

Case No. G044138

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE**

SIERRA CLUB,

Petitioner

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE,

Respondent.

COUNTY OF ORANGE,

Real Party in Interest.

MOTION REQUESTING JUDICIAL NOTICE

From the Superior Court of the State of California,
County of Orange, Case No. 30-2009-00121878

The Honorable James J. di Cesare, Judge
Department C-18

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CALIFORNIA STATE ASSOCIATION OF
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MOTION


The League of California Cities ("League") and the California State Association of Counties ("CSAC") (collectively "*Amici*") hereby move and request, pursuant to California Rules of Court 8.200, 8.252 and Evidence Code Sections 452(c) and 459, that the Court take judicial notice of the following document:

1. California Assembly Bill No. 1293 (1997-1998 Reg. Sess.) as enrolled Sept. 11, 1997. A true and correct copy of this document is attached to the Declaration of Shawn Hagerty as Exhibit 1.

This motion is also based upon the accompanying Memorandum of Points and Authorities.

Dated: January 13, 2011

BEST BEST & KRIEGER LLP

By: 

SHAWN HAGERTY
Attorney for *Amici Curiae*
League of California Cities and
California State Association of
Counties

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The League of California Cities (“League”) and the California State Association of Counties (“CSAC”) (collectively “*Amici*”) request the Court to take judicial notice of the following legislative document: California Assembly Bill No. 1293 (1997-1998 Reg. Sess.) as enrolled Sept. 11, 1997. Pursuant Evidence Code section 459, the reviewing court has authority to take judicial notice of matters specified in Evidence Code section 452. Evidence Code section 452, subdivision (c), permits this Court to take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code, § 452, subd. (c).)

II. EVIDENCE CODE SECTION 452, SUBDIVISION (c) AUTHORIZES THE COURT TO TAKE JUDICIAL NOTICE OF THE MATERIALS PRESENTED IN THIS MOTION

Under Evidence Code 452, subdivision (c), a court may take judicial notice the legislative history of a statute and vetoed legislation. (See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26 (2005) [discussing judicial notice of legislative history and different versions of a bill]; *City of Richmond v. Comm'n on State Mandates*, 64 Cal. App. 4th 1190, 1199 (1998) [referring to various versions of a bill, including previously vetoed legislation].)

At issue in the present matter is the appropriate interpretation of Government Code section 6254.9 as it applies to computer mapping systems. Other previously vetoed acts of the Legislature may contribute to the Court's interpretation of a statute. (*City of Richmond v. Comm'n on State Mandates*, 64 Cal. App. 4th 1190, 1199 (1998) [referring to various versions of a bill, including previously vetoed legislation].) Here, AB 1293 provided an alternative approach to the policy reflected in Section 6254.9. While the Governor vetoed AB 1293, it is instructive in providing the Legislature's understanding of Section 6254.9. Because it is relevant to the Court's interpretation, the Court may properly take judicial notice of AB 1293 pursuant to Evidence Code section 452, subdivision (c).

III. CONCLUSION

For all the reasons set forth above, the *Amici* respectfully request that the Court grant its Motion and take judicial notice of California Assembly Bill No. 1293 (1997-1998 Reg. Sess.) as enrolled, Sept. 11, 1997.

Dated: January 13, 2011

BEST BEST & KRIEGER LLP

By: 

SHAWN HAGERTY
Attorney for *Amici Curiae*
League of California Cities and
California State Association of
Counties

DECLARATION OF SHAWN HAGERTY

1. I, Shawn Hagerty, am licensed to practice in the state of California and am a Partner with the law firm Best Best & Krieger. I am the brief writer for the League of California Cities ("League") and the California State Association of Counties ("CSAC") (collectively "*Amici*").

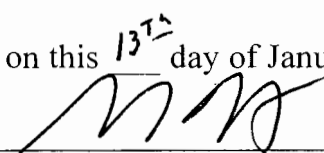
2. The Court may and should take judicial notice of the document described in Paragraphs 3 of this Declaration.

3. California Assembly Bill No. 1293 (1997-1998 Reg. Sess.) as enrolled Sept. 11, 1997. A true and correct copy of this documents is attached to the Declaration of Shawn Haggerty as Exhibit 1.

I declare under penalty of perjury that all the foregoing is true and correct.

Executed at San Diego, California, on this 13th day of January, 2011.

Dated: 1/13/11 _____



Shawn Hagerty
Attorney for *Amici Curiae*
League of California Cities and
California State Association of
Counties

[PROPOSED] ORDER

The Court of Appeal, Fourth Appellate District, Division Three,
hereby takes judicial notice of the transcript of California Assembly Bill
No. 1293 (1997-1998 Reg. Sess.) as enrolled Sept. 11, 1997, as submitted
by the League of California Cities (“League”) and the California State
Association of Counties (“CSAC”) (collectively “*Amici*”) Motion and
Request for Judicial Notice, dated _____, 2011.

Presiding Justice

EXHIBIT 1

Assembly Bill No. 1293

Passed the Assembly September 11, 1997

Chief Clerk of the Assembly

Passed the Senate September 9, 1997

Secretary of the Senate

This bill was received by the Governor this ___ day
of _____, 1997, at ___ o'clock __M.

Private Secretary of the Governor

└

CHAPTER _____

An act to add Chapter 4.5 (commencing with Section 8301) to Division 1 of Title 2 of the Government Code, relating to information systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, Bowen. Geographic information systems.

Existing law requires or authorizes state and local agencies to compile, maintain, and disseminate data for various purposes, and to develop electronic information systems for those purposes.

Existing law sets forth the duties of the Resources Agency in the development and oversight of various environmental programs in the state.

This bill would enact the Strategic Geographic Information Investment Act of 1997. It would require the Resources Agency to create a Geographic Information Systems Panel, with a described membership, and with specified duties. It would require the agency, in consultation with the panel, to administer grants under the Geographic Information Grant Program for the development of new, and maintenance of, framework data bases for geographic information systems, and to maintain a registry of projects in which it participates under the program. It would establish the Geographic Information Grant Fund in the State Treasury for the purpose of funding the grant program, and provide that moneys in the fund shall be subject to appropriation in the annual Budget Act.

This bill would declare the intent of the Legislature that funding for its provisions be provided through the annual Budget Act.

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

SECTION 1. The Legislature finds and declares all of the following:



(a) Quality information is essential to maintain the health, safety, and welfare of the people of California and California's economy and environment, and it is the responsibility of state government to ensure that crucial information is available for effective operation of the public sector.

(b) The lack of quality information leads to poor decisions by public and private organizations.

(c) Crime prevention, property management, energy resources planning and service delivery, land planning, risk assessment, economic development, emergency response, pollution control, education, delivery of human and social services, transportation management, natural resources management, and environmental decisionmaking are all functions of the public and private sectors that require large amounts of high quality and available information. This information can be indexed by its geographic location, and, through the use of geographic information systems, can be retrieved rapidly and effectively.

(d) Computers and electronic data bases proliferate throughout government, and automated mapping and geographic information systems are the fastest growing areas for information technology.

(e) Data are often collected and data bases designed for isolated reasons, and seldom with consideration for the needs and requirements of those outside the sponsoring organization. California cannot afford data fragmentation. A new direction must focus on coordinated actions and better allocation of existing financial resources at all levels of government.

(f) The capture of geographic information is expensive, and public and private organizations must be encouraged to work together to create shared geographic information data bases, thus avoiding redundancy and duplication.

(g) The update and maintenance of existing geographic information system data bases is an effort that is critical to the effective use and preservation of the resources invested in geographic information systems.

(h) Geographic information is heavily relied upon and critical to agencies, public utilities, educational institutions, and private organizations, and provides the foundation for assessment and planning of services and actions.

(i) The flow of information between public organizations and the citizenry must be unfettered in order for public organizations to respond rapidly and successfully to the health, safety, and welfare concerns of the people of California.

(j) Increased electronic access to the public's information systems will enhance the delivery of public services and the availability of information.

(k) California must implement a comprehensive strategy for the development, funding, and coordinated use of geographic information to successfully serve its citizens and to compete in the new international economic system.

(l) Automated mapping and geographic information systems offer great value to the public.

(m) Because of the high cost of creating and maintaining geographic information data bases, many public agencies are seeking greater authority to sell the data. Public agency policies for pricing the data range from covering the cost of data duplication, to recouping the costs from compilation and maintenance of the data bases. These policies impede and discourage the sharing of data among public agencies with overlapping geographic jurisdictions and interests. They also threaten to thwart the public's right to open and unfettered access to the government's decisionmaking information.

(n) It is the intent of the Legislature in enacting this act to redress these problems and take better advantage of opportunities described in this act. It is the further intent of the Legislature to provide an alternative source of funds for public agencies to create and maintain geographic information data bases without having to sell the public data. Finally, it is the intent of the Legislature that the Resources Agency coordinate open exchange of geographic information among public agencies by



establishing compatible standards for framework information and serving as a clearinghouse for access to data.

SEC. 2. Chapter 4.5 (commencing with Section 8301) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 4.5. STRATEGIC GEOGRAPHIC INFORMATION
INVESTMENT ACT OF 1997

8301. This chapter shall be known and may be cited as the Strategic Geographic Information Investment Act of 1997.

8302. For the purposes of this chapter, the following definitions shall apply:

(a) "Agency" means the Resources Agency.

(b) "Data base" means records or groups of records, stored electronically, that can be retrieved by a computer.

(c) "Framework data base" means any categories of geographic information and their attributes that provide a foundation for collection and analysis of other data. A characteristic of framework data is that it serves multipurpose and multiple users with the same data.

(d) "Geographic information" means any physical, legal, economic, environmental, biological, or human information related by some indicator of geographic location. Geographic information includes, but is not limited to, information relating to topography, soil, geology, vegetation, land cover, land use, land use controls and restrictions, wildlife, land ownership, jurisdictional boundaries, administrative zones, tax assessment, land value, geodetic control, aerial photography, planimetric data, satellite imagery, historic and prehistoric sites, and economic projections.

(e) "Geographic information records" means maps, documents, computer files, data bases, and other information storage media in which geographic information is recorded.

(f) "Geographic information system" means an organized collection of computer hardware, software, geographic information, and personnel designed to efficiently capture, store, update, manipulate, analyze, and display all forms of geographically referenced information.

8303. (a) The Resources Agency shall implement this chapter.

(b) The agency shall create a Geographic Information Systems Panel consisting of members, each with one vote, who shall advise the agency on policies to carry out this chapter and make recommendations on the awarding of grants. The panel shall include, in its membership, a representative of a regional planning agency, a county employee active in the management of geographic information systems, a municipal employee active in the management of geographic information systems, a representative of professional surveyors, a representative of professional engineers, representatives of elementary and higher education, representatives from state and federal agencies active in the management of geographic information systems, and other groups that the agency believes will help foster its goals and objectives.

(c) Each member of the panel shall represent the state at large and not any particular geographic region or special interest thereof.

(d) The terms of office of the appointed members of the panel shall be for four years, except that the members first appointed to the panel shall classify themselves by lot so that the term of two or three members, as the case may be, shall expire at the end of each of the four years following the initial appointments to the panel.

(e) Any vacancy shall be filled by the Secretary of the Resources Agency within 30 days of the date on which a vacancy for the unexpired portion of the term occurs or for any new term of office. If the Secretary of the Resources Agency fails to make an appointment for any vacancy within that period, the panel may, by a majority vote of all members, make the appointment to fill the vacancy for the unexpired portion of the term.

(f) Every two years, the panel shall elect a chairperson and a vice chairperson from the membership of the panel. The term of office for the chairperson and vice chairperson shall be two years. If a vacancy occurs in either office, the panel shall fill the vacancy for the unexpired term.

(g) Members shall be entitled to reimbursement of travel expenses and per diem pursuant to rules set forth by the Department of Personnel Administration.

(h) A majority of the voting members of the panel shall constitute a quorum for the transaction of business of the panel. A majority vote of the voting members present shall be required to take action with respect to any matter unless otherwise specified in this chapter. The vote of each member shall be individually recorded.

(i) The panel shall adopt its own rules and procedures necessary for its organization and operation. Any rule, procedure, plan, or other record of the panel that constitutes a public record pursuant to subdivision (d) of Section 6252 shall be available for inspection and copying during regular office hours.

(j) The agency, on behalf of the panel, may apply for and accept federal grants or other federal funds and receive gifts, donations, rents, royalties, state funds derived from bond sales, the proceeds of taxes or funds from other state revenue sources or any other financial support available from public or private sources.

(k) The agency, on behalf of the panel, may expend no more than 10 percent of the moneys in the grant fund appropriated annually by the Legislature for the operations of the panel.

8304. The panel shall perform the following functions:

(a) Direct and supervise the geographic information grant program for the state.

(b) Collect, maintain, and disseminate information regarding the availability and development of geographic information and geographic information products and serve as the state clearinghouse for access to geographic information.

(c) Administer and monitor the Geographic Information Grant Program established pursuant to Section 8306. The panel shall set eligibility requirements, competitive selection criteria, and performance monitoring criteria for grants.

(d) Define framework geographic data bases and the minimum level of attribution for the framework data bases that are eligible for grants from the geographic information grant program.

(e) Ensure and certify that data developed and maintained through the grant program conform to framework standards and integrates with other framework data. The panel shall ensure that a consistent set of standards applies to all framework data bases developed and maintained through the grant program.

8305. (a) There is in the State Treasury the Geographic Information Grant Fund. All moneys appropriated or transferred by the Legislature to, or received from any other source by, the agency or the panel for purposes of subdivision (b), shall be deposited in the fund.

(b) Moneys in the fund shall be used for fostering programs and activities to create and improve geographic information, including, but not limited to, the Geographic Information Grant Program and the activities of the panel.

(c) Moneys in the fund shall be subject to appropriation in the annual Budget Act.

8306. (a) The agency shall establish the Geographic Information Grant Program, to administer, in consultation with the panel, grants from the Geographic Information Grant Fund as follows:

(1) Development of new, and maintenance of, framework data bases for geographic information systems shall be the only purposes for which grants may be made.

(2) The panel shall give preference to grant applications that do not duplicate existing framework data bases.

(3) The grant program shall be open to all public agencies and private organizations located in California.



(4) Grants shall be made to partnerships, to include at least one public agency. The partnership shall demonstrate in its application that each partner shares responsibility for development and maintenance of the geographic information and that each partner uses and participates materially in the geographic information developed or maintained.

(5) The maximum dollar amount for a grant shall be determined annually by the panel.

(6) The panel may require all grants to have a matching requirement. The panel shall develop criteria for determining the levels of a matching requirement for any application. The panel may permit a matching requirement be met through the provision of goods and services by an applicant.

(7) The panel shall require that any recipient of a grant make data developed or maintained with grant funds available to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7) and require that the electronic data shall be placed in the public domain free of any restriction on use or copy.

(b) In administering the grant program, the panel shall promote, facilitate, and coordinate liaison among municipal, county, regional, state, and federal agencies as well as utilities and private companies involved with the creation and maintenance of geographic information.

(c) Notwithstanding Section 7550.5, the agency shall report annually to the Legislature on the status of the grant program, the success of the program in achieving the development of framework data bases, and the status and success of each grant.

8307. The agency shall create a geographic information systems registry listing all geographic information systems projects in which the agency participates pursuant to this chapter.

8308. (a) It is the intent of the Legislature that the funding for this chapter be provided through the annual Budget Act.

(b) State funding provided pursuant to this chapter shall only be used to fund projects in which a state agency is a participating partner, as described in paragraph (4) of subdivision (a) of Section 8306.



Approved _____, 1997

Governor



PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 655 West Broadway, Suite 1500, San Diego, CA 92101.

On Jan 13, 2011, I served the foregoing document described as: **APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND [PROPOSED] BRIEF OF *AMICI CURIAE* LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF REAL PARTY IN INTEREST COUNTY OF ORANGE'S RETURN TO PETITION FOR WRIT OF MANDATE; MOTION REQUESTING JUDICIAL NOTICE** on each interested party, as follows:

SEE ATTACHED SERVICE LIST


By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Executed on January 13, 2011, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Cindy Cekander

SERVICE LIST

**Sierra Club v. Superior Court of the State of California, County of
Orange, Court of Appeal Case Number G044138**

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