

Senate Bill ____ (Senate Local Government Committee)
Senator Patricia Wiggins, Chair
The Local Government Omnibus Act of 2010

Summary. The Senate Local Government Committee will author the “Local Government Omnibus Act of 2010” which proposes 13 relatively minor, noncontroversial changes to the laws affecting local agencies’ powers and duties. When signed into law by Governor Arnold Schwarzenegger, the omnibus bill will take effect on January 1, 2011.

Problem. Each year local officials discover problems with the state statutes that affect counties, cities, special districts, and redevelopment agencies, as well as the laws on land use planning and development. These minor problems do not warrant separate (and expensive) bills. According to the Legislative Analyst, in 2001-02 the cost of producing a bill was \$17,890.

The Senate Local Government Committee responds by combining several of these minor topics into an annual “omnibus bill.” In 2009, for example, the Committee’s omnibus bill was SB 113 which contained 39 noncontroversial statutory changes, avoiding about \$700,000 in legislative costs (Chapter 332, Statutes of 2009). Although this practice may violate a strict interpretation of the single-subject and germaneness rules as presented in *Californians for an Open Primary v. McPherson* (2006) 38 Cal.4th 735, nevertheless it is an expeditious and relatively inexpensive way to respond to multiple requests.

Specifics. The Committee plans to author the “Local Government Omnibus Act of 2010,” which proposes 13 changes to the laws affecting local agencies’ powers and duties:

1. Land use mediation law clean-up. Judges can resolve land use and environmental lawsuits through mediation (Government Code §66030, et seq., added by SB 517, Bergeson, 1994). A judge can invite the litigants to use a mediator to resolve their case before it goes to trial (Government Code §66031 [d]). Judges can use these mediation procedures for lawsuits that affect 10 specified statutes (Government Code §66031 [a]):

- Development projects.
- California Environmental Quality Act (CEQA) decisions.
- Time limits in the Permit Streamlining Act or Subdivision Map Act.
- School districts’ developer fees.
- Developer fees.
- The adequacy of general plans or specific plans.
- Local agency formation commission (LAFCO) decisions.
- The adoption or amendments of redevelopment plans.
- Zoning decisions.
- Airport land use decisions.

Although no one keeps track, practitioners say that judges don’t use these mediation procedures very often. The Committee’s staff believes that one reason that judges may not use the law is that the authority appears only in a general statutory location and not in each of the affected laws. The Committee’s staff wants the Legislature to insert a cross-reference to the existing mediation procedures in each of the affected statutes (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** inserts the statutory cross-

reference to the existing land use and environmental dispute mediation law in each of the affected statutes. The **proposed bill** also corrects the cross-references to the existing laws that describe school districts' developer fees and the Mitigation Fee Act. The changes in the **proposed bill** are consistent with current law and do not change state policies or result in new state-mandated local programs. [See these sections of the bill:

§2	School fees
§18	LAFCO decisions
§20	General and specific plans
§21	Zoning
§22	Permit Streamlining Act
§23	Mitigation Fee Act
§24	Mediation law clean-up
§25	Subdivision Map Act
§27	Redevelopment plans
§37	California Environmental Quality Act (CEQA)
§38	Airport land use commissions.]

2. Fresno and Merced counties' boundaries. The state statutes recite the official boundary descriptions of all 58 counties (Government Code §23101-§23158). State law also allows counties to adjust their mutual boundaries (Government Code §23200, et seq.). After counties use this procedure they ask the Legislature to revise their statutory boundary descriptions to match the new realities. For example, in 2000, Kern and Los Angeles county officials used this procedure when property owners asked to transfer about 1,000 acres near the Tejon Pass from Los Angeles County to Kern County. The Legislature then corrected the counties' statutory boundary descriptions (SB 1326, Senate Local Government Committee, 2002). In 2007, Fresno and Merced county officials used the same procedures to shift 4,175 acres from Fresno County to Merced County near the City of Dos Palos. The county boundary changes took effect on January 1, 2008 and county officials want the Legislature to conform their statutory boundary descriptions (Government Code §23110 & §23124) to match the new legal reality (Karen Lange, Merced County lobbyist, 916/441-4424, peteronconsult@earthlink.net and Angelo Lamas, Merced County Executive's Office, 209/385-7595, alamas@co.merced.ca.us). The **proposed bill** amends the statutory boundary descriptions for Fresno County and Merced County to conform to the counties' current boundaries. [§3 & §4]

3. MACs & CSDs. A municipal advisory council (MAC) is an appointed or elected body that advises county supervisors on topics that affect an unincorporated community (Government Code §31010). State law prohibits public officials from holding incompatible offices, with exceptions. One exception is that state law may expressly authorize holding dual offices (Government Code §1099). In 1991, the Legislature expressly declared that service on a recreation and park district's board is not incompatible with service on a MAC (Government Code §31010.5; added by SB 767, Senate Local Government Committee, 1991). In 2001, the Legislature revised the state laws that govern park districts and restated the MAC exception in the Recreation and Park District Law (Public Resources Code §5784 [d]; added by SB 707, Senate Local Government Committee, 2001). In 2005, when the Legislature revised the state laws that govern community services districts (CSDs), it also declared that service on a CSD board was not incompatible with serving on a MAC (Government Code §61040 [d]; added by SB 135, Kehoe, 2005).

However, the Legislature failed to make the parallel change in the MAC law. To avoid misunderstandings, the Committee's staff wants the Legislature to add CSDs to the list of special districts' boards that are not incompatible with serving on a MAC (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** adds community services districts to the statute that declares that service on a municipal advisory council is not an incompatible office. [§5]

4. Gender-specific city council references. All general law cities have city councils with at least five members (Government Code §36501 [a]). Although older statutes still refer to city councilmembers as "councilmen" or "councilwomen," state law makes it clear that any member of a city council can be called a "councilmember" (Government Code §36815; amended by SB 1685, Bergeson, 1986). Nevertheless, at least 15 older sections in the Government Code and the Health & Safety Code still use the terms "councilman" and "councilmen."

- Government Code §31479.1
- Government Code §34873
- Government Code §34875
- Government Code §34900
- Government Code §34901
- Government Code §36508
- Government Code §36511
- Government Code §36515
- Government Code §36516.1
- Government Code §36516.5
- Government Code §36804
- Government Code §36811
- Government Code §65063.7
- Health & Safety Code §40225
- Health & Safety Code §40326

The Committee's staff wants the Legislature to use gender-neutral terms in the state laws that refer to city councilmembers (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** changes the statutory references to city "councilman" and "councilmen" to city "councilmember" and "councilmembers." [§§6-17, §19, §28 & §29]

5. Redevelopment audit terms. When a redevelopment agency presents its annual report, including its annual independent financial audit report, to its underlying city council or county board of supervisors, the agency must explain any "major violations" that the auditor found (Health and Safety §33080.2). In 2003, the Legislature changed this term to "major audit violation" (Health & Safety Code §33080.8 [j]; amended by SB 109, Torlakson, 2003), but neglected to change all of the other references. To avoid confusion, the Committee's staff wants the Legislature to use the correct term (Brian Weinberger, Senate Local Government Committee, 916/651-4115, brian.weinberger@sen.ca.gov). The **proposed bill** changes statutory references to "major violations" to "major audit violations" in the state laws that tell redevelopment agencies what to do with their annual reports. [§26]

6. Publishing water reservoir rules. Public agencies (counties, cities, special districts) with water reservoirs that are used for fishing or recreation must publish their watershed rules and regulations at least once in a general circulation newspaper in the county where the reservoir is located (Health & Safety Code §117065). The East Bay Municipal Utility District (EBMUD) operates seven drinking water reservoirs, five of which are used for fishing and recreation; the reservoirs are in five different counties. Publishing the full text of EBMUD's watershed rules and regulations costs approximately \$20,000 each time the District changes them, although it's not clear if public agencies must republish their rules and regulations when they're amended. Other statutory publishing requirements allow public officials to print only summaries of their ordinances when they change (See Public Utilities Code §11910 and Water Code §31027. Also see Public Utilities Code §11938 and Water Code §31027; as amended by SB 113, Senate Local Government Committee, 2008). Instead of publishing the full text of changes to its reservoir rules and regulations, the East Bay Municipal Utility District wants the Legislature to allow public agencies to publish summaries of the changes (Marlaine Dumaine, East Bay Municipal Utility District, 916/443-6948, mdumaine@ebmud.com). The **proposed bill** allows public agencies to publish summaries of the changes to their watershed rules and regulations for reservoirs. [§30]

7. County public works contracts and change orders. State law spells out the competitive bidding procedures that counties follow when they issue public works contracts (Public Contract Code §20120, et seq.). The county board of supervisors must approve changes to these contracts by a 4/5 vote (Public Contract Code §20137), however, the county supervisors can delegate this authority to the county engineer or other county officer (Public Contract Code §20142). For a contract worth more than \$250,000, the change order can't be more than \$25,000, plus 5% of the amount over \$250,000. In no event can the change order be more than \$150,000 (Public Contract Code §20142 [b]). Los Angeles County officials note that inflation has eroded the purchasing power of the \$150,000 limit since the Legislature last raised that amount (AB 683, Morrow, 1997). The equivalent of \$150,000 in 1998 dollars would be \$209,100 in 2009. They want the Legislature to increase the limit on counties' change orders (Ed Berends, Los Angeles County lobbyist, 916/441-7888, eberends@counties.org; Jim Sparks, Los Angeles County Public Works Department, 626/458-3100, jsparks@dpw.lacounty.org). The **proposed bill** raises the limit on change orders for public works contracts that county supervisors delegate to county officials from \$150,000 to \$210,000. [§31]

8. County bridge contracts and change orders. State law spells out the competitive bidding procedures that counties follow when they issue contracts to build or alter bridges and subways (Public Contract Code §20400, et seq.). The county board of supervisors must approve changes to these contracts by a 4/5 vote (Public Contract Code §20405 [c]). Los Angeles County officials note that unlike the laws governing other county public works contracts, this statute doesn't allow the county supervisors to delegate the authority to approve change orders to county officials (see Public Contract Code §20142). Taking individual change orders to the county board of supervisors is time-consuming and increases the costs of bridge projects. They want the Legislature to allow county boards of supervisors to delegate change orders for bridge and subway construction contracts, following the same thresholds as change orders for other county contracts (Ed Berends, Los Angeles County lobbyist, 916/441-7888, eberends@counties.org; Jim Sparks, Los Angeles County Public Works Department, 626/458-3100, jsparks@dpw.lacounty.org). The

proposed bill allows county boards of supervisors to delegate their authority to approve change orders on county bridge and subway construction contracts to county officers:

- For contracts of \$50,000 or less, the maximum amount is \$5,000.
- For contracts worth between \$50,000 and \$250,000, the maximum amount is \$25,000.
- For contracts worth more than \$250,000, the maximum amount is \$25,000 plus 5% of the amount over \$250,000. In no event can the change order be more than \$210,000. [§32]

9. County waterworks districts’ contracts and change orders. The County Waterworks District Law says that a county board of supervisors is the *ex officio* governing board of a county waterworks district (Water Code §55000, et seq.). State law spells out the competitive bidding procedures that county waterworks districts follow when they issue contracts to build water facilities (Public Contract Code §20600, et seq.). Los Angeles County officials note that unlike the laws governing county public works contracts, this statute doesn’t allow the county supervisors to approve changes to county waterworks districts’ contracts or to delegate the authority to approve change orders to county officials (Public Contract Code §20142). They want the Legislature to allow county boards of supervisors to delegate change orders for construction contracts, using the same thresholds as change orders for county construction contracts (Ed Berends, Los Angeles County lobbyist, 916/441-7888, eberends@counties.org; Jim Sparks, Los Angeles County Public Works Department, 626/458-3100, jsparks@dpw.lacounty.org). The **proposed bill** allows a county board of supervisors, acting as a county waterworks district’s governing board, to delegate to the district manager or other district official the authority to approve change orders on construction contracts:

- For contracts of \$50,000 or less, the maximum amount is \$5,000.
- For contracts worth between \$50,000 and \$250,000, the maximum amount is \$25,000.
- For contracts worth more than \$250,000, the maximum amount is \$25,000 plus 5% of the amount over \$250,000. In no event can the change order be more than \$210,000. [§33]

10. Redevelopment agencies’ design-build cross-reference. Redevelopment agencies can use the design-build contracting method until January 1, 2016 (Public Contract Code §20688.6; added by SB 4xx, Cogdill, 2009). In describing the public works projects to which the language applies, the statute incorrectly cites Health & Safety Code §33455 instead of §33445. The Committee’s staff wants the Legislature to correct this typographical error (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** corrects an incorrect statutory cross-reference in the state law that allows redevelopment agencies to use the design-build contracting method. [§34]

11. Los Angeles County Flood Control District’s contracts and change orders. The Los Angeles County Flood Control District Act says that the Los Angeles County Board of Supervisors is the District’s *ex officio* governing board (Water Code Appendix §28-1, et seq.). State law spells out the competitive bidding procedures that the District follows when they issue contracts to build water facilities (Public Contract Code §20990, et seq.). Los Angeles County officials note that unlike the laws governing county public works contracts, this statute doesn’t allow the county supervisors to approve changes to the District’s contracts or to delegate the authority to approve change orders to county officials (see Public Contract Code §20142). They want the Legislature to allow the Los Angeles County Board of Supervisors to delegate change orders for the District’s construction contracts, using the same thresholds as change orders for county con-

struction contracts (Ed Berends, Los Angeles County lobbyist, 916/441-7888, eberends@counties.org; Jim Sparks, Los Angeles County Public Works Department, 626/458-3100, jsparks@dpw.lacounty.org). The **proposed bill** allows the Los Angeles County Board of Supervisors to delegate to the Los Angeles County Flood Control District's chief engineer or other District officer the authority to approve change orders on construction contracts:

- For contracts of \$50,000 or less, the maximum amount is \$5,000.
- For contracts worth between \$50,000 and \$250,000, the maximum amount is \$25,000.
- For contracts worth more than \$250,000, the maximum amount is \$25,000 plus 5% of the amount over \$250,000. In no event can the change order be more than \$210,000. [§35]

12. El Dorado County Toll Tunnel Authority. In 1968, the Legislature passed the Los Angeles County Toll Tunnel Authority Act (Streets & Highways Code §31300, added by SB 555, Dills, 1968). In 1980, the Legislature repealed the Act because local officials never used it (SB 1419, Foran, 1980). Also in 1968, the Legislature passed the El Dorado County Toll Tunnel Authority Act which allows the El Dorado County Board of Supervisors to issue revenue bonds to pay for a tunnel under the Sierra Nevada from Highway 50 near Twin Bridges to Meyers (Streets & Highways Code §31100, et seq., added by SB 221, Collier, 1968). El Dorado County officials have never used their Act and a tunnel under Echo Summit now seems infeasible. The Committee's staff wants the Legislature to repeal this obsolete statute (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** repeals the El Dorado County Toll Tunnel Authority Act. [§36]

13. California Water Districts' regulations. California water districts can adopt "equitable rules and regulations" that govern the sale and distribution of water (Water Code §35423). After they publish these rules and regulations once a week for two weeks in a general circulation newspaper, they can enforce the regulations (Water Code §35424). The Irvine Ranch Water District says that it costs between \$10,000 and \$20,000 to publish its lengthy rules and regulations. Other statutory publishing requirements allow public officials to print only summaries of their ordinances when they change (See Public Utilities Code §11910 and Water Code §31027. Also see Public Utilities Code §11938 and Water Code §31027; as amended by SB 113, Senate Local Government Committee, 2008). Instead of publishing the full text of its amended water rules and regulations, the Irvine Ranch Water District wants the Legislature to allow California water districts to publish summaries (Maureen O'Haren, Irvine Ranch Water District lobbyist, 916/498-1900, maureen@isenberg-oharen.com). The **proposed bill** allows California water districts to publish summaries of the changes to their water rules and regulations. [§39]

14. Legislative declarations. The **proposed bill** expresses the Legislature's intent to cut costs by combining several noncontroversial items relating to local government into a single bill. [§1]