effective date;
 - Funding to cover one-time expenditures; and
 - Funding to repay the costs of state mandates related to local government employees.
- Also exempted from the definition of “state costs” are payments of principal and/or interest on a (existing or new) State general obligation bond.
 - “Additional revenue” is defined to include, but is not limited to, revenue resulting from specific changes to federal or State law that the State agency responsible for collecting the revenue has quantified and determined to be a “sustained increase”.

6) Unclear Effect on “Rainy Day” Reserve Fund (ACA 4): The definitions listed above also apply to a provision included in both this measure and ACA 4, the “Rainy Day” state reserve fund constitutional amendment placed on the ballot as part of the 2009 budget agreement. Should this measure pass, it

² This provision applies to proposals included in the Governor’s budget. It is not clear what application, if any, this limitation would have to the final budget bill approved by the Legislature and sent to the Governor.

³ None of the exemptions which apply to proposals to expand spending apply to a proposal to reduce revenues.

would require Legislative Counsel to rewrite ACA 4 to harmonize with this Act. ACA 4 requires up to 3% annually in General Fund revenues, and revenues exceeding a 20-year state revenue trend to be allocated to fund a reserve account. This year, the Legislature—with a majority vote – passed a statute that moved ACA 4 from the June 2011 to the November 2014 ballot.⁴

- 7) Changes to a Governor’s Ability to Address a Fiscal Emergency: This measure makes several changes enacted by Proposition 58, approved at the March, 2004, statewide ballot. Prop. 58 established a process whereby the Governor could declare a fiscal emergency as a result of a substantial decline in revenues or increase in expenditures in a previously approved state budget. In such an event, the Governor is authorized to issue a proclamation declaring a fiscal emergency, call the Legislature into special session, and provide the Legislature with proposed legislation to address the emergency. If the Legislature fails to pass and send a bill or bills to address the fiscal emergency within 45 days, the Legislature may not act on any other bill or adjourn for a joint recess until those bills have been passed and sent to the governor. Requires a bill addressing the fiscal emergency to contain a statement to that effect.

This measure changes that process in the following way:

- Authorizes the Legislature to present a bill or bills to the Governor in response to the governor’s proclamation declaring a fiscal emergency. States that such a bill shall mean “conclusively” that the bill addresses the fiscal emergency.
- Requires a bill sent to the Legislature by the Governor within 45 days containing a statement that the bill is addressing a fiscal emergency to take immediate effect. (This allows urgency measures to be adopted with a majority vote rather than two-thirds)
- States that if the Legislature fails to act within 45 days, the Governor can issue an executive order reducing or eliminating any General Fund appropriation for that fiscal year not prohibited by federal law or the state Constitution.
- Provides the ability of the Legislature to override an executive order with a two-thirds vote.⁵

- 8) New Three-Day Print Rule: Prohibits the Legislature from acting on bills and the budget—other than bills in a special session addressing a natural disaster or terrorist attack—unless the measures with amendments have been in print and available to the public for at least three days.⁶

⁴ Establishing a state “Rainy Day” reserve fund was important to Republican legislators who negotiated the 2009 budget agreement. Legislative Democrats moved that measure to the November 2014 ballot, SB 202 (Hancock), over Republican opposition. It is unclear how a provision that amends ACA 4, and requires Legislative Counsel to rewrite it, will be viewed by Republican legislators. Having Legislative Counsel, rather than the Legislature, rewrite the terms of a ballot measure that has been previously approved to be placed on the ballot may raise disputes about delegating policy issues to that office.

⁵ This proposal enhances legislative over executive power. In the waning years of the Schwarzenegger Administration, legal battles emerged over the Governor’s authority to impose furloughs on state employees. After declaring a fiscal emergency and proposing various budget cuts to the Legislature, the Governor was dissatisfied with the level of legislative response and sought to make cuts through executive order. Ultimately, those decisions were upheld by the courts. *Professional Engineers in California Government v. Schwarzenegger*, 50 Cal. 4th 989. The changes in this Act provide more authority to the Legislature in these situations by allowing urgency measures to be approved with a majority vote and stating that legislation shall mean “conclusively” that the bill addresses the fiscal emergency.

⁶ As a stand-alone provision, this proposal could clearly be supported by the League. City officials were very upset in 2011 with the lack of transparency with SB 89 (Budget) which swept \$130 million in city VLF funds with little legislative review, and the League passed a resolution at its 2011 annual conference supporting such transparency.

- 9) New Local Government Budgeting Requirements: Beginning with budget year 2014-15, will require local government budgets to include all the following:
- A statement of how the budget will promote, *“as applicable to a local government entity’s functions, role, and locally-determined priorities, a prosperous economy, quality environment, and community equity, by working to achieve at least the following goals: increasing employment; improving education; decreasing poverty, decreasing crime; and improving health, and other community priorities.”*
 - A description of outcome measurements to assess progress toward the local government’s goals and community priorities;⁷
 - A statement of the outcome measurement for each major expenditure and its relationship to the overall goals established by the local government entity;
 - A statement of how the local government will align its expenditures and investments of public resources to achieve the established goals; and
 - A public report on progress in achieving goals and an evaluation of the effectiveness in achieving the outcomes according to the measurements set in the prior year’s budget.

Each local government must also develop and implement an open and transparent process to encourage public participation in developing its budget, including identifying community priorities.

- 10) Community Strategic Action Plans. Provides incentive funds for the creation of Community Strategic Action Plans by counties as follows:
- (a) Dedicates 0.035% of the State sales and use tax (approximately \$180 million) annually to create the Performance and Accountability Trust Fund to provide incentives for adopting Plans. These funds are represented a byproduct of “realignment savings.” Beginning in FY 2014-15, each county that has adopted a Plan and submitted it to the Controller will receive a portion of funds based on the county’s percentage of the total population for all of the eligible Plans. If the State reduces the sales and use tax bases and the Fund receives less revenue than in FY 2013-14, the difference shall be provided by the General Fund.⁸
 - (b) Authorizes a county board of supervisors to develop a Community Strategic Action Plan (“Plan”) to deliver public services more effectively and efficiently. Requires other local governments in the county with services in the Plan’s anticipated scope to be invited to participate. Local governments may also petition the county to be included in the planning process, to initiate or amend a Plan. The Plan is to be drafted through an open and transparent process that encourages participation. Intent language at the beginning of the measure declares that it is the purpose of these Plans *“for advancing community priorities that they (local agencies) cannot achieve by themselves.”*
 - (c) Requires the Plan to include outcomes, measurements, reporting methods and statements that:
 - outline how it will achieve the stated purposes and goals;⁹

⁷ While local governments can exercise discretion in deciding which of the listed purposes and goals apply to them, it is to be expected that there will be debate about what these terms mean and which ones apply to a city. It remains unclear what effect, if any, the intent language at the beginning of the measure when declaring a “shared purpose” of state and local government will be. It also is unclear how the Legislature will apply these terms to the state budget.

⁸ The way this measure is drafted it appears that all of the funds will be allocated to those counties which elect to adopt a Plan. If that is the case, then there will likely be pressure on counties to adopt a Plan or see their “share” of these funds distributed to other counties. Since the language allocating the funding to counties is statutory rather than an amendment to the Constitution, the Legislature could clarify this area of law with a statute requiring a two-thirds vote.

⁹ The Plan must achieve the listed purposes and goals. Will the Legislature remain content to fund plans with diverging interpretations of what these purposes and goals mean or adopt uniform criteria?

- describe services to be delivered and the roles and responsibilities of participating entities;
 - explain why those services will be delivered more effectively and efficiently under the Plan;
 - provide for resource allocation to support the Plan, including any funds received from the Performance and Accountability Trust Fund;
 - consider disparities within communities served; and
 - explain how the Plan is consistent with budgets adopted by participating entities.¹⁰
 - include a method for regularly reporting outcomes to the public and to the state.
- (d) Requires at least a majority of the entities “*providing municipal services...to at least a majority of a county’s residents*” (counts both population within cities and unincorporated area residents), and one or more school districts serving at least a majority of the pupils in the county, must participate in the Plan. The Plan (and amendments) must be approved by a majority vote of the county and each participating local government and school district. *The Plan shall not apply to any local government that does not approve it.*¹¹
- (e) Prohibits a school district from receiving funds under the Plan from the Performance and Accountability Trust Fund. Funds paid to a school district can be from any other source determined by the participating entities.¹²
- (f) Authorizes counties, cities, and other local government entities, including school districts and community college districts that are parties to a Plan to enter into contracts to apportion their shares of ad valorem property taxes, provided the contract is approved by each entity’s governing board by a two-thirds vote. *(Cities and counties can already agree to share sales tax revenue with a two-thirds vote of their governing bodies.)*
- (g) Authorizes entities that adopt Plans to be granted statutory, regulatory and funding flexibility for administering state financed programs,¹³ as follows:
- Plan adoptees may integrate state or local funds to provide Plan services and advance Plan goals.
 - If parties to a Plan believe that a state law or regulation impedes Plan progress, they may propose provisions that are “functionally equivalent.” They must describe the intended state objective, explain how the rule is an obstacle, and describe the proposed community rule and how it will improve outcomes. These “functionally equivalent” provisions are required to be submitted to the Legislature with the Plan; if within 60 days the Legislature takes no action to disapprove it, the provision is deemed operative

¹⁰ This requirement to specify in a Plan how the budgets adopted by participating local agencies are consistent with the Plan could affect the discretion of an individual agency to adopt a budget that matches its community’s priorities. For instance, if a city supported an effort by its county Plan to spend its state incentive funds on health care, does that mean that the city must also spend its own funds on health care?

¹¹ A regional approach to public safety funding under the “reduced crime” goal could be one possible focus of a Plan which matches a traditional interest of cities, and possibly schools, and tracks with the state’s realignment of corrections’ responsibilities to counties. “A prosperous economy” and “increasing employment” could be interpreted as a regional economic development effort. Much depends on how the state—which has significant other budget leverage over counties and schools—interprets the goal of this tool.

¹² The initial allocation of incentive funds to counties and prohibiting schools from accessing those funds raises significant questions over where additional revenue would come from to support a Plan. Counties are likely to be underfunded from realignment. Schools have incurred significant cuts to their funding. Special districts and cities are the only other entities of local government these funds could come from.

¹³ This option appears to be limited to programs operated by counties and schools, but programs such as COPS could come under a “state-financed” definition. From a political standpoint, if there is consensus in the Legislature or administrative agency to allow a functionally equivalent interpretation it may be easier, and less legally risky, to clarify this by statute.

and in compliance with the state statute. Regulatory agencies have 60 days to disapprove equivalent provisions or they are deemed in compliance. (*Legislative or administrative review does not appear to be required if no alternatives to state laws and regulations are proposed in the Plan*)

- Authorizes the state to contract with local governments participating in a Plan “to perform any function that the contracting parties determine can be more efficiently and effectively performed at the local level.”

(h) Requires Counties to evaluate the effectiveness of Plans at least once every four years. The evaluation must include public comments and is to be used to improve the Plan and by the public to assess government performance. Four years after the first allocation of funds, the Legislative Analyst will evaluate the extent to which adopted Plans have improved the efficiency and effectiveness of service delivery or reduced the demand for State-funded services.

11) State Incentives For Collaborative Regional Planning: A separate provision requires the state to consider and determine how it can support “*through financial and regulatory incentives*” local entities’ efforts to address challenges and resolve problems that they have “*voluntarily and collaboratively determined*” are best addressed at a regional scale to advance *a prosperous economy, quality environment, and community equity*. The State is required to give priority for “state-administered” funds for infrastructure and human services, “as applicable”, to local entities that have voluntarily developed a regional collaborative plan and are making progress toward its goals.¹⁴

Fiscal Impact on Cities: Unknown but potentially significant fiscal impact; unknown costs, savings and revenues due to:

- 1) New processes required for budgeting increase local costs.
- 2) Revenue sharing of property taxes is permitted; unclear whether local agencies would participate and net impact to cities.
- 3) Local agencies that adopt approved Plans might receive budgetary benefits from regional approaches to public safety, economic development or infrastructure.

Representatives of the League’s Fiscal Officers and City Manager’s departments will be analyzing local budget impacts of this measure in greater depth in advance of the policy committee meetings. Their conclusions will be shared at those meetings.

Existing League Policy There is some consistency between League policies and the Act’s intentions; the League’s 2012 Strategic Goals and specific League policies do encourage regional collaboration and support transparency and State government reforms. For example:

The League’s Revenue and Taxation policies also support some of the Act’s proposed reforms of State legislative and budget processes, including a two-year spending plan, oversight hearings for program review, and an emphasis on efficiency and effectiveness. In the State-local government relationship the following League policies advocate for accountability, incentives-based approaches and regional collaboration:

¹⁴ This is a completely separate provision that is not connected to the adoption of a Plan. The enactment of this legislation could inspire legislation to further develop what this provision means. The “voluntary and collaborative” language may protect local agencies from attempts at state leverage. A clear constitutional priority is provided for “state-administered” funds for infrastructure and human services to support these regional efforts. It is unclear which funds these provisions will be interpreted to apply, but given the condition of the state budget, there are unlikely to be any new funds in the near future. Any reallocation of existing funds is bound to be controversial.

- “Inherent in these recommendations is the underlying principle that meaningful fiscal reform should allow each level of government to adequately finance its services responsibilities, with each being accountable to taxpayers for its own programs.”
- State policies should “offer incentives to reward cities achieving program goals rather than withhold or reduce revenues to accomplish targets.”
- “In cases where regional issues, programs and services are identified, multi-jurisdictional revenues should then be identified and implemented.”

At the 2011, Annual Conference the League membership supported a resolution calling for improved legislative transparency.

The League’s adopted Smart Growth Principles include support for coordinated planning: “Coordinate planning with neighboring cities, counties, and other governmental entities so that there are agreed-upon regional strategies and policies for dealing with regional impacts of growth...” They also encourage full community participation to “foster an open and inclusive community dialogue and promote alliances and partnerships to meet community needs.” Finally, the League’s policies on Open Meeting Law states: “The League supports legislation that recognizes the need to conduct the public’s business in public.”

While some League policies conceptually support the direction of several of this Act’s proposals, the details and language of this proposal does matter. The Act’s intent sections acknowledge in that “many governmental services are best provided at the local level,” yet the question remains whether or not that principle is sufficiently embedded in the structure, language and direction of this measure. For example, the language that speaks to a new joint purpose for state and local government and various goals raises questions about the Act’s conformance with the League’s mission to “expand and protect local control.”

Background on California Forward: California Forward describes itself as “a nonpartisan, nonprofit organization working to bring government closer to the people.” California Forward was launched by five foundations to propose changes to the way California government operates. Its Leadership Council includes former State policymakers and representatives of business, labor and academia,¹⁵ selects and guides the organization’s projects.

In order to understand its proposed solutions, it helps to see California Forward’s view of the problem. California Forward believes that the State lacks a unified vision and strategy to achieve statewide goals in the biggest areas of General Fund spending—education, public safety and health and human services. While local governments provide most essential services, the State sets the rules for how funds are spent. With different agencies addressing small pieces of complex problems, it is hard to collaborate on mutual goals, share resources and reduce costs. Local leaders have trouble integrating and collaborating long term because of legislative mandates and budget volatility. Therefore, California Forward’s solution is a fundamental reform of the

¹⁵ Thomas V. McKernan, Co-Chair, CEO of the Automobile Club of Southern California, Robert M. Hertzberg, Co-Chair, Chair & Founder of G24 Innovations Robert L. Balgenorth, President of the State Building & Construction Trades Council of California, AFL-CIO, David Davenport, Research Fellow at the Hoover Institution, Carl Guardino, President and CEO of the Silicon Valley Leadership Group, R. William "Bill" Hauck, Former President of the California Business Roundtable, Antonia Hernández, President & CEO of the California Community Foundation, Fred Keeley, Former Assembly Speaker pro Tempore Joanne Kozberg, Principal at California Strategies, LLC, Stewart Kwoh, President & Executive Director of the Asian Pacific American Legal Center of Southern California, Donna Lucas, Former Deputy Chief of Staff for Strategic Planning & Initiatives for Governor Arnold Schwarzenegger, Sunne Wright McPeak, President & CEO of the California Emerging Technology Fund, Bruce McPherson, Former California Secretary of State, Eugene J. "Gene" Voiland, Former President & CEO of Aera Energy LLC, Arturo Vargas, Executive Director, NALEO, Peter Weber, Executive Committee Chair of the California Partnership for the San Joaquin Valley, Lenny Mendonca, Director of the San Francisco office of McKinsey & Company, Cruz Reynoso, Former Associate Justice of the California Supreme Court & the Third District Court of Appeal, Constance L. "Connie" Rice, Former Co-Director of the Los Angeles NAACP Legal Defense & Educational Fund

relationship between State and local governments. In California Forward's model, the State should establish clear priorities for public programs; they propose five "priority outcomes" for State and local governments: increased employment, improved education, decreased poverty, decreased crime and improved health.

Representatives from California Forward have engaged in various outreach efforts to local officials, including providing a briefing to the League board on their policy paper that proposes restructuring State and local government relationships and responsibilities, *Smart Government: Making California Work Again*, in May, 2011. Several weeks before this measure was filed, the organization began to share drafts on a confidential basis with League staff for comment. While making it clear to their representatives that city officials would need to be consulted on any final position on this measure, League staff suggested numerous amendments to the provisions directly affecting local governments in an attempt to reduce anticipated concerns from city officials. To California Forward's credit, many of those suggested amendments were taken directly or in modified form, but other suggested changes were not. City officials now have a chance to review this measure in its final form and make a recommendation on the League's position.

Comments:

1. City officials, like many other individuals and organizations, want to improve the operation of their state legislature and support transparent and accountable government at all levels. That said, the details of any state Constitutional change must be carefully reviewed and considered. This measure proposes many changes that California Forward believes will collectively result in an improved Legislature, make local government budgeting more focused and transparent, and encourage various elements of government to work better together. Do city officials agree the changes in this measure will result in improved governance at the state and local levels?
2. The most direct impact on cities in this measure is the requirement to adopt performance-based budgeting. There are costs associated with these activities. Do city officials agree that performance-based budgeting, as set forth in this measure, would improve the transparency, accountability and focus of local budgeting and thus worth the costs?
3. The Act's intent language declares that *"the shared purpose of State and local governments is to promote a prosperous economy, a quality environment, and community equity."* This purpose is advanced *"by achieving at least the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health."* This language would be applied to the state budget. Local governments (cities, counties, schools and special districts) would have to consider these same goals when adopting their budgets. These terms are undefined in the measure. Do city officials agree that there is a shared purpose between the goals of state government and that of city government? If so, do the above listed purposes and goals match that of city officials?
4. Community Strategic Action Plans, in concept, seem to offer an opportunity for regional collaboration. Yet there are many requirements in the measure that city officials will have to weigh.
 - a. The available state incentive funds are provided to counties that adopt a Plan. Counties will likely need additional funds to support realignment and be eager to adopt plans. One of the factors to be reviewed by the Legislative Analyst is the extent to which these plans reduce demand for state-funded services.
 - b. School districts representing a majority of pupils in the county must agree to the Plan, but schools are prohibited by the measure from receiving the funds provided to counties.
 - c. The adopted plans must state how they will "achieve" the purposes and goals listed above. A Plan must include an allocation of resources, including the state incentive funds provided to counties, and explain how it is consistent with the budgets adopted by the participating governmental entities.

- d. At least a majority of local government entities providing “municipal services” must also agree to the plan.

Do city officials see opportunities for collaboration with counties and schools despite the numerous restrictions and requirements?

5. This measure proposes numerous changes to the state legislative and budget process. Some, such as a three-day print rule, are clearly supportable based upon existing League policy. In concept, proposals for a two-year budget and requiring more legislative oversight are supportable as well. Given the many exceptions, it remains to be seen whether the \$25 million threshold in this measure alters state spending practices. Also debatable is the effect of the enhanced authority of the Legislature versus the Governor in responding to a declared fiscal crisis.
6. The most fundamental questions, however, with this measure revolve around the new purposes and goals for the state budget. The terms “*prosperous economy, a quality environment, and community equity*” are not defined, widely understood or reflect a clear popular consensus. For instance, many would debate the term “prosperous economy” and whether state government should have a significant role. What does “community equity” mean? How is it to be applied? What do goals like “*increasing employment, improving education, decreasing poverty, decreasing crime, and improving health*” mean? Should this measure pass, the Legislature will define these terms. For cities, that value their local autonomy, how these provisions will be ultimately interpreted, applied or potentially enforced remains the critical question.

Staff Recommendation: Discussion. The challenge with taking a position on a Constitutional Amendment is that no amendments are possible. There are provisions in this measure for city officials to like; there are provisions to be concerned about. The question for city officials is whether or not this measure, on balance, merits support?

Support/Opposition (as of 3-20-12)

A list of statements from individuals supporting the measure can be found at <http://www.cafwd-action.org/pages/gpaa-support>

This measure is still in the process of qualifying. To date, there is no know opposition.

Attachment B

City-Related Issues with California Forward Measure¹

New Purpose for State and Local Government: The shared purpose for state and local government makes a big change to how local governments operate for two reasons. First, the state and cities have not had a "shared purpose" historically. Second, cities are incorporated by the voters to address local concerns, not state concerns. Then it's up to the elected city council to determine how to best address those local concerns. The phrase "prosperous economy, a quality environment, and community equity," is not defined by the Measure. Does the Measure in any way prevent the Legislature from defining this phrase in a way that overrides the wishes of locally elected officials and agencies? For example, could the term "prosperous economy" be defined to include a certain unemployment rate, per capita income, etc.?

New Local Budgeting Requirements: The measure imposes new budgeting requirements on cities. That could be viewed as internally inconsistent. On the one hand, the outcome of the budget is already determined: it must promote a prosperous economy, quality environment, and community equity as reflected in certain stated goals. On the other hand, the process for adopting the budget emphasizes and attempts to ensure extensive public participation. What we know from working at the local level is that when a city council conducts a public process and asks for extensive public participation, the public does not want the outcome to be pre-determined. What are your thoughts on this inconsistency?

Community Strategic Action Plan: Although the measure says that public agencies may work voluntarily to integrate services and adopt strategies in such a plan, the State retains control over the content and implementation of the Community Strategic Action Plan because: (1) The Legislature controls how the money in the Fund will be distributed; (2) The Legislature has the authority to further define the "shared purposes and goals;" and (3) the Legislative Analyst is given the responsibility of deciding whether locally-adopted plans achieve efficient service delivery. Does the Legislature retain so much authority as to render the Community Strategic Action Plans of limited value?

State Reforms: The state budget and legislative reforms do not apply directly to cities. Do you believe requirements like the 72-hour bill in print requirement and the two-year budget will benefit local agencies as well?

¹ The intent of this document is to help focus the committee's discussion on the areas of most concern to cities.

COMMITTEE ON ADMINISTRATIVE SERVICES
March 2012
Past Legislation Staff Report

The following report is a legislative update of the bills that have been reviewed by the Administrative Services Policy Committee in 2011. This is just an update.

AB 23 (Smyth). Local Agency Meetings: Simultaneous Meetings: Prohibitions. *(As amended on June 9, 2011)*

Bill Summary: This bill requires that, prior to holding a serial or simultaneous meeting, the clerk or a member of the legislative body announce the compensation that members of the legislative body will receive for attending the serial or simultaneous meeting.

Bill Status: Signed by Governor Brown on July 25, 2011.

League position: Watch

AB 46 (Perez). Local government: city disincorporation. *(As amended June 28, 2011)*

Bill Summary:

This bill would disincorporate cities with a population less than 150, as of January 2010, into the respective county within 91 days of becoming law, subject to the following additional conditions:

1. The affected city will be disincorporated unless the county board of supervisors determines, with a majority vote within the 90 day period that there is substantial evidence on record that the city *is in an isolated, rural location* and it is impractical for the residents to organize another form of local government.
2. The population will be determined by the official records of the Department of Finance.
3. The local agency formation commission in the affected county is required to oversee the terms and conditions of the disincorporation of the city pursuant to the provisions in the Cortese-Knox-Hertzberg Act. The commission's authority shall include, but not be limited to, the power to enforce a writ of mandate.

Bill Status: Held on the Senate floor.

League position: Oppose

AB 148 (Smyth). Local Government: Ethic Training: Disclosure. *(As amended April 14, 2011)*

Bill Summary: This bill adds agencies compensation setting guidelines to the required ethics training curriculum. Additionally, requires local agencies to post ethics trainings

records for all elected officials of a local agency on the local agency's Internet Web site, if one exists, and to also submit the records to the State Controller. Requires local agencies with written attendance compensation or reimbursement policies to post them on its website and submit copies to the Controller.

Bill Status: Held in Assembly Appropriations. Failed house or origin Deadline. Dead.
League position: Watch

AB 392 (Alejo–D) Ralph M. Brown Act: posting agendas. *(As amended on April 14, 2011)*

Bill Summary: This bill would require the legislative body of a local agency to post the agenda and any specified staff-generated reports that relates to an item on the agenda 72 hours in advance of a public meeting and also requires the writing to be posted on the agency's website if one exists. For local agencies without websites, the bill requires that they disclose on the physically posted agenda the public location where the local agency makes available any applicable staff-generated reports for public inspection and copying.

Bill Status: Held in Assembly Appropriations. Failed house of origin deadline. Dead.
League position: Concerns

AB 527 (Hernandez–D) Public officials: financial interests. *(As amended on June 22, 2011)*

Bill Summary: This bill amends Government Code Section 1090 related to conflicts of interest. It provides that city officers and employees are deemed to be financially interested in a contract if they have an independent contracting relationship with an individual or nongovernmental entity that enters, or seeks to enter, into a contract with the governing body that the officer or employee is a member, officer, or employee of. This bill also requires a legislative body at a public meeting to note in its official record an officer's remote interest in a contract that the legislative body enters into.

Bill Status: Held in the Senate. Failed Deadline. 2-Year Bill.
League position: Oppose

AB 582 (Pan). Open meetings: local agencies. *(As amended on April 14, 2011)*

Bill Summary: This bill would amend the Ralph M. Brown Act to require that proposed compensation increases of more than 5% for specified employees be publically noticed twice. The first notice is for general notice and nonvoting and discussion purposes. The second notice, if the compensation increase is deemed necessary by the legislative body, which must occur no less than 12 days after the first notice.

Bill Status: Held in Assembly Appropriations. Failed house or origin Deadline. Dead.
League position: Concerns

AB 785 (Mendoza). Public officers: financial interest. *(As amended on Jan. 4, 2012)*

Bill Summary: This bill provides that a member of a legislative body has a financial interest in a contracting decision if his or her immediate family member is either of the following:

- (1) A person acting as an agent for, or otherwise representing, any other person making a formal or informal appearance before, or by making an oral or written communication to, the state or local a government agency, or an officer or employee of a state or local government agency, for the purposes of influencing a decision.
- (2) A person who is a director, officer, or partner of a business entity on which it is reasonably foreseeable that the contracting decision will have a material financial effect.

This bill creates a new definition of immediate family member under the Political Reform Act to include spouse (already covered in PRA), domestic partner, child (dependent child covered in PRA), parent, sibling, or the spouse or domestic partner of a child, parent, or sibling.

Bill Status: Held in the Assembly. Failed house of origin deadline. Dead.
League position: Oppose

AB 834 (Hernandez) Local Government. Contracts. *(As amended on April 14, 2011)*

Bill Summary: This bill would require a legislative body to review any private party contract with a total value of \$250,000 or more that contains an automatic renewal clause on or before the annual date the contract may be rescinded. The legislative body must make findings on the record whether the contract contains updated information and whether the contract fits the needs of the legislative body.

Bill Status: Held in the Assembly. Failed Deadline. 2-Year bill.
League position: Watch

AB 1344 (Feuer) Local Governance. *(As amended on August 30, 2011)*

Bill Summary: This bill:

- Sets new standards on what can be included in executive manager and department-head contracts by prohibiting contracts from including automatic renewals, if they are linked to a salary increase above a cost-of-living adjustment and cash settlements that exceed existing statutory limits. Additionally, the measure requires that specific abuse-of-office provisions be added to manager and department head contracts;

- Requires that a proposed charter be presented to the voters at a statewide or general municipal election;
- Drastically alters the statutory requirement related to how cities and counties can put a proposed charter before the voters by requiring a 10-week process that includes two public hearings, one of which must be conducted outside of normal business hours;
- Requires local agency agendas subject to the Ralph M. Brown Act be placed online; and
- Prohibits a legislative body from calling a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of an executive manager or department head. This does not apply when a local agency calls a special meeting to discuss the agency's budget.

Bill Status: Signed by Governor Brown on October 9, 2011.

League position: Oppose

AB 1345 (Lara) Local government. audits. *(As amended on Jan. 12, 2012)*

Bill Summary: This bill was substantially amended on January 12, 2012. It now requires that local agency audit reports be submitted to the Controller within 9 months after the end of the period audited or pursuant to applicable federal and state law. The bill also requires that audit reports submitted to the Controller to be compliant with the Government Auditing Standards issued by the Comptroller General of the United States. The bill authorizes the Controller to conduct an audit if a local agency fails to do so and requires that any costs to conduct an audit be charged against the local agency's unencumbered funds. If the Controller finds through quality control reviews of the audit working papers of the audit report that the audit was conducted in a manner that constitutes unprofessional conduct, or that there were multiple and repeated failures to disclose noncompliant acts, the Controller is required to refer the case to the California Board of Accountancy (Board). Further, this bill requires that audits by local agencies to be made by a certified public accountant or public accountant, licensed by, and in good standing with, Board. Lastly, this bill requires that local agencies rotate auditors and/or firms at least every six years, but the Controller may waive this requirement if there is not an otherwise eligible auditor available.

Bill Status: Referred to committee on Governance and Finance.

League position: Watch

AB 1355 (Lara) City officials: standards *(as amended on Jan. 14, 2012)*

Bill Summary: This bill requires a city council to adopt minimal educational and certification standards for their city clerk, city manager, and city treasurer. Additionally, requires that these standards be posted to the city's website.

Bill Status: Failed house or origin Deadline. Dead. The author has requested that the League, City Clerk's Association of California, the California Municipal Treasurers Association, and California City Management Foundation work with their office to discuss the possible development of minimum certification and educational standards.

League Position: Concerned.

LEGISLATIVE PROPOSAL

<p>City Clerks Association of California c/o City of Vallejo Office of the City Clerk 555 Santa Clara Street Vallejo, CA 94590</p>	<p>Contact: Dawn G. Abrahamson, MMC CCAC Legislative Director (707) 648-4528 dabrahamson@ci.vallejo.ca.us</p>
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Topic: Effective Date of Citizen Initiative Ordinance If Adopted by City Council Upon Presentation

Existing code section: EC §9217 **Municipal Elections, Initiative**

Current law enacted (or amended) by which bill, author, year? Statutes 2000, c. 55, §17 and §18 (S.B. 1424); 1994, c. 920 §2 (S.B. 1547).

Describe the problem that requires this amendment:

Background:

Existing law is unclear when a citizen-initiative ordinance becomes effective.

E.C. §9214 and §9215 provide three options to the City Council when a citizen-initiative petition is certified sufficient:

- (a) Adopt the ordinance when certification of the petition is presented, or within ten days;
- (b) Submit the ordinance to the voters; or
- (c) Order a report. If the report is ordered, upon receipt of the report, the City Council again has option (a) or (b).

The statutes fail to indicate when a citizen-initiative ordinance would become effective if the City Council adopts it, rather than placing it on the ballot. There currently are four pertinent statutes with three different possibilities for effective date of an ordinance. They are: a) in 10 days (similar to E.C. §9217), b) 30 days (E.C. §9235, Gov. Code Sec. 36934), or c) effective immediately (E.C. §36937). See discussion below.

E.C. §9217 provides if the initiative is placed on the ballot and a majority of voters adopt it, the ordinance becomes effective 10 days after the vote is declared by the legislative body.

E.C. §9235 provides that no ordinance shall become effective until 30 days from and after the date of its final passage, except for specific reasons, (i.e. election, public peace, health or safety, street improvement proceedings, otherwise governed by state

law).

Unrelated to any petition process, Government Code §36934 provides a process for enactment of ordinances:

First Reading (Introduction)

Second Reading (Passage/Adoption) (at least five days after Introduction)

Effective Date (30 days after Passage/Adoption)

Government Code §36937 provides an ordinance may be adopted immediately; if it:

(a) Relates to an election.

(b) For the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council.

(c) Relating to street improvement proceedings.

(d) Relating to taxes for the usual and current expenses of the city.

(e) Covered by particular provisions of law prescribing the manner of its passage and adoption.

Describe what the amendment would do, what problem solved, how will affect agency and public:

Clarify when a citizen-initiative ordinance that is adopted by City Council becomes effective?

Based on possibilities underlined above, this proposal recommends that a citizen-initiative ordinance that is adopted by the City Council upon certification of the petition becomes effective in 30 days. Below are the reasons:

Reason 1: It would be impossible to follow Government Code 36934 if the legislative body took action under Election Code 9214(a) or 9215(a) to "*adopt at a regular meeting at which the petition is presented*" because there is no time allowed for Introduction/the 5-Day Interval/Passage). However, the standard practice for ordinance adoption to take effect in 30 days could still be followed.

Reason 2: If the ordinance takes place immediately pursuant to Government Code 36937, then it would not be subject to referendum (E. C. §9237) because there would be no opportunity for voters to submit a petition protesting the ordinance within 30 days of adoption. If an ordinance is not subject to referendum, then either 15% or 10% of the voters would have full power to enact an ordinance which cannot be altered except by a majority vote of the people.

Reason 3: E. C. §9217 could be interpreted to only apply where the ordinance is passed by an election of the people, not the vote of the Council.

Reason 4: The timing in the case of MHC Financing Ltd. Partnership Two v. City of Santee (2005) 125 Cal.App.4th 1372 because the initiative was adopted on October 28, 1998 and was effective November 27, 1998.

See specific language below.

Has a similar proposal been tried in the past? If so, give bill, author, year:

Unknown.

Will this proposal save/increase costs (explain and give estimates):

Yes, because it will eliminate the need for the elections official to obtain an opinion from the City Attorney or for a court case to determine when the ordinance would become effective if the City Council chooses to adopt the ordinance upon presentation of the certified petition.

Which groups follow this topic and will be interested in supporting your request:

CCAC - City Clerks Association of California
League of California Cities
California Association of Clerks & Elections Officials (CACEO)

What did groups say when you talked to them about your proposal? Please list the names of people you talked to:

CCAC
Contact has been made with CACEO (Deborah Seiler and Jill LaVine)

Who will oppose this proposal? Why?

None to the best of our knowledge.

List any state legislative support for this proposal or potential legislative sponsor:

Senate or Assembly Elections Committee or (chair)

Specific language that you request: (you may attach a separate sheet if desired)

E.C. §9217 Adoption of Ordinance; effective date, repeal & amendment.
(a) Legislative Body Adoption:
If a proposed ordinance is adopted by the legislative body pursuant to Section 9214(a) or 9215(a), or pursuant to Section 9214(c) or 9215(c), the ordinance shall take effect 30 days following the date of its adoption.

(b) Voter Adoption:

If a proposed ordinance is submitted to a vote of the voters of the city pursuant to Sections 9214(b) or 9215(b) and a majority of the voters voting on a the proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall ~~go into~~ take effect 10 days ~~after that~~ following the date of its adoption.

(c) No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.

*underlined language indicates an addition

*~~language with a strikethrough indicates a deletion~~

Submitted by:

Name
Agency/Organization
Address
City, State, ZIP
Phone
Fax
E-Mail

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Legislation Committee
Notes:

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