

COUNCIL COMMITTEE MINUTES

Concurrent Special Committee Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento and the Parking Authority of the City of Sacramento.

COMMITTEE NAME: LAW AND LEGISLATION

MEETING DATE: April 26, 1990

MEETING TIME: 3:00 p.m.

LOCATION: 915 I STREET, 2ND FLOOR, COUNCIL CHAMBER

I HEREBY CALL Special Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento, and Parking Authority of the City of Sacramento to be conducted concurrently with the Council committee meetings listed below, which are incorporated herein by reference. The Special Meetings are called to permit Members who are not on the listed committees to attend the meetings and participate in the discussions. In the event five (5) or more members of the City Council are present at a Committee meeting, only those items listed on the agenda can be acted on or discussed.

The meeting was called to order at 3:05 p.m. by Chair Lynn Robie.

PRESENT: Committeemembers Robie, Chinn and Pane.*

ABSENT: Committeemember Serna.

*Committeemember Pane left at 4:15 p.m.

1. Legislative update from Ken Emanuels, the City's Legislative Advocate.

Recommendation of Staff: File

MINUTES:

Ken Emanuels, the City's Legislative Advocate, was present to discuss pending legislation affecting the City of Sacramento. He passed out AB 3436 (Isenberg) relating to consolidation of railroad freight traffic, which Committeemember Serna had requested. Robie suggested that this bill be placed on the agenda in May and that staff and RT prepare opinions on this bill. Ken Emanuels also presented SB 2893 (Greene) relating to California Exposition and State Fair taxes. Robie stated she opposes this bill because it takes control out of the hands of local governments. She feels it is important for the City to oppose this bill, even if the City may decide not to impose an admissions tax now or for another ten years, if ever. Chinn feels the City should not take a position at this time. Jim Jackson, City Attorney, informed the Committee that there is a legal question as to whether the State can limit the municipal taxation power of a charter city, as this bill proposes. It was also pointed out that these taxes are not imposed during the State Fair time, but that they are only imposed on non-State activities during

ITEM CONTINUED ON FOLLOWING PAGE.

COMMITTEE ACTION SHEET

1. ITEM CONTINUED FROM PREVIOUS PAGE.

other times of the year, but that this may not deter the State from acting on the bill. In response to Ken Emanuels' question regarding the City's position, Robie stated she felt it should be opposed and Chinn requested a delay on action on this bill.

Mr. Emanuels then brought up AB 3967 (Polanco) relating to distribution of tobacco products to minors. There was some discussion, and it was agreed that the City is opposed to any bill which would take away the ability of local communities to put together their own ordinances. It was also agreed that an analysis of this bill would come before the Committee in May. Jim Jackson, City Attorney, stated that, if necessary, a meeting could be scheduled prior to the regular May 17th meeting. Ken Emanuels stated that he will keep in touch with Jim Jackson, and if this bill has an effect on the City, one of them will contact the Committee Chair, Lynn Robie.

Mr. Emanuels then briefly summarized some of the bills listed on his update included in the Committee agenda packet. Roberta Larson, Administrative Assistant for the Department of Public Works, presented one of the bills on this list, AB 4023, relating to audits for flood damage claims. She explained that the City is saying the bill "invented the criteria after the fact," and that the City was not providing "betterments" but were making "repairs" due to flood damage. She said this bill is important to the City in that it would amount to about \$2.2 million in payment of flood claims previously denied by the State.

2. A resolution in support of a traffic school in Sacramento County.

Recommendation of Staff: Recommend support and forward to Council.

Committee Action: Supported and forwarded to Council.

Voting Record: Moved: Chinn
Seconded: Pane
Ayes: Chinn, Pane
Noes: Robie
Absent: Serna

MINUTES:

Barry Broad, Legal Counsel for the California Teamsters Public Affairs Council, was present and in support of this item, which was placed on the agenda at the request of Committeemember Josh Pane. Mr. Broad stated that some of the agencies in support of a traffic school in Sacramento County include the Sacramento County Sheriff, Sacramento County District Attorney, Sacramento County Public Defender, Voter Revolt, United Transportation Union, Local 39, and the California Professional Firefighters, among others.

ITEM CONTINUED ON FOLLOWING PAGE.

COMMITTEE ACTION SHEET

2. CONTINUED FROM PREVIOUS PAGE.

Captain Jerry Ledbetter of the Sacramento Police Department stated the Police Department is in opposition to a traffic violators school. He said the Department's position is that its job is to prevent accidents, injuries and loss of lives, and that for serious violations, a traffic violation school has little influence. Captain Ledbetter stated the Department feels that swift and certain punishment has a greater impact on repeat violators.

Committeemember Chinn said he was in favor of a traffic school, since he had received three traffic violations and his insurance premiums were raised. He said that if there had been a traffic school, his insurance would be one-third as much. He went on to say that, more importantly, the fact that the purpose of the penalty is to prevent future violations, and he feels a school would better achieve that goal. Captain Ledbetter said that this is true for certain individuals, but after someone goes to traffic school again and again, it shows there is no change in that person's driving habits. Committeemember Chinn noted that it was his understanding that the judge can only give one traffic school sentence. There was some discussion, and it was agreed that this would be a decision for the judge to make, and that the standard could be one school per year, one school per three years, or one per lifetime, or whatever.

Robie asked Mr. Broad why the previous traffic school in Sacramento County was discontinued. Mr. Broad explained that it was initiated in the early 1960s and was abandoned in the '70s to institute other programs.

Mr. Miles Minnies of the Safety Center, Inc. of California explained to the Committee that the course used in traffic schools in other cities has proven very effective in preventing repeat violators. He also noted that the old traffic school program in effect in Sacramento County did not have the DMV monitoring that is now in effect. He also said that a statistical survey showed a substantial reduction in accidents and violations where traffic schools exist.

Committeemember Chinn moved to recommend to the City Council a resolution in support of a traffic school in Sacramento County; Committeemember Pane seconded the motion; and Committeemember Robie opposed the motion. This 2-1 recommendation in support of a traffic school in Sacramento County will be presented to the full Council.

3. An ordinance amending the Sacramento City Code by adding Chapter 81 thereto relating to maintenance districts.

Recommendation of Staff: Recommend support and forward to Council.

Committee Action: Supported and forwarded to Council.

Voting Record: Moved: Robie
Seconded: Chinn
Ayes: Robie, Chinn
Abstain: Pane
Absent: Serna

COMMITTEE ACTION SHEET

5. ITEM CONTINUED FROM PREVIOUS PAGE.

Voting Record:	Moved:	Pane
	Seconded:	Chinn
	Ayes:	Pane, Chinn, Robie
	Absent:	Serna

MINUTES:

Tom Long, Neighborhood Services Assistant Manager, stated that this ordinance is just a clean-up of the Nuisance Code to reflect changes in the duties for nuisance abatement in the City. Pane moved to support this ordinance, Chinn seconded the motion and it was unanimously supported. This ordinance will now go before the full Council with this Committee's recommendation.

6. AB 2929 (Moore) relating to elimination of the need for Cable Television Commission to promulgate its own regulations in the customer service area.

Recommendation of Staff:	Recommend opposition.
Committee Action:	Opposed.
Voting Record:	Moved: Chinn
	Seconded: Pane
	Ayes: Chinn, Pane, Robie
	Absent: Serna

MINUTES:

Rich Esposto, Executive Director of the Sacramento Metropolitan Cable Television Commission, presented this item to the Committee. Chinn moved to oppose AB 2929, Pane seconded the motion, and it was unanimously opposed.

7. AB 2892 (Moore) relating to cable television.

Recommendation of Staff:	Recommend opposition.
Committee Action:	Opposed.
Voting Record:	Moved: Chinn
	Seconded: Pane
	Ayes: Chinn, Pane, Robie
	Absent: Serna

ITEM CONTINUED ON FOLLOWING PAGE.

7. ITEM CONTINUED FROM PREVIOUS PAGE.

MINUTES:

Rich Esposto, Executive Director of the Cable Television Commission, also presented this bill for the Committee's recommendation. Chinn moved to oppose AB 2892, Pane seconded the motion, and it was unanimously opposed.

8. SB 2312 (Lockyer) relating to motor vehicle anti-theft devices.

Recommendation of Staff:	Recommend support.
Committee Action:	Supported.
Voting Record:	Moved: Chinn
	Seconded: Pane
	Ayes: Chinn, Pane, Robie
	Absent: Serna

MINUTES:

Captain Jerry Ledbetter of the Sacramento Police Department was present to discuss this item. He stated that vehicle thefts cost insurance companies and the insured in Sacramento approximately \$8 million a year. He explained that this bill would help create anti-theft standards to protect car owners from vehicle thefts. Chinn moved to support AB 2312, Pane seconded the motion, and it was unanimously supported.

9. AB 1088 (Mountjoy), as amended 3/1/90, relating to guns and gun dealers.

Recommendation of Staff:	Recommend opposition.
Committee Action:	Opposed.
Voting Record:	Moved: Chinn
	Seconded: Pane
	Ayes: Chinn, Pane, Robie
	Absent: Serna

MINUTES:

Lt. Hamilton of the Police Department presented this item. He explained that this bill would tear apart the City's recently enacted gun regulations. He said it costs the City about \$550 to process a dealer's license, but that this bill only requires a \$25 fee, and that the bill does not require that the applicant be fingerprinted, which could allow a convicted felon to deal in guns. Chinn moved to oppose AB 1088, Pane seconded the motion, and it was unanimously opposed.

COMMITTEE ACTION SHEET

12. ITEM CONTINUED FROM PREVIOUS PAGE.

MINUTES:

There was no discussion on this item. Chinn moved to support AB 3591, Pane seconded the motion, and it was unanimously supported.

13. SB 1794 (Rosenthal) relating to cellular telephones; siting of antenna.

Recommendation of Staff: Recommend opposition.

Committee Action: No action taken.

MINUTES:

This item was withdrawn.

14. AB 4128 (Chacon), as amended 3/2/90, relating to consolidated elections, cost, reimbursement.

Recommendation of Staff: Recommend opposition.

Committee Action: No action taken.

MINUTES:

Diane Balter, Deputy City Attorney, explained that the City Clerk opposes this bill, but that the League of California Cities supports it, and that it will be going to an interim hearing soon. It was agreed to take no position at this time, but to bring it back to Committee if it is active legislation during the next session.

15. Preprint SB 6 (Presley), as amended 3/19/90, relating to funding of statewide "California Council on Tourism."

Recommendation of Staff: Recommend opposition.

Committee Action: Opposed.

Voting Record: Moved: Chinn
Seconded: Pane
Ayes: Chinn, Pane, Robie
Absent: Serna

ITEM CONTINUED ON FOLLOWING PAGE.

COMMITTEE ACTION SHEET

15. ITEM CONTINUED FROM PREVIOUS PAGE.

MINUTES:

Ken Emanuels stated that this bill relates to enactment of a Transient Occupancy Tax at the State level to fund a statewide "California Council on Tourism." By enacting this bill, the Legislature would enter a revenue area which has traditionally been occupied by local government. Chinn moved to oppose Preprint SB 6, Pane seconded the motion, and it was unanimously opposed.

*Committeemember Josh Pane left at 4:15 p.m.

16. AB 3458 (Friedman), as amended 2/28/90, relating to settlement offers, attorney fees.

Recommendation of Staff:	Recommend opposition.
Committee Action:	Opposed.
Voting Record:	Moved: Chinn Seconded: Robie Ayes: Chinn, Robie Absent: Serna, Pane

MINUTES:

At this time, Jim Jackson, City Attorney, presented AB 3458, which came to him very late. He said that the League of California Cities is opposed to this bill. This bill would limit the ability of governmental attorneys to settle cases by prohibiting them from requesting that the plaintiff waive attorney fees which may be awarded to the plaintiff from a governmental defendant. He explained that this bill has quite a history; the State Bar tried to insert the substance of the bill into the attorneys' rules of professional conduct, but the Superior Court refused to consent. Chinn moved to oppose AB 3458, Robie seconded the motion, and it was unanimously opposed.

The meeting was adjourned at 4:22 p.m.

LYNN ROBIE, Chair

ATTEST:

JUDY SANDERS, Secretary

LAW AND LEGISLATION COMMITTEE
April 26, 1990

ASSEMBLY BILL

No. 4023

Introduced by Assembly Member Cortese

March 2, 1990

An act relating to county disaster relief.

LEGISLATIVE COUNSEL'S DIGEST

AB 4023, as introduced, Cortese. Disaster relief: counties. Chapter 16 of the Statutes of 1986 allocated funds to counties for, among other purposes, repair of flood damaged roads.

This bill would require any state agency that administers any of those funds to provide the fiscal committees of the Legislature with audit reports before requiring any county to repay allocated funds.

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

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

- 1 SECTION 1. Notwithstanding any other provision of
- 2 law, any state agency that administers any funds allocated
- 3 to counties to repair flood damaged roads pursuant to
- 4 Chapter 16 of the Statutes of 1986 shall provide the fiscal
- 5 committees of the Legislature with reports of any audits
- 6 of county expenditures before requiring any county to
- 7 repay the state any of the allocated funds.

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League of California Cities

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

4/19/90
9L
Room 437
Local Govt
2:00 pm

Sacramento, CA
April 4, 1990

5: Lynn ok'd
by phone 4/20

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 (Cortase) 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 1 1 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 2-28-70 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's~~ 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 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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