Taking Their Pulse:

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September 2002

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Assembly Bill 2838 (Hertzberg, 2000) was the most important LAFCO reform bill in 40 years, amending the statutes that give local agency formation commissions (LAFCOs) power over the boundaries of cities and special districts. Now known as the "Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000," the statute creates LAFCOs and spells out their policies, powers, and procedures.

Prompted by the recommendations of Growth Within Bounds, the report of the Commission on Local Governance in the 21st Century, Assembly Speaker Robert M. Hertzberg authored his landmark bill to overhaul the LAFCO statute. AB 2838 took effect on January 1. 2001.

What have LAFCOs done to implement AB 2838?

Finding an answer to that question was the purpose of a survey circulated by Senator Tom Torlakson, Chair of the Senate Local Government Committee. Writing to the LAFCO executive officers in May 2002, Senator Torlakson asked them to answer a dozen questions about their commissions' activities and operations. After 18 months of implementation, Senator Torlakson wanted to know what the LAFCOs were doing about the statutory reforms.

Executive officers and staff from 56 of the 58 LAFCOs answered Senator Torlakson's survey; the LAFCOs in Sierra and Siskiyou counties declined to participate. This report compiles those responses and distills them into general findings. As with any summary, this report sacrifices fine-grained detail to discover broader themes. The Committee's staff expected to find that the LAFCOs in the more urbanized counties had gone further with implementation. Contrary to that expectation, the responses did not fit geographic patterns. Implementation is occurring among the LAFCOs in all categories of counties: rural, suburban, and urban. Similarly, there was no obvious split between the LAFCOs in coastal counties and those in the Central Valley or Mother Lode counties. The **Appendix** presents the compilation of the LAFCOs' answers to the 12 survey questions.

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1. Written Policies. The Growth Within Bounds report recommended that legislators enact new statutory priorities to give more direction to the LAFCOs. AB 2838 enacted more explicit statewide policies to guide the LAFCOs (Government Code §56001). LAFCOs had until January 1, 2002 to adopt written policies and procedures to implement those statutory policies (Government Code §56300 [a]). Because many of the LAFCOs had already adopted written policies before the Hertzberg bill passed in 2000, some of them did not need to adopt new policies. Some of the LAFCOs with older policies decided to revise their written statements in light of AB 2838.

Findings:
- Almost all of the LAFCOs (52 of 56) now have written policies.
- Most of those LAFCOs (36 of 52) recently adopted or revised their written policies.

- A significant minority of the LAFCOs (16) have not revised their older written policies.

2. Special District Representation. When the Legislature created the LAFCOs in 1963, the standard membership consisted of five members: two county supervisors, two city councilmembers or mayors, and one public member. In the early 1970s, the Legislature made it possible for LAFCOs to expand their membership by adding two representatives of independent special districts. The Commission on Local Governance for the 21st Century recommended that special districts have an automatic option to add representatives. AB 2838 made it easier for special districts to gain LAFCO representation (Government Code §56332.5).

Findings:

- About half of all of the LAFCOs (28 of 56) have special district representatives.
- Most of those LAFCOs (26 of 28) had special district representation before AB 2838.
- Only the Monterey and Placer LAFCOs added special district representatives after AB 2838.

3. Contribution Disclosure. When the Commission on Local Governance for the 21st Century learned that proponents of the San Fernando Valley secession attempt did not have to disclose the identity of their financial backers, it recommended that the Legislature require proponents to report campaign contributions. Instead, AB 2838 required each LAFCO to hold a public hearing to discuss the adoption of rules for the disclosure of contributions. The LAFCOs with active boundary change proposals had until March 31, 2001, to hold their public hearings; the other LAFCOs had to hold their hearings within 90 days of receiving a proposal (Government Code §56100.1 and §56300 [b]).

Findings:

- Most of the LAFCOs (37 of 56) have not adopted contribution disclosure rules.
- Of the 19 LAFCOs that have adopted contribution disclosure rules, most of them (15 of 19) adopted their rules after AB 2838.
- In the 10 most populous counties, two LAFCOs (San Diego and Fresno) have adopted contribution disclosure rules; the other eight LAFCOs have not (Los Angeles, Orange, San Bernardino, Santa Clara, Riverside, Alameda, Sacramento, Contra Costa).
- Four of the LAFCOs have not held public hearings because they have had no proposals (Alpine, Amador, Mariposa, Mono).
- The San Joaquin and Tehama LAFCOs failed to hold the required public hearings.

4. Lobbying Disclosure. The Commission's Growth Within Bounds report also recommended that the LAFCOs should follow uniform regulations regarding the disclosure of lobbying activities, similar to the regulations that apply to state appointed boards. AB 2838 authorized --- but did not require --- the LAFCOs to adopt local lobbying disclosure and reporting requirements. The LAFCOs with active boundary change proposals had until March 31, 2001, to hold their public hearings; the other LAFCOs had to hold their hearings within 90 days of receiving a proposal (Government Code §56300 [c]).

Findings:

- No LAFCO had adopted lobbying disclosure rules before AB 2838.

- After AB 2838, 11 of the LAFCOs have adopted lobbying disclosure rules.
- Five of the LAFCOs have not held public hearings because they had no proposals (Alpine, Amador, Mariposa, Mono, San Benito).
- The San Joaquin and Tehama LAFCOs failed to hold the required public hearings.

5. Independent Executive Officer. Before AB 2838, state law allowed each LAFCO to appoint its own Executive Officer. If the LAFCO did not appoint an independent Executive Officer, the former state law required the county administrator or county clerk to serve as the LAFCO Executive Officer. In Growth Within Bounds the Commission on Local Governance for the 21st Century declared that independent staffing would "allay any perceived bias." AB 2838 required each LAFCO to appoint its own Executive Officer (Government Code §56384 [a]). A LAFCO may appoint a county official to serve as its Executive Officer.

Findings:
- Most of the LAFCOs (42 of 56) have appointed their own independent Executive Officers.
- Of those LAFCOs, about half (19 of 42) appointed them after AB 2838.
- The Los Angeles, San Diego, and Marin LAFCOs were the first to have independent staffs.
- Eleven of the LAFCOs contract with their county governments for Executive Officers.
- The LAFCOs in three smaller counties have yet to act (Alpine, Colusa, Mariposa).

6. Independent Legal Counsel. Before AB 2838, state law allowed each LAFCO to appoint its own legal counsel. If the LAFCO did not appoint its own legal counsel, the former state law required the County Counsel to act as the LAFCO's legal counsel. In Growth Within Bounds the Commission on Local Governance for the 21st Century declared that independent staffing would "allay any perceived bias." AB 2838 required each LAFCO to appoint its own legal counsel (Government Code §56384 [b]). A LAFCO may appoint the County Counsel to serve as its legal counsel.

Findings:
- Most of the LAFCOs (31 of 56) have appointed their own legal counsels.
- Of those LAFCOs, over three-quarters (24 of 31) appointed them after AB 2838.
- Nineteen of the LAFCOs chose to contract with County Counsel for services.
- A half-dozen of the LAFCOs still rely on their counties' County Counsels.

7. Spheres of Influence. For more than 30 years, state law has required the LAFCOs to adopt a *sphere of influence* for each city and special district in its county. A sphere of influence designates the city or district's future service area and boundaries. The LAFCO's boundary decisions must be consistent with the adopted spheres of influence. The Commission on Local Governance for the 21st Century noted that while the law required the LAFCOs to periodically review and update their spheres of influence, there was no specific statutory schedule for these revisions. AB 2838 required the LAFCOs to update the spheres of influence for all cities and special districts every five years. The first deadline is January 1, 2006 (Government Code §56425 [f]).

Findings:
- Less than half of the LAFCOs (23 of 56) have adopted schedules or work plans to meet the January 1, 2006 deadline.
- Some of the 33 LAFCOs without schedules have nevertheless budgeted funds for this work (Alameda, Calaveras, Inyo, Riverside, San Benito, Sutter, Trinity).

8. Municipal Service Reviews. The Growth Within Bounds report also recommended that the LAFCOs undertake periodic service reviews as they prepare to adopt and amend their spheres of influence. AB 2838 required the LAFCOs to conduct service reviews of the municipal services provided by cities and special districts (Government Code §56430).

Findings:
- Nearly half of the LAFCOs (25 of 56) have started their municipal service reviews.
- Thirty-one of the LAFCOs have not started their municipal service reviews.

9. Sharing LAFCOs' Budgets. Until AB 2838, state law required the county governments to finance the LAFCOs' budgets. Based on the recommendations of the Commission on Local Governance in the 21st Century, AB 2838 required cities and independent special districts to share this fiscal burden with the county governments. Under the standard statutory formula, each sector (county, city, district) pays one-third; where there is no independent special district representation on the LAFCO, the county and the cities split the funding. Statutory formulas allocate the cities' share among the cities and the independent special districts' share among the districts. Local officials can negotiate alternative formulas (Government Code §56381).

Findings:
- Cities in 44 counties contributed to the LAFCOs' budgets by following the statutory formula, while cities in nine counties did not use the formula. Three counties have no cities.
- Cities in five of those nine counties (Mono, Orange, San Diego, San Joaquin, Tulare) negotiated alternative formulas to allocate the cities' share of the LAFCO's budget.
- In the 28 counties where independent special districts have LAFCO representation, districts in 23 counties relied on the statutory formula to allocate their share of the LAFCO's budget.
- In the five other counties (Mono, Monterey, Orange, San Bernardino, Trinity), the special districts negotiated alternative formulas to allocate their shares of the LAFCO's budget.

10. Processing Fees. Even before AB 2838, state law allowed a LAFCO to charge processing fees to recover its costs. AB 2838 clarified a LAFCO's ability to charge fees to offset the costs of appointing its own Executive Officer and legal counsel (Government Code §56383 and §56384).

Findings:
- Nearly all of the LAFCOs (53 of 56) reported charging processing fees before AB 2838.
- Over half of these LAFCOs (30 of 53) raised their fees after the adoption of AB 2838.

11. <u>Size of LAFCOs' Budgets</u>. Before AB 2838, when counties were responsible for paying for the LAFCOs, some of the counties' in-kind contributions did not appear in the LAFCOs' budgets. Observers expected to see these budgets increase when the more independent LAFCOs adopted more accurate accounting. The questionnaire asked each LAFCO to compare its 2001-02 budget (the then-current fiscal year) with its 1999-00 budget (the fiscal year before AB 2838 took effect).

<u>Findings</u>:

- Over 3/4 of the LAFCOs (43 of 56) reported that their 2001-02 budgets were higher.
- Eight of the LAFCOs reported that their budgets were about the same.
- Three of the LAFCOs said that their budgets were lower.
- Two of the LAFCOs said they did not have budgets.

12. <u>Budget Explanations</u>. The questionnaire asked the LAFCOs to say why their budgets were higher or lower.

<u>Findings</u>:

- Among the 43 LAFCOs with higher budgets, common explanations included the new duties imposed by AB 2838, the cost of shifting from county buildings to separate quarters, more accurate accounting, and expanded work loads.
- Reductions in staff and consulting expenses and more accurate budgeting explained the lower budgets for the San Bernardino, San Francisco, and Tuolumne LAFCOs.

<u>Other Comments</u>. In addition to answering the questions, some of the LAFCOs' Executive Officers appended notes when they returned their surveys.

The ***Amador LAFCO*** explained that AB 2838 issues are not very relevant in small counties where the LAFCO is not controversial at all.

The response from the ***El Dorado LAFCO*** noted that the Commission "acknowledges that it has not fully funded the mandates of AB 2838," even though it cut spending in some areas to offset increases in fixed expenses and the goal of reducing the costs to the cities and special districts. The Commission discussed the burden of paying for unfunded state mandates such as AB 2838 in light of the state government's diversion of local revenues.

The ***Humboldt LAFCO*** explained that it kept its budget at the same level as previous years because local agencies committed to provide resources and personnel to help prepare the municipal service reviews.

An extended letter from the ***Lake LAFCO*** expressed the Commission's concern with the costs of preparing municipal service reviews and revising spheres of influence. The Commission's letter noted that its budget has increased 400% since 1999. Special districts declined representation on LAFCO because they do not want to pay for these state mandated costs. The burden then falls on the county government and the cities in the county. The Commission recommended legislation to resolve the precarious state-local fiscal relationship in California's rural areas. The Commission enclosed a copy of its earlier May 22, 2002, letter to State Senator Wesley Chesbro.

Comments on the municipal service reviews came from the ***Riverside LAFCO***. Calling them "potentially a useful tool," the letter noted their high cost because some of the statutorily required contents may not be necessary. Complying with municipal service reviews may be counterproductive, diverting limited resources away from other more important tasks. The Commission recommended returning discretion to local officials on when to perform special studies.

The ***Shasta LAFCO*** attached a copy of its 2002-03 final budget tables and narrative to demonstrate to the Committee how a higher budget reflects the new requirements imposed by AB 2838.

Committed to meeting the January 1, 2006 deadline for reviewing all spheres of influence, the ***Stanislaus LAFCO*** expressed its frustration with the failure by the Governor's Office of Planning and Research (OPR) to issue the required service review guidelines. The Commission noted that state law required OPR to issue its guidelines by July 1, 2001. Local officials are hesitant to proceed with their sphere of influence updates without having the OPR guidelines. "This [failure] does not provide a good example or indication of the State's seriousness for the implementation of AB 2838." The Commission recommends that the Legislature extend the deadline for conducting service reviews and updating spheres of influence by at least another year. The Commission asked the Committee's help in getting OPR to finish its guidelines.

The Committee also received a copy of a June 11, 2002 letter sent by the ***Ophir Hill Fire Protection District*** to the ***Nevada LAFCO***, declaring that the District cannot support the LAFCO's new work program and budget. Noting that the budget increases occurred as a result of new state mandates, the District suggested that the LAFCO go back to the state to receive its funding.

Earlier Surveys

This report is the latest statewide survey of the LAFCOs' activities. For an historical perspective, you may wish to review these earlier surveys and reports:

Assembly Interim Committee on Municipal and County Government, "Operations of Local Agency Formation Commissions" in Final Report (1963-1965), Volume 6, Number 22, Sacramento: January 11, 1965.

California Council on Intergovernmental Relations, Local Agency Formation Commissions, Sacramento: November 1971.

Joyce Crosthwaite, "Appendix G: An Analysis of a Survey of Local Agency Formation Commissions," in Commission on Local Governance for the 21st Century, Growth Within Bounds, Sacramento: January 2000.

Governor's Office of Planning and Research, LAFCO Reexamined: A Report on the Performance of Local Agency Formation Commissions, 1970-74, Sacramento: March 1976.

Sources

To better understand the LAFCOs and the Cortese-Knox-Hertzberg Act, the staff of the Senate Local Government Committee relied on the following publications to prepare this report:

Assembly Local Government Committee, Guide to Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Sacramento: Assembly Publications Office. Revised February 2002.

Commission on Local Governance for the 21st Century, Growth Within Bounds, Sacramento: January 2000.

Peter M. Detwiler, "Annexation and Boundary Issues," in California Environmental Law & Land Use Practice (Chapter 73), Daniel Selmi and Kenneth Manaster, eds., New York: Matthew Bender & Co., 2001.

Peter M. Detwiler, "The Challenges of *Growth Within Bounds*," in California Environmental Law Reporter, Vol. 2000, No. 5, Matthew Bender & Co., May 2000.

Dennis Graves, "Annexations and Other Boundary Changes," Longtin's California Land Use, 2nd Edition (Chapter 7), Berkeley: Local Government Publications, 1987, 2001 Update.

Bill Ihrke, It's Time to Draw the Line: A Citizen's Guide to Local Agency Formation Commissions in California, Senate Local Government Committee, 1996.

Credits

The accuracy and reliability of any survey depends on the hard work and good will of the respondents. This survey benefited from the help provided by the Executive Officers and staff from 56 of the 58 LAFCOs. Many of the Executive Officers discussed the responses to this survey with their commissioners at public meetings. This excellent cooperation makes this survey a valuable benchmark in evaluating the implementation of AB 2838. Not only did the LAFCOs' staffs respond to Senator Torlakson's questionnaire, 31 of them took extra time to review the draft tables and recommend improvements. Their help was essential to completing this project.

Colin Eichenberger and Wesley Spowhn, summer interns in the Office of Senator Tom Torlakson, patiently collected and collated the LAFCOs' responses, under the direction of Elizabeth West. Peter Detwiler and Jennifer Swenson, consultants to the Senate Local Government Committee, compiled the tables and prepared the findings. Elvia Diaz, Committee Assistant, produced the report with the help of the Senate Reprographics staff.