

Legislative Briefing

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California Association of LAFCOs
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Mr. Detwiler has helped to write major reform bills on land use planning, LAFCOs, redevelopment, special districts, and long-term local finance after Propositions 13 and 218. He has been involved in the Legislature's debates over agricultural land conservation and growth management. Before starting with the Committee in 1982, he worked for the Governor's Office of Planning and Research (OPR) and the San Diego LAFCO.

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Assembly Bill 1263 (Caballero)
Chapter 64, Statutes of 2008
Local Agency Formation Commissions

Local agency formation commissions (LAFCOs) are the Legislature's watchdogs over cities and special districts' boundaries. The Cortese-Knox-Hertzberg Local Government Reorganization Act spells out the LAFCOs' powers and procedures. **Assembly Bill 1263** makes three changes to the state's boundary laws.

1. LAFCOs' fees. Local agency formation commissions (LAFCOs) can establish a schedule of fees to recover the costs of processing boundary changes (Government Code §56383). The schedule of fees can't exceed the estimated reasonable cost of providing the services. A LAFCO can require applicants to deposit their fees before the LAFCO's executive officer takes any further actions. The LAFCO may waive a fee if it finds that the payment would be detrimental to the public interest. Some LAFCOs say that the statute doesn't sufficiently distinguish between fees and service charges. Fees, they say, are fixed amounts based on estimated costs, while service charges recover actual costs. LAFCOs want the Legislature to clarify the statute so that they can charge both fees that are based on estimated costs and service charges that reflect their actual processing costs. **Assembly Bill 1263** allows LAFCOs to establish a schedule of service charges in addition to the schedule of fees already permitted by statute. The service charges can't exceed the cost of providing the service for which they are charged. If the LAFCO requires an applicant to deposit some or all of the required amount, AB 1263 requires the executive officer to provide the applicant with an accounting of the costs charged against the deposit. If the actual charges are less than the deposit, the executive officer must refund the balance. If the costs are more than the deposit, the applicant must pay the difference. The bill allows the LAFCOs to defer any mandatory time limits until the applicant pays the required fee, service charge, or deposit. AB 1263 allows a LAFCO to reduce a fee, service charge, or deposit if it finds that the payment would be detrimental to the public interest. [See §3 of the bill.]

2. Unincorporated islands. The Cortese-Knox-Hertzberg Act contains expedited procedures for cities to annex islands of unincorporated territory that are surrounded or substantially surrounded by the annexing city, avoiding the protest hearing and the possibility of an election. These expedited procedures don't apply to territories that became unincorporated islands after January 1, 2000 (Government Code §56375.4; AB 2838, Hertzberg, 2000). That ban prevents a city from deliberately creating new unincorporated islands so that they can use the expedited procedures to annex them. The Orange County LAFCO's staff notes that a proposal to adjust the mutual boundary between Los Angeles and Orange Counties along Los Coyotes Creek will create new unincorporated islands that should be quickly annexed to the adjacent cities. **Assembly Bill 1263** excepts unincorporated islands created after January 1, 2000 as the result of counties' boundary adjustments from the statutory ban on using the expedited procedures to annex unincorporated islands created after January 1, 2000. [§2]

3. LAFCOs' powers. The Cortese-Knox-Hertzberg Act spells out the LAFCOs' powers in a section that has 17 subdivisions (Government Code §56375). Because of successive amendments, the section has become convoluted and difficult to read. **Assembly Bill 1263** reformats the statutory language. [§1]

Assembly Bill 2484 (Caballero)
Chapter 196, Statutes of 2008
LAFCOs and Special Districts' Powers

Local agency formation commissions (LAFCOs) are the Legislature's watchdogs over cities and special districts' boundary changes which are known as "changes of organization."

Existing Law. Most special districts provide fewer services than those authorized by the state laws creating them. In the past, a special district could start delivering one of its so-called latent powers even if another local government already provided the same service in the same area. To avoid duplication, the Legislature allowed LAFCOs to gain control over districts' latent powers as a condition of adding representatives of independent special districts as LAFCO members.

After receiving a major study of LAFCOs' powers, the Legislature rewrote the procedures for control over special districts' latent powers. A special district that wants to provide a new or different service must hold a noticed public hearing before formally applying to the LAFCO. The district's application must include a five-part plan for services. The LAFCO must hold its own noticed public hearing before acting on the district's application. The LAFCO can approve, approve with conditions, or disapprove the district's latent powers application (AB 948, Kelley, 2001). When a district challenged the San Joaquin LAFCO's authority to control its latent power to provide retail electric service, the District Court of Appeal upheld the statute in April 2008.

Some LAFCOs and special districts want further statutory changes. They want LAFCOs to treat latent powers applications the same way that they handle boundary changes. They want to make sure that LAFCO doesn't approve a latent powers request if the district can't afford the new service. They want to require LAFCO approval before a district divests itself of a service.

New Law. **Assembly Bill 2484** prohibits a local agency formation commission (LAFCO) from approving a special district's application to establish new or different functions or classes of services unless LAFCO determines that the district will have sufficient revenues. If the district lacks those revenues, AB 2484 allows LAFCO to approve the district's application if it imposes a condition that requires the approval of sufficient revenue sources. If the revenue sources are not approved, the district cannot provide the new services.

The bill expands the definition of a "change of organization" to include a special district's proposal to provide new services or divest itself of existing services. The bill clarifies that only a special district's legislative body can apply to LAFCO to provide a new service or divest itself of a service. The bill expands the required contents of a district's plan for services by requiring officials to explain which services they intend to provide or stop providing.

AB 2484 clarifies that voter approval is not needed before a district provides a latent power or divests itself of an existing power, unless the district's principal act requires voter approval or there is sufficient protest to trigger an election. However, majority protest by the district's voters (or, in some cases, landowners) can stop the district from exercising a latent power or divesting itself of an existing power.

Assembly Bill 3047 (Assembly Local Government Committee)
Chapter 68, Statutes of 2008
Local Agency Formation Commissions

Assembly Bill 3047 makes nine changes to the state laws affecting local agency formation commissions (LAFCOs) and local governments' boundaries.

- 1. Time limits.** Although the Cortese-Knox-Hertzberg Act imposes various time limits for landowners, residents, and public officials to act, the statute says that, with two exceptions, these deadlines are directory rather than mandatory (Government Code §56106). The Act clearly states that two deadlines are mandatory: the time limit for calling a LAFCO hearing and the time limit for requesting that LAFCO reconsider a decision. However, the section on time limits references the former, but not the latter. To avoid confusion, LAFCOs want the statute to list both exceptions. **Assembly Bill 3047** adds a cross-reference to the mandatory deadline for requesting that LAFCO reconsider a decision to the section that describes time limits. [See §1 of the bill]
- 2. Duplicate mailed notices.** The Act requires local officials to mail notices of LAFCO hearings, including notices to landowners and registered voters (Government Code §56157). When a voter is also a landowner, the same person may receive duplicate notices. LAFCOs want to avoid costs and confusion that can result from duplicate notices. **Assembly Bill 3047** requires only one mailed notice to an individual who is both a landowner and a registered voter. [§2]
- 3. Correction.** The Act describes how independent special districts can appoint representatives to sit on LAFCOs (Government Code §56332). LAFCOs note that the statute contains a typographical error. **Assembly Bill 3047** corrects a typographical error in the provisions for appointing special district representatives to LAFCOs. [§3]
- 4. Island annexations.** The Act calls boundary changes “changes of organization” and a “reorganization” is a combination of two or more changes of organization. The Act contains expedited procedures for cities to annex islands of unincorporated territory that are surrounded or substantially surrounded by the annexing city (Government Code §56375.3). LAFCOs note that annexing county islands often involves reciprocal detachments from special districts. Because the county island procedures refer only to annexations, LAFCOs can't concurrently process expedited district detachments. **Assembly Bill 3047** applies the expedited procedures for annexing county islands to reorganizations. [§4]
- 5. Development in the Redlands doughnut hole.** Special legislation made it easier for property owners to develop within the Redlands “doughnut hole,” a 1,000-acre unincorporated area surrounded by the City of Redlands (AB 1544, Calderon, 2000). The Cortese-Knox-Hertzberg Act says that a city's sphere of influence that covers this area doesn't preclude another local agency or the Inland Valley Development Agency from providing “facilities or services related to development” to the doughnut hole (Government Code §56425.5). The statute defines “facilities and services related to development” by cross-referencing a section repealed in 2000 (former Government Code §56426, repealed by AB 2838, Hertzberg, 2000). LAFCOs want the Legislature to delete the obsolete reference. **Assembly Bill 3047** deletes an obsolete cross-reference in

the statute that allows local agencies to provide facilities and services related to development inside the Redlands doughnut hole. [§5]

6. Annexations to large cities in Los Angeles County. Every LAFCO must adopt a “sphere of influence” that designates the future service area and boundary of each city and special district in its county. A LAFCO’s decisions on boundary changes must be consistent with these spheres of influence. When residents of the unincorporated community of Altadena feared annexation by the City of Pasadena, the Legislature made the annexation of inhabited areas harder by changing the requirements for petitions, protest, and elections for cities with more than 100,000 residents in Los Angeles County. The Legislature also prohibited petitions or resolutions for inhabited annexations to cities with more than 100,000 residents in Los Angeles County, unless the petitions or resolutions were consistent with the spheres of influence (SB 603, Russell, 1985 and AB 115, Cortese, 1985). When the Legislature rewrote the LAFCO statutes, it removed the tougher petition, protest, and election requirements, but didn’t change the provisions that require consistency with spheres of influence (Government Code §56650.5 and 56758; AB 2838, Hertzberg, 2000). LAFCOs say that the prohibitions on starting inhabited annexations to cities with more than 100,000 residents in Los Angeles County are superfluous in light of the statewide requirement that LAFCOs’ decisions must be consistent with spheres of influence. **Assembly Bill 3047** repeals the sections that prohibit starting inhabited annexations to cities with more than 100,000 residents in Los Angeles County unless they’re consistent with spheres of influence. [§6 & §9]

7. Deadline for mailing notices. At least 20 days before a city or special district adopts a resolution applying for a boundary change, the Act requires local officials to mail notices to the LAFCO and other local agencies (Government Code §55554). LAFCOs say that the usual deadline for mailing notices is 21 days (see Government Code §56154, §56156, §56157). To avoid confusion, LAFCOs want to make these notice periods consistent. **Assembly Bill 3047** increases from 20 days to 21 days the time period for mailing notices to LAFCO and local agencies before a city or special district can adopt a resolution applying for a boundary change. [§7]

8. Deadline for checking petitions. When LAFCO receives a petition applying for a boundary change, the executive officer has 30 days to have the county elections officials check the signatures (Government Code §56706). LAFCOs note that county officials have 30 days, excluding Saturdays, Sundays, and holidays, to check the validity of other petitions (Elections Code §9115). To avoid confusion, LAFCOs want their deadline to match the elections officials’ deadline. **Assembly Bill 3047** excludes Saturdays, Sundays, and holidays from the 30-day time limit for LAFCO executive officers to check signatures on petitions. [§8]

9. Protests on island annexations. The Act contains expedited procedures for cities to annex islands of unincorporated territory that are surrounded or substantially surrounded by the annexing city. If a city proposes to annex a county island before January 1, 2014, LAFCO must waive the usual protest proceedings (Government Code §56375.3). The bill that extended this time limit from 2007 to 2014, neglected to extend the time limit in the parallel section that waives the protest proceedings (AB 2223, Salinas, 2006). LAFCOs want to conform the time limits in the section that waives the protest provisions (Government Code §57080). **Assembly Bill 3047** extends from January 1, 2007 to January 1, 2014, the time limit on waiving protest provisions for expedited city annexations of county islands. [§10]

**Senate Bill 301 (Romero)
Governor's Action Pending
VLF Allocations to Cities**

Existing Law. In lieu of a property tax on motor vehicles, the state collects an annual Vehicle License Fee (VLF) and allocates the revenues, minus administrative costs, to cities and counties. In 1998, the Legislature began cutting the VLF rate from 2% to 0.65% of a vehicle's value. The State General Fund backfilled the lost VLF revenues to cities and counties.

As part of the 2004-05 budget agreement, the Legislature enacted the "VLF-property tax swap," which replaced the backfill from the State General Fund with property tax revenues that otherwise would have gone to schools through the Educational Revenue Augmentation Fund (ERAF). In turn, the State General Fund backfills schools for their lost ERAF money.

The VLF-property tax swap reduced or eliminated allocations of VLF funds for newly incorporated cities and cities that annex inhabited areas. Advocates for cities asked the Legislature to reallocate a portion of existing cities' remaining VLF funds to new cities and to cities that annex inhabited areas to help make new city incorporations and city annexations financially feasible.

In response, the Legislature passed AB 1602 (Laird, 2006), which changed the allocation of Vehicle License Fee (VLF) funds to cities in three ways:

- For cities that incorporate between August 5, 2004 and July 1, 2009, AB 1602 allocated an additional \$50 per capita that is adjusted over time to reflect changes in total VLF revenues relative to changes in the total population of all cities.
- For cities that incorporate between August 5, 2004 and July 1, 2009, those cities' shares of VLF funds and revenues from specified state fuel taxes are allocated according to a formula that increases a new city's actual population by 50% in its first year after incorporation, 40% in the second year, 30% in the third year, 20% in the fourth year, and 10% in the fifth year. After five years, cities receive VLF funding and fuel tax revenues in proportion to their actual populations.
- For cities that incorporated before August 5, 2004, which annex new areas between August 5, 2004 and July 1, 2009, AB 1602 allocated an additional \$50 per capita for the population in those newly annexed areas at the time of annexation. This per capita amount is adjusted over time to reflect changes in total VLF revenues relative to changes in the total population of all cities.

Six unincorporated communities may be able to complete the city incorporation process in time to receive VLF funding before the July 1, 2009 deadline imposed by the Laird bill. At least eight other communities that initiated the city incorporation process with their counties' LAFCOs will not have enough time to incorporate before the VLF funding provisions sunset next year.

Proposed Law. **Senate Bill 301** deletes the July 1, 2009 sunset date, thereby making permanent the Vehicle License Fee (VLF) allocation formulas enacted by the 2006 Laird bill.

Senate Bill 1458
Chapter 158, Statutes of 2008
Senate Local Government Committee
County Service Area Law Revision

Summary: **Senate Bill 1458** revises the state laws governing county service areas (CSAs). Signed into law by Governor Arnold Schwarzenegger as Chapter 158 of the Statutes of 2008, the new County Service Area Law will take effect on January 1, 2009.

Problem: The statutes that govern CSAs are out-of-date. The Legislature has not comprehensively revised the County Service Area Law since it passed in 1953.

Background: The County Service Area Law (Government Code §25210.1, et seq.) governs all of the county service areas; 879 CSAs existed in 2005-06. Scores of amendments in the last 55 years have resulted in a convoluted statute that needed revisions and clarifications.

Since 1953, the voters have amended the California Constitution by passing Propositions 13, 4, 218, and 1A. Other initiatives created the Political Reform Act and changed local officials' fiscal powers. The Legislature enacted and expanded state laws on open meetings, public records, fiscal audits, special districts' boundaries, land use planning, and public finance. The current CSA Law reflects few of these reforms.

Finding similar problems with other special districts' statutes, the Senate Local Government Committee previously rewrote the principal acts that govern fire protection districts (SB 515, Bergeson, 1987), recreation and park districts (SB 707, Senate Local Government Committee, 2001), mosquito abatement and vector control districts (SB 1588, Senate Local Government Committee, 2002), public cemetery districts (SB 341, Senate Local Government Committee, 2003), and community services districts (SB 135, Kehoe, 2005).

The Senate Local Government Committee, chaired by Senator Gloria Negrete McLeod, convened an 18-member **Working Group on Revising the County Service Area Law** to review the current CSA Law and recommend revisions. Working with additional expert advisors, the Working Group met four times between September 2007 and February 2008, to examine every section in the 1953 Law and review two drafts of a proposed new CSA Law.

SB 1458 repeals the 1953 CSA Law and offers a new statute that differs from current law in dozens of ways. This summary looks at four types of changes: policy, power, procedures, oversight.

Policy. The existing CSA Law contains statements of legislative intent to guide county supervisors, property owners, and residents in the use of CSAs. **SB 1458** opens with seven revised statements of legislative findings and declarations. [See §25210.1 in SB 1458]

Powers. Responsible and effective local governments need enough (but not too much) power to carry out their statutory policies. The Working Group scrutinized the 1953 Law and recommended improvements. **SB 1458** contains these differences:

- Restructures the provisions for forming new CSAs. [§25211]

- Consolidates the scattered sections authorizing CSAs' basic powers. [§25212]
- Requires CSAs to follow standard real estate management procedures. [§25212.3]
- Allows CSAs to provide any services or facilities that counties can provide. [§25213]
- Creates an illustrative list of many of those services and facilities. [§25213]
- Avoids the archaic distinction between extended services and miscellaneous services.
- Preserves CSAs' special powers in specific counties. [§25213.1 - §25213.4]
- Clarifies how CSAs can activate their latent powers. [§25213.5 & §25210.2 (g)]
- Streamlines how counties loan money to CSAs. [§25214.4 & §25214.5]
- Explains how CSAs can raise additional operating revenues. [§25215]
- Explains how CSAs can generate capital for public works. [§25216]
- Streamlines how CSAs use internal zones to finance services [§25217]

Procedures. **SB 1458** cuts the bulk of the 1953 Law, reducing the number of code sections from 166 to 50. **SB 1458** uses a contemporary drafting format, reorganizes related topics for quicker reference, and renumbers the entire CSA Law. To improve effective administration and political accountability, **SB 1458** relies on the practice of “billboarding,” providing statutory cross-references to other existing laws that apply to CSAs as well as to other local governments:

- Lawsuits to challenge CSAs' validity, debts, and decisions. [§25210.6]
- Boundary changes under the Cortese-Knox-Hertzberg Act. [§25210.7 (e)]
- Election procedures under the Uniform District Election Law. [§25210.8]
- Using the Joint Exercise of Powers Act. [§25212 (g)]
- Record retention and destruction. [§25212.1 (d)]
- Changing a CSA's name. [§25212.1 (e)]
- Land use planning, zoning, and surplus land. [§25212.2]
- Annual appropriations limits under the Gann Initiative. [§25214.1]
- Annual allocation of property tax revenues. [§25215.1]
- Adopting special taxes with 2/3-voter approval. [§25215.2]
- Levying benefit assessments under Proposition 218. [§25215.3 & §25216.3]
- Charging property-related fees under Proposition 218. [§25215.5]
- Standby charges under the Uniform Standby Charge Procedures Act. [§25215.6]
- Issuing general obligation bonds and revenue bonds. [§25216.1 & §25216.2]

Oversight. Responsive government is accountable government. **SB 1458** promotes public accountability and responsiveness by:

- Recognizing the county supervisors as a CSA's “governing authority.” [§25210.2(a)]
- Allowing advisory elections. [§25210.8 (c)]
- Clarifying the requirements to retain and destroy records. [§25212.1 (d)]
- Authorizing advisory committees to help county supervisors. [§25212.4]
- Requiring formal budgets, audits, financial reports, and fiscal transparency. [§25214]

SB 1458 also amends or repeals 19 other code sections to conform to the new CSA Law.

Retrieving California Statutes

1. Go to the home page for the Legislative Counsel: www.leginfo.ca.gov
2. Scroll down to the button “CALIFORNIA LAW” and click
3. In the next screen, find the Code that you want to search. For example, if you want to read Government Code §65302 (the contents of general plans), check the box for “Government Code” then scroll to near the bottom of the page and click on the button “Search”
4. In the next screen, look at the section numbers highlighted in blue, and scroll down to “65300-65303.4” and click
5. In the next screen, you’ll see a series of code sections. Scroll down to “65302”



Retrieving Attorney General’s Opinions

1. Go to the home page for the California Attorney General: <http://caag.state.ca.us>
2. Scroll down to “LEGAL OPINIONS” and click on “Opinions of the Attorney General”
3. In the next screen, scroll down and click on “Search Opinions”
4. In the next screen, fill in the field. For example, if you want to see the AG’s opinions since 1986 that contain the word “LAFCO,” type “LAFCO” and click on the button “SEARCH”
5. In the next screen, following this example, there are 20 citations to choose from. For example, if you want to read Opinion 99-602, click on “99-602”
6. When Opinion No. 99-602 comes up, you can either read it on-line or print it. Because the opinion is 10 pages long, it might be easier to print the opinion.



Retrieving Administrative Regulations

1. Go to the home page for the Office of Administrative Law: <http://ccr.oal.ca.gov>
2. In the middle of the page, click on “List of CCR Titles”
3. In the next screen, scroll down the left-hand column to the Title that contains the topic you want to read. For example, for the CEQA Regulations, click on “TITLE 14. Natural Resources”
4. In the next screen, scroll down to the section you want to read.