

REINVENTING LAFCO

Changes Made by the Cortese-Knox-Hertzberg Act

A Primer for Commissioners

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On January 1, 2001, the Cortese-Knox-Hertzberg Act became law. The Act contains Government Code Sections 56000 et. seq., the laws that empower the Local Agency Formation Commissions throughout California. The following is a overview of the changes brought by this Act. It is a primer prepared for LAFCO commissioners; its purpose is to identify major changes and spotlight issues that have arisen as they and their staff members implement this new law. This summary, with its overview characteristics, also will be particularly useful for commissioners to use as an education tool with their fellow supervisors, council members and district board members to help them understand the complex and changing role of the often misunderstood or not-understood LAFCO role.

A more detailed analysis of the law, titled *CALAFCO Workshop: Cortese-Knox-Hertzberg* is available from most LAFCO offices or it can be downloaded from the online library at *calafco.org*

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TABLE OF CONTENTS

INTRODUCTION	1
KEY CHANGES IN CORTESE-KNOX-HERTZBERG	
Legislative Intent (56001 and 56301)	9
Spheres of Influence (56425 et. seq.)	10
Service Reviews (56430)	12
Service Extension (56434)	14
Infrastructure and Housing Factors (56668 and 56668.5)	15
Special District Membership and District Latent Powers (56332.5 and 56820)	17
Written Policies and Procedures (56300(a), 56301, 56375)	18
Public Member Selection	19
PROCEDURAL CHANGES	20
OPERATIONAL INDEPENDENCE	23

INTRODUCTION

While LAFCOs have been in existence for over thirty years, it has only been the last decade that has witnessed significant legislative action concerning the roles and functions of LAFCOs. Much of this activity has been fueled by the phenomenal rate of urban growth throughout the state. This growth has created substantial burdens on local services provided by counties, cities and special districts while having an ever-increasing impact on agricultural and open space lands.

The Cortese-Knox-Hertzberg Local Government Reorganization Act (C-K-H) provides greater guidance to locally controlled LAFCOs and provides additional tools to address local growth issues. C-K-H also provided new opportunities and challenges for LAFCOs to establish a greater level of participation in local growth management issues. C-K-H offers opportunities and challenges with respect to proactive involvement, the importance of professional “cross-training,” avenues for political support and budgeting and facilities.

What is the legislative intent of C-K-H?

C-K-H establishes many new operational protocols and procedures, while retaining the general themes of LAFCOs empowerment in the growth management matrix. The Commission on Local Governance for the 21st Century (CLG21) worked diligently for over two years to tackle the single biggest issue facing California in the next decade, population growth and the resulting land use “gold rush.” The end result of this effort was the publication *Growth Within Bounds*, a detailed report that provided a baseline of growth management issues accompanied by thoughtful recommendations. It is these recommendations that resulted in the enactment of C-K-H.

Local Governance Commission Recommendations

CLG21 recognized that LAFCOs powers must be strengthened in the area of regional planning, that LAFCOs must encourage coordination of local plans within a region and that LAFCOs must enhance communication and coordination with local governments. It is clear that the Legislature understood that a great void existed in the area of regional planning and that LAFCOs could best grasp the needs of a multiple agency theater of planning. These recommendations were reinforced through several provisions of C-K-H.

Code Sections That Require Interagency Collaboration

C-K-H reinforces the traditional roles of LAFCO to protect agricultural lands and encourage the orderly development of local agency boundaries, while strengthening the often-resisted path of coordinating local government planning patterns. Section 56001 elevates the importance of regional planning when reviewing proposals by granting preference to “accommodating additional growth within, or through the expansion of, the boundaries of the local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.” This language not only establishes a standard for review of boundary changes, but it places LAFCOs in a new role of mediating local growth goals.

Amendments to Sections 56425 and 56430 support the mandate for LAFCOs to play a greater role in regional planning issues by expanding the criteria used to evaluate sphere of influence proposals and periodic updates. It is clear that the new requirement for city/county cooperation when reviewing sphere of influence updates is targeted at achieving agreements on boundaries, zoning and development standards to ensure compatible land use goals within the proposed sphere. While LAFCOs are not directly a party to these city/county agreements, it would benefit each Commission and its staff to participate in these discussions. Such collaborative efforts will allow for third party facilitation of impasses and ultimately benefit the decisions of the Commission when evaluating a new sphere of influence proposal. This effort may create additional burdens on Commission staff, but will allow LAFCOs to weave their individual sphere policies into the city/county agreement that may reduce the need for exhaustive findings or conditions when adopting the final action.

The ability for LAFCOs to look outside of their historical realm of control has been substantially augmented with additions to the factors to be considered when reviewing a proposal. What was originally Section 56841 is now the expanded Section 56668. The factors for consideration are now extended to include revenue availability, adequacy of water supplies and regional housing allocations. Most notable is the consideration in Section 56668.5 of regional growth goals and policies established by a collaboration of elected officials on a regional or subregional basis. While this section does not authorize LAFCOs to establish regional growth goals, it does allow for LAFCOs to address the issue and seek the collaboration of local officials in addressing regional land use issues. This section comes as close as the Legislature has been to placing LAFCOs in the much needed facilitation role that will allow LAFCOs to meet the statutory mandate to discourage urban sprawl and promote orderly development.

Call for Action!

Each Commission is called upon to review the mission and purpose of LAFCOs as established in C-K-H. The powerful new tools provided should be actively considered and woven into the mandated revisions of local policies and procedures. The opportunity to create a new collaborative standard for addressing regional growth issues has been spawned by the far thinking recommendations of CLG21 and delivered in the cautiously written Hertzberg law. Each LAFCO must consider its role in the growth management process, and blend this role with the resources available to facilitate much needed reform to our current processes.

HOW TO ESTABLISH A PROCESS FOR PROACTIVE INVOLVEMENT

In order for LAFCOs to seize the opportunity to fully implement the legislative intent of C-K-H as discussed above, they must actively involve themselves with the matrix of government agencies responsible for growth management activity. Without this active participation, LAFCOs remain in the reactive posture that often results in boundary and growth decisions being made in the face of great pressure from project proponents. By actively participating in project development discussions prior to local agency approval, issues related to annexations, sphere amendments, service efficiencies and interagency cooperation can be addressed early in the process thus reducing LAFCOs exposure to complaints of delaying a “previously approved” project.

It is understood that some Commissions and staff may be reluctant to step into this busy arena, citing concerns related to staff experience, available resources, complexity and number of local projects and political considerations. Each Commission staff must evaluate the effectiveness of their increased participation based on the above concerns and the nature of their historical experiences. It is also recognized that some Commissions, through agreements with their respective county, will remain in the “dependent” posture – resulting in the retention of county staff as its own. In these cases it is fundamentally imperative that the county-supplied staff clearly identify their concurrent roles and step “out of the box” when conducting Commission business.

Initial Steps of Inter-Agency Cooperation

Initially Commission staff should review their current access to, and involvement with, county, city and special district staff who are responsible for development review. Key players should be identified and contacts secured for the coordination of relevant information. The Commission staff should maintain open communication concerning regional growth issues with local planning directors, county and city administrators, special district general managers and other

independent related planning agencies, such as county association of governments and air quality management boards. LAFCOs that remain in a dependent posture as discussed above should request that their staff executive officer be considered an integral part of the county administrative team.

Constructive Participation

In order for LAFCOs to provide the greatest possible assistance to local agencies and exercise the opportunities available, the Commission staff must be diligent in reviewing plans and projects that relate to Commission policies or which will require Commission action. This can be accomplished through a variety of processes as identified below:

By receiving and responding to requests for comments from local agency planning and development departments.

These departments should be requested to include LAFCO staff in the early “scoping” process for all local agency development projects, so that issues related to annexations, sphere amendments, service efficiencies and interagency cooperation can be addressed early in the process. Such early participation can reduce duplication of efforts by responding agencies and expedite the development process for the project proponents.

Create Commission policies for the review of all significant local land use issues that involve growth issues and service provisions.

These policies can be expanded from existing sphere policies and master service element requirements. The complexity of the policies can be tailored to the needs of each commission based on its historical experiences and available resources.

Prepare a mailing list of agencies that will be targeted for project review.

Notify local agencies of the LAFCO “responsible” agency status pursuant to the California Environmental Quality Act (CEQA) for project review of draft environmental documents, draft development plans and draft general plan documents. It is fundamentally important to integrate Commission policies with environmental review responsibilities established in CEQA. Opportunities for Commission influence can be regularly initiated through the submission of clear responses to project environmental documents.

EXPANDING PROFESSIONAL DEVELOPMENT

The importance of “cross-training” and expanding professional development should not be under-valued by commissions or staff. The opportunity for enhanced exposure to related disciplines will allow staff to play a greater role in the growth management process. Staff should review other disciplines that are integral to re-invented LAFCOs, such as growth management, land use planning, environmental review, public works infrastructure and public financing. It is not essential for LAFCOs to be “experts” in any of these specific areas. Rather, it is more important to understand the relationships that exist between them. It is often the crossover area between interdisciplinary functions that are most relevant when reviewing annexations, sphere amendments, service area efficiencies and regional interagency cooperation.

The function of staff can also be assisted through establishing memberships in professional associations and allied organizations. These groups become sources of information, beneficial ongoing relationships and current case study opportunities. Attending classes, seminars, workshops and forums sponsored by a local university, community groups, or special interest groups will also allow for meaningful information gathering and public input. As discussed below, when establishing new LAFCO budgets, Commissions must make allowances for such professional development opportunities.

GAINING POLITICAL/COMMUNITY SUPPORT

As with most political bodies, LAFCOs will see their opportunities and influence largely predicated on the level of support provided by elected officials and respected community groups. The opportunity to gain the political support of this constituency should not be dismissed as it can mean the difference between being active in the game or being idle on the sidelines of important local growth issues.

Elected Officials

There are a variety of ways to accomplish the daunting task of gaining political exposure at the state and local levels. Commission staff should arrange meetings with local State Assembly and State Senate representatives to seek their views on growth management and the role of LAFCOs, and to establish support for the implementation of C-K-H. Periodic contacts with these representatives will allow them to share with you their thoughts, and prepare the ground for future requests by CALAFCO to amend and clarify C-K-H.

LAFCO staff has a head start with local council members, county supervisors and district directors as a result of our mandated structure. Staff can build on

these relationships by working with Commissioners to develop periodic discussions with local government officials. Such discussions can have a significant affect on local understanding of LAFCO requirements and efforts to develop coordinated and complementary local government decisions.

Community Groups

Community groups such as the League of Women Voters, Farm Bureau, Chamber of Commerce and local neighborhood councils should be recruited to assist the Commission and staff in developing and supporting regional growth objectives. Often these organizations have extensive grass roots connections and can provide insightful assistance in understanding the needs and concerns of the community.

The League of Women Voters often champions the causes of local government participation and can provide the opportunity to participate in community forums on subjects such as growth management, farmland preservation and responsive government programs. Farm Bureau members will have experience in dealing with special districts (water, irrigation, mosquito abatement, etc.) and can offer useful recommendations on the management and service provisions of these agencies. Chambers of Commerce generally have a diverse client base of community members who can assist in providing “real world” feedback on policy issues that can affect the availability and efficiency of governmental services, assessments and community growth. And finally, neighborhood groups remain the first line of participation when reviewing annexations and incorporations for both established neighborhoods and new developments.

The Press

The power of the press cannot be overestimated. As LAFCOs implement the provisions of C-K-H, local media coverage will attempt to provide a context of the process for their audience. Commissioners and staff should arrange meetings with local newspaper editors and television news managers to educate them about Commission goals as supported by the State Legislature and implemented through local Commission policies. Far too often, local regional bodies such as LAFCOs can be viewed as overstepping their boundaries or being intrusive in the decisions of local communities. It is also true that most decisions are based on the mandates created in state law and cannot be summarily dismissed when locally unpopular. The greater the level of understanding of local media representatives, the greater the opportunity for effective implementation of LAFCO goals and policies.

BUDGETING, FACILITIES AND STAFFING

Perhaps the most important challenge facing each LAFCO following its determination of goals is the ability to meet them. Depending on the level of interest in exercising the extensive opportunities described above, each LAFCO must clearly evaluate the level of resources necessary to function effectively. There will be no greater obstacle to the success of each LAFCO and the overall effectiveness of C-K-H, than under-budgeted, under-staffed and under-housed local commissions.

Much of this section on budgeting is targeted at the emerging independent LAFCOs, as they may face the most challenging transitions. Smaller LAFCO operations that will remain largely dependent on the host county will require additional resources, but it is unlikely that the impact of C-K-H will be dramatic. The opportunities are great for LAFCOs to play an increasingly significant role in the local growth management process as it relates to both the provision of services and reorganization of boundaries.

LAFCOs immediately must consider the magnitude and cost to perform the new requirements of C-K-H, such as five-year sphere updates, special district service studies and conducting authority obligations. These tasks will require substantial increases in research time, staff analysis and public hearing preparation.

These functions will potentially result in the need for additional staff or the need to hire consultants. Increases in staff will most likely result in the need for larger quarters and additional supporting equipment such as computers, furniture and supplies. Essentially, each Commission or Executive Officer must consider *all* the costs currently incurred, both obvious (salaries, benefits, rent, supplies) and incidental (utilities, janitorial, pooled county services such as IS tech support) when establishing its initial base year budget. The basic message is simple:

Don't underestimate, less product delivery and organization effectiveness be compromised!

SUMMARY

Incredible opportunities and challenges are available through the reforms pioneered by CLG21 and championed by Speaker Hertzberg. Each LAFCO now has the choice to seize on the many opportunities and prepare for the challenges to follow. The choice is not unlike the growth management issues of land use planning and adequate services that C-K-H addresses. LAFCOs can look to the future and plan for phenomenal growth within their local and state organization through cooperative partnerships with the myriad of regional agencies, or they can assume a reactive posture and the resulting loss of productive control. The choice is here, the choice is now and the choice is yours.

KEY CHANGES
IN THE
CORTESE-KNOX-HERTZBERG ACT

LEGISLATIVE INTENT SECTIONS 56001 AND 56301

The hearings of CLG21 revealed questions about the meaning and priority of statements of legislative intent in the Cortese-Knox Act. At the recommendation of the Commission, the Cortese-Knox-Hertzberg Act provides new, clarifying language on legislative intent and the purpose and powers of LAFCOs.

Changes

The Cortese-Knox-Hertzberg Act consolidates statements of legislative intent into two Sections, 56001 and 56301. Section 56001 reiterates long-standing policies of the Legislature, while 56301 identifies more clearly the role LAFCO is to play in the pursuit of those policies.

Section 56001 reiterates and emphasizes the Legislature's policies of discouraging urban sprawl, preserving open-space and prime agricultural lands, "efficiently extending government services, and 'providing housing for persons and families of all incomes is an important factor in promoting orderly development.'" It also provides that the Legislature's policy should be "effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible." Section 56001 makes clear that while it is the Legislature's policy that a single multipurpose governmental agency "may be the best mechanism for establishing community service priorities, especially in urban areas," limited purpose agencies also play a critical role in the provision of services, especially in rural areas.

Section 56301 notes the Legislature's intent that LAFCOs conduct studies to determine the logical provision of services to an area. "When the formation of a new government entity is proposed, a Commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services."

For Consideration

LAFCOs must incorporate the intent of the Legislature when adopting written policies and procedures, and when reviewing proposals for the formation or reorganization of service providers.

SPHERES OF INFLUENCE SECTION 56425 ET. SEQ.

It was the conclusion of CLG21 that LAFCO is the only intermediate agency between the state and local governments relating to land use. Although CLG21 did not recommend that LAFCOs play a direct role in land use determinations, it did state that the sphere of influence (SOI), especially one created with public and affected agency input, could and should play an important role in land use decisions. “Up-to-date spheres of influence determinations are critical to LAFCO’s responsibility to assure orderly growth and development and prevent sprawl.” CLG21 also concluded that 5-year updates are needed to insure that the spheres stay central to LAFCO’s process.

Changes

The CLG21 conclusions are reflected in Section 56425 et. seq. Key requirements are that:

- LAFCOs update spheres of influence not less than once every 5 years;
- cities and counties meet – prior to submitting an application to LAFCO for the determination of a new sphere of influence for a city – and attempt to come to a mutual agreement regarding the boundaries, development standards and zoning requirements for the proposed sphere;
- LAFCOs give great deference to any mutual agreement;
- LAFCOs consider and prepare a written statement of its determinations with respect to certain delineated issues; and
- With regard to spheres of influences for special districts, LAFCOs will:
 - 1) require existing districts to file written statements specifying the functions or classes of their services;
 - 2) establish the nature, location and extent of any functions or classes of services provided by existing districts; and
 - 3) determine that no new or different functions or class of service will be provided by an existing district, except upon LAFCO approval, except as otherwise authorized by the Act.

Also stated in Cortese-Knox-Hertzberg is the requirement that SOI studies be predicated on detailed Service Reviews, discussed separately in this document.

For Consideration

No changes enacted by Cortese-Knox-Hertzberg have greater impact on the workload of LAFCOs than the changes to the sections guiding the SOI review process. In conjunction with the Service Review and Service Extension components of Cortese-Knox-Hertzberg, the changes to the SOI guidelines mark a shift that places LAFCOs in a better position to take a proactive position in shaping the development of unincorporated territory near local agencies. To this end, LAFCOs must develop comprehensive workplans that clearly identify the objectives of the SOI reviews. Through these workplans, LAFCOs will understand more clearly the demands that will be placed on commissioners and staff alike.

SERVICE REVIEWS

SECTION 56430

Fundamental to the ability of a LAFCO to fulfill the legislative intent of Cortese-Knox-Hertzberg is possession of a broad and detailed understanding of the functions of local agencies within the LAFCO's jurisdiction. CLG21 found that there is a glaring need for LAFCOs to be informed about the types and scope of services provided by local agencies, as well as the manner in which similar service providers interrelate. Thus, CLG21 recommended and Cortese-Knox-Hertzberg creates the requirement for detailed LAFCO service reviews. These service reviews are studies of the provision of municipal services in an area designated by the Commission. It is intended that the determinations of the service reviews be given major consideration when the Commission considers a sphere of influence review, update, or amendment.

Changes

The service review is a new component of LAFCO law. Section 56430 states that determinations shall be made in the following areas:

- (1) Infrastructure needs or deficiencies.
- (2) Growth and population projections for the affected area.
- (3) Financing constraints and opportunities.
- (4) Cost avoidance opportunities.
- (5) Opportunities for rate restructuring.
- (6) Opportunities for shared facilities.
- (7) Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers.
- (8) Evaluation of management efficiencies.
- (9) Local accountability and governance.

Section 56430 does not offer much direction in terms of implementing the service review requirement. Rather, it states that the Governor's Office of Planning and Research (OPR), in consultation with CALAFCO and other local governments, shall prepare guidelines for service reviews. Completion of this effort by OPR is required by July 1, 2001.

For Consideration

As new law, implementation of service review procedures will require considerable forethought by each LAFCO. With the anticipated guidelines from OPR, local policies must be adopted to give purpose to the study process and outcome. The service review requirement explicitly empowers LAFCOs to ask the tough questions that have often gone unanswered in the past. Because its

new budget authority allows each Commission to appropriate the necessary funds to conduct these studies, LAFCOs are no longer beholden to other agencies' purse strings to pursue these answers.

Opportunities abound to address local concerns. Are residents receiving appropriate levels and quality of service? Are there greater efficiencies in service delivery to be captured? Section 56430 states that the Commission shall define the geographic area of study. This means service reviews need not be restricted to jurisdictional boundaries unless appropriate. The challenge lies in fostering this new responsibility in an inclusive manner that ensures the cooperation and acceptance of local agencies and communities.

SERVICE EXTENSION SECTION 56434

Unincorporated areas outside of spheres of influence, in the past, have received little direct comment or consideration by LAFCOs. Many recent large-scale developments have occurred in such areas, restricting LAFCOs from pursuing its legislative mandate with respect to development. The newly created service extension review is an attempt by Cortese-Knox-Hertzberg to give LAFCO a role in – or at a minimum, an ability to comment about – the review of developments in unincorporated areas.

Changes

Section 56434 enables each LAFCO, if it chooses, to establish a procedure for reviewing and approving the extension of services to proposed developments in unincorporated areas. In reaching its conclusion, each Commission is to consider the statements of legislative intent in the Cortese-Knox-Hertzberg Act and its own local policies. No specific provision is made for disapproving the extension of services, although such might be inferred from the provision of approval authority.. This section sunsets on January 1, 2007.

For Consideration

As a permissive power, the implementation of the service extension review is a matter of local policy. LAFCOs are encouraged to work with their respective counties and service providers to give Section 56434 the desired authority. The service extension can be a very valuable tool for all parties. One option is for planners and developers to delineate the service provision possibilities for a new development and seek LAFCO's guidance as to which approach is the most appropriate. Another option is for local agencies to incorporate the review and approval or "failure to approve" by LAFCO into its own planning and approval process. Critical for those LAFCOs that wish to pursue implementing a service review process is defining the circumstances that would trigger the review. Section 56434 does not identify if the Commission is to initiate the review, or if agencies or individuals can apply to have a review conducted.

INFRASTRUCTURE AND HOUSING FACTORS SECTION 56668 AND 56668.5

Although each LAFCO may consider factors that it deems appropriate for the review of a proposal, Section 56668 identifies a number of factors that must be considered. The Cortese-Knox-Hertzberg Act adds five new factors to this mandatory list. Two of these new factors make explicit what is a common LAFCO practice – to consider the comments from owners and landowners and to consider information relating to existing land use designations. The other three broaden LAFCOs review specifically to include factors relating to the adequacy of infrastructure and housing. Section 56668.5 states that LAFCOs also may consider regional growth goals.

Changes

The five new factors for consideration in Section 56668 are:

- (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- (k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.
- (l) The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.
- (m) Any information or comments from the landowner or owners.
- (n) Any information relating to existing land use designations.

The enumeration of these five factors emphasizes that it is the intent of the Legislature that these issues be weighed when LAFCOs review proposals.

For Consideration

Factors (j), (k) and (l) present new challenges for LAFCOs. Information about adequate water supplies and fair share housing needs are available, to some extent, from neutral sources – such as state and regional monitoring agencies. These sources will give LAFCOs a basis with which to judge the validity of information provided by the applicant and the affected agencies. More difficult is the consideration of an agency's ability to serve and the sufficiency of its

revenues. In complex cases, validation of the information provided to LAFCO may require the assistance of independent experts.

The Legislature is calling on LAFCOs to limit the over-commitment of resources by local agencies. LAFCOs must now ask two key questions: (1) Will the agency in this proposal be able to adequately serve? and (2) Will this proposal reduce service levels to areas currently under the jurisdiction of the affected agency? Application procedures should be reviewed and amended to direct proponents to provide as much information as possible and to inform proponents of these new factors and their implications.

**SPECIAL DISTRICT MEMBERSHIP ON LAFCO AND
DISTRICT LATENT POWERS
SECTIONS 56332.5 AND 56820**

In an effort to make special districts equal partners in the LAFCO structure, Cortese-Knox-Hertzberg establishes that the special districts of a county may initiate the process to expand LAFCO from 5 to 7 members. It further stipulates that membership on LAFCO is no longer contingent upon the forfeiture of a district's latent power authorities.

Changes

Section 56332.5 establishes that special districts can request membership on LAFCO without being forced to give up their right to exercise latent powers. Previous law allowed each LAFCO to regulate the powers and functions of districts if special districts were represented on the Commission. Section 56820 requires that LAFCOs that had special district membership prior to January 1, 2001 and had regulations relative to the special districts provision of services and functions must repeal such regulations if so requested by a majority of the special districts.

For Consideration

As of January 1, 2001, about 40% of the LAFCOs statewide did not have special district representation on their commissions. The Cortese-Knox-Hertzberg Act recognizes the valuable contributions these agencies can make to LAFCOs and attempts to make membership more attractive by eliminating restrictions.

WRITTEN POLICIES AND PROCEDURES

G.C. 56300(a), 56301, 56375

The adoption of policies and procedures appropriate for the local jurisdiction has long been an option for each LAFCO. The studies of CLG21 identified the implementation of many useful policies throughout the state. Cortese-Knox-Hertzberg draws from several of these studies in mandating certain written policies and by requiring that LAFCOs be more explicit when adhering to their policies.

Changes

Section 56300(a) requires that by January 1, 2002, each LAFCO establish written policies and procedures that encourage and provide for planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns.

Section 56301 amends the former Section 56300 to clarify legislative intent and how LAFCOs evaluate the need for the formation of new local government agencies relative to reliance on existing agencies. When reviewing proposals for incorporation, district formation, etc. LAFCOs must make a determination as to whether existing agencies can feasibly provide needed services in a more “efficient and accountable manner.” If a new single-purpose public agency is deemed necessary, LAFCO must consider reorganization with other single-purpose agencies that provide related services.

Section 56375 requires each LAFCO’s actions on changes of organization to be consistent with its written policies and procedures.

For Consideration

As LAFCOs implement the changes of Cortese-Knox-Hertzberg, it is important that they revisit their existing policies and procedures, and ensure that they comply with the mandates of the Legislature. Cortese-Knox-Hertzberg also offers each LAFCO the opportunity to comprehensively review its written policies and procedures, cleaning-up old language and adopting new concepts.

PUBLIC MEMBER SELECTION SECTION 56325(d)

The Cortese-Knox-Hertzberg Act attempts to ensure that the selection of the LAFCO public member is one of consensus. To that end, it provides that the public member must receive the support of all interests represented on LAFCO.

Changes

Selection of the public member and alternate public member remain subject to a majority vote of the other commissioners on a LAFCO. However, Section 56325(d) adds that:

“Selection of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members selected by each of the other appointing authorities. “

For LAFCOs with special district representation, this means that the public member must receive at least one vote from Commission member representative of the county, the cities and the special districts.

For Consideration

Sitting and prospective public members should be made aware of this procedural change so that they can consider its implications for their selection.

PROCEDURAL CHANGES

Many of the reforms to LAFCOs recommended by CLG21 focused on procedural changes. A significant number of these changes were incorporated into the Cortese-Knox-Hertzberg Act and took effect January 1, 2001. The intent of these reforms is clear – the Legislature wants LAFCOs to have an increased public presence and wants to clarify some of the more nebulous LAFCO functions.

Commissioners should be aware of these procedural changes and the implications that they may have for the conducting of both routine and special business. Commissioners should make themselves aware of their staff's workplan for the implementation of these changes and offer advice and guidance as LAFCO reform moves forward.

The following table highlights some of the more notable procedural changes.

G.C. Section	Topic and Change	Implications
56150 56154 56156 56157 56159	Notice Requirements New requirements include that notice must be given to all registered voters within 300 feet of the subject territory; that notice must be given and published 21 days prior to hearing (instead of 15 days); and that notice will be posted on the web.	New noticing requirements may result in greater participation from the public at-large – particularly those who live in proximity to the subject territory.
56300(e)	Protest Forms and Procedures Among the forms and procedures a LAFCO must now have on hand is a clear means for filing protest.	LAFCOs must have adopted a protest procedure no later than January 1, 2002.
56375(e)	City Rezoning Subject territory must be rezoned so that LAFCO can properly assess the impact of annexation. After annexation, zoning for the territory cannot be changed for a period of two years unless a substantial change is found to have occurred.	Rezoning – already a requirement by many LAFCOs – offers the Commission a better sense of the implications of annexation. Some post-approval monitoring will be required of staff.
56653	Plan for Services – School Districts Because Section 56069 now allows school districts to be applicants, Section 56653 stipulates that they, like other applicants, must submit a plan for service.	School districts are unaccustomed to dealing with LAFCOs and will require some guidance to navigate the process.
56658	School District Notification School districts have been added to the list of agencies that should be noticed about LAFCO hearings.	This is a relatively simple change to implement, but the intent is to improve communication between LAFCOs and school districts.

G.C. Section	Topic and Change	Implications
56300(f)	LAFCO Website By January 1, 2002, each Commission <u>must</u> have a means of posting public notices and other information to the web.	LAFCOs that do not plan to maintain their own websites can use space on <i>calafco.org</i> to fulfill this mandate.
56663(d)	Waiver of Protest Proceedings New criteria are established for the waiving of the conducting authority process. A proposal must now have the consent of property owners and affected agencies, and no protest can have been filed by person(s) entitled to notification of the proposal's hearing.	These conditions significantly raise the threshold for waiving protest proceedings and may force many LAFCOs to hold more conducting authority hearings.
56700.4	Notice of Intent to Circulate a Petition When a LAFCO process is to be initiated by circulated petition, the chief petitioners are to file a notice of intent with LAFCOs.	This requirement forces potential applicants to begin a dialogue with LAFCOs.
56730	Special Reorganization Proceedings This section clarifies that special reorganizations shall be held to the same standards and procedures as a standard incorporation.	Local policy and practice should conform to this stipulation.
56751	City Detachment Proceedings Requires affected cities to terminate detachment proceedings at the beginning of the process, rather than during the conducting authority process.	This requirement will eliminate the possibility that LAFCO will approve a detachment and then be overridden by the affected city.
56753(b) 56766 56768 56866 56870	Minimum Signature Requirements Minimum signature requirements on petitions to initiate proceedings were changed for <ul style="list-style-type: none"> annexation of 100,000+ persons in counties with pop. of 4,000,000 (from 8% to 5%); the consolidation of two or more cities (from 20% to 5%); detachment from a city (from 20% to 25%); merger of a special district of est. of a subsidiary district (from 10% to 5%); and dissolution of special district (from 5% to 10%). 	Each LAFCO should note these changes and administer them accordingly.
56800	New Incorporation Cost Criteria Offers greater clarity to the costs that are to be used in the creation of a comprehensive fiscal analysis.	This is an effort to further standardize the review of incorporation proposals.
56854	LAFCO Protest Thresholds Protest thresholds for dissolutions, mergers and subsidiary district establishments are specifically enumerated.	Each LAFCO should note these changes and administer them accordingly.
57100 - 57102, 57115- 57120	Commission Resolution Contents Greater clarity is offered with respect to the contents required of LAFCO resolutions, including specifications for the ordering of an election.	Each LAFCO should note these changes and administer them accordingly.

G.C. Section	Topic and Change	Implications
56857	<p>Termination of District Annexation District annexation proposals not filed by the subject district must be brought to the Commission as an informational item. Districts then have 60 days to terminate the consideration of the proposal.</p>	<p>This section is meant to ensure that districts are aware of and approve of proposed annexations.</p>
56895	<p>Request for Reconsideration Requests must now include a statement from the applicant as to what new or different facts are in evidence.</p>	<p>This is a reasonable requirement that LAFCOs should enforce to eliminate frivolous filings.</p>
56029, 57000 et. seq.	<p>LAFCO as Conducting Authority The ministerial responsibility to serve as conducting authority shifts from the affected agency to LAFCO. LAFCOs can empower their Executive Officers to hold conducting authority hearings and report the results to the Commission.</p>	<p>Though administration of the conducting authority process is well prescribed in the Cortese-Knox-Hertzberg, this represents a significant increase in LAFCOs workload. Each LAFCO should plan accordingly.</p>

OPERATIONAL INDEPENDENCE

The most pressing changes brought by the Cortese-Knox-Hertzberg Act relate to the recommendation of CLG21 that LAFCOs become independent of their county structure. Seeking to give LAFCOs greater credibility as bodies that represent the interests of all agencies, the new law requires that LAFCO assume responsibility for its budget and administrative operation – or specifically decide to contract for these services from an agency such as the county. This transition is facilitated by the requirement that funding be shared equally by the interests represented on LAFCO. Cortese-Knox-Hertzberg further emphasizes the concept of an independent LAFCO by promoting the adoption of disclosure requirements above and beyond the Political Reform Act.

Because most of these operational changes must be addressed prior to the adoption of a FY2001-02 budget, most LAFCOs already have begun the task of implementing these changes. Below are the changes LAFCOs should be contemplating and/or making.

Appointment of the Executive Officer and Counsel

Section 56384 requires that each Commission appoint specific individuals to the position of Executive Officer and Commission Counsel. The Commission has a number of options in this regard – it can make appointments to maintain its current arrangement with the County, it can hire independent staff, or it can contract for staff services from any local agency or agencies.

Determining the Shares of Each Funding Agency

Section 56381 mandates the funding of LAFCO by the groups represented on the Commission¹ and offers formulae for calculating the cost to each agency within these groups. The calculations must be done annually. The section does allow for agreement by the agencies in each of these groups to develop their own formulae for calculating these costs.

Adoption of a Budget

Section 56381 requires that all LAFCOs adopt their own budget. To properly create a budget, LAFCOs must have an understanding of the true costs associated with their operation. Budget authority does give each LAFCO the ability to reevaluate the manner in which they conduct business and to assess whether they wish to make changes such as relocating office space and the number of staff persons. Although adoption deadlines of May 1 for a preliminary budget and June 15 for a final budget were established, it will be helpful for funding agencies to know their costs well in advance of their own budget cycles.

¹ For most LAFCOs, this is a 1/3-each split between the county, cities, and special districts.

First-year efforts make May 1 a tough deadline, but in future years, LAFCOs may wish to have a budget process that circulates preliminary numbers as early as February.

Disclosure Requirements

Sections 56300(b) and §56300(c) mandate that each LAFCO hold a hearing prior to March 31, 2001² to consider:

1. whether it wishes to establish a policy requiring the disclosure of campaign contributions by applicants and by speakers before LAFCO; and
2. whether it wishes to establish a policy requiring the disclosure of lobbying efforts intended to influence the outcome of pending LAFCO decisions.

If established, these policies would be imposed as additional requirements above those mandated by the Political Reform Act – to which Commissioners and local officials are already subject. Those LAFCOs that adopt these policies should clarify the operational procedures for enforcing them.

Section 57000.1 mandates the disclosure of political contributions made to organizations involved with a LAFCO proposal. These contributions “shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate.” All LAFCOs should make their applicants and other organizations involved with a proposal aware of this requirement.

² LAFCOs that did not have proposals pending on January 1, 2001 do not need to address this issue until a proposal is on file.