

Senate Local Government Committee
The Local Government Omnibus Act of 2011

Summary. The Senate Local Government Committee proposes to author the “Local Government Omnibus Act of 2011” to make 13 relatively minor, noncontroversial changes to the laws affecting local agencies’ powers and duties. When signed into law by Governor Jerry Brown, the omnibus bill will take effect on January 1, 2012.

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 2010, for example, the Committee’s omnibus bill was SB 894 which contained 24 noncontroversial statutory changes, avoiding over \$400,000 in legislative costs (Chapter 699, Statutes of 2010). 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 “Local Government Omnibus Act of 2011,” proposes 13 changes to the laws affecting local agencies’ powers and duties:

1. Delegation for unclaimed funds. Cities and counties collect money for various services, programs, and penalties. Sometimes payments are inadvertently more than the amount due, requiring local treasurers to keep track of the unclaimed funds. After three years, a local treasurer can publish a notice of the unclaimed funds and, if no one claims the money, it becomes the local agency’s property (Government Code §50050 & §50052). For amounts of less than \$15, the legislative body can transfer the money to its general fund after a year, without publishing notice (Government Code §50055). A county board of supervisors may authorize its county treasurer to act on its behalf regarding unclaimed items worth \$1,000 or less, provided that the treasurer informs the county auditor (Government Code §50057, added by SB 1165, Senate Local Government Committee, 2004). The California Association of County Treasurers and Tax Collectors requested the 2004 statute which allows county supervisors to delegate these duties to county treasurers. However, the Association now believes that the \$1,000 ceiling is too low, requiring county supervisors to act on small matters which could be reliably delegated to the county treasurers. The Association wants the Legislature to raise the ceiling (Karen Lange, lobbyist for the California Association of County Treasurers and Tax Collectors, 916/441-4424, karenlange@earthlink.net). The **proposed bill** raises the statutory ceiling on the amount of unclaimed funds that county supervisors may delegate to county treasurers from \$1,000 to \$5,000. [See §2 of the bill.]

2. Investment of public funds. Since 1913, state law has authorized local officials to invest a portion of their temporarily idle funds in a variety of financial instruments (Government Code §53601). Among those eligible investments are certificates of deposit issued by a nationally or

state-chartered bank, savings associations, credit unions, or a state-licensed branch of a foreign bank (Government Code §53601 [i]). The California Association of County Treasurers and Tax Collectors notes that changes in banking regulations have resulted in the establishment of federally chartered branches of foreign banks (“Yankee banks”), but that state law doesn’t recognize those institutions’ certificates of deposit. The Association wants the Legislature to allow local officials to invest their funds in CDs issued by federally chartered branches of foreign banks (Karen Lange, lobbyist for the California Association of County Treasurers and Tax Collectors, 916/441-1850, karenlange@earthlink.net). The **proposed bill** adds the federally chartered branches of foreign banks to the list of financial institutions whose certificates of deposit are eligible for local agencies’ investments. [§3]

3. Community services districts’ governing boards. Community services districts (CSDs) can provide a wide range of public services and facilities within their boundaries (Government Code §61000, et seq.). When the Legislature revised the CSD Law (SB 135, Kehoe, 2005), it learned that most of the 325 CSDs’ governing boards had five members, but a few districts still relied on three-member boards of directors. The revised CSD Law required all of the districts to have five-member boards and provided a transition rule for CSDs to expand their boards by adding two more directors at the next election after January 1, 2006 (Government Code §61041). Because that transition period has expired, the Committee’s staff wants the Legislature to repeal the obsolete transition language (Peter Detwiler, Senate Local Government Committee consultant, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** repeals the obsolete section of the Community Services District Law that requires the districts to expand the membership of their boards of directors. [§4]

4. Planning law cross-reference. Before a city or county planning commission holds its public hearing on the adoption or amendment of a general plan, local officials must give public notice to the affected property owners. The statute refers to specific procedural requirements (Government Code §65353). In 2006, the Legislature expanded the notice requirements for certain types of subdivisions which consequently changed the format of Government Code §65091, the section to which this public notice requirement refers (AB 2867, Torrico, 2006). Planners note that these statutory cross-references are no longer valid and they want the Legislature to correct those errors (Sande George, lobbyist for the American Planning Association-California Chapter, 916/443-5301, sgeorge@stefangeorge.com). The **proposed bill** corrects the erroneous statutory cross-references in the law that requires planning commissions to give notice of their public hearings on general plan adoptions and amendments. [§5]

5. Codify timing of zoning hearing. The Planning and Zoning Law (Government Code §65000, et seq.) spells out the procedures that cities and counties follow when adopting and amending zoning ordinances (Government Code §65800, et seq.). The local planning commission must hold a noticed public hearing (Government Code §65854) and make recommendations to the city council or county board of supervisors (Government Code §65855). After receiving the planning commission’s recommendations, the city council or county board of supervisors must hold its own noticed public hearing (Government Code §65856). Sierra County used to rely on a “streamlined zoning process” in which the county supervisors gave notice of their hearing before the planning commission made its recommendations. The court said that this compression of the statutory timelines does not comport with the Planning and Zoning Law. The

court said that the law’s silence on the timing of the public notice created an ambiguity (*Environmental Defense Project of Sierra County v. Sierra County* [2008] 158 Cal.App.4th 877). According to an attorney who advises local governments, local officials reading the statute might think that the streamlined zoning process could be acceptable unless they knew about the *Environmental Defense* decision. He wants the Legislature to clarify the timing and contents of notices for zoning hearings (Scott E. Porter, Colantuono & Levin, PC, 213/542-5708, sporter@cllaw.us). The **proposed bill** requires city councils and county boards of supervisors to wait to give notice of their zoning hearings until after their planning commissions have made their recommendations and requires the notices to mention those recommendations. [§6] The **proposed bill** states that this statutory change is declaratory of existing law, in light of the *Environmental Defense* decision. [§16]

6. Subdivision clarification. The Subdivision Map Act (Government Code §66410, et seq.) controls how counties and cities approve requests to convert large properties into marketable parcels. When a major subdivision creates five or more parcels, state law requires a two-stage process involving both a tentative map and a final map (Government Code §66426). A minor subdivision with fewer parcels needs only a parcel map, but local officials can require a tentative parcel map and a final parcel map (Government Code §66428). Counting the number of parcels determines if a proposed subdivision is a major subdivision or a minor subdivision. The Map Act excludes certain types of divisions when counting parcels. For example, land conveyed to (or from) a government agency, public entity, public utility, or land conveyed to a subsidiary of a public utility for conveyance to the public utility doesn’t count as a parcel (Government Code §66428 [a][2]). Similar, but not identical, language appears in the section relating to parcel maps. This lack of precision might result in confusion, according to an assistant city attorney who specializes in land use law. He wants the Legislature to conform the language in the parcel map section to the language in the tentative map section (Bryan W. Wenter, City of Walnut Creek, 925/943-5813, wenter@walnut-creek.org). The **proposed law** amends the exclusion of parcels for minor subdivisions to match the language that excludes parcels for major subdivisions. [§7]

7. Map Act cross-reference. The Subdivision Map Act (Government Code §66410, et seq.) controls how counties and cities convert large properties into marketable parcels. The Map Act allows Orange County and its cities to charge special subdivision fees to pay for bridges and major thoroughfares (Government Code §66484.3, added by AB 2431, Young, 1984). That language refers to another statute governing subdivision fees which the Legislature renumbered in 1986 (Government Code §53077.5 renumbered to §66007 by AB 3314, Leonard, 1986). The Committee’s staff wants the Legislature to correct this erroneous statutory cross-reference (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** corrects the erroneous statutory cross-reference in the Map Act provision relating to special subdivision fees for bridges and thoroughfares. [§8]

8. Obsolete redevelopment “blight” definition. The Community Redevelopment Law governs how local officials can use redevelopment powers to eradicate physical and economic blight (Health & Safety Code §33000, et seq.). Because the statutory “blight” definition is crucial, the Legislature defined and amended that term in 1993 and 2006 (Health & Safety Code §33030 & §33031, amended by AB 1290, Isenberg, 1993 and SB 1206, Kehoe, 2006). However, a section

adopted in 1963 still refers to blight in temporary government-owned wartime housing projects, presumably referring to World War II which ended in 1945. The Committee's staff wants the Legislature to repeal this obsolete reference (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** repeals the redevelopment law's reference to blight in wartime housing. [§9]

9. Military base redevelopment cross-reference. The earliest special legislation for closed military bases benefited Norton AFB and George AFB in San Bernardino County (Health & Safety Code §33320.5 & §33320.51, added by AB 419, Eaves, 1989). Later bills placed the military base redevelopment provisions in a separate chapter (Health and Safety Code §33492 et seq., added by SB 915, Johnston, 1993). In 1997, the Legislature moved most of the provisions for Norton AFB and George AFB to a new article within that separate chapter (Health & Safety Code §33492.40, et seq., added by SB 320, Senate Housing & Land Use Committee, 1997), but left one provision behind (Health & Safety Code §33320.51). The Committee's staff wants the Legislature to renumber this section, moving it to the article with the rest of the provisions (Peter Detwiler, Senate Local Government Committee, 916/651-4115, peter.detwiler@sen.ca.gov). The **proposed bill** renumbers and amends a cross-reference in a provision relating to the redevelopment of the Norton AFB and George AFB. [§10]

10. County highway contracts' change orders. State law spells out the procedures that local officials must follow when contracting for public works projects (Public Contract Code §20100, et seq.). For county highway projects, a board of supervisors may authorize county employees to make contract changes, provided that they don't exceed specified dollar amounts. For contracts over \$250,000, change orders can't exceed \$25,000 plus 5% of the amount over \$250,000. The amount of the change can't exceed \$150,000 (Public Contract Code §20395 [d], amended by AB 683, Morrow, 1997). Los Angeles County officials note that since 1997, inflation has eroded their purchasing power. To buy something that cost \$150,000 in 1998 (the effective date of the last statutory change) costs \$202,000 in 2010. County officials want the Legislature to raise the dollar limit on county highway contracts' change orders (Ed Berends, lobbyist for the County of Los Angeles, 916/441-7888, eberends@counties.org). The **proposed bill** raises the dollar limit on county highway contracts' change orders from \$150,000 to \$210,000. The **proposed bill** also clarifies that these change orders may include additions to the work. [§11]

11. Cities' fiscal years and state reports. State law requires counties, cities, special districts, and school districts to file various annual reports regarding their financial practices. For example, local transit operators must file annual reports regarding their operations with transportation planning agencies and the State Controller within 90 days after the end of their fiscal year (Public Utilities Code §95243). Counties and cities must annually report to the State Controller about their spending on streets and roads for the fiscal year that ended on the previous June 30 (Streets & Highways Code §2151). Although the state government follows a fiscal year that starts on July 1, state law doesn't specify a date on which a city must begin its fiscal year. Five cities use the federal fiscal year which begins on October 1: El Segundo, Huntington Beach, Inglewood Long Beach, and South Lake Tahoe. State law recognizes Huntington Beach and South Lake Tahoe's practices, allowing those cities to file their annual financial reports based on the federal fiscal year. The Committee's staff wants the Legislature to recognize the other three cities that use the federal fiscal year (Brian Weinberger, Senate Local Government Committee, 916/651-

4115, brian.weinberger@sen.ca.gov). The **proposed bill** adds the Cities of El Segundo, Inglewood, and Long Beach to the list of cities that may use the federal fiscal year when filing annual reports regarding transit and street spending with the State Controller. [§12 & §13]

12. Marin County's oblique reference. The California Constitution prohibits special legislation when a general law could apply (Article IV, §16 [b]). When legislators want a new law to apply to just one particular local agency, the current practice is to insert an uncodified section that explains the unique circumstances that justify the special legislation. The old custom-and-practice for bills that applied to just one county was to classify each of the 58 counties into a separate category, based on their population (Government Code §28020). As the most populous county, the County of Los Angeles is the county of the first class (Government Code §28022); Alpine County is a county of the fifty-eighth class because it's the least populous (Government Code §28079). Some state laws that apply to particular counties still refer to them by their class numbers, making it hard for the uninitiated to figure out which county the statute affects. For example, when the Legislature validated Marin County's property tax allocations, the bill referred to a County of the Eighteenth Class instead of clearly naming Marin (Revenue & Taxation Code §100.4, added by SB 1396, Burton, 2000). To avoid obfuscation, the Committee's staff wants the Legislature to substitute Marin County's name for its class number in the statute that validated property tax allocations (Brian Weinberger, Senate Local Government Committee, 916/651-4115, brian.weinberger@sen.ca.gov). The **proposed bill** deletes Marin County's classification number and inserts its name in the statute that validated property tax allocations. [§14]

13. Assessment area clarification. Cities use the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code §36500, et seq.) to levy benefit assessments, when approved by the affected property owners or business owners. The formation of a parking and business improvement area begins when a city council adopts a formal resolution that contains eight types of information about the proposal and a subsequent protest hearing (Streets & Highways Code §36522). An assistant city attorney notes that the statute incorrectly calls this resolution a "notice" and wants the Legislature to clarify that the resolution must describe the protest provisions (Bryan W. Wenter, City of Walnut Creek, 925/943-5813, wenter@walnut-creek.org). The **proposed bill** clarifies the wording in the statute that spells out the contents of a city's resolution initiating the formation of a parking and business improvement area. [§15]

14. Legislative intent. 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]