



# LMA Legislative Report

Regular Session, 2008 ■ REPORT NO. 3

April 16, 2008

Please deliver copies to your mayor, council and other officials.

Hearing Rescheduled Wednesday, April 23!!

## Senate Commerce to Take Up “Consumer Choice Television Act”

The Senate Commerce Committee has delayed until Wednesday, **April 23**, before taking up the **LMA-opposed SB 422 by Sen. Duplessis**, a measure advanced by the cable/telephone industry to create the “Consumer Choice Television Act.” As reported last week, the title of the proposed law may be attractive from the consumer standpoint, but the impact to local governing bodies as franchising authorities for cable and video services would be severe. This legislation seeks to preempt local authority under which municipalities and parishes negotiate and enter into franchise agreements with cable/telephone companies seeking to operate within the local jurisdictions and instead give the state the outright, sole authority to grant these agreements. The statewide franchise agreements would be awarded pursuant to the provisions set forth in the legislation, affecting such issues as build-out, public and educational channels, and the police powers granted to local entities to protect their rights-of-way. Plainly and simply, this effort in Louisiana is part of a nationwide campaign by the telecommunications industry to do away with locally-negotiated franchise agreements. In 2006, Louisiana was the only state where this issue was addressed that fought off this attempted erosion of traditional local authority.

Here are some of our chief concerns regarding this vehemently-opposed legislation:

⊗ It gives away control of and negotiations concerning local government’s rights-of-way by granting access by video programming providers to those rights-of-way, thereby creating safety and liability problems for municipalities and parishes. It could be effectively argued that this granting a third party the right to use local rights-of-way constitutes a “taking” by the State of Louisiana of local government property, causing significant costly legal and liability repercussions for the state.

⊗ Some 116 municipalities have adopted a model franchise agreement which already provides the necessary access that AT&T desires to enter into those communities to provide video programming services.

⊗ In the state, there is no longer an exclusive monopoly or contract. Competition is already occurring – among Cox Communications and EATEL in Ascension Parish and among Cox Communications and AT&T in East Baton Rouge Parish. The East Baton Rouge Parish Metropolitan Council recently approved an agreement with AT&T that substantially mirrors the same franchise terms in the agreement with the incumbent cable provider.

⊗ Customers would be required to call an 800 number to report service problems and outages. The Attorney General’s Office would also be a contact point for consumer issues. (Attorney General Buddy Caldwell has said he is opposed to the legislation.)

⊗ SB 422 does not apply to nearly half of the citizens in the state. It currently exempts the state’s largest communities.

⊗ The proposed law eliminates the actual franchise contract between cable providers and the owners of rights-of-way.

This issue is complicated by recent proposed rule-making by the Federal Communications Commission that creates a nationwide franchise agreement with onerous and detrimental language impacting local governments. In addition, these could apply to current contracts with incumbent cable providers which could opt-in to the nationwide agreement. The LMA has joined the National League of Cities in an amicus brief filed with the Sixth Circuit Court of Appeals in Cincinnati seeking to enjoin the FCC’s rule-making, alleging that such overreaches its rulemaking authority.

Two other bills, **HB 869 by Rep. Arnold** and **HB 1009 by Rep. Ellington**, have also been filed on behalf of the cable/telephone industry.

There’s ample time between now and April 23 to speak to your Senators about this harmful legislation. If your Senator is on the Commerce Committee, please contact him or her to discuss the measure. The Senate Commerce Committee’s members are – Sens. Duplessis (chair), Crowe (vice chair), Alario, Nick Gautreaux, Marionneaux, Michot, and Scalise. The Senate switchboard is (225) 342-2040.

## **House Civil Law Committee Gives OK to LMA-Opposed Ad Valorem Tax Limitation Measure**

The House is expected to vote soon on the **LMA-opposed HB 436 by Rep. Arnold**, a proposed constitutional amendment that limits local governing authority to increase millages after reappraisal and valuation. On Monday, April 7, the House Ways and Means Committee gave a favorable report to the measure after amending it to make it a little less restrictive. On Tuesday, April 15, the House Civil Law Committee approved the language of the constitutional amendment contained in the bill. HB 436 now goes to the full House for further consideration.

As amended, HB 436 gives the local governing authority 90 days from the date the millage has been lowered to roll it forward with a two-thirds vote. After this 90-day window, the local governing authority would have no authority to adjust the millage over the next three years. This then would cause local officials to analyze and project costs for the next three years (or when reassessment occurs).

**ACTION CALL!!** We must defeat HB 436 on the House floor. Although it was amended to make the measure less restrictive, the LMA and its allies continue to oppose this proposed constitutional amendment. This bill threatens the revenue capacity of municipal and local governments. It impairs municipalities' ability to utilize every reasonable means to secure critically needed revenue to provide services to citizens and businesses. Contact your Representatives immediately to advise them of your opposition to HB 436! The House switchboard number is (225) 342-6945.

## **Bills Eliminating July Election Date Moving Forward**

The House on Wednesday, April 9, voted 93-2 for a **LMA-opposed** measure to eliminate the July election date traditionally used by local governing authorities to seek voter adoption or renewal of tax and bond propositions. **HB 790 by Rep. Foil** is that bill and part of the Secretary of State's legislative package. You may remember that in 2006 similar legislation successfully eliminated the January election date. HB 790 has been referred to the Senate and Governmental Affairs Committee.

Also on the same day, the Senate and Governmental Affairs Committee gave a favorable report to similar legislation, the **LMA-opposed SB 271 by Sen. Donahue**, which reduces the number of days on which certain elections may be held and provides for the elimination of the July election date for bond, tax, or proposition elections. This bill now goes to the Senate floor for further consideration.

We oppose HB 790 and SB 271 because the July election date allows certain issues to be more prominent on the ballot. For example, tax-related proposals must be made as simple and understandable as possible and their inclusion on the July election date ballot assures the greatest opportunity for a greater focus on local issues and for voter approval. Generally, these tax and bond propositions are well publicized in advance, and low turnouts of voters have more to do with voter apathy than with the actual issues on ballots. Under current law, local governing authorities can call for special elections when there is a serious need to conduct one for specific ballot propositions or issues.

## **Bill Prohibits Use of Public Funds for PSAs by Public Servants-Candidates**

The House on Tuesday, April 15, voted 84-16 for **HB 281 by Rep. R. Jones**, which prohibits a public servant from using public funds to create a public service announcement during time periods around an election if he or she has qualified to be a candidate in that election. The PSAs could not contain the name, likeness, or image of the public servant. A floor amendment adopted by the House clarifies that a PSA means a non-commercial advertisement that is printed or broadcast to distribute a message intended for the public good, including but not limited to, an announcement that promotes the programs, activities, or services of the state, a political subdivision, non-profit organization, or group serving community interests. As amended and passed by the House, HB 281 goes to the Senate for committee referral.

## **Senate Panel Gets Measure to Stop Proliferation of Damage with Graffiti**

The House-passed **HB 163 by Rep. Ligi**, which creates the crime of criminal damage to property by defacing with graffiti, has been sent to the Senate Judiciary C Committee for further consideration. Under the proposal, it would be unlawful for any person to intentionally deface with graffiti immovable or movable property, whether publicly or privately owned, without the consent of the owner. The proposal sets penalties, including fines, imprisonment, and court orders to the offender to clean up, repair, or replace any property damage, pay restitution to the owner of the damaged property, and perform community service. If damage is more than \$500, the offense would become a felony. If a minor is unable to pay fines or make court-ordered restitution, the parent or guardian would be liable. It allows the court to waive a payment of the fine or restitution, or any part thereof, by parent or guardian of the minor upon a finding of good cause.

## **Bill to Transfer Special Assessment Level Advances in House**

The House will vote soon on **HB 461 by Rep. Ritchie**, a proposed constitutional amendment to provide for the transfer of the special assessment level to new property properly purchased to replace property expropriated by the state or any local governing authority. The special assessment level would be transferred to the new property of the owner entitled to the special assessment level and remain in effect on the new property at the same special assessment level of the property that was expropriated, so long as the owner entitled to the special assessment level remains the owner of the new property. An amendment that provides that the value of the new property entitled to the special assessment level shall not exceed 150 percent of the value of the expropriated property was approved. The House Civil Law Committee on Tuesday, April 15, approved the constitutional amendment language in the bill.

## **Lowering Age to Freeze Assessment Value of Residential Property Deferred, Recommitted**

On Tuesday, April 15, the Senate Judiciary A Committee – on a motion by Sen. Michot – voted to defer action on and recommit to the Senate Revenue and Fiscal Affairs Committee a proposed constitutional amendment, **SB 231 by Sen. Nevers**, which seeks to lower the age at which the assessment value of residential property is “frozen” from 65 to 62 to allow individuals to qualify for the special ad valorem tax assessment level. The Police Jury Association of Louisiana and the Louisiana Association of Business and Industry oppose the bill. With property tax bases declining in some areas, the provision in the proposed constitutional amendment could lead to further deterioration of local revenue from property tax assessments.

## **Senate Panel Gets House Bill Amending Provisions for Internal Investigations**

The Senate Judiciary B Committee is the next stop for the House-passed **HB 93 by Rep. St. Germain**, a bill to amend provisions in state law regarding the rights of law enforcement officers under investigation. The measure, which received a 99-0 vote on Thursday, April 10, applies the rights of certain law enforcement officers under investigation to police employees.

## **Bills Mandate Payments to Chiefs of Police Association**

On Thursday, April 17, the House Judiciary Committee is expected to consider two measures filed on behalf of the Louisiana Association of Chiefs of Police:

- **HB 342 by Rep. Abramson**, which requires a municipality to appropriate a portion of each appearance bond taken by its chief of police to the Louisiana Association of Chiefs of Police.

- **HB 561 by Rep. Abramson**, which provides for the use of a portion of each appearance bond taken by a chief of police by the Louisiana Association of Chiefs of Police for members and training.

These bills change the authorization for a municipality to appropriate two dollars of each \$15 appearance bond taken by the chief of police to the LACP to a mandate that each municipality appropriate one dollar of each such appearance bond to the LACP for law enforcement education and training.

The LMA opposes both proposed measures because they mandate expenditures that should be handled administratively by policy and procedure within the municipality.

## **Legislation on Standards for Manufactured Housing Moving Forward**

The House Commerce Committee on Tuesday, April 15, advanced legislation concerning manufactured housing, reporting both bills favorably as described below:

- **HB 545 by Rep. Arnold** – Provides for changes to the minimum standards for installation of manufactured housing, providing for the design of foundations and piers, installation standards for anchors and tie-downs, standards for used manufactured homes in hurricane zones, and installation permit stickers.

- **HB 553 by Rep. Arnold** – Provides for changes to the Uniform Standards Code for Manufactured Housing, in guidelines for a retailer’s license and for suits filed by the Louisiana Manufactured Housing Commission.

Both bills go to the House floor for further consideration.

## **Proposals Increase Contract Limit Amount for Local Projects**

The Senate Transportation, Highways, and Public Works Committee gave a favorable report to **SB 121 by Sen. Dupre**, which increases the contract limit in public contracts to \$200,000 per project for all public entities, and authorizes the public entities to use their regular maintenance employees when the cost of the work per project does not exceed \$200,000, including labor and materials. The measure, which expands local flexibility for public works projects, goes to the Senate floor for further consideration.

The House Transportation, Highways, and Public Works Committee could take up **HB 173 by Rep. Baldone**, a measure which would authorize any state agency or local government to undertake any public works project with its own employees, regardless of the cost. If the cost of the project is greater than the limit (currently \$100,000) and the entity chooses not to pursue the project with its own employees, the entity is required to advertise and let the contract in accordance with existing law.

### **Legislative Actions on Other Municipally-Related Measures**

Here's a look at other actions of the Legislature on municipally-related legislation in the pipeline:

- **SB 37 by Sen. Dupre** – Authorizes certain ex officio notarial appointments by mayors in certain political subdivisions; passed the Senate 28-0 on Monday, April 14; referred to the House Civil Law Committee for further consideration.
- **SB 53 by Sen. Shaw** – Provides that any complaint filed anonymously with the Board of Ethics shall not be investigated or addressed by the board; reported favorably as amended by the Senate and Governmental Affairs Committee on Wednesday, April 9; passed the Senate 26-9 on Tuesday, April 16.
- **HB 190 by Rep. Mills** – Allows the Department of Health and Hospitals to make final administrative orders and penalty assessments for violations of the State Sanitary Code executory in district court; reported favorably as amended by the House Civil Law Committee on Tuesday, April 8; passed the House 100-0 with floor amendment adopted on Monday, April 14; referred to the Senate Judiciary A Committee for further consideration.
- **HB 641 by Rep. G. Jackson** – Provides for changes to accessibility standards for disabled individuals in new public or governmental facilities; recommitted to the House Commerce Committee.
- **HB 407 by Rep. Hardy** – Prohibits the use of cellular telephones by any person while operating/driving public transportation vehicles; involuntarily deferred by the House Transportation, Highways, and Public Works Committee on Monday, April 14; a study will be ordered on this issue.
- **HB 852 by Rep. Badon** – Prohibits the use of or text messaging on wireless telephone or electronic communications device while driving, except for emergencies or calls to a physician, fire department, ambulance, or law enforcement agency; reported favorably by the House Transportation, Highways, and Public Works Committee on Monday, April 14; sent to the House floor for further consideration.
- **HB 663 by Rep. Hutter** – Relative to the Good Samaritan Law, provides for immunity from liability for religious organizations which provide refuge as natural disaster shelters, provide for immunity from liability for an individual acting on behalf of a religious organization or an individual acting on his own behalf who provides transportation to natural disaster shelters; reported from the House Civil Law Committee as substituted; became HB 1127, which provides a limitation of liability for religious organizations providing assistance during a state of emergency; on the House floor for further consideration.
- **SB 321 by Sen. Hebert** – Authorizes the Department of Environmental Quality to accept credit cards for payment of obligations owed to the state through use of a third-party processor to collect a convenience fee to adequately cover transaction fees; reported favorably by the Senate Environment Committee on Tuesday, April 8; passed the Senate 36-0 on Tuesday, April 15.
- **HB 544 by Rep. Hutter** – Expands the authority of the Department of Transportation and Development for design-build contracts for select projects or combination of projects utilizing the design-build method; reported favorably by the House Transportation, Highways, and Public Works Committee on Tuesday, April 8; passed the House 100-0 on Monday, April 14; referred to the Senate Transportation, Highways, and Public Works Committee for further consideration.
- **HB 765 by Rep. Hutter** – Requires a parish or municipality to comply with federal flood plain management and flood insurance programs; referred to the House Transportation, Highways, and Public Works Committee.
- **SB 525 by Sen. Erdey** – Requires parishes and municipalities to comply with federal flood plain management and flood insurance programs prior to construction of local flood protection or storm damage reduction projects; reported favorably by the Senate Local and Municipal Affairs Committee on Monday, April 14; sent to the Senate floor for further consideration.
- **HB 584 by Rep. Downs** – Proposed constitutional amendment to authorize certain investments for political subdivisions with respect to monies reserved for post-employment benefits; reported with amendments by the House Appropriations Committee on Tuesday, April 15; sent to the House floor for further consideration.

## **Use the Power of Membership to Influence Your Legislators!**

**Please Contact Your Legislators!** Senators – (225) 342-2040, Representatives – (225) 342-6945. You can communicate with them via email them. Legislative information is continuously updated on the Legislature’s web portal, **www.legis.state.la.us** or call them at their district office.

**Legislative Information:** Public Update Legislative Service – (225) 342-2456 or (800) 256-3793. Also, the LMA website, **www.lma.org**, or the Legislature’s web portal, **www.legis.state.la.us**, can be utilized daily to follow all LMA-tracked legislation.

**Address Corrections/Information/Assistance:** Call Tommy Darensbourg or George Marretta at (225) 344-5001 or (800) 234-8274; Email: **tdarensbourg@lma.org** or **gmarretta@lma.org**; Fax: (225) 344-3057 (attention: Tommy Darensbourg).

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