

PUBLIC SAFETY POLICY COMMITTEE

Thursday, June 16, 2011

10:00 a.m. – 3:00 p.m.

Sacramento Convention Center, Room 202

1300 J Street, Sacramento, CA

Special Order

Joint Policy Committee State Budget and Redevelopment Update

League Sponsored Services Update (Attachment A)

10:00 a.m., Room 204, Sacramento Convention Center

S U P P L E M E N T A L A G E N D A

- I. Welcome and Introductions**
- II. Public Comment**
- III. Board of Directors Action on Committee Recommendations from April**
- AB 1087 (Brownley). Law enforcement contracts
 - AB 1215 (Blumenfield). Electronic vehicle registration
 - State-Local Corrections Realignment
- IV. Disaster Response and Emergency Preparedness Panel: Local Training Opportunities and Lessons Learned from Japan**
- *Speakers: Curry Mayer, Sr. Emergency Management Coordinator/Instructor, CalEMA; Jearl Strickland, Senior Manager, PG&E; Captain William White, City of Sacramento Fire Department, CERT Coordinator*
- V. Marijuana Regulation Working Group Report (Handout)** (Informational)
- VI. Next Generation 9-1-1 & Public Safety Technology Projects**
- *Speakers: Karen Wong, Deputy Director, Public Safety Communications Office, California Technology Agency; Greg Park, Technology Subcommittee Chair, IT Coordinator, City of Livermore Police Department*
- VII. State Legislative Update (Attachment B & Supplemental Attachment 1)**
- SB 530 (Wright). Direct Broadcast Satellite Television Service Tax (Action)
 - SB 676 (Leno). Industrial Hemp. (Action)
 - State-Local Corrections Realignment Proposal (Action)
 - *Speakers: John Lovell, Legislative Representative, California Police Chiefs Association (Support); Chief Pat Williams, Desert Hot Springs Police Department (Oppose)*
 - Current Public Safety Legislation with Registered Positions (Attachment C)
- VIII. U.S. Supreme Court Decision on State Prison Overcrowding (Supplemental Attachment 2)**
- *Speaker: Clark Kelso, Receiver, California Prison Health Care Receivership*
- IX. California Sex Offender Management Board Report**
- *Speaker: Greg Larson, CASOMB League Appointee, City Manager, City of Mountain View*
- X. NLC Public Safety and Crime Prevention Committee Report**
- *Speaker: Pete Constant, Committee Vice Chair, Council Member, City of San Jose*

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XI. Federal Issues Update

XII. Next Meeting: (Tentative) Wednesday, September 21, 2011, 9:00 am – San Francisco Moscone Center

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.

COMMITTEE ON PUBLIC SAFETY
Legislative Agenda
June 2011

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

SB 530 (Wright) Direct Broadcast Satellite Television Service Tax
(As amended May 17, 2011)

Summary: SB 530 would enact a tax on direct broadcast satellite television service providers, the Satellite Video Fund for Public Safety Tax, at the rate of 6% of gross revenues, as defined, until January 1, 2020. Revenues would be deposited in General Fund and transferred to the Local Safety and Protection Account which would be reestablished as of July 1, 2011 to receive and continuously appropriate these funds.

The bill contains extensive definitions, including what is included and excluded from “gross revenues”; generally these definitions are consistent with definitions used with cable taxes. The measure also requires the Legislative Analyst’s Office (LAO) to establish an advisory committee and report on the impact of the tax on direct broadcast satellite television service providers.

Background: Several years ago, the League was approached by the California Cable and Telecommunications Association (CCTA) requesting our support for a legislative proposal to levy a tax on direct broadcast satellite providers and distribute the proceeds to local governments. The potential revenue from such a tax would yield an estimated \$200 million per year.

The cable industry supported such a tax because it argues that it faces a competitive disadvantage versus satellite because cable companies must pay franchise fees and satellite does not. They also argued that local agencies should also care about this because as satellite gains a larger share of the market, local governments are losing corresponding revenues from both franchise fees and, where applicable, local utility user’s taxes (UUTs). While the legislation proposed by CCTA did not go anywhere at the time, the reemergence this year of the issue in SB 530 (Wright) merits a policy discussion.

Cable: In California, two principal fees and charges are levied on cable providers and their subscribers:

1. Franchise fees are paid to local governments by privately-owned cable companies for the privilege of using local government property and rights-of-way. Federal law prohibits franchise fees from exceeding 5 percent of gross revenues, while state law also limits franchise fees to a percentage of gross revenues. State and federal laws also prevent companies from providing cable services without acquiring a franchise. In California, cities and counties are the franchising authority over cable companies and their fee payments are a source of general fund revenue.

Franchises issued after January 1, 2008, are granted by the state Public Utilities Commission. Cable service is also regulated by the federal government and is subject to a regulatory fee levied by the FCC.

2. Utility-user taxes (UUTs) have been enacted as a general fund revenue source by 146 cities and 4 counties on gross proceeds of cable television services and other utilities, such as gas, telephone, and electric services. UUT rates range from 1 to 11 percent, but most fall between 3 to 7 percent.

Satellite: The Federal Telecommunications Act of 1996 (Section 602) pre-empts locally imposed and administered taxes and fees on direct-to-home satellite services. However the Act authorized states to impose taxes and fees on the DBS industry and nine states have done so.

In California, there is currently no state-imposed tax or fee on the satellite service subscriptions or the monthly charges billed in connection with the provision of direct broadcast satellite television service to subscribers or customers. In general, direct broadcast satellite television service providers (DBS service providers) either pay a sales tax or collect the use tax associated with the monthly rental or lease of the satellite receiver box by the subscriber for use in the subscriber's home or business location.

Fiscal Impact: The tax would be collected and administered by the Board of Equalization (BOE) in accordance with the Fee Collections Procedure Law. BOE estimates the following revenue impact for imposing a 6% tax on DBS service providers:

2011-12 (1/2 year implementation): \$96 million
2012-13: \$196.2 million
2013-14: \$200 million

These funds would be allocated to the Transportation Tax Fund, which is the same account where the temporary 0.15 percent increase in the Vehicle License Fee is allocated to fund approximate \$500 million in local law enforcement programs including Citizen's Options for Public Safety (COPS) and booking fee reimbursements. This temporary VLF rate is scheduled to sunset on July 1, 2011, but could be extended as part of a budget agreement to extend temporary taxes.

Existing League Policy:

Telecommunications: The League has a comprehensive telecommunication policy which was adopted a number of years ago. A full copy of that policy is attached to this analysis. Some of these policies may not be applicable in that federal law prohibits local taxation or fees from being imposed upon satellite. Yet, below are several that could be partially applicable to the discussion.

- Any new state or federal standards must conform to the following principles:

Revenue Protection (telecom)

- Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.
- Regulatory fees and/or taxes should apply equitably to all telecommunications service providers.
- A guarantee that all existing and any new fees/taxes remain with local governments to support local public services and mitigate impacts on local rights-of-way.
- Oppose any state or federal legislation that would pre-empt or threaten local taxation authority

Public Safety Services (telecom)

- The authority for E-911 and 911 services should remain with local government, including any compensation for the use of the right-of-way. All E-911 and 911 calls made by voice over internet protocol shall be routed to local public safety answering points (PSAPs); i.e., local dispatch centers.

- All video providers must provide local emergency notification service.

Public Safety Policy: Below are several provisions from the League’s public safety policies which also can apply:

The League supports the promotion of public safety through:

- o Stiffer penalties for violent offenders, and
- o Protecting Community Oriented Policy Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

Revenue and Taxation Policy:

Additional revenue is required in the state/local revenue structure. There is not enough money generated by the current system to meet the requirements of a growing population and deteriorating services and facilities.

Comments:

1. **Is It About Equity?** When the federal government in the Telecommunications Act of 1996 allowed the collection of local franchise fees from cable, but prohibited local governments from levying fees or taxes on satellite, it can be argued that they were protecting the fledgling satellite industry until it became more established. If so, given the growth of the direct broadcast satellite industry, that can hardly be argued today. Also, the federal government permits states to levy taxes on satellite, and several have. Satellite providers use the same type of video programming as cable and other providers such as phone companies but do not pay any of the \$530 million in annual franchise fees. If federal law had permitted local governments to also tax satellite services, it is likely that many local governments would have done so. Therefore, if the state of California decides to tax satellite services, would that help to provide equity with cable and increase funding for important priorities?
2. **This “Tax” is Different than a Franchise “Fee.”** While the cable industry advocates for a level playing field with satellite, what cannot be ignored is that the two industries operate with entirely different business models. Cable requires a massive infrastructure network that relies on the public right-of-way and thus must obtain a franchise and compensate the local agency with a franchise “fee” or “rent.” Satellite, however, beams a signal directly to a receiving dish attached to the customer’s property, making a “fee” nexus connected to right-of-way untenable. Satellite advocates will also argue that they have made massive investments in launching and maintain their “infrastructure” of satellites in space.
3. **Should Locals Benefit From This State Tax?** SB 530 allocates the proceeds of a satellite tax for local public safety purposes. The intent language in the bill advances several arguments to build a “nexus” for doing so. Satellite companies benefit from the network provided by state and local governments such as infrastructure, offices and other property, employees and contractors which install and maintain equipment, and the provision of adequate local services, including public safety. Yet the satellite companies contribute little. It is also argued that significant portions of cable fees and UUT taxes support public safety via expenditures from local general funds.
4. **Do Cities Agree With Revenue Leakage Concern?** At a recent League meeting in Sacramento, Senator Rod Wright told city officials that they should support his bill because local governments are losing revenue (both franchise fees and UUT) as cable’s share of the market erodes to satellite,

and new entrants such as Netflix cause cable customers to drop service. Do cities share these revenue leakage concerns? If so, does this argument support a decision that satellite services should also be taxed? What other factors should be weighed?

5. **Could Local Governments Rely On Such Revenues?** Federal law only permits states to levy taxes on satellite. Nothing requires that these taxes benefit local government. Given the experience of local governments with the state legislature constantly attempting to take local funds, it is unlikely that such funds would last long before being swept for state budget purposes. SB 530 attempts to protect these funds from such actions by enacting a “kill switch” which would eliminate authority to collect the tax if the state used the money for another purpose. This “switch” could - along with a motivated law enforcement lobby - protect such funds, but absent state constitutional protection it would be unwise for local agencies to rely on the Legislature to maintain this funding.
6. **Poor Timing; Public Safety Distribution Needs More Thought:** With the Legislature mired in yet another budget crisis and the Governor intent on eliminating redevelopment agencies, this is not the time—no matter how well developed—for a tax measure seeking to give more funds to local government. Furthermore, the local public safety account targeted for these revenues is scheduled for sunset on July 1, 2011, and all the major law enforcement agencies are supporting a continuation of the VLF tax as part of the Governor’s Realignment proposal. The temporary VLF supports approximately \$500 million in local law enforcement programs, while a satellite tax would yield less at \$200 million. Thus, the politics of state budget debate first need to be resolved before identifying the best allocation for public safety funds derived from a satellite tax.
7. **Ohio Courts Reject Commerce Clause Argument:** In *DIRECTV, Inc. v. Levin*, 2009-Ohio-636, the court disagreed with the satellite industry contention that satellite taxes discriminate against their industry and violates the Commerce Clause of the U.S. Constitution. The Court stated that "The sales tax imposed by Ohio on satellite television providers and not upon cable television providers does not violate the dormant Commerce Clause. The clause protects interstate commerce and the interstate market for products, but does not protect "the particular structure or methods of operation in the retail market," *Exxon Corp.*, 437 U.S. at 127." The court stated "the Commerce Clause is not violated when the differential tax treatment of two categories of companies 'results solely from differences between the natures of their businesses, not from the location of their activities.' " *Kraft Gen. Foods v. Iowa Dept. of Revenue & Finance* (1992), 505 U.S. 71, 78, 112 S.Ct. 2365, 2369, quoting *Amerada Hess*, 490 U.S. at 66. As the North Carolina court noted, "neither satellite companies nor cable companies are properly characterized as an in-state or out-of-state economic interest," based upon their physical presence and corporate organization in Ohio and other states."
8. **UUT’s Taxation of Satellite Services:** One city attorney reviewing this measure believes that since the state has the ability under federal law to levy a tax on satellite, it could-- pursuant to this authority --adopt enabling language that would assist local efforts to apply local UUTs to satellite. Given the legal complexity of this area of law, further research and review by city attorneys knowledgeable on the topic may be needed.
9. **Issue Not Going Away:** SB 530 was recently held on the Senate Appropriations Suspense File, which means the issue is likely stalled for the year. But given the competitive battles raging between cable and satellite and constantly changing technology questions of taxation are certain to continue. It is therefore important for the League to develop its policy on this topic.

Staff Recommendation: Conditional Support, If Amended

If the State Legislature wishes to levy a tax on satellite television service providers, as it is allowed to do under federal law, and distribute the proceeds to local public safety programs, then it appears consistent with some League policies listed above. Supporting such a measure could also have collateral benefits of creating more equity among competitors in the rapidly changing video telecommunications marketplace. League support, however should be conditioned upon:

1. The completion of this year's budget process including any special election. Public safety organizations will be unable to fully engage in this measure until the state budget, including the outcome of a possible special election, is resolved. These groups are currently supporting the Governor's tax extensions, including the VLF dedicated to \$500 million in local public safety programs.
2. If the extension of VLF funding for local public safety programs is achieved in the budget process, then a new allocation process will need to be developed for these additional funds that would be dedicated to public safety. If the VLF extension is not successful, then this measure would only support a portion of the existing VLF funding. In either case, the full engagement of public safety organizations in the support of such a bill and agreement in the allocation methodology will be critical to the passage of legislation.
3. The retention of the "kill switch" mechanism and other protections against a future effort by the state to divert these revenues for another purpose.
4. The development of an allocation methodology should also reflect the geographic distribution of households using satellite television service and provide maximum flexibility for local agencies to use these funds to support and augment local public safety needs.

City attorneys should review the concept of developing language which would assist local agencies to apply local UUTs to satellite. If developed, this language could be inserted in this measure or another legislative vehicle.

Support and Opposition (5/5/11)

Support: Peace Officers Research Association of California; California Taxpayer Reform Association.

Opposition: Direct TV; DISH Network; Satellite Broadcasting and Communications Association.



cdcr news
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FOR IMMEDIATE RELEASE
Tuesday, June 7, 2011

Contact: Oscar Hidalgo (916) 445-950

State Responds to Three-Judge Court's Order Requiring a Reduction in Prison Crowding

Calls on Legislature to Protect Public Safety by Funding Realignment

SACRAMENTO – The California Department of Corrections and Rehabilitation (CDCR) today submitted a report to the federal Three-Judge Court updating it on prison crowding reduction measures that the state has taken, or plans to take, in response to the U.S. Supreme Court's decision on May 23, 2011. This decision requires California to reduce inmate crowding within its 33 adult institutions to 137.5 percent of design capacity within two years, or by May 24, 2013.

"California has already reduced its prison population significantly over the past several years. Today, we have the lowest crowding levels in California's prisons since 1995," said CDCR Secretary Matthew Cate. "Our goal is to meet the Court's order by continuing to reduce prison crowding while still holding offenders accountable.

"Our current reduction plan does not include the early release of inmates. But it is absolutely critical that the Legislature understand the seriousness of the Supreme Court's decision and support a variety of measures that will allow us to lower our inmate population in the safest possible way," Cate added. "AB 109 is the cornerstone of the solution, and the Legislature must act to protect public safety by funding Realignment."

On May 23, 2011 the U.S. Supreme Court upheld the Three Judge Court's determination that medical and mental health care for inmates falls below a constitutional level of care and that the only way to meet the requirements is by reducing prison crowding. Complying with the Court's decision will require implementing and funding of Realignment, as well as new prison construction, to achieve the 137.5 percent goal set by the Court.

Crowding Reduction Deadlines

Today, the number of inmates in the state's 33 prisons is approximately 143,000 inmates—a reduction of about 19,000 inmates since plaintiffs filed their motions to convene the Three-Judge Court on November 13, 2006. At that time, California's prisons were at 202 percent of design capacity. Today, the state's 33 prisons operate at approximately 179 percent of design capacity. California's 33 prisons were designed to hold 79,858 inmates.

According to the Supreme Court's decision, effective May 24, 2011, the inmate population statewide in California's 33 adult prisons must be no more than:

- 167 percent of design capacity by November 28, 2011,
- 155 percent of design capacity by May 24, 2012,
- 147 percent of design capacity by November 26, 2012,
- 137.5 percent of design capacity by May 24, 2013.

Today's filing outlines the following measures to reduce prison crowding:

Realignment – The Cornerstone of California’s Solution

On April 4, 2011, Governor Edmund G. Brown Jr. signed Assembly Bill 109, historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of prison.

Under Realignment, the state will continue to incarcerate offenders who commit serious, violent, or sexual crimes and counties will supervise, rehabilitate and manage low-level offenders using a variety of tools. It is anticipated that realignment will reduce the prison population by tens of thousands of low-level offenders over the next three years.

As Governor Brown said in his AB 109 signing message, Realignment cannot and will not be implemented without necessary funding. The Governor also signed Assembly Bill 111, which gives counties additional flexibility to access funding to increase local jail capacity for the purpose of implementing Realignment.

Realignment is supported by law enforcement including the California Police Chiefs Association, Peace Officers Research Association of California, California Peace Officers’ Association, California State Sheriffs’ Association, Chief Probation Officers of California, Association for Los Angeles County Deputy Sheriffs and Los Angeles County Deputy Probation Officers Union and Los Angeles County Sheriff Lee Baca.

Legislative Reforms

Legislative reforms already implemented include the passage of Senate Bill (SB) x3 18, which, in part, established the California Community Corrections Performance Incentives Act, created credit-earning enhancements for inmates who complete certain rehabilitation programs, and reformed parole supervision by creating a Non-Revocable Parole category for low-level, lower-risk offenders.

CDCR also transferred about 10,000 inmates to out-of-state facilities. This program would continue as operationally needed. Since 2009, the department has also discharged more than 27,000 parolees who were deported to foreign countries by the federal government.

Increasing Capacity

CDCR has made efforts to increase prison capacity through Assembly Bill 900, passed in a bipartisan vote of the Legislature and signed into law on May 3, 2007. The department has increased design capacity by adding beds as well as treatment space.

Under AB 900, the state is currently planning, designing or constructing:

- A new 1.2 million-square-foot health-care facility in Stockton.
- New high-security prison facilities to be built on existing prison sites.
- New mental health facilities at the California Medical Facility and the California Institution for Women.
- Conversions of former juvenile facilities to adult facilities.
- New re-entry facilities.

In addition to projects that will add design capacity, under AB 900, the state has completed and is planning upgrades that add health care treatment and clinical space.

The full report filed with the Three-Judge Court, as well as other information regarding population reduction measures, is available on CDCR’s web site at www.cdcr.ca.gov.

MARIJUANA REGULATION WORKING GROUP REPORT

League of California Cities Policy Committees

June 2011

League Staff: Dorothy Holzem, (916) 658-8214

Overview of Marijuana Regulation Working Group

Marijuana regulation in California is an issue of growing interest from many stakeholders in the fields of public safety, land use, licensing and taxation, and employee/employer rights. Cities, counties, state representatives and California voters are increasingly engaged in discussions about, and taking action on, regulations in these areas.

The League of California Cities (League) created a small advisory group, the Marijuana Regulation Working Group (working group), to examine and make recommendations on current state legislation involving marijuana regulation in a condensed time frame and in accordance with the League's policy review structure. The goal of the working group was to review both specific legislation as well as broader principles to help guide the efforts of the League staff. They reviewed a total of eight bills and developed three policy guidelines and one area for future League study and possible action.

The potential conflict between federal and state laws regulating medical marijuana was included in each of the working groups' discussions. The federal government's shifting position about federal enforcement has left California's cities, counties and state agencies in a challenging place when seeking clarification on permissible marijuana regulation. The uncertain legal status of medical marijuana is reflected in several of the working group's recommendations.

The following report provides these recommendations, background on the working group, and next steps for League activity in the area of marijuana regulation policy.

Recommendations from Marijuana Regulation Working Group

The working group has offered the following policy guidelines that will be considered in January 2012 when the League policy committees revise the "Summary of Existing Policy and Guiding Principles" booklet. The policy guideline recommendations are based on common themes that arose during discussions on current legislation, existing League policy, and prior League action on marijuana regulation legislation or ballot measures. (Please refer to Appendix A for a summary of recent League action on marijuana related regulations.)

- 1) Reaffirming that local control is paramount, cities should have the authority to regulate medical marijuana dispensaries, cooperatives, collectives or other distribution points as it relates to location, operation, and establishment to best suit the needs of the community.
- 2) Revenue or other financial benefits from creating a statewide tax structure on medical marijuana should be considered only after the public safety and health ramifications are fully evaluated.
- 3) While the value of marijuana as a physical or mental health treatment option is uncertain, the League recognizes the need for proactive steps to mitigate the proliferation of unlawful medical marijuana dispensaries, cooperatives, collectives and other access points acting outside state or local regulation.

In addition, the working group has asked for further study on:

- 1) Residential cultivation and its impacts on energy consumption and housing stock. The proliferation of residential cultivation represents a considerable drain on utilities, increasing costs for providers and ratepayers. It can also reduce availability of existing housing, which is magnified when considering affordable housing units.

In addition to making these guideline and future study suggestions, the working group provided comments on eight specific bills, guided by previous League action on marijuana policy and League existing policy and guiding principles applicable to all/other policy areas. Those recommendations are provided below.

No Action Recommended

Failed legislative deadline

- AB 223 (Ammiano). Compassionate Use Act findings and declarations: Declares legislative intent to improve the Compassionate Use Act of 1996 and makes findings and declarations to the potential benefits of medical marijuana.
- AB 1017 (Ammiano). Reduced penalties for cultivation: Makes cultivation of marijuana a “wobbler” offense instead of a felony, reducing the penalty to one year in county jail or a fine from a state prison term of 16 to 36 months.
- SB 626 (Calderon). State Board of Equalization licensing and taxation task force: Establishes a task force consisting of representatives from law enforcement, drug enforcement, cannabis cooperatives and dispensaries, and the State Board of Equalization to determine how medical marijuana sales could be licensed and taxed on a statewide level, similar to tobacco products.

Defer to California Police Chiefs Association

- SB 420 (Hernandez). Synthetic cannabinoid compound penalties: Establishes penalty structure for possession of cannabinoid chemical compounds to match those of marijuana under current state law. The California Police Chiefs Association has a registered support position.

Action Recommended

- AB 1300 (Blumenfield). Medical marijuana local ordinances: *Based on League existing policy and past action, recommend that League staff work with author’s office to clarify and strengthen local control provisions.*
This bill clarifies authority for cities or other local governing bodies to adopt and enforce local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective.
- SB 129 (Leno). Employment discrimination for medical marijuana: *Based on existing League employee relations policy, the League formally opposed this measure. It failed passage on the Senate floor.*
This bill creates a protected class for individuals with medical marijuana patient status from workplace discrimination based on this status. Poses a conflict with federal Drug-Free Workplace Act but provides exemptions from protected status for employees in “safety-sensitive” positions.
- SB 676 (Leno). Industrial hemp cultivation: *Refer to policy committees to consider challenges for local law enforcement to regulate the law and potential threat to city*

autonomy within those five counties. (Referred to Public Safety Committee as an action item).

This bill establishes a five county pilot program for the legal cultivation of hemp as an agricultural product until 2020. Includes testing requirements to ensure product maintains low THC levels. Also requires two reports to legislature with data on the number of violations from growers and potential fiscal benefits of hemp growing and related product sales for the state.

- **SB 847 (Correa) Zoning restrictions on medical marijuana dispensaries/cooperatives:** *Based on League existing policy and past action, recommend that League staff work with author's office to ensure local control provisions are maintained.*

This bill creates a statewide prohibition of a medical marijuana dispensary, collective, cooperative or other establishment from being located within 600 feet of a residential zone or residential use area, unless a local ordinance is adopted by a city or county that creates a more or less restrictive prohibition specific to residential zoning or residential use areas.

Background on Marijuana Regulation Working Group

The working group was formed to provide guidance on legislation on a condensed timeline and within the frame work of the eight policy committees to allow for timely action, if needed, on bills related to marijuana regulation.

The working group met via conference call and webinar three times between mid-May and early June, in addition to individual one-on-one communication with League staff. They reviewed the history of League action on marijuana regulation issues, current legislative proposals, and the League's existing policies and guiding principles as a foundation for their recommendations. Following League procedures, the legislative/policy recommendations were sent to the relevant policy committees in June, who will provide their recommendations to the League board for a vote in July.

The membership of the working group was based on League policy committee assignments, professional department involvement, regional divisions, and prior League involvement on marijuana related issues, such as Proposition 19 (2010) or educational sessions at League conferences. They provided invaluable information and perspective on how the various proposals would impact local control and quality of life issues for residents in California cities. (Please see Appendix A for roster of members).

Next Steps

The next steps for the League in the area of marijuana regulation legislation will follow the standard process for policy review by committees in June and the board of directors in July.

In January, the appropriate policy committees will review the recommended policy guidelines for incorporation in the "Summary of Existing Policy and Guiding Principles" booklet. Individual committees may also wish to incorporate areas of marijuana regulation into their 2012 work plan.

At a future date, and with pending ballot measures on this topic, the League may reconvene this or a similar working group to provide specific feedback and recommendations as needed.

APPENDIX A
Recent History of League Action on Marijuana Related Regulations

2010

AB 2650 (Buchanan) – Medical marijuana. (Chapter 603, Statutes of 2010)

Summary: This measure prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana from being located within 600 feet of a school (defined as grades K – 12, public or private) unless a local jurisdiction has adopted an ordinance providing a lesser/no restriction prior to January 2011. Also permits more restrictive local ordinances.

League Action: The League took an “oppose unless amended” position and requested specific amendments to remove the preemption of local ordinances and also allow the complete prohibition of dispensaries upon local approval. This position was recommended by the League Housing, Community, and Economic Development Policy Committee and approved by the League board of directors.

Proposition 19 - The Regulate, Control and Tax Cannabis Act of 2010.

Summary: Would have authorized the personal consumption of marijuana for persons ages 21 and older in a non-public place. Also allowed for a person to:

- possess, process, or transport up to one ounce of marijuana for personal consumption;
- cultivate marijuana on private property in an area up to 25 sq. feet;
- possess harvested and living marijuana plants cultivated in such an area;
- possess any items or equipment associated with these activities.

Allowed for sale of marijuana in public establishments licensed for marijuana consumption and related transport. Established associated sanctions for underage sales or activities where prohibited by this proposition.

Prop 19 also allowed local governments to adopt ordinances and regulations regarding the cultivation, processing, distribution, transportation, sale or possession for sale of marijuana by licensed marijuana sales establishments. Local governments would have been able to license businesses that could sell up to one ounce of marijuana (per transaction) to a person 21 years or older, including the regulation of the location, size, hours of operation, and signs and displays of the business. Local governments would have also been authorized to impose general, excise, or transfer taxes, as well as benefit assessments and fees, on authorized marijuana-related activities in order to raise revenue or offset any costs associated with marijuana regulation. Required that licensed marijuana establishments pay all applicable federal, state, and local taxes and fees currently imposed on other similar businesses.

In addition, Prop 19 stated that no person could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. Also maintained employers’ existing rights to address on-the-job consumption of marijuana that affects an employee’s “job performance.”

League Action: This measure was referred to the League Public Safety Policy Committee and the Revenue and Taxation Policy Committee. Both committees recommended an “oppose” position. This was based on concerns with potential increases in crime, the unsatisfactory experience with medical marijuana implementation, and that any benefit that cities realize from additional revenue would not outweigh the potential public safety risks. The board approved the “oppose” position.

2008

Proposition 5 – Nonviolent Offender Rehabilitation Act (NORA)

Summary: Sought to expand drug treatment diversion programs for nonviolent offenders; modify parole supervision procedures and expand prison and parole rehabilitation programs; allow for additional early release credits for participation and performance in rehabilitation programs; change the penalties for marijuana possession; and make various changes to the organization of rehabilitation programs in the California Department of Corrections and Rehabilitation (CDCR). Specific to marijuana, this ballot measure would have reduced penalties for marijuana possession (less than 28.5 grams) for adults and minors, as follows: reduce first offense for adults from a misdemeanor to an infraction and maintain the fine of up to \$100; reduce the first offense for minors from a fine to mandatory participation in a drug education program; maintain \$250 fine for repeat offenses by a minor in addition to mandatory participation in a drug education program.

League Action: This ballot measure was referred to the Public Safety Policy Committee, who recommended an “oppose” position to the League board based on the reduced penalties and fines for marijuana use/possession, and redundancy of rehabilitation services offered. The League board approved the “oppose” position.

SB 1098 (Migden). Medical marijuana.

Summary: Defined in state law a “medical cannabis dispensary” and offered these dispensaries a one-time opportunity to comply with the Board of Equalization’s sales and use tax program by March 31, 2009, and receive relief from back tax liability, penalties and interests on its sales of tangible property made prior to October 1, 2005. The dispensary’s obligation would be to pay unpaid sales taxes between 2005 and 2009 and continue paying sales taxes moving forward.

League Action: This bill was referred to the League Revenue and Taxation Policy Committee for review because of the potential revenue local governments would receive from back tax payments. The committee recommended “no position” to the League board because of the questionable status of revenues received from tax payments. However, the bill did not move out of the Senate Revenue and Taxation Committee and therefore the League board did not take action to adopt a formal position on the bill.

2005

League Public Safety Policy Committee Medical Marijuana Subcommittee

Summary: The Public Safety Policy Committee Medical Marijuana Subcommittee convened two meetings to review the prevalence of medical marijuana dispensaries in California’s cities and the implications of Proposition 215 (Compassionate Use Act of 1996) and Senate Bill 420 (Chapter 875, Statutes of 2003), which established within the Department of Health Services the voluntary identification card and implementation guidelines, as well as pending litigation.

League Action: This Subcommittee was formed as an informational body, who heard from various state and local agencies on the implementation of medical marijuana regulations. No action was taken or recommended to the League board.

APPENDIX B
Roster of Marijuana Regulation Working Group Members

First	Last	Title	City	League Affiliation
Jan	Arbuckle	Mayor	Grass Valley	Vice Chair, Public Safety Committee
Tom	Brown	City Attorney	Berkeley, others	City Attorneys Department
Sonia	Carvalho	City Attorney	Asuza, Claremont	City Attorneys Department
Ed	Dadisho	Police Chief	Suisun	Member, HCED Committee
Jeff	Dunn	City Attorney	Various southern California cities	City Attorneys Department
Marc	Fox	Assistant City Manager	Pittsburg	President, Personnel & Employee Relations Department; Member, TCPW Policy Committee
Dennis	Gillette	Council Member	Thousand Oaks	Member, Public Safety Committee; Past Public Safety Committee chair
Bob	Johnson	Mayor	Lodi	Vice Chair, Employee Relations Committee
Carlos	Mestas	Police Chief	Hanford	Board of Directors, Police Chiefs Dept
Kelly	Morariu	Assistant City Manager	Hayward	Proxy for Fran David, Member, Revenue and Taxation Committee
Scott	Nassif	Council Member	Apple Valley	Vice Chair, HCED Committee
Steve	Quintanilla	City Attorney	Rancho Mirage, Cathedral City, others	City Attorneys Department
Mark	Wheetley	Council Member	Arcata	Board of Directors, Redwood Empire Division; Member, Community Services Committee; Member, Environmental Quality Committee