

B I L L R E F E R R A L

DATE: May 18, 1989 COMMITTEE ACTION: _____

TO: Betty Masuoka DATE: _____
Director of Finance

FROM: KENNETH EMANUELS, LEGISLATIVE REPRESENTATIVE

REPLY NO LATER THAN: ASAP

A.B. _____ S.B. 552 Relating to municipalities:
granting of franchises

STATUS:

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Kenneth Emanuels at 442-0412. This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. Judy

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).

Bill imposes limits on City Franchise Fees.

2. Should this measure be: (Please circle desired position)

Supported

Opposed

Supported if Amended

Placed on Watch List

Other (explain)

3. Please explain your reasons for the above determination, including how this measure effects your Department and the fiscal impact of this measure to the City. Please make your comments in a format that can be used in a letter to State officials. (Continue on next page or attach additional sheets if necessary.)

4 (Continue answer to Question No. 3 here)

Bill was amended to restrict limits to petroleum pipeline franchises. At this time, the bill would not have a direct impact on City revenue. However, the bill would close an available revenue option and therefore should be opposed. Cities need to retain their revenue options.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

City has historically opposed attempts to restrict City revenue options.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

None.

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

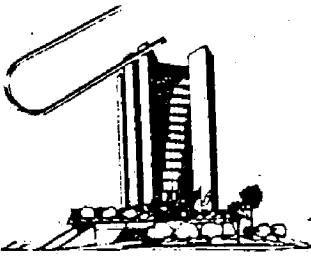
League of Cities has urged cities to oppose SB 552.

7. Does this bill involve a State-mandated local program? If so, does the bill contain an S.B. 90 waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

Yes. No.

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento?

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CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

333 WEST OCEAN BOULEVARD

LONG BEACH, CALIFORNIA 90802

(213) 590-6711

JAMES C. HANKLA
CITY MANAGER

May 10, 1989

Mr. Walter Slipe
City Manager
City of Sacramento
915 "I" Street
Sacramento, CA 95814

Dear *Walt* Slipe:

Once again the State Legislature is attempting to usurp the "home rule" authority of charter cities. In favor of supporting yet another special interest the Legislature is considering legislation that will take away our authority to regulate pipeline companies and place a limit on franchise fees without reimbursement of lost revenues.

SB 552 by Senator Newton Russell was introduced at the request of Sante Fe Pacific Pipeline Company, Inc. in order to escape local government pipeline regulation. Enactment of this legislation would require that when a public utility has facilities that are part of a system providing services outside the boundaries of a charter city, the charter city will be required to grant all franchises, licenses, permits and other privileges to the utility in accordance with either the Broughton Act or the Franchise Act of 1937. SB 552 makes a declaration that the granting of these franchises is of "statewide concern", thereby causing the State to occupy the field and preempt the local authority of charter cities. Enactment of this legislation will inhibit the ability of charter cities to provide for the public safety of their citizens. In addition, this bill would require that the compensation paid for the franchise be as set forth in the Franchise Act of 1937 rather than allowing the amount to be set by the charter city now or in the future. What really is at issue here is that pipeline companies want to use public right-of-ways without paying a fair franchise fee amount.

The City of Long Beach recently completed a long and expensive court battle which sustained the City's right to collect those annual fees necessary to regulate and enforce pipeline operator compliance with state and local law. SB 552, in effect, will override this Court decision. The company pushing for this bill is, of course, the same company that sued the City of Long Beach. Even if your revenue loss is not severe, all charter cities should be active in opposing this bill because of the principle of "home rule" that must be preserved.

To give you an idea of the strength of the lobbying effort behind this bill, you should know that the first hearing of SB 552 was on April 12, 1989 in the Local Government Committee where it was passed without a

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Senate Bill 552
May 10, 1989
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single negative vote despite the opposition of the League of California Cities and ourselves. SB 552 will be heard in the Senate Appropriations Committee on May 22, 1989. The City of Long Beach is requesting your help in opposing SB 552 (Russell).

I have enclosed A Statement of Opposition and information from the League Legislative Bulletin. I have also attached a list of the members of the Senate Appropriations Committee. I urge you to contact the Committee members and let them know that your City opposes this bill. Please send copies of your correspondence to us and the League of Cities. We cannot afford to lose either our authority to protect the safety of our constituents or the revenue from pipeline regulation fees.

THANK YOU FOR YOUR PROMPT SUPPORT OPPOSING THE ENACTMENT OF SB 552.

Sincerely,


JAMES C. HANKLA
CITY MANAGER

JCH:dh

BACKGROUND

SB 552 was introduced as a result of the California Court of Appeals decision in Southern Pacific Pipelines, Inc. vs City of Long Beach. That decision upheld the authority for a charter city to utilize its own procedures in establishing franchise fees. The State Constitution (Article XI, Section 5) provides that charter cities have full authority with regard to "municipal affairs." The Broughton Act (Public Utilities Code Sections 6001-6017) and the Franchise Act of 1937 (Public Utilities Code Sections 6201-6302) recognize that the granting of a franchise and the procedures and fees therefor are matters of municipal affairs and that charter cities are not bound by the procedures and fees set forth in state law.

ISSUE

Should the Legislature enact legislation (SB 552) which will preempt the field of public utility franchise regulation and prohibit charter cities from utilizing local procedures and fee setting mechanisms to determine the franchise fees to be paid by public utilities for the right to use city streets and public property?

EFFECTS OF SB 552

1. Would preempt the field of franchising for public utilities and deny charter cities the ability to locally determine franchise procedures and franchise fees for the use of city streets.
2. Would cap the amount of fees assessed at no greater than 2% of the gross annual receipts received by the public utility. (State law.)

ARGUMENTS AGAINST SB 552

1. Charter cities in California will lose millions of dollars by not being able to charge utilities a fair rent for the use of city streets.
2. Land values and the cost of services are substantially higher in urban areas where most charter cities are situated. To mandate that Long Beach, for example, meet the same requirements and fee schedule as apply in a small rural city is inappropriate.
3. Charter cities are generally larger cities located in major metropolitan areas. Utility pipelines in these densely populated areas cause unique problems which are more costly to address.
4. The fee structure in Long Beach was put in place pursuant to a cost analysis prompted by a pipeline explosion in 1981. Is the State willing to finance the costs associated with future pipeline incidents? If not, where are cities to get the money? Shouldn't the pipelines pay these costs as opposed to city taxpayers?
5. The use of city streets and the fees charged for the use of city streets constitute a "municipal affair." If the use of city streets is not a municipal affair, what is? SB 552 strikes at the very heart of local home rule.

Background

Senate Bill 552 was introduced as a result of the California Court of Appeals decision in Southern Pacific PipeLines Inc. vs City of Long Beach. That decision restated the existing law; namely that when a charter city grants a franchise or permit to a public utility for the use of its streets, it may utilize its own procedures and establish its own fees for that use pursuant to charter and ordinance provisions and is not bound by State law.

Existing State Law

The State Constitution (Article XI, Section 5) provides that charter cities have full authority with regard to matters of municipal affairs, and are not bound by general state laws which may be inconsistent.

The Broughton Act (Sections 6001-6017, Public Utilities Code) and the Franchise Act of 1937 (Sections 6201-6302, Public Utilities Code) presently recognize that the granting of franchises and the procedures and fees therefor are matters of municipal affairs and that charter cities are not bound by the procedures and fees set forth in the State laws.

Effect of SB-552

This Bill proposes to add Sections 6001.5 and 6205.1 to the Public Utilities Code, the effect of which would require that all franchises, license, permits or privileges granted by cities to public utilities whose facilities within the City are part of a system extending outside of a city:

- (1) be granted according to the procedures set forth in the Public Utilities Code;
- (2) be limited in the amount of fees to be assessed at no greater than 2% of the gross annual receipts received by the utility; and
- (3) would declare that the intent of the legislature is to preempt all ordinances of charter cities and that the matter is now of statewide and not local concern.

Arguments Against SB-552

- There have been no technological, social or economic changes with regard to either pipeline or other public utility operations in the State to warrant this proposed change in the law.
- Only the courts and not the legislature may declare what constitutes a municipal affair or a matter of statewide concern.
- Many charter cities in the state presently charge fees in excess of 2% of gross revenues.
- Charter cities are generally larger cities located in major metropolitan areas. Utility pipelines in these densely populated areas cause unique problems.
- Subsurface use of city streets constitutes rental of City property. Cities in major metropolitan areas should be able to require utilities to pay a fair market rent.
- Charter cities in the State of California stand to lose millions of dollars by not being able to charge utilities fair rent for use of city streets.

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legislation forces agencies to use all new non-tax increment revenue, as new sales tax, business license tax, and utility user tax revenue for retirement of redevelopment bonds before any new property tax increment revenue may be used for debt repayment. In addition, before the creation of project areas and the use of tax increment financing, it would require agencies to create special assessment districts and special tax Mello-Roos districts and to levy developer fees.

While consideration and use of such alternative financing sources may appear reasonable at first glance, AB 498 offers counties and others a new opportunity to litigate and hold hostage city redevelopment plans. Challengers will argue to the court that the city should be using its new sales tax revenue from the project area, not for municipal services, but to retire agency debt. If the court agrees, new project area revenues from non-property tax sources could be obligated for 20 to 30 years, effectively eliminating virtually all financial incentives for the city to enter into redevelopment in the first place.

If you have not already contacted your Assembly Member, and the members of the Assembly Housing and Community Development Committee, outlining the crippling effect this measure will have on your agency's future plans or amendments, and in particular how necessary it is for your city to receive local tax revenues from the project area for city services, etc., please do so immediately. Assembly Housing and Community Development Committee members are: Dan Hauser (Chair); Bane, Calderon, Chacon, Costa, Ferguson, Filant, Mountjoy, and Norman Waters. (Referred to previously #9-1989.)

Use the most recent article,

OPPOSE - URGENT

Franchise Fees. Charter Cities R.
the Franchise Act of 1937.
Franchise Fees. SB 552 (Russell
Local Government Committee, Wednes

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SB 552 would require that when a public utility has facilities that are part of a system providing services outside the boundaries of a charter city, the charter city would be required to grant all franchises, licenses, permits, or other privileges to the public utility in accordance with either the Broughton Act or the Franchise Act of 1937. The bill also makes a declaration that the granting of these franchises is a matter of statewide concern, thereby causing the state to occupy the field and preempt the local authority of charter cities. The Franchise Act of 1937 would require the compensation to be paid for the franchise to be that set forth in the Act, 2%, rather than what the charter city may choose now or in the future.

Under current law, the Broughton Act provides the procedures to be followed when municipalities grant franchises. The Franchise Act of 1937 provides that an alternative procedure to that contained in the Broughton Act for the granting of gas, oil, water, and electric franchises by municipalities. The provisions of the Broughton Act do not apply to charter cities if those cities have provisions in their charters for the issuance of franchises, although charter cities may use the procedures set forth in that Franchise Act of 1937 if they choose to do so.

members of the Senate Local Government Committee, who are: Marian Bergeson, Chair; Ayala, Craven, Cecil Green, Kopp, Leonard, McCorquodale, Wesley, Russell. (AB 2400 referred to previously in Bulletin #13-1989.)

5. OPPOSE

Redevelopment. Housing Elements. SB 966 (Bergeson).
Hearing: Senate Housing and Urban Affairs Committee,
Tuesday, April 18, 1989.

SB 966 requires an analysis of existing and projected employment by occupation and income categories and the associated need for housing by amount, type and cost. The bill would require Councils of Governments or the Department of Housing and Community Development to determine the progress of cities in meeting the city's share of regional housing allocations since the last revision of its housing element.

One of the more damaging elements of the legislation prohibits a redevelopment agency from undertaking publicly-financed projects to alleviate blight unless it has a housing element that has been approved by the Department of Housing and Community Development. The bill prohibits the amendment of a redevelopment plan for cities that do not have housing elements that are deemed in substantial compliance by the Department, if the amendment modifies the total amount of tax increment to be received by the redevelopment agency, the duration of the plan, the size of the project area, or the specific projects proposed to be undertaken by the agency.

SB 966 also provides that priority be given for issuance of state grants for water and sewer projects which serve residential housing developments for those jurisdictions that have a department-approved housing element. The bill also allows a city to enter into a contract with another city or county where the city would provide financing for subsidies for the construction and maintenance of residential units for lower-income households in contiguous territory within the city.

The members of the Senate Housing and Urban Affairs Committee are: Leroy Greene (Chair); Bill Leonard (Vice Chair); Kopp, Marks, Petris, Seymour, and Torres. (Referred to previously in Bulletin #13-1989.)

6. OPPOSE

Franchise Fees. Charter Cities Required to Conform to the Franchise Act of 1937 or Broughton Act, and Levy Uniform Franchise Fees. SB 552 (Russell). Approved by Senate Local Government Committee on Wednesday, April 12. Next Goes to Senate Appropriations Committee and Senate Floor.

On Wednesday, April 12, the Senate Local Government Committee approved SB 552 without a dissenting vote. "Yes" votes were Senators Bergeson, Ayala, Cecil Green, Kopp, and Russell; with Senators Craven, McCorquodale and Leonard absent.

SB 552 applies to utility franchises for facilities which extend outside the boundaries of a city or county which grants the franchise. The bill declares the Legislature's intent to preempt charter cities' ordinances on these types of utility franchises. As a result, charter cities would be required to conform to the uniform rate established in either the Franchise Act of 1937 or the Broughton Act (generally 2 percent of gross annual receipts).

the sponsor of SB 552 is Southern Pacific Pipelines, Inc., the bill applies to all utilities, not just oil pipelines. The sponsors argue that charter cities can be arbitrary and establish franchise fees well above the percent required for all general law cities. However, in opposition to the bill it was noted that a number of charter cities levy a franchise fee in an amount less than the 2 percent which SB 552 would specify.

SB 552 will next be referred to the Senate Appropriations Committee, however it will move promptly out of that Committee on consent (Rule 28.8) and go to the Senate floor. Cities opposing SB 552 should contact all members of the Senate and ask for a "NO" vote on the Senate floor. (Referred to previously in Bulletin #13-1989.)

7. OPPOSE

Utility Users Tax. Prohibition of Tax on Telephone Service. AB 1795 (Moore). Hearing: Assembly Revenue and Taxation Committee, Monday, May 8, 1989.

AB 1795 would prevent any city or county from imposing any new or existing local utilities tax, or any similar excise tax, on the use of telephone service on or after the effective date of any state tax imposed on the use of telephone service (exclusive of the existing "911" emergency telephone system state tax). The effect of this bill would be to preempt local government from levying a utility users tax on telephone service, when, and if, the state levies such a tax. This bill would be the first step in removing this long-standing local revenue source from cities and shifting it to the state.

AB 1795 has been scheduled for hearing on Monday, May 8, 1989 by the Assembly Revenue and Taxation Committee. Cities should communicate their opposition to Committee members: Klehs (Chair); Bader, Bates, Dennis Brown, Elder, Hayden, Jensenberg, Peace, Pringle, Tucker, and Woodruff.

8. REVIEW & COMMENT

Coastal Planning. No New Development Permitted in Wetlands. SB 1500 (Hart). Hearing: Senate Natural Resources, Tuesday, May 9, 1989.

SB 1500 would prohibit any new development within an existing wetlands or adjacent to an existing wetlands if the development would cause degradation or destruction of the wetlands. The bill also creates the California Coastal Sanctuary and would prohibit the discharge of hazardous substances or untreated wastes in the sanctuary, and would allow offshore oil and gas development only under prescribed conditions. In addition, the bill includes several provisions regarding water quality and toxic hot spots in bays and estuaries.

All coastal cities and cities with wetlands should review SB 1500 carefully. While some parts of the bill may be attractive, others may, such as the wetlands provision, present problems for cities. Please send your comments to the League's Sacramento office.

SB 1500 will be heard in the Senate Natural Resources Committee, Tuesday, May 9. Copies of SB 1500 are available directly on CITYLINK or from the Capitol Bill Room (916) 445-2323.

SENATE APPROPRIATIONS COMMITTEE

Senator Robert Presley (Chair)
State Capitol - Room 4048
Sacramento, CA 94248-0001

Senator Robert G. Beverly (V. Chair)
State Capitol - Room 5082
Sacramento, CA 94248-0001

Senator William Campbell
State Capitol - Room 5052
Sacramento, CA 94248-0001

Senator Ralph C. Dills
State Capitol - Room 5050
Sacramento, CA 94248-0001

Senator Art Torres
State Capitol - Room 2080
Sacramento, CA 94248-0001

Senator Alfred E. Alquist
State Capitol - Room 5100
Sacramento, CA 94248-0001

Senator Marian Bergeson
State Capitol - Room 4082
Sacramento, CA 94248-0001

Senator Daniel E. Boatwright
State Capitol - Room 3086
Sacramento, CA 94248-0001

Senator Wadie E. Deddeh
State Capitol - Room 3048
Sacramento, CA 94248-0001

Senator Bill Lockyer
State Capitol - Room 2032
Sacramento, CA 94248-0001

Senator Jim Nielson
State Capitol - Room 3063
Sacramento, CA 94248-0001

Senator Ruben S. Ayala
State Capitol - Room 2082
Sacramento, CA 94248-0001

SENATE BILL

No. 552

Introduced by Senator Russell

February 21, 1989

An act to amend Section 6205 of, and to add Section 6001.5 to, the Public Utilities Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

SB 552, as introduced, Russell. Municipalities: granting of franchises.

(1) Existing law, known as the Broughton Act, provides the procedures to be followed when municipalities grant franchises. The Franchise Act of 1937 provides for an alternative procedure to that contained in the Broughton Act for the granting of gas, oil, water, and electric franchises by municipalities. The provisions of the Broughton Act, however, do not apply to chartered municipalities if those municipalities have provisions in their charters for the issuance of franchises, although chartered municipalities may use the procedures set forth in the Franchise Act of 1937 if they so choose.

This bill would require all franchises, licenses, permits, or other privileges granted to a public utility by any city, county, or city and county holding a freeholder's charter, to use, or to construct, or lay and use, under, along, across, or upon the public streets, ways, alleys, and places within the municipality, facilities which are part of a system providing services outside the boundaries of the municipality, to be granted upon the terms and conditions provided in, and in accordance with, either the Broughton Act or the Franchise Act of 1937. It would additionally make a declaration that the granting of these franchises is a matter of statewide concern. It would require the compensation to be paid for the franchise to be as set forth in the Franchise Act of 1937 when a chartered municipality elects to avail itself of those provisions.

These requirements would impose a state-mandated local program.

(2) Because a violation of certain requirements, which the bill would impose, by specified persons, would be a misdemeanor under existing law, the bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for a specified reason.

Moreover, the bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for other costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for those other costs.

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

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 the geographical area served by a public utility is based
3 upon a community of business and other interests of the
4 persons residing in that area, and does not necessarily
5 conform to the geographical boundaries of the cities and
6 counties of the state. The Legislature, therefore, finds
7 that the granting of franchises to construct facilities
8 which are part of a system providing services outside the
9 boundaries of the municipality granting the franchise is
10 a matter of statewide concern. It is therefore the intent
11 of the Legislature, by the addition of Section 6001.5 to the
12 Public Utilities Code, to preempt the ordinance of any
13 chartered municipality insofar as that ordinance governs

1 the granting of franchises to construct facilities which are
2 part of a system providing services outside the
3 boundaries of the municipality.

4 SEC. 2. Section 6001.5 is added to the Public Utilities
5 Code, to read:

6 6001.5. (a) All franchises, licenses, permits, or other
7 privileges granted to a public utility by any city, county,
8 or city and county holding a freeholder's charter, to use,
9 or to construct, or lay and use, under, along, across, or
10 upon the public streets, ways, alleys, and places within
11 the municipality, facilities which are part of a system
12 providing services outside the boundaries of the
13 municipality, shall be granted upon the terms and
14 conditions provided in, and in accordance with, this
15 chapter or Chapter 2 (commencing with Section 6201).

16 (b) It is the intent of the Legislature, in enacting this
17 section, to preempt the ordinance of any chartered
18 municipality insofar as that ordinance governs the
19 granting of franchises to construct facilities which are
20 part of a system providing services outside the
21 boundaries of the municipality.

22 SEC. 3. Section 6205 of the Public Utilities Code is
23 amended to read:

24 6205. (a) This chapter does not apply to any
25 municipality having a freeholders' charter adopted and
26 ratified under the Constitution and having in ~~such~~ *the*
27 charter provisions for the issuance of franchises by the
28 municipality, but ~~nothing contained in this chapter shall~~
29 ~~restrict the right of any such~~ chartered municipality to
30 *described in this section may* avail itself of the provisions
31 of this chapter ~~wherever whenever~~ it may lawfully do so.
32 ~~The provisions of this chapter relating to the payment of~~
33 ~~a percentage of gross receipts shall not be construed as a~~
34 ~~declaration of legislative judgment as to the proper~~
35 ~~compensation to be paid a chartered municipality for the~~
36 ~~right to exercise franchise privileges therein.~~

37 (b) *When a chartered municipality elects to avail itself*
38 *of the provisions of this chapter, the compensation to be*
39 *paid for the franchise or privilege shall be as set forth in*
40 *Section 6231.*

1 (c) Subdivision (c) of Section 6231 shall not be
2 construed as a declaration of legislative judgment as to
3 the proper compensation to be paid a chartered
4 municipality for the right to exercise franchise privileges
5 in the municipality when the chartered city does not
6 elect to avail itself of the provisions of this chapter.

7 SEC. 4. No reimbursement is required by this act
8 pursuant to Section 6 of Article XIII B of the California
9 Constitution for those costs which may be incurred by a
10 local agency or school district because this act creates a
11 new crime or infraction, changes the definition of a crime
12 or infraction, changes the penalty for a crime or
13 infraction, or eliminates a crime or infraction.

14 Moreover, no reimbursement shall be made from the
15 State Mandates Claims Fund pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code for other costs mandated by
18 the state pursuant to this act. It is recognized, however,
19 that a local agency or school district may pursue any
20 remedies to obtain reimbursement available to it under
21 Part 7 (commencing with Section 17500) and any other
22 provisions of law for those other cost.

23 Notwithstanding Section 17580 of the Government
24 Code, unless otherwise specified in this act, the provisions
25 of this act shall become operative on the same date that
26 the act takes effect pursuant to the California
27 Constitution.