

PUBLIC SAFETY POLICY COMMITTEE
Friday, June 15, 2012
10:00 a.m. – 3:00 p.m.
Sacramento Convention Center, 1400 J Street, Rm. 202, Sacramento

SPECIAL ORDER OF BUSINESS
POST REDEVELOPMENT & STATE BUDGET UPDATE
10:00 a.m., Room 204, Sacramento Convention Center

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

A G E N D A

I. Welcome and Introductions

II. Public Comment

III. Report on Board Action Items from April

Informational

IV. State Legislative Update (Attachment A)

1. SB 1468 (Calderon). Fireworks.
2. AB 1993 (Ma). Unlicensed Drivers.
3. Public Safety Legislation with Registered Positions

Action
Informational

V. Federal Update

1. H.R. TBD (Schiff) FEMA Disaster Assistance Eligibility (Attachment B)
2. NLC Public Safety and Crime Prevention Committee Report

Action
Informational

VI. Post-Release Community Supervision – Local Service Impacts

- *Speaker: Dr. Lois Davis, Senior Policy Researcher, RAND Corporation*

VII. November 2012 Ballot Measures – Public Safety Measures and League Review Process

VIII. Subcommittee Reports

Informational

- Emergency Response/Disaster Preparedness
- Realignment
- Technology

IX. Next Meeting: Annual Conference, San Diego, September 5, 10:30 – Noon

Staff will notify committee members after July 7th if the policy committee will be meeting in September.

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 may 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 Website.

PUBLIC SAFETY POLICY COMMITTEE
Legislative Agenda
June 2012

1. SB 1468 (Calderon) Fireworks.

Summary:

This measure would expand current “safe and sane” fireworks sales if authorized by a city, county, or fire district to include the New Year holiday (December 26 – January 1) in 2014-15 and 2015-16. Local agencies authorizing sales during the Fourth of July holiday and/or the New Years holiday would also be authorized to collect up to 7% of total gross sales in their jurisdiction to be used for mitigation and response efforts including inspecting fireworks stands, public education and awareness programs on responsible fireworks use, enforcement of municipal ordinances, and fire suppression duties stemming from “safe and sane” fireworks.

In addition, the State Fire Marshal would be charged with collecting voluntary contributions and federal or private grants for the Fireworks Data Collection Fund (Fund). The Fund will support data collection and analysis for fires, damages, seizure, arrests, administrative citations, and disposal issues related to dangerous or “safe and sane” fireworks during the Fourth of July and New Year holiday sales period. Areas covered will include both jurisdictions that permit “safe and sane” fireworks sales and neighboring jurisdictions that do not. If the Fund does not collect sufficient revenue to proceed with data collection and analysis, the expanded holiday sales period cannot proceed.

Background:

Current law, through adoption of a local ordinance, a city, county, or fire district, permits the sale of “safe and sane” fireworks from June 28 to July 6. “Safe and sane” refers to fireworks approved by the State Fire Marshal.

Sellers are first required to obtain a retail license, good for one year, from the State Fire Marshal and pay associated fees to the state. Local ordinances may include an administrative fee related to the processing of permits and a percentage of gross sales collected by the jurisdiction, generally used for education, over-time staffing, enforcement duties and other fireworks related additional activities during the permitted sales period. Local ordinances may also regulate the number of permits available, sale locations, hours, and days within the Fourth of July sales time period.

In response to concerns about additional costs in all jurisdictions, regardless if fireworks are permitted, the legislature passed SB 839 (Calderon; 2008) that permits a local jurisdiction to adopt a streamlined enforcement and administrative fine procedure for the possession and use of less than 25 pounds of dangerous, illegal fireworks. It also allows a local jurisdiction, subject to a minor disposal cost reimbursement to the Office of the State Fire Marshal, to levy administrative fines (most general law cities are adopting fines of \$1,000 for the first violation, \$2,000 for a second violation and \$3,000 for a third violation), with all that money, as mandated by statute, coming back to the city rather than the State’s General Fund.

In addition, SB 839 provided for any actions brought in a CA Superior Court by a local jurisdiction, when fines are imposed for the use and possession of dangerous fireworks, the local jurisdiction retains 35% of that court ordered fine with a balance of 65% going to the Office of the State Fire Marshal.

Relative to other neighboring states, California has some of the most stringent safety and environmental restrictions on permissible fireworks. The fireworks industry has sought to expand the “safe and sane” fireworks period in California through numerous legislative efforts (see Existing League Policy section below). Often, the struggles of nonprofits’ fundraising efforts are cited by the fireworks industry as cause to expand sales opportunities.

According to the bill’s sponsor, TNT Fireworks, a report from a nonprofit think tank in the San Francisco Bay Area concluded that the sale of “safe and sane” fireworks during the Fourth of July holiday constituted the single largest collective source of funds for nonprofit organization in the state. In 2007, a legislative policy committee analysis on a fireworks bill (AB 839, Calderon; 2007) estimated that “safe and sane” fireworks sales totaled \$70 million for more than 3,000 nonprofit organizations over the Fourth of July holiday.

The Public Safety Committee reviewed this measure at their March 2012 meeting. The recommendation to the board was “oppose unless amended” via voice vote, with approximately one-third of the committee voting “no” on this motion. The amendments requested included:

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

The original motion was to recommend a “neutral” position. This was based on comments from fire chiefs who identified the bigger problem of dangerous fireworks and also cities that have seen a reduction in fire response and enforcement needs after allowing fireworks sales in their jurisdiction.

The current language differs from the previous version of SB 1468 that was considered, as follows:

- 1) Shortens New Year holiday sales period from five (5) years to two (2) years with one (1) additional year to allow for the adoption of local ordinances but no sales;
- 2) Establishes data collection and analysis program for jurisdictions permitting fireworks sales and neighboring jurisdictions that do not, funded by volunteer contributions and federal or private grants; and
- 3) States legislative intent to restrict future expansion of fireworks sales should any detrimental impacts be determined from the data collection and analysis.

Staff Recommendation:

Staff recommends discussion and that the committee takes into consideration the following:

Amendments could be sought to request that any city, county or fire authority that collects a higher percent of gross sales revenue per their locally adopted ordinance already in effect be permitted to continue to collect at the higher percent for the duration of the two-year sales period. Currently, there is one jurisdiction that charges a higher fee for cost-recovery in the San Francisco Bay Area.

If amendments are accepted, staff suggests “no position” or “neutral.” (Note: While these positions are similar, “neutral” would set a precedent for future positions in like issues whereas

“no position” would leave the door open for future policy review.) This bill would fund much needed data collection and research to ascertain what, if any, additional impacts fireworks use, either “safe and sane” or dangerous, has on local communities. In addition, local discretion is maintained. Finally, a “no position” or “neutral” position would follow a previous League position of “neutral” on the “Millennium” fireworks bill (AB 2090, Miller; 1998) that expanded sales over the New Year holiday for one year.

The Joint Legislative Committee on Emergency Management’s fireworks stakeholder group will not have any recommendations until after this bill would be considered. If the committee recommends seeking amendments that would reflect the findings of that stakeholder group then staff would register the League’s position as “oppose” on the grounds this effort is premature.

Committee Recommendation:

Fiscal Impact:

Additional revenue for state and local agencies participating in fireworks sales related to permitting/licensing fees. Local costs and revenues vary by jurisdictions approving or denying additional sales period. Unknown impact to potential emergency response needs for all cities, regardless of authorized fireworks sales within their jurisdiction.

Existing League Policy:

- The League has opposed the statewide expansion of fireworks sales without local discretion. (AB 1295, Bermudez; 2005).
- The League has also opposed efforts to expand fireworks sales when additional fees or surcharges would be levied and collected by state agencies and departments for state-level programs. (AB 1371, Portantino; 2011).
- The League was “neutral” on legislation that allowed for the one-time authorization of fireworks sales over the New Year “Millennium” holiday, at the discretion of the city or county jurisdiction, from December 26, 1999 to January 1, 2000 (AB 2090, Miller; 1998).
- The League supported legislation that authorized local jurisdictions to adopt streamlined enforcement and administrative fine procedures related to the possession of 25 pounds or less of dangerous fireworks (SB 839, Calderon; 2007).

Comments:

Share the Wealth: Nonprofit organizations often play an important role in providing direct social services to communities. The bill’s sponsor contends that the ability of nonprofits’ to raise revenue through fundraisers and continue community programs has been cut severely given the economic downturn. Some cities that have approved sales over the Fourth of July holiday have not sought to levy a surcharge for permits to maximize nonprofit organizations fundraising efforts.

Bigger Issues for Disposal and Transportation: The current system for collection, transportation and disposal of “safe and sane” fireworks and also dangerous fireworks is unsustainable. A myriad of onerous, expensive, and incompatible requirements for the State Fire Marshal and local fire departments are underfunded and may result in a total failure of fireworks processing in the state. Funding specifically set aside for the State Fire Marshal to dispose of fireworks will expire at the end of 2012. The Joint Legislative Committee on Emergency Management is currently researching the issue with relevant stakeholders, including the League of California Cities and California Fire Chiefs Association. While it may be more prudent to revisit fireworks sales expansion after revised regulations and related funding sources have been implemented, the dialogue to date includes the most pressing issue

How Severe is the Fire Danger? Members of the Fire Chiefs Department have shared the fire risk for northern California in the winter months is generally very low. Southern California, however, has been moving towards a “year-round” fire season given continuous dry conditions and persistence of Santa Ana winds in December. The true fire risk varies year to year depending on a variety of conditions in the area.

Fee For Actual Costs, Not a Tax for General Revenue: Cities currently allowing for fireworks sales should consider if 7% of gross sales in their community would be sufficient to cover expenses related to either of the holiday time periods for fireworks sales. Because of the fee definition provided in Prop 26 and the Sinclair Paint Case, cities must levy a fee that reflects real costs for the eligible items listed in the bill.

Feedback from the Fire Chiefs Department: The League Fire Chiefs Department sees this measure as creating possible positive outcomes because local control is retained and additional revenue opportunity to direct costs recovery is offered. Fire safety is their ultimate concern and the majority of their investigation and response efforts focus on illegal fireworks, not those classified as “safe and sane.”

Just the Facts: One main argument against increased fireworks sales is that greater access equates to greater fire and personal injury risk. However, it has been difficult to identify and quantify costs related to fireworks related incidents. This is further complicated because of the difference between “safe and sane” and illegal fireworks usage. Until better data collection and analysis is conducted, anecdotal information may be overshadowing actual impacts of “safe and sane” fireworks use.

NIMBY 101: Another argument for not allowing expanded fireworks sales, regardless of possible revenue to mitigate the impacts, is that “safe and sane” fireworks can be bought in one jurisdiction but be used, illegally, in the next. In addition, fires do not respect city limit lines or county boundaries. A city that bans fireworks may still face increased risk if their neighboring jurisdiction permits them. Further, the city that bans fireworks sales and use will receive no compensation for investigation, inspection, or fire response services under this bill.

Support/Opposition:

Support

TNT Fireworks (*sponsor*)

City of Duarte

Sacramento Metropolitan Fire District

Approximately 85 school, faith-based, or athletic and other non-profit organizations

Neutral

California Fire Chiefs Association

Opposition

City of Burbank, Office of the Mayor

Orange County Fire Authority

2. AB 1993 (Ma). Unlicensed Drivers. – *(Informational)*

Summary:

This bill restricts a peace officer's ability to impound a vehicle driven by an unlicensed driver. Existing law authorizes police officers to impound and hold vehicles for 30 days when the vehicle that is stopped is being driven by an unlicensed driver. Specifically, this bill:

- 1) Prohibits a peace officer from towing and impounding a vehicle driven by an unlicensed driver under either of the following circumstances:
 - a) The vehicle can be legally parked nearby and if the unlicensed driver signed a document indemnifying the peace officer and his or her employer from any harm or damage that results from releasing the vehicle.
 - b) The vehicle is turned over to a licensed driver who is with the driver at the time of the stop or who can appear at the scene within a reasonable amount of time.
- 2) Requires the peace officer to inform the unlicensed driver, if a licensed driver is not present, that the vehicle will not be towed or impounded if a licensed driver can retrieve the vehicle within a reasonable amount of time.
- 3) Provides discretion to the peace officer over whether to allow a licensed driver who appears after a reasonable amount of time to retrieve the vehicle and whether to assist the unlicensed driver in contacting a licensed driver.
- 4) Requires a licensed driver assuming control over a vehicle to show proof of insurance.
- 5) Requires a peace officer to obtain approval from a supervisory officer before towing and impounding a vehicle driven by a person who has never been issued a driver's license and requires the name of the supervisory officer to be included in the incident report of the traffic stop.
- 6) If a vehicle of the unlicensed driver cannot be retrieved and must be towed and impounded, the vehicle can be immediately released to the registered owner if they present a valid driver's license, proof of current vehicle registration, and pay all required fees.

Background:

The author intends this bill to result in more reasonable treatment of those arrested for driving without a license. The author notes that vehicle impoundment is disproportional to the offense, which sometimes, due to the cost of impoundment fees, results in abandonment of the vehicle and falls frequently and heavily on undocumented immigrants who cannot legally obtain a driver's license.

According to the Assembly Appropriations Committee, many municipalities, presuming to act consistent with state law, impound the vehicles of drivers who do not possess a valid driver license. However, recently, the Ninth U.S. Circuit Court of Appeals ruled that law enforcement cannot impound vehicles if the only offense is unlicensed driving. More recently, many municipalities have adopted ordinances barring the practice in ways similar to the prohibition included in this bill.

This measure builds on legislation signed last year to prohibit the towing and impoundment of vehicles if the driver is unlicensed and stopped at DUI checkpoints where no offense or traffic violation has occurred.

Staff Recommendation:

The League has a registered OPPOSE position. Staff is seeking discussion from the committee to understand full consequences of this proposed new law for additional opposition arguments. The League has offered:

- 1) The seriousness of unlicensed driving warrants serious penalties.
- 2) This bill is overly broad in forgiveness to all unlicensed drivers and there are already numerous exemptions in place.
- 3) This bill moves California one step closer to turning a blind-eye to unlicensed drivers.
- 4) The Vehicle Code does not distinguish between unlicensed and “undocumented.”

Fiscal Impact:

Unknown. No direct state general fund or local costs or new revenue. Potential loss of revenue for cities in loss of fees collected from impounded vehicles.

Existing League Policy:

League existing policy states, “The League opposes all efforts that allow vehicles and vehicle operators on the road that will jeopardize the integrity of the public infrastructure or health and safety of the motoring public.”

The League has not previously taken a position on legislation related to unlicensed drivers based on the immigration status of unlicensed drivers. Support or opposition for related legislation has been offered based on: promoting safety of motorists, pedestrians and cyclists; preventing costly or time-consuming requirements on traffic or police departments or officers; or maximizing local control and discretion in relation to police services.

Comments:

Fiscal or Public Safety Issue?

The author claims that the practice of impounding vehicles of unlicensed drivers has resulted in lucrative income for some cities. In making this claim, the author points to an article published in the San Francisco Chronicle in 2009 that reports the City of Oakland impounded the vehicles of over 2,000 unlicensed drivers and in doing so generated revenues totaling over \$288,000. Reports regarding towing and impounding associated with sobriety checkpoints show that many jurisdictions are making money from associated towing and impound fees.

Peace Officer Discretion Whittled Down:

Under current law, a peace officer may review the circumstances of the unlicensed driver (there are numerous exemptions specified) and determine if towing and impoundment is appropriate course of action. This bill provides for peace officer discretion only in regards to the amount of time given for a licensed driver to come and retrieve the vehicle or assisting the unlicensed driver in contacting a licensed driver.

No License is a Serious Offense and Requires Serious Penalty:

Some governmental entities have struggled with this policy, which they believe can lead to liability if it is not followed since municipalities can be sued if there is no impound and the car subsequently is driven and causes damage, or is damaged after the traffic stop. For example, recently, a suit was brought against Solano County for serious injuries suffered by a man when his trailer was struck by a vehicle driven by someone with a suspended license and a sheriff failed to impound the unlicensed driver's vehicle during a traffic stop weeks before the accident.

Does No License Equate to No Insurance?

Driving without a license does not necessarily mean the vehicle is operating without insurance. California drivers may obtain insurance for vehicles that are registered to the owner but operated by another driver.

Support/Opposition (as of May 25, 2012)

Support:

Immigrant Legal Resource Center (sponsor)
American Civil Liberties Union
California Immigrant Policy Center

Opposition:

Association of Los Angeles Deputy Sheriffs
California Police Chiefs Association
California State Sheriffs' Association
League of California Cities
Riverside Sheriffs' Association

PUBLIC SAFETY POLICY COMMITTEE
Federal Legislative Agenda
June 2012

1. H.R. TBD (Schiff). FEMA Assistance Eligibility.

Summary:

This federal legislation would add to the existing factors used by the Federal Emergency Management Agency (FEMA) to determine eligibility for allocating disaster assistance grants to states and local jurisdictions. Specifically, this measure would give additional consideration for the following local jurisdictions in counties with populations over one million and in states with populations over five million:

- 1) Census defined places (unincorporated communities) with populations under 25,000 and damages that exceed more than \$1 per capita; and
- 2) Cities with populations under 250,000 and damages that exceed more than \$1 per capita or 5% of the current year General Fund.

Background:

The formula for federal assistance to states following a disaster declaration has been debated for decades. Congressman Adam Schiff (29th Congressional District) introduced this legislation to improve equity in how different states receive funding from the Federal Emergency Management Agency (FEMA) through the Stafford Act, which came to light following the 2011 windstorms in southern California.

There are many factors that FEMA considers following a Governor's disaster or state of emergency declaration before providing assistance.

- Estimated cost of the assistance for damage recovery;
- Localized impacts;
- Insurance coverage in force;
- Hazard mitigation efforts by the state or local community pre-disaster;
- Recent multiple disasters;
- Programs of other Federal assistance;
- Factors for the Individual Assistance Program, including concentration of damages and trauma such as number of injuries and deaths, disruption of normal services or access to power or water;
- Special populations impact (such as low-income or elderly);
- Voluntary agency assistance levels; and
- Average amount of individual assistance by State.

While there are many factors, the first and most heavily weighted is the estimated cost of losses or damages and ability to meet the minimum threshold to trigger FEMA assistance. If a disaster results in damages at a lower level than the calculated threshold, the effected public agencies in that state will not be eligible for assistance. FEMA calculates the statewide threshold by providing roughly \$1 per person, based on statewide population. Current rates provide \$1.30 per person and in California the FEMA threshold is currently \$50.3 million dollars.

In the winter of 2011, the Los Angeles region experienced severe windstorms that resulted in approximately \$34 million dollars in damages and other losses. While Governor Brown declared a state of emergency due to the extensive and far-reaching impact, California did not qualify for

FEMA assistance because the total damages fell short of the threshold by more than \$15 million dollars. Further, because FEMA did not offer assistance, Governor Brown did not extend assistance through the California Disaster Assistance Act.

Congressman Schiff contends that the Southern California Windstorms disaster, affecting the same area and population, in a smaller state would have received assistance. By allowing California to set assistance thresholds by county population, federal assistance would be more easily and equitably accessible.

This issue is highlighted in a report titled, “FEMA’s Disaster Declaration Process: A Primer” (*Francis X. McCarthy, Analyst in Emergency Management Policy, March 2011*): “Depending on the state’s population, the per capita threshold may be difficult to reach. For example, the 2000 Census estimated California’s population at just under 34 million people. Applying the \$1.30 per capita figure, it would require eligible public assistance damage in California to be close to \$41.5 million....Compare that level of eligible damage for California (\$41.5 million) with Nevada, a small population state according to FEMA regulations. For Nevada, with a population of just under 2 million people according to the 2000 Census, eligible public assistance damage of about \$2.4 million would make the state potentially eligible for supplemental federal assistance.”

Staff Recommendation:

Staff recommends a “support” position. The new criteria could potentially bring additional resources for disaster recovery efforts to California’s communities and also trigger state-based assistance furthering recovery funding. While only the most populous counties are eligible, this makes California as a state more competitive with other, less populous states for assistance. In turn, this may alleviate state-wide burdens and make state funding more available for smaller disasters.

Committee Recommendation:

Fiscal Impact:

Unknown. There is no mandated appropriation or minimum required funding levels by the federal government or a specific agency.

Existing League Policy:

The League supports disaster recovery legislation that includes mitigation for losses experienced by local governments.

Comments:

Apples and Oranges: The current FEMA threshold formula is the same for all states, regardless of disaster-risk or prior history of need. Those factors are considered secondary. Because of this, states with smaller populations may have a greater advantage to receive assistance because they have a lower threshold. However, smaller states may also be less capable of providing necessary support services on their own because of their smaller economic base. Also, smaller disasters could have a proportionately larger impact on smaller states in relative terms.

State Trends in Assistance: Governor Brown’s Administration has not offered the same state assistance to disasters with local impacts as his predecessor through the California Disaster Assistance Act (CDAA). While there are no requirements or limitations related to FEMA declarations, the Governor has cited the lack of federal response as reason for not offering state assistance in several recent incidents impacting the North and Central Coasts and Southern California regions.

Show Me the Money: At the most basic level, the proposal would make it easier for California to qualify for FEMA public assistance following a disaster declaration. There are 21 other states with populations over 5 million that would also be able to seek additional consideration for disaster relief based on the same grounds.

County and Community Population Minimums: When the Public Safety Committee reviewed this measure in concept in the January meeting, the Committee generally supported the proposal but recommended minimum thresholds similar to the smallest states' thresholds to prevent numerous minor disaster claims from draining the overall FEMA allocation for public assistance to states. Congressman Schiff's office offers this has been addressed by maintaining the federal minimum of \$1 million dollars regardless of state population. This is also the rationale limiting the additional eligibility to counties with populations of 1 million or greater, based on the \$1 per person assessed damages threshold.

Some Jurisdictions Still Favored over Others: Only nine counties in California would be eligible for additional consideration under this measure. While this may give them a more favorable position for receiving assistance, these new factors are not part of an objective formula but are subjectively reviewed. This may also give California a more competitive edge when seeking limited resources on a national scale.

Support/Opposition:

None on file at this time.