

**LAW AND LEGISLATION COMMITTEE AGENDA**

Thursday, May 24, 1990

3:00 p.m.

City Council Chamber  
915 "I" Street  
Sacramento, California

1. Legislative update from Ken Emanuels, the City's Legislative Advocate. (D-All)

**RECOMMENDATION OF STAFF:** FILE

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2. AB 3845 (Murray) relating to cable television. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND OPPOSITION

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3. Bills relating to distribution of tobacco products to minors.

- A. AB 3967 (Polanco)  
B. SB 2148 (Petris)

**RECOMMENDATION OF STAFF:** A.-B. RECOMMEND OPPOSITION  
UNLESS AMENDED

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4. AB 3381 (Baker) relating to the California Library Literacy Service. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT

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5. AB 2617 (Felando), as amended May 2, 1990, relating to criminal records of operators or managers of community care facilities. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT

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6. AB 3652 (Harris), as amended May 18, 1990, relating to Community-Based Gang Risk Intervention Pilot Programs. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND OPPOSITION

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**LAW AND LEGISLATION COMMITTEE AGENDA (CONTINUED)**

7. AB 3939 (McClintock), as amended April 5, 1990, relating to street gangs; minors. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT

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8. AB 3436 (Isenberg) relating to consolidated freight lines. (D-All)

**RECOMMENDATION OF STAFF:** COMMITTEE TO TAKE ACTION.

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9. AB 3297 (Bates) relating to local general plans and dependent care services. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT

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10. AB 2893 (L. Greene) relating to California Exposition and State Fair; taxes. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND OPPOSITION.

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11. Senate Constitutional Amendment No. 50 (Kopp) relating to insurance taxation. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT.

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12. Funding of Child Abuse Prevention Training. (D-All)

**RECOMMENDATION OF STAFF:** COMMITTEE TO TAKE ACTION.

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13. SB 2113 (Doolittle) relating to consolidation and annexations. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT.

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**LAW AND LEGISLATION COMMITTEE AGENDA (CONTINUED)**

14. Emergency ordinance amending Chapter 64 relating to Department of Finance and utility billing and collection procedures. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT AND FORWARD TO COUNCIL.

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15. An ordinance amending Sections 42.103, 42.109, and 42.110 of the Sacramento City Code, relating to food vending vehicles, and declaring said ordinance to be an emergency ordinance to take effect immediately.

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT AND FORWARD TO COUNCIL.

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16. Ordinances amending Chapter 19 relating to solid waste, Chapter 36 relating to sewage, and Chapter 47 relating to water. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT AND FORWARD TO COUNCIL.

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17. A resolution amending "Organization and Procedures Manual on Legislative Matters Affecting the City of Sacramento" relating to recycling and renewable resources. (D-All)

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT AND FORWARD TO COUNCIL.

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18. A resolution establishing the policy and procedure for disclosure of public records.

**RECOMMENDATION OF STAFF:** RECOMMEND SUPPORT AND FORWARD TO COUNCIL.

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**COMMITTEE MEMBERS:** Robie (Chair), Chinn, Pane and Serna



# League of California Cities

1400 K STREET • SACRAMENTO, CA 95814 • (916) 444-5790

*new copy 7/19/90*  
*JK*  
*Room 437*  
*Local Govt*  
*2:00 pm*  
*DR*  
*Hynn ok'd*  
*by phone 4/20*  
*1000*  
*APP*

Sacramento, CA  
April 4, 1990

TO: Selected State, City and County Representatives

FROM: Dwight Stenbakken, Legislative Director  
Damien Brower, League Staff

SUBJECT: 1986 Flood Relief Legislation: Audit Exceptions. Meeting Scheduled.

DATE: Wednesday, April 18, 1990  
TIME: 3:00 - 5:00 p.m.  
PLACE: League of California Cities  
1400 K Street - 4th Floor Conference Room  
Sacramento, CA 95814  
(916) 444-5790

Prior to 1986, the State Office of Emergency Services (OES) administered state disaster assistance programs to local government. To alleviate damages resulting from the 1986 floods, legislation was implemented (Chapters 16 and 1110, Statutes of 1986) which provided \$115 million in disaster assistance and was disbursed by the Department of Finance (DOF). Eighty million dollars was allocated on an advance basis, rather than the usual reimbursement, to counties and local agencies for expenses not covered by federal programs.

A subsequent DOF audit argues that a lack of claim review at both the state and county levels led to: 1) payments made for unsupported estimates; 2) betterments; 3) costs which were previously paid; 4) unallowable costs; and 5) costs paid under other disaster assistance programs. The audit urged that the DOF identify and recover overpaid funds and duplicate payments and review cases of ineligible funding. Moreover, the report recommended that future guidelines include a cutoff date after which work costs would no longer be eligible for state assistance.

The League of California Cities has received a number of reports from city officials regarding DOF efforts to recover the flood assistance funds. The meeting noted above seeks to coordinate a response to this problem. It is hoped that we can develop a list of projects and audit exceptions in order to determine their defensibility. Currently, AB 4023 (Cortese) seeks to assist counties in alleviating this problem.

We hope you can attend. See you in Sacramento.

City of Sacramento  
State Legislature

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

URGENT

DATE: APR 11 1990 COMMITTEE ACTION: \_\_\_\_\_

TO: James P. Jackson, City Atty DATE: \_\_\_\_\_

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: ASAP

A.B. 3458, As Amended 2-28-90\* Author Friedman

S.B. \_\_\_\_\_, As Amended \_\_\_\_\_ \* Author \_\_\_\_\_

\*Date of introduction or latest amendment

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 Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) 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.

NO RECOMMENDATION. 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. \_\_\_\_\_.

PLEASE TYPE YOUR RESPONSE

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

Prohibits attorneys from making offers of settlement which are conditioned upon ~~counsel for~~ opposing party's waiving all or substantially all attorneys fees.

2. This measure should 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 on 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.)

Will make settlement of litigation against

(Continue answer to Question No. 3 here)

City much more difficult and much more expensive. Would also encourage more suits against City. -see attached from League of California

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

Opposition to this measure is consistent with following policies: to oppose legislation which will mandate local governments to incur costs without reimbursement; to oppose legislation which reduces City's options, alternatives, and flexibility.

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: OPPOSED.

Supported + sponsored by State Bar of California on 10-9 vote of its board. State Bar tried to get State Supreme Court to impose this rule, but Court refused to do so.

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

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? 10

FORM COMPLETED BY: Diane B. Butler

DATE: 4/25/90



# League of California Cities

1400 K STREET • SACRAMENTO, CA 95814 • (916) 444-5790

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RECEIVED  
APR 20 1990

City Attorney's Office

Sacramento, CA  
April 6, 1990

TO: City Attorneys

FROM: Sheryl Patterson, Legislative Attorney

RE: AB 3458 (Friedman). Settlement Offers. Attorney Fees.  
League Opposed. Hearing: Assembly Judiciary Committee, May 9, 1990.

This bill, which is sponsored by the State Bar, prohibits an attorney from making a settlement which is conditioned upon the counsel for the opposing party waiving all or substantially all attorneys fees. This bill would adversely affect the ability of a lawyer for a government entity to protect the public treasury. It would overrule the U.S. Supreme Court decision in the case of Evans v. Jeff D. (475 US 717, L.Ed.2d 747). Its subject matter was disapproved last year by the State Supreme Court when the State Bar attempted to adopt a Rule of Professional Conduct, 2-400, which would have also prohibited settlement offers which are conditioned upon the waiver of opposing counsel fees. The State Bar voted to sponsor this legislation on a narrow 10-9 vote of the Board of Governors. The Public Law Section of the State bar opposed the State Bar sponsorship of this bill. It is our understanding that no other State has enacted such a statute nor has any other State Bar enacted a rule of professional conduct which would prohibit fee waivers as a condition to settlement of a lawsuit. Attached is a copy of this bill and provided below is a summary of the League's concerns with this legislation.

## Increased Litigation and Public Agency Costs

Our primary concern with the this legislation is increased costs and litigation, since public agencies will have to allocate additional funds in order to settle cases and plaintiff's counsel will be more willing to take on cases with a low potential for success on the merits. Many cases which public agencies can win on the merits are now being settled. These cases will not be settled if attorney's fees must be paid as, in many instances, the attorney fee claim exceeds the request for damages. The end result will be more cases clogging the courts. This bill represents bad public policy because it undermines the public interest in encouraging settlement of cases. The proposed legislation also encourages the filing of frivolous cases by guaranteeing the payment of all or substantially all attorneys fees regardless of the merit of the action.

ASSEMBLY BILL

No. 3458

Introduced by Assembly Member Friedman

February 28, 1990

An act to add Section 999 to the Code of Civil Procedure, relating to settlement offers.

LEGISLATIVE COUNSEL'S DIGEST

AB 3458, as introduced, Friedman. Settlement offers.

Existing law does not prohibit an attorney from making a settlement offer conditioned upon the counsel for an opposing party waiving all or substantially all attorneys' fees in a case in which there may be entitlement to attorneys' fees pursuant to a private attorney general statute, as defined.

This bill would prohibit such a settlement offer, as specified.

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

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

- 1 SECTION 1. Section 999 is added to the Code of Civil
- 2 Procedure, to read:
- 3 999. (a) An attorney may not make or present a
- 4 settlement offer which is conditioned upon the counsel
- 5 for an opposing party waiving all or substantially all
- 6 attorneys' fees in any case in which there may be an
- 7 entitlement to attorneys' fees pursuant to a private
- 8 attorney general statute. For the purposes of this section,
- 9 private attorney general statutes are those state
- 10 fee-shifting statutes which are designed to encourage
- 11 private enforcement of constitutional and statutory
- 12 rights, and includes, but is not limited to: Section 1021.5
- 13 of this code; Sections 52 (antidiscrimination), 54.3



1 (handicapped access), 55 (blind and disabled access),  
2 1780 (Consumers Legal Remedies Act), 1785.31  
3 (Consumer Credit Reporting Agencies Act), or 1786.50  
4 (Investigative Consumer Reporting Agencies Act), of the  
5 Civil Code; Sections 800 (review of administrative  
6 proceedings), 6259 (Public Records Act), 11130.5 and  
7 54960.5 (open meetings), 12965 (antidiscrimination), or  
8 91012 (Political Reform Act) of the Government Code.

9 (b) Nothing in this section precludes negotiations  
10 between counsel to determine a reasonable fee, nor shall  
11 it preclude an attorney from making or presenting an  
12 offer of a lump sum or structured settlement to settle all  
13 claims including attorneys' fees. In determining a  
14 reasonable fee, parties and a court should consider the  
15 following factors:

16 (1) The time and labor involved.

17 (2) The novelty and difficulty of the questions.

18 (3) The skill requisite to perform the legal services  
19 properly.

20 (4) The preclusion of other employment by the  
21 attorney due to acceptance of the case.

22 (5) The customary fee.

23 (6) Whether the fee is fixed or contingent.

24 (7) The limitations imposed by the client or other  
25 circumstances.

26 (8) The amount involved and the results obtained.

27 (9) The experience, reputation, and ability of the  
28 attorneys;

29 (10) The undesirability of the case.

30 (11) The nature and length of the professional  
31 relationship with the client.

32 (12) Awards in similar cases.

33 (13) Whether the defendant made a good faith effort  
34 to resolve the case in dispute expeditiously before  
35 resorting to litigation or upon notice of litigation.

36 (c) Where counsel are unable to negotiate a  
37 reasonable fee, either counsel may follow steps or  
38 procedures which are commonly available to resolve  
39 other monetary damage disputes. Accordingly, this  
40 section does not prohibit a settling party from requesting

1 a settlement conference on a fee dispute and obtaining  
2 an evaluation of the settlement judge on what would be  
3 a reasonable fee for the case in question, submitting the  
4 attorney fee dispute to nonbinding arbitration, or  
5 submitting the attorney fee dispute to judicial  
6 determination.

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