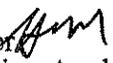


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 11, 2010
TO: Honorable Members Information Technology & Government Affairs Committee
FROM: Gerry F. Miller 
Chief Legislative Analyst Council File No: 10-0002-S36
Assignment No: 10-04-0432
SUBJECT: Resolution (Reyes-Hahn-Garcetti, et. al.) opposing Arizona SB 1070

CLA RECOMMENDATION: That the City Council, with the concurrence of the Mayor, Adopt the attached Revised Resolution which provides that the City include in its 2009-10 Federal Legislative Program OPPOSITION to federal funds that support the implementation of Arizona SB 1070 and HB 2162, which promote racial profiling, discrimination and harassment; and

That the City Council:

- 1) Suspend all City travel to the State of Arizona to conduct City business unless special circumstances can be demonstrated to the Council that the failure to authorize such travel would seriously harm City interests, with this ban lifted upon the repeal of SB 1070 and HB 2162 in the State of Arizona;
- 2) Direct all City Departments, to the extent practicable, and in instances where there is no significant additional cost to the City nor conflict with the law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona;
- 3) Instruct the City Administrative Officer to review the terms of all contracts with Arizona-based companies and report to Council in two weeks on which of those contracts can be legally terminated immediately;
- 4) Request the City Attorney to prepare and present an ordinance to accomplish the following purpose:

The City of Los Angeles in exercising its power to make economic decisions as a participant in the market shall restrict, to the extent permissible and consistent with the City's interests, its contracting relative to goods and services to persons or entities which are not based in the State of Arizona, subject to review by the City Attorney and City Administrative Officer; and
- 5) Instruct the CLA to continue to monitor the status of SB 1070 and HB 2162 any court actions and report to Council in 60 days.

SUMMARY

Resolution (Reyes-Hahn-Garcetti-Cardenas-Huizar-Perry-Alarcón), introduced on April 27, 2010, states that the City of Los Angeles has historically supported policies that prohibit discrimination based on race, ethnicity, national origin, religion, sexual orientation, and disability. It notes that in 1992, Colorado voters passed a statewide initiative known as Amendment 2 to repeal local ordinances that prohibited discrimination based on sexual orientation, thereby allowing overt discrimination against the LGBT community. Similarly, on April 23, 2010, Arizona Governor Jan Brewer signed Senate Bill 1070 (Support Our Law Enforcement and Safe Neighborhoods Act), requiring all local law enforcement to investigate a person's immigration status when there is a reasonable suspicion that the person is in the Country unlawfully, regardless of whether the person is suspected of a crime. The Resolution states that SB 1070 permits the arrest of a person, without a warrant, if there is suspicion that the person has committed a public offense and does not prohibit law enforcement officers from relying on race, ethnicity, national origin or language, to determine who to investigate. The Resolution further states that SB 1070 encourages racial profiling and violates Fourteenth Amendment guarantees of due process and equal protection for U.S. citizens,

legal residents and visitors who are detained for suspicion of being in the Country unlawfully. The Resolution proposes that federal funds not be used to support immigration programs that promote racial profiling and discrimination based on race, ethnicity, national origin or any other form of discrimination. The Resolution therefore recommends that the City: 1) Refrain from conducting business with the state of Arizona including participating in any conventions or other business that requires City resources, unless SB 1070 is repealed; and 2) Include in its 2009-10 Federal Legislative Program, opposition to any budgetary action or legislation, including immigration policy, that promotes racial profiling or discrimination based on race, ethnicity or national origin.

BACKGROUND

On April 23, 2010, Arizona Governor Jan Brewer signed Senate Bill 1070 (Support Our Law Enforcement and Safe Neighborhoods Act) which is intended to “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” Among other provisions, SB 1070:

- 1) Requires local law enforcement to investigate the immigration status of persons who are suspected of being in the U.S. without proper documentation;
- 2) Permits the arrest of persons suspected of committing any offense that makes the person removable from the United States, without a warrant;
- 3) Provides individuals the ability to sue a law enforcement agency that fails to enforce immigration laws;
- 4) Prohibits stopping a motor vehicle to pick up passengers for work, soliciting work or entering a motor vehicle to be hired by undocumented immigrants; and,
- 5) Allows local law enforcement officers to consider race, color or national origin as a factor in determining whether a person is undocumented.

Subsequent to the passage of SB 1070, on April 30, 2010, Arizona enacted HB 2162 which eliminated the consideration of race, color or national origin as determinants of undocumented status (See No. 5 above). For further bill analysis see attached Legislative Analysis Section I.

Arizona law provides a 90-day period for opponents to contest a newly signed law. Arizona local municipalities, as well as civil rights organizations, have announced a legal challenge against SB 1070 on the basis that it preempts federal law and violates civil and human rights of workers, youth, women and children, by promoting racial profiling since the bill relies on suspicion, as opposed to facts, as the method of determining a person’s immigration status. SB 1070 would not be in effect until July 23, 2010.

Contracting Options

Resolution (Reyes-Hahn-Garcetti, et. al.) recommends that the City refrain from conducting business with the state of Arizona, including participating in any conventions or other business that requires City resources, unless SB 1070 is repealed. This recommendation was extracted from the original Resolution and incorporated into this report as actions for immediate implementation.

According to data provided by the City Controller, the City has at least 15 current contracts with Arizona-based companies totaling approximately \$7.7 million, not including proprietary departments (See table below).

Current City Contracts with Arizona-Based Companies		
Reporting Agency	Amount	No. of Companies (Contracts)
Controller (All City Non-Proprietary Departments)	\$ 7.70 M	14 (35)
Harbor Department	\$25.60 M	4 (4)
Community Redevelopment Agency/LA	\$.02 M	2 (2)
Department of Water and Power*		
Los Angeles World Airport (LAWA)	.08 M	3 (3)
LAWA (Airlines)	\$22.88 M	2 (4)
TOTAL	\$ 56.28 M	25 (48)

*Data from DWP was not available at the time this report was written.

The Los Angeles World Airports (LAWA) and the Harbor Department have both expressed concerns over the potential termination of any current contract. LAWA indicates that interstate commerce is generally regulated under federal statute and the potential termination of such contracts requires further review. Three of the contracts in the Harbor Department with Arizona-based companies are part of the Clean Truck Program (CTP). The Harbor does not recommend rescinding this incentive program due to adverse effects this action would have on the environment and public health. Attachment 3 includes specific contract information by City department with Arizona-based companies, as submitted by departments.

While many government entities, sports organizations, local businesses, business organizations and civil rights organizations oppose SB 1070, not all favor a boycott. Preliminary research shows that some organizations are concerned with the economic impact to the working people of Arizona. The Arizona Hispanic Chamber of Commerce has expressed concerned with the boycott but realizes the potential impact of SB 1070. Although the Washington D.C. City Council opposes SB 1070, some councilmembers are still considering their next course of action. The cities of San Francisco and Oakland have both adopted resolutions denouncing SB 1070 and requesting city departments to refrain from entering into any new or amended contracts with Arizona-based companies.

The City has previously supported legal efforts and economic sanctions against governments and measures that promote inequitable treatment, or discrimination based on race, ethnicity, sexual orientation or any other form of discrimination such as the 1986 boycott against apartheid in South Africa, the 1992 boycott against Colorado Amendment 2 which promoted discrimination against the Lesbian Gay Bisexual and Transgender (LGBT) community, and California Proposition 187 which denied public education, non-emergency health care and public services to undocumented immigrants (See Attachment A Section III).

Federal Action

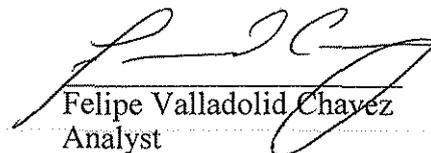
The Resolution further recommends that the City include in its 2009-10 Federal Legislative Program OPPOSITION to any budgetary action or legislation, including immigration policy, that promotes racial profiling or discrimination based on race, ethnicity or national origin. We recommend that this paragraph be amended to reflect the City's opposition to federal funds that support the implementation of SB 1070 and HB 2162, which promote racial profiling, discrimination and harassment.

Based on the City's position to support comprehensive immigration reform and the City's prior actions in similar circumstances where the City has exerted its power as participant of the market place, we recommend that the City: 1) Oppose federal funds that support the implementation of SB 1070; 2) Suspend all travel at City expense to Arizona, unless SB 1070 is repealed; 3) direct all City departments to refrain from entering into any new contracts with companies based in Arizona; and 4) instruct the CAO to review all contracts with companies based in Arizona; 5) request the City Attorney, with the assistance of the CAO, to prepare an ordinance, restricting the City's contracting to companies that are not based in Arizona; and 6) instruct the CLA to continue to monitor the status of SB 1070 and HB 2162 and any court action and report to Council in 60 days.

DEPARTMENTS NOTIFIED

City Controller
Los Angeles Police Department
Los Angeles World Airports
Los Angeles Harbor Department

City Attorney
Los Angeles Department of Water and Power
Community Redevelopment Agency/LA


Felipe Valladolid Chayez
Analyst

GFM:SMT:KEK:IS:fvc

Attachments: 1) Legislative Analysis, Legal Challenges & Previous City Actions;
2) Amended Resolution; and
3) Contract Lists by City Departments (Attachment 3)

I. LEGISLATIVE ANALYSIS

SB 1070

With the enactment of SB 1070, enforcement of immigration laws was added to Title 11, Chapter 7 of Arizona Revised Statutes. See full list of provisions:

- 1) Requires law enforcement to investigate a persons immigration status based on suspicion that the person is in the U.S. unlawfully.

SB 1070 provides no guidelines as to the impact to families, youth and children. The provisions could potentially impact k-12 students, university students, youth in parks and other recreational venues, and women and children exiting or entering medical facilities.

- 2) Requires law enforcement to arrest persons who are suspected of having committed a crime without a warrant.

Prior to SB 1070, Arizona law allowed law enforcement to arrest, without a warrant, if there was probable cause that the individual committed a felony or misdemeanor. SB1070 now provides specific authority to law enforcement officers to arrest, without a warrant, persons who are believed to be undocumented.

- 3) Provides individuals the ability to sue a law enforcement agency that fails to enforce immigration laws.

This provision could lead to abuse by extremist groups. In 2006, the City Council passed a Resolution (Garcetti-Weiss) in response to the Anti-Defamation League report "Armed Vigilantes in Arizona," which recognized the potential for abuse and called for legislation to monitor and respond to groups who advocate vigilantism (C.F. 06-0002S82).

- 4) Prohibits persons who are driving from stopping to hire, attempt to hire, or pick up other persons for work if the vehicle blocks or impedes the normal movement of traffic. Prohibits persons from entering a motor vehicle to be hired if the vehicle blocks or impedes the normal movement of traffic. Prohibits persons who are undocumented from applying for, soliciting or performing work in a public place. Soliciting is defined as verbal or nonverbal gesture or nod that would indicate that the persons is willing to be employed.

- 5) Prohibits the transport, conceal, harbor or shield of an undocumented immigrant in any place in the state.

Any person in a vehicle or a home who is suspected of being undocumented could be subject to arrest based on this provision and other provisions of SB 1070.

- 6) SB 1070 does not provide guidelines or training for making such determinations.

However, Governor Jan Brewer issued an Executive Order directing the Arizona Peace Officer Standards and Training Board (AZPOST) to develop training to implement SB 1070.

HB 2162

HB 2162, signed April 30, 2010, modified the provisions in SB 1070 by stating that law enforcement officers would not use race, color or national origin as a factor to determine immigration status. While the law now prohibits the use of race as a factor in determining immigration status, it does not preclude local law enforcement officers from relying on language, appearance, or other cultural traits as forms of identifying undocumented immigrants. The Bill also states that a police officer may only investigate immigration status upon a "lawful stop, detention, or arrest," lowers the original fine of \$500 to a maximum of \$100 and changes incarceration limits from 6 months to 20 days for first time offenders.

II. LEGAL CHALLENGE

The Cities of Tucson and Flagstaff Arizona have both filed lawsuits challenging the legality of SB 1070. The American Civil Liberties Union (ACLU), the National Immigration Law Center and Mexican American Legal Defense and Education Fund (MALDEF), in partnership have announced a legal challenge against SB 1070.

III. PREVIOUS CITY ACTION

The City has supported economic sanctions against other countries and states that promote inequitable treatment, or discrimination based on race, ethnicity, sexual orientation or any other form of discrimination such as the 1986 boycott against apartheid in South Africa and the 1992 boycott against Amendment 2 in Colorado.

Apartheid

In the case of apartheid in South Africa, in 1986, the City approved an Ordinance (No. 161466) to restrict its contracting relative to goods and services to persons or entities which do not do business in or with South Africa, thereby supporting the international economic sanctions against that country. Also, the City's retirement systems divested themselves wherever possible of stocks connected to South Africa. In 1993, the ban was lifted when the South African parliament voted for open and free elections to create a new multiracial government in that country (C.F. 93-1947).

Colorado Amendment 2

In 1992, Colorado voters approved Amendment 2 which prohibited municipalities in the state from banning discrimination based on sexual orientation. In response, the City Council (C.F. 92-2343) banned City-financed travel to Colorado and directed the City Attorney to prepare an ordinance which would impose restrictions on City contracting with persons or entities based in Colorado. In 1993, a Denver District Court Judge found Amendment 2 to be unconstitutional and issued a permanent injunction prohibiting its enforcement. Inasmuch as the State of Colorado appealed the District Court decision, the Council suspended the City boycott with the provision that it would automatically be reinstated in the event that Amendment 2 was once again allowed to become law. In 1996, the U.S. Supreme Court ruled Amendment 2 unconstitutional, and the Council thus, rescinded the ban.

Proposition 187

In 1994, the City was a named plaintiff in the LULAC v. Pete Wilson case challenging California Proposition 187 which denied public education, non-emergency health care and public services to undocumented immigrants, and required public employees, such as teachers to identify and report children and their parents who were suspected of being undocumented. Prop 187 was declared unconstitutional by the U.S. Supreme Court due to preemption of federal law.

City Position on Immigration Reform

The City's position on immigration includes support of federal legislation or administrative action that reforms our immigration system and includes the following:

- 1) Improving the economic situation of all workers in the United States;
- 2) Finding a path to citizenship for undocumented immigrants working and living in the United States;
- 3) Reforming visa programs to keep families together, protecting worker's rights, and ensuring that future immigration is regulated and controlled;
- 4) Implementing smart, effective enforcement measures targeted at the worst violators of immigration and labor laws;
- 5) Integrating immigrants into our communities and country;
- 6) Respecting the due process rights of all in the United States.

The Los Angeles Police Department has indicated that "...in the City of Los Angeles, immigration status, in itself, is not a matter for police action."

IV. Martin Luther King, Jr. Holiday

In the early 1990's, Arizona was faced with a boycott when the state refused to recognize the national Martin Luther King Jr. holiday. As a result of the boycott, Arizona lost \$350 million in revenues and the 1993 Super Bowl XXIV was moved to California.

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies to or pending before a local, state or federal government body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the City of Los Angeles has historically supported policies that prohibit discrimination based on race, ethnicity, national origin, religion, sexual orientation, and disability; and

WHEREAS, in 1992, Colorado voters passed a statewide initiative known as Amend 2 to repeal local ordinances that prohibited discrimination based on sexual orientation, thereby allowing overt discrimination against the LGBT community; and

WHEREAS, in that instance, the Los Angeles City Council resolved that City funds would not be used, actively or passively, to condone Amend 2 in Colorado; and

WHEREAS, similarly, on April 23, 2010, Arizona Governor Jan Brewer signed Senate Bill 1070 (Support Our Law Enforcement and Safe Neighborhoods Act), requiring all local law enforcement to investigate a person's immigration status when there is a reasonable suspicion that the person is in the Country unlawfully, regardless of whether that person is suspected of a crime; and

WHEREAS, SB 1070 permits the arrest of a person, without a warrant, if there is suspicion that the person has committed a public offense; and

WHEREAS, SB 1070 does not prohibit law enforcement officers from relying on race, ethnicity, national origin or language to determine who to investigate; and

WHEREAS, SB 1070 encourages racial profiling and violates Fourteenth Amendment guarantees of due process and equal protection for U.S. citizens, legal residents and visitors who are detained for suspicion of being in the Country unlawfully; and

WHEREAS, SB 1070 seriously undermines the U.S. Constitution which grants Congress the exclusive power over immigration matters; and

WHEREAS, federal funds should not be used to support immigration programs that promote racial profiling and discrimination based on race, ethnicity or national origin or any other form of discrimination, and therefore, an economic boycott, will strongly convey that the City disagrees with the provisions of SB 1070; and

WHEREAS, the City is contemplating suspending all City travel to Arizona and terminating all current and future contracts with Arizona-based companies, unless SB 1070 is repealed;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles City include in its 2009-10 Federal Legislative Program, OPPOSITION to any legislation of administrative action which will provide federal funds that support the implementation of Arizona SB 1070 and HB 2162, which promote racial profiling, discrimination and harassment.

**Harbor Department
Agreements With Arizona-based Companies**

Department Name: Harbor

Contact Person: Glenn Robison, Chief Management Analyst (310) 732-0414

Company Name	Address	Services Provided (Purpose)	Contract Term	Total Contract Amount	Comments
Knight Transportation Inc	5601 W. Buckeye Rd Phoenix, AZ 85043	Clean Truck Incentive Program	10/01/08 - 9/30/13	\$5,730,000.00	The Harbor Department does not recommend rescinding this incentive program due to the adverse effects this action would have on the environment and public health. See Footnote 1 below.
Duncan & Son Lines, Inc	23860 West US Highway 85 Buckeye, AZ 85326	Clean Truck Incentive Program	1/28/09 - 1/28/14	\$1,860,000.00	The Harbor Department does not recommend rescinding this incentive program due to the adverse effects this action would have on the environment and public health. See Footnote 1 below.
Swift Transportation Corp	2200 S 75th Ave Phoenix, AZ 85043	Clean Truck Incentive Program	12/29/08 - 12/29/10	\$18,000,000.00	The Harbor Department does not recommend rescinding this incentive program due to the adverse effects this action would have on the environment and public health. See Footnote 1 below.
West Coast Equipment, Inc.	5022 N 54th Ave Suite 10 Glendale, AZ 85301	Gutter broom cores for street sweepers and rewinding of street sweeper broom	10/1/09 - 9/30/10	\$5,000.00	Of this total contract amount, only \$173.80 has been paid to the vendor. If the Council adopts an Ordinance prohibiting the City to do business with companies located in Arizona, the Department could cancel this contract and rebid for the services provided. Fiscal Impact: Under \$500 per year

\$25,595,000.00

Footnote 1: The Clean Truck Program (CTP) is a key element of the Clean Air Action Plan. Truck-related air pollution is projected to be reduced by 80 percent by 2012, as a result of the implementation of the CTP. In order to facilitate the replacement of the Port's trucking fleet, the Harbor Department provides certain grants and financial incentives to assist participants with the cost of replacing the aging drayage trucks serving the San Pedro Bay Ports with newer diesel and alternative fuel trucks meeting 2007 U.S. Environmental Protection Agency Standards (USEPA). Under the CTP Incentive Program, the following incentives are offered to participants: (1) program participants are awarded \$20,000 for each privately financed USEPA 2007-compliant truck used at the Port; and (2) program participants are provided a yearly cash incentive payment of \$10 per dray with their USEPA 2007-compliant truck if they reached a target of 300 qualified drays per year into and out of the Port of Los Angeles.

LAWA Contracts with Arizona-based Firms (not including airlines)

PRELIMINARY

Vendor Name	Contract Description	Date	Material Grp Name	Target Value
DIVERSIFIED INSPECTIONS OF	Aerial parts, service & Regulatory	9/15/2009	Mechanical Materials	20,000.00
TASER INTERNATIONAL	Taser gun repair	3/30/2010	Professional Service	7,000.00
WEST COAST EQUIPMENT & PARTS	Reconditioned street sweeper brooms	2/18/2010	Custodial Supplies	50,000.00
			Total	77,000.00

Community Redevelopment Agency/LA

Report on Contracts and Purchase Orders Awarded to Firms in the State of Arizona

From 7/1/09 through 5/3/10

Contract#	Vendor Name	Address1	Address2	City	State	Zip	Pool	Eth	Start Date	End Date	Description	CC	Total
10-0519 0	A Bridge Between Nations	7741 E. Gray Road, Ste 9		Scottsdale	AZ	85260		MN	11/25/09	03/31/10	Williams Sound 16 Channel portable transmitter	770	\$4,888.21
10-0576 0	Seliger & Associates	6890 E. Sunset Drive	Suite 120-332	Tucson	AZ	85750	GC10	MN	03/15/10	12/31/10	EDA Grant Consulting Services	CI	\$14,400.00

Controller's Office
All Non-Proprietary City Departments

Company			Amount	
CAROLLO ENGINEERS P.C.			435.05	
CAROLLO ENGINEERS P.C.			15,000.00	
			15,435.05	
JUSTICETRAX INC			204,432.00	
JUSTICETRAX INC			5,840.00	
JUSTICETRAX INC			72,480.00	
			282,752.00	
R & R PRODUCTS	TUCSON AZ 85714		30,115.64	30,115.64
R & R PRODUCTS Total			30,115.64	30,115.64
DIVERSIFIED INSPECTIONS	PHOENIX AZ 85069		32,320.00	32,320.00
DIVERSIFIED INSPECTIONS Total			32,320.00	32,320.00
AMERICAN INDUSTRIAL SUPPLY INC	PHOENIX AZ 85038-9680		58,181.75	58,181.75
AMERICAN INDUSTRIAL SUPPLY INC Total			58,181.75	58,181.75
FLIGHT TRAILS HELICOPTERS INC	MESA AZ 85215		89,013.81	89,013.81
FLIGHT TRAILS HELICOPTERS INC Total			89,013.81	89,013.81
DURHAM COMMUNICATIONS	MESA AZ 85215-9107		68,477.52	68,477.52
DURHAM COMMUNICATIONS Total			68,477.52	68,477.52
TASER INTERNATIONAL INC	PHOENIX AZ 85038		1,214,135.57	1,214,135.57
TASER INTERNATIONAL INC Total			1,214,135.57	1,214,135.57
DETECTION INSTRUMENTS CORP	# 103	PHOENIX A	25,752.91	
DETECTION INSTRUMENTS CORP Total			25,752.91	
PROFORCE MARKETING INC	3009 N HIGHWAY 89	PRESCOTT	501,325.67	
PROFORCE MARKETING INC Total			501,325.67	
WASTE MANAGEMENT	PO BOX 78251	PHOENIX A	4,310.86	
WASTE MANAGEMENT	PO BOX 78251	PHOENIX A	6,033.28	
WASTE MANAGEMENT	BOX 78251	PHOENIX A	2,220.84	
WASTE MANAGEMENT	LONG BEACH CA 90810		608,486.27	
WASTE MANAGEMENT Total			621,051.25	
A THRU Z CONSULTING &	PO BOX 30820	TUCSON A	34,906.31	
A THRU Z CONSULTING &	8620 E OLD VAIL RD SUITE 100	TUCSON A	913,680.35	
A THRU Z CONSULTING & Total			948,586.66	
KNOWLEDGE COMPUTING CORP	TUCSON AZ 85710		2,719,820.70	
KNOWLEDGE COMPUTING CORP Total			2,719,820.70	
JUSTICETRAX INC	MESA AZ 85201-7307		294,152.00	
JUSTICETRAX INC Total			294,152.00	
DETECTION LOGIC INC	GLENDALE AZ 85307		808,923.43	
DETECTION LOGIC INC Total			808,923.43	
		Total	7,710,043.96	