



**To:** Mayor and City Council  
**From:** Mercy G. Cabral, Deputy City Clerk  
**Subject:** Letter of Opposition against SB 876 (Liu) Enforcement of Local Ordinances  
**Date:** February 10, 2016

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**Recommendation**

Motion authorizing the Mayor to sign a letter of opposition against SB 876 (Liu) Enforcement of Local Ordinances.

**Background**

This measure is preempting local authority to address important issues affecting public health and safety in public spaces and on private property that is held open to the public, including not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities, public buildings, shopping centers and parks.

Despite this bill being well-intended, SB 876 (Liu) would not solve the challenges of homelessness in our State and within our communities. The bill contains no solutions for homelessness. It offers no new programs, no funding for housing, and no effort to improve services. In fact, the bill on page 3, line 16, specifically states, *“Passing this Act will not reduce homelessness.”* Instead, it creates a special set of exemptions and privileges for one group of people and undermines the equal applicability of laws.

Local agencies must continue to be able to protect the public health, safety and welfare of their communities. This measure will not make a positive impact in the effort to address chronic homelessness.

**Fiscal Impact**

No impact to the General Fund.

**Attachments**

- SB 876
- League of California Cities Letter of Opposition
- City’s Letter of Opposition

APPROVED BY:   
Interim City Manager

**Introduced by Senator Liu**January 14, 2016

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An act to add Part 2.2 (commencing with Section 53.8) to Division 1 of the Civil Code, and to amend Section 11135 of, and to add Section 11139.2 to, the Government Code, relating to homelessness.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 876, as introduced, Liu. Homelessness.

Existing law provides that no person shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would expand those provisions to also include exclusion or discrimination based upon homeless status. The bill would prohibit cities, counties, cities and counties, and municipal agencies that receive state funds from enacting or enforcing a law that bans resting in a public space, as defined. The bill would afford persons experiencing homelessness the right to use public spaces without discrimination based on their housing status and describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions, including the right to use and to move freely in public spaces, the right to rest in public spaces and to protect oneself from the elements, the right to eat in any public space in which having food is not prohibited, and the right to perform religious observances in public spaces, as specified. Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program.

The bill would authorize a person whose rights have been violated pursuant to these provisions to enforce those rights in a civil action in which the court may award the prevailing party injunctive and declaratory relief, restitution, damages, statutory damages of \$1,000 per violation, and fees and costs.

The bill would also require all applicants for the United States Department of Housing and Urban Development's Continuum of Care Homeless Assistance Program to annually provide to the Department of Housing and Community Development's Division of Housing Policy Development a copy of its application for funding from the United States Department of Housing and Urban Development that includes the organization's response to the application question regarding steps that its community is taking to reduce criminalization of homelessness.

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.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 all of the  
2 following:
- 3 (a) According to the United States Department of Housing and  
4 Urban Development's report to Congress, 115,738 people were  
5 estimated to be homeless in California in 2014, a rate that is  
6 unprecedented following a deep and prolonged economic recession,  
7 a severe shortage of safe and affordable housing, a failed veteran  
8 and civilian mental health system, and a diminished social safety  
9 net.
- 10 (b) According to the United States Department of Education,  
11 284,086 schoolchildren were known to have experienced  
12 homelessness in the 2013–14 school year.
- 13 (c) Homelessness is an independent risk factor for a number of  
14 illnesses, making people more susceptible to increased health  
15 problems due to high stress, sleep deprivation, unsanitary

1 surroundings, lack of access to hygiene facilities, and a myriad of  
2 other situational stressors experienced by people without stable  
3 housing. Subsequently, people who are chronically homeless are  
4 more medically frail and three to four times more likely to die  
5 prematurely than their housed counterparts.

6 (d) Throughout California, local governments have enacted  
7 ordinances that make it illegal to rest or receive nourishment in  
8 public spaces.

9 (e) Ending homelessness in California will require significant  
10 state and federal resources and there is ample evidence that policies  
11 that invest in ending homelessness, rather than criminalizing and  
12 marginalizing people who are experiencing homelessness,  
13 adequately balance the needs of all parties: community residents,  
14 government agencies, businesses, and men and women who are  
15 experiencing homelessness.

16 (f) Passing this act will not reduce homelessness, but neither  
17 will local ordinances that criminalize homelessness. Instead,  
18 ordinances that criminalize homelessness result in increased  
19 incarceration rates and financial indebtedness of people who simply  
20 have no means of support and prolong homelessness by making  
21 it more difficult for people to secure housing, employment, and  
22 medical care. Criminalization policies further marginalize men  
23 and women who are experiencing homelessness, fuel inflammatory  
24 attitudes, and may even unduly restrict constitutionally protected  
25 liberties.

26 (g) That is why, on September 18, 2015, the United States  
27 Department of Housing and Urban Development included in the  
28 annual Notice of Funding Availability for the Continuum of Care  
29 funding competition, provisions that would award additional points  
30 to any application that could include steps the community is taking  
31 to reduce criminalization of homelessness.

32 (h) It is also why, on August 6, 2015, the United States  
33 Department of Justice submitted a rare statement of interest in a  
34 United States District Court in opposition to the criminalization  
35 of people who are homeless, calling it cruel and unusual  
36 punishment to punish someone for a crime with the potential for  
37 imprisonment and a violation of constitutional rights.

38 (i) While these ordinances apply to all residents, they  
39 disproportionately impact people without homes, who have no  
40 private place to rest or seek nourishment, and are often selectively

1 applied by law enforcement to people based upon their appearance  
2 or an assumption of homelessness.

3 (j) In practice, these ordinances deprive persons experiencing  
4 homelessness and those who may be perceived as homeless of a  
5 safe and legal place to rest and seek nourishment, which adversely  
6 impacts their health and well-being.

7 (k) Sleep deprivation impairs cognitive processes and puts one  
8 at risk for obesity, heart disease, heart attack, heart failure, irregular  
9 heartbeat, high blood pressure, stroke, diabetes, and depression.  
10 People who are homeless suffer from sleep deprivation and, absent  
11 a place to rest, they suffer it more frequently.

12 (l) Because current practices have denied the right to adequate  
13 legal representation to people cited or arrested while resting or  
14 sharing food, homeless persons are often denied relief or damages  
15 through the courts.

16 (m) Both the federal government, through its Interagency  
17 Council on Homelessness, and the United Nations have recognized  
18 that discrimination and criminalization violate a homeless person's  
19 human rights and have called upon state and local governments to  
20 cease enactment and enforcement of those laws.

21 (n) Homelessness and the increasing criminalization of  
22 homelessness and discrimination against those experiencing  
23 homelessness are widespread throughout California and are matters  
24 of statewide concern.

25 (o) Section 1 of Article I of the California Constitution provides  
26 that "[a]ll people are by nature free and independent and have  
27 inalienable rights. Among these are enjoying and defending life  
28 and liberty, acquiring, possessing, and protecting property, and  
29 pursuing and obtaining safety, happiness, and privacy," without  
30 qualification as to whether or not a person is, or appears to be,  
31 homeless.

32 (p) Subdivision (a) of Section 7 of Article I of the California  
33 Constitution provides that "[a] person may not be deprived of life,  
34 liberty, or property without due process of law or denied equal  
35 protection of the laws ... ."

36 (q) Concordant with this fundamental belief, a person should  
37 not be subject to discrimination based on his or her income, housing  
38 status, or ability or desire to appear housed. Therefore, it is the  
39 intent of the Legislature in enacting this legislation to protect the  
40 rights of all Californians, regardless of their housing status, and

1 ameliorate the adverse effects caused by the criminalization of  
2 homelessness on our communities and our citizens.

3 (r) Decriminalization of rest allows municipal governments to  
4 redirect resources from local enforcement activities to activities  
5 that address the root causes of homelessness and poverty.

6 SEC. 2. Part 2.2 (commencing with Section 53.8) is added to  
7 Division 1 of the Civil Code, to read:

8  
9 PART 2.2. HOMELESS PERSONS

10  
11 53.8. For purposes of this part, the following definitions shall  
12 apply:

13 (a) “Homeless persons,” “homeless people,” or “persons  
14 experiencing homelessness” means those individuals or members  
15 of families who lack a fixed, regular, and adequate nighttime  
16 residence, including people defined as homeless using the criteria  
17 established in the Homeless Emergency Assistance and Rapid  
18 Transition to Housing (HEARTH) Act of 2009.

19 (b) “Motor vehicle” means a motor vehicle as defined in Section  
20 415 of the Vehicle Code.

21 (c) “Public space” means any property that is owned by a  
22 government entity or any property upon which there is an easement  
23 for public use and that is held open to the public, including, but  
24 not limited to, plazas, courtyards, parking lots, sidewalks, public  
25 transportation facilities and services, public buildings, shopping  
26 centers, and parks.

27 (d) “Recreational vehicle” means a recreational vehicle as  
28 defined in Section 18010 of the Health and Safety Code.

29 (e) “Rest” means the state of not moving, holding certain  
30 postures that include, but are not limited to, sitting, standing,  
31 leaning, kneeling, squatting, sleeping, or lying.

32 53.81. (a) Persons experiencing homelessness shall be  
33 permitted to use public space in the ways described in this section  
34 at any time that the public space is open to the public without  
35 discrimination based upon their housing status, and without being  
36 subject to criminal, civil, or administrative penalties. Permitted  
37 use of the public space include, but are not limited to, all of the  
38 following:

39 (1) Free movement without restraint.

1 (2) Sleeping or resting, and protecting oneself from the elements  
2 while sleeping or resting in a nonobstructive manner.

3 (3) Eating, sharing, accepting, or giving food in a space in which  
4 having food is not otherwise generally prohibited.

5 (4) Praying, meditating, worshiping, or practicing religion.

6 (b) Nothing in this section shall prevent law enforcement from  
7 enforcing laws to protect the right of people to use the sidewalk,  
8 pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C.  
9 Sec. 12101 et seq.).

10 (c) Nothing in this section shall prevent law enforcement from  
11 enforcing the Penal Code, except subdivision (e) of Section 647  
12 of the Penal Code, so far as it prohibits rest.

13 53.82. (a) Any person whose rights have been violated pursuant  
14 to this part may enforce those rights in a civil action.

15 (b) The court may award appropriate injunctive and declaratory  
16 relief, restitution for loss of property or personal effects and  
17 belongings, actual damages, compensatory damages, exemplary  
18 damages, statutory damages of one thousand dollars (\$1,000) per  
19 violation, and reasonable attorney's fees and costs to a prevailing  
20 party.

21 SEC. 3. Section 11135 of the Government Code is amended  
22 to read:

23 11135. (a) No person in the State of California shall, on the  
24 basis of race, national origin, ethnic group identification, religion,  
25 age, sex, sexual orientation, color, genetic information, ~~or~~  
26 disability, *or homeless status*, be unlawfully denied full and equal  
27 access to the benefits of, or be unlawfully subjected to  
28 discrimination under, any program or activity that is conducted,  
29 operated, or administered by the state or by any state agency, is  
30 funded directly by the state, or receives any financial assistance  
31 from the state. Notwithstanding Section 11000, this section applies  
32 to the California State University.

33 (b) With respect to discrimination on the basis of disability,  
34 programs and activities subject to subdivision (a) shall meet the  
35 protections and prohibitions contained in Section 202 of the federal  
36 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),  
37 and the federal rules and regulations adopted in implementation  
38 thereof, except that if the laws of this state prescribe stronger  
39 protections and prohibitions, the programs and activities subject

1 to subdivision (a) shall be subject to the stronger protections and  
2 prohibitions.

3 (c) (1) As used in this section, “disability” means any mental  
4 or physical disability, as defined in Section 12926.

5 (2) The Legislature finds and declares that the amendments  
6 made to this act are declarative of existing law. The Legislature  
7 further finds and declares that in enacting Senate Bill 105 of the  
8 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),  
9 it was the intention of the Legislature to apply subdivision (d) to  
10 the California State University in the same manner that  
11 subdivisions (a), (b), and (c) already applied to the California State  
12 University, notwithstanding Section 11000. In clarifying that the  
13 California State University is subject to paragraph (2) of  
14 subdivision (d), it is not the intention of the Legislature to increase  
15 the cost of developing or procuring electronic and information  
16 technology. The California State University shall, however, in  
17 determining the cost of developing or procuring electronic or  
18 information technology, consider whether technology that meets  
19 the standards applicable pursuant to paragraph (2) of subdivision  
20 (d) will reduce the long-term cost incurred by the California State  
21 University in providing access or accommodations to future users  
22 of this technology who are persons with disabilities, as required  
23 by existing law, including this section, Title II of the federal  
24 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101  
25 and following), and Section 504 of the Rehabilitation Act of 1973  
26 (29 U.S.C. Sec. 794).

27 (d) (1) The Legislature finds and declares that the ability to  
28 utilize electronic or information technology is often an essential  
29 function for successful employment in the current work world.

30 (2) In order to improve accessibility of existing technology, and  
31 therefore increase the successful employment of individuals with  
32 disabilities, particularly blind and visually impaired and deaf and  
33 hard-of-hearing persons, state governmental entities, in developing,  
34 procuring, maintaining, or using electronic or information  
35 technology, either indirectly or through the use of state funds by  
36 other entities, shall comply with the accessibility requirements of  
37 Section 508 of the federal Rehabilitation Act of 1973, as amended  
38 (29 U.S.C. Sec. 794d), and regulations implementing that act as  
39 set forth in Part 1194 of Title 36 of the Federal Code of  
40 Regulations.

1 (3) Any entity that contracts with a state or local entity subject  
2 to this section for the provision of electronic or information  
3 technology or for the provision of related services shall agree to  
4 respond to, and resolve any complaint regarding accessibility of  
5 its products or services that is brought to the attention of the entity.

6 (e) As used in this section, “sex” and “sexual orientation” have  
7 the same meanings as those terms are defined in subdivisions ~~(q)~~  
8 **and** (r) and (s) of Section 12926.

9 (f) As used in this section, “race, national origin, ethnic group  
10 identification, religion, age, sex, sexual orientation, color, or  
11 disability” includes a perception that a person has any of those  
12 characteristics or that the person is associated with a person who  
13 has, or is perceived to have, any of those characteristics.

14 (g) As used in this section, “genetic information” has the same  
15 definition as in paragraph (2) of subdivision (e) of Section 51 of  
16 the Civil Code.

17 (h) *As used in this section, “homeless status,” or “people*  
18 *experiencing homelessness” means those individuals or members*  
19 *of families who lack a fixed, regular, and adequate nighttime*  
20 *residence.*

21 (i) *As used in this section, “public space” means any property*  
22 *that is owned by any government entity or any property upon which*  
23 *there is an easement for public use and that is held open to the*  
24 *public, including, but not limited to, plazas, courtyards, parking*  
25 *lots, sidewalks, public transportation facilities and services, public*  
26 *buildings, shopping centers, and parks.*

27 (j) *As used in this section, “rest” means the state of not moving,*  
28 *holding certain postures that include, but are not limited to, sitting,*  
29 *standing, leaning, kneeling, squatting, sleeping, or lying. Rest also*  
30 *includes the act of protecting oneself from the elements, in a*  
31 *nonobstructive manner.*

32 (k) *The Legislature finds and declares that people with a*  
33 *homeless status lack a private space to rest, and, therefore, they*  
34 *must rest in a public space.*

35 (l) *It is the intent of the Legislature to protect the rights of all*  
36 *people, including those experiencing homelessness, in order to*  
37 *diminish the adverse effects of municipalities engaged in violating*  
38 *the fundamental right to rest.*

39 (m) *In order to ensure full and equal access to the benefits and*  
40 *protections afforded by this section against discrimination in the*

1 *administration of any program or activity conducted, operated,*  
2 *or administered by the state or any state agency funded directly*  
3 *by the state, or that receives any financial assistance from the*  
4 *state, no city, county, city and county, or municipal agency that*  
5 *receives state funds shall enact or enforce a law that bans resting*  
6 *in a public space, as defined in Part 2.2 (commencing with Section*  
7 *53.8) of Division 1 of the Civil Code.*

8 SEC. 4. Section 11139.2 is added to the Government Code, to  
9 read:

10 11139.2. To improve monitoring of discrimination based upon  
11 housing status and violations of Section 11135, and to ensure that  
12 people who are experiencing homelessness are not unlawfully  
13 denied full and equal access to the benefits of state-funded  
14 programs or assistance, or unlawfully subjected to discrimination,  
15 all applicants for the United States Department of Housing and  
16 Urban Development's Continuum of Care Homeless Assistance  
17 Program shall annually provide to the Department of Housing and  
18 Community Development's Division of Housing Policy  
19 Development a copy of its application for funding from the United  
20 States Department of Housing and Urban Development that  
21 includes the organization's response to the application question  
22 regarding steps that its community is taking to reduce  
23 criminalization of homelessness.

24 SEC. 5. If the Commission on State Mandates determines that  
25 this act contains costs mandated by the state, reimbursement to  
26 local agencies and school districts for those costs shall be made  
27 pursuant to Part 7 (commencing with Section 17500) of Division  
28 4 of Title 2 of the Government Code.



## City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

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FAX (925) 229-5012

DATE

The Honorable Senator Carol Liu  
California State Senate  
State Capitol, Room 5097  
Sacramento, CA 95814  
FAX: (916) 651-4925

**RE: SB 876 (Liu) Enforcement of Local Ordinances  
Notice of OPPOSITION**

Dear Senator Liu:

On behalf of the City of Martinez I regret to inform you of our opposition of Senate Bill 876 (Liu).

This measure is preempting local authority to address important issues affecting public health and safety in public spaces and on private property that is held open to the public, including not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities, public buildings, shopping centers and parks. We recognize that this measure is well intentioned; however, local agencies must continue to be able to protect the public, health, safety and welfare of their communities. Moreover, we do not believe this measure will make a positive impact in the effort to address chronic homelessness.

Removing local enforcement authority as you propose in SB 876 will do nothing to help the problem, and would actually undermine existing efforts. SB 876 contains no solutions for ending homelessness. In fact, the bill on page 3, line 16, specifically states, "Passing this Act will not reduce homelessness." Removing local authority could exacerbate the problem by removing incentives for some to take advantage of existing resources and services being offered.

The key to getting people off of the streets is to provide more shelter. We need resources: permanent housing beds and accompanying social services such as mental health treatment, job training, addiction counseling, etc. Cities and other local agencies need more funding and flexibility to provide these proven programs.

In terms of what our City is doing: Martinez Police Department (MPD) tries to staff an officer to conduct outreach with the homeless, or use beat officers, to do the same. They try to develop relationships with people and offer them services through our contract with Homeless Outreach Services (HOS). HOS spends several days a week in our City following up with the homeless and seeks to find them shelters as well as link them up with a caseworker for any assistance they may need. The HOS are out at night several days a week helping people get to shelters. The MPD did have an officer assigned to work on homelessness, but has suspended the program based on staffing.

Senator Carol Liu  
Date  
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Further, we recently modified our camping ordinance requiring the person be made aware of local shelters, confirm they have room in the shelter, and the person contacted must refuse the shelter before we take any further action. In the event someone needs shelter, our contact at HOS has been instrumental in finding them beds. We helped shelter over 200 people in 2015 and secured about 60 hotel rooms over the year through their services.

Unfortunately, Homeless Outreach Services may end up dissolving their program due to funding. I hope this does not happen as they have been invaluable and serve an important need in the community.

Once again, the City of Martinez regrets to inform you of our opposition to SB 876.

Sincerely,

Rob Schroder,  
Mayor  
City of Martinez

cc: Lois Wolk, Senate Third District, fax: (916) 651-4003  
Susan A. Bonilla, Assemblywoman, State Assembly, Democratic Caucus,  
fax: (925) 602-1536  
Alison Dinmore, Consultant, Senate Committee on Transportation and Housing,  
fax: (916) 445-2209  
Doug Yoakam, Housing Consultant, Senate Republican Caucus, fax: (916) 445-2209  
Sam Caygill, Regional Public Affairs Manager, [scaygill@cacities.org](mailto:scaygill@cacities.org)  
Meg Desmond, League of California Cities, [mdesmond@cacities.org](mailto:mdesmond@cacities.org)



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February 4, 2016

The Honorable Senator Carol Liu  
California State Senate  
State Capitol, Room 5097  
Sacramento, CA 95814

**RE: SB 876 (Liu) Homelessness  
Notice of Opposition**

Dear Senator Liu:

The League of California Cities regrets to inform you of our opposition to your SB 876. As we conveyed to your staff at our recent meeting, we view this measure as preempting local authority to address important issues affecting public health and safety in public spaces and on private property that is held open to the public, including not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities, public buildings, shopping centers and parks. We recognize that this measure is well intentioned; however, local agencies must continue to be able to protect the public, health, safety and welfare of their communities. Moreover, we do not believe this measure will make a positive impact in the effort to address chronic homelessness.

Homelessness is a pervasive problem affecting many communities across our state. As a result, many local governments, non-profits and social service providers are trying various creative solutions to get people housed and into the treatment programs they need to permanently get off of the streets. Last fall, the League formed a statewide working group of city officials and staff who are tackling the problem to share best practices and receive input on what is needed to make additional progress with strategies that best serve local needs. The consensus was clear: legislation that seeks to combat homelessness should focus on solutions and provide resources that help get people off of the streets and into shelter and housing.

The key to getting people off of the streets is to provide more shelter, permanent housing beds and accompanying social services such as mental health treatment, job training, addiction counseling, etc. Cities and other local agencies need more funding and flexibility to provide these proven programs. Additionally, these services should be provided as a coordinated effort. We have heard from members of our working group that many cities have formed special task forces on homelessness that combine city, county, law enforcement, social service providers and non-profits all working together to come up with creative ways they can partner and address the homeless problem.

In our discussions with local officials who are working on a daily basis on these issues, the consensus was clear. Removing local enforcement authority as you propose in SB 876 will do

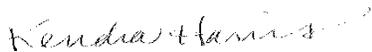
nothing to help the problem, and would actually undermine existing efforts. SB 876 contains no solutions for ending homelessness. In fact, the bill on page 3, line 16, specifically states, “Passing this Act will not reduce homelessness.” Removing local authority could exacerbate the problem by removing incentives for some to take advantage of existing resources and services being offered. For example, some local jurisdictions host legal clinics where homeless clinic participants can have citations and related fines removed from their records in exchange for community service and for taking advantage of housing and other services.

While we oppose this measure’s approach, the League is committed to supporting efforts across the state and in our communities that address the homeless issue in a constructive manner. In that vein, we are encouraged by Senator de León’s recent “No Place Like Home” proposal that will provide much needed funding for housing for the mentally ill homeless, and augmentations to existing shelter resources. We look forward to supporting such efforts to develop resources to provide affordable housing and services to actually serve our chronically homeless and help them get off of the streets.

The League is genuinely interested in finding workable solutions to this growing problem. We appreciate the meeting we had with your staff where we expressed our concerns, and we look forward to continued discussions.

If you have any questions or if I can be of any assistance, please call me at (916) 658-8250.

Sincerely,



Kendra Harris  
Legislative Representative

Cc: Chair and Members, Senate Committee on Transportation and Housing  
Alison Dinmore, Consultant, Senate Committee on Transportation and Housing  
Doug Yoakam, Housing Consultant, Senate Republican Caucus