

Community Needs, Community Services:

A Legislative History of SB 135 (Kehoe)
and the “Community Services District Law”

March 2006

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Drafting calls for the highest in tact and flexibility.

- Reed Dickerson, Legislative Drafting, 1952

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Community Needs, Community Services: A Legislative History of SB 135 and the “Community Services District Law”

Authored by Senator Christine Kehoe, Chair of the Senate Local Government Committee, Senate Bill 135 completely overhauled the Community Services District Law, the state statute that governs California’s 318 community services districts (CSDs). Governor Arnold Schwarzenegger signed SB 135 into law as Chapter 249 of the Statutes of 2005. The new Community Services District Law took effect on January 1, 2006.

This report documents the origins and legislative history of the new Community Services District Law, offering public officials, researchers, legal advisors, and the courts an understanding of where the new CSD Law came from and what its drafters meant to achieve.

Contemporaneous with the half-century of California’s greatest sustained population growth, since 1951 the CSD Law has been the legal basis for the special districts that deliver public services to hundreds of neighborhoods, rural towns, and sprawling suburbs. Legislators originally passed the CSD Law in 1951 and re-enacted it in 1955. In the last 50 years, the Legislature amended the CSD Law scores of times, resulting in a convoluted statute that by 2005 had more than 300 separate sections.

However, without a major overhaul, the CSD Law had not kept pace with California’s other statutory and constitutional changes. The voters amended the California Constitution by passing Propositions 13, 4, 218, and 1A. Other voter initiatives created the Political Reform Act and changed local officials’ fiscal powers. The Legislature enacted and expanded state laws on open meetings, public records, fiscal audits, special districts’ boundaries, land use planning, and public finance. The 1955 CSD Law reflected few of these reforms. The Senate Local Government Committee’s staff analysis of SB 135 summed up the condition of the 1955 CSD Law this way:

Five decades after enactment, the current CSD Law looks like many 50-year olds: a little paunchy, out of shape, and starting to lose its way. Scores of amendments created exceptions and sometimes quirky provisions. At more than 300 sections, the statute is three times longer than most districts’ principal acts.

Leaders of the California Special Districts Association and individual CSDs asked the Senate Local Government Committee to revise the aging CSD Law. They knew about the Committee’s earlier successes in revising principal acts of other types of special districts:

- Fire protection districts (SB 515 in 1987).
- Recreation and park districts (SB 707 in 2001).
- Mosquito abatement and vector control districts (SB 1588 in 2002).
- Public cemetery districts (SB 341 in 2003).

The Senate Local Government Committee responded by convening a 19-member Working Group on Revising the Community Services District Law to review the statute and recommend revisions. Working with expert advisors, the Working Group met seven times between November 2004 and June 2005, to review every section in the 1955 Law and prepare drafts of the new

CSD Law. As Chair of the Senate Local Government Committee, Senator Kehoe amended the results of the Working Group's advice into her SB 135. The bill moved through the legislative process and Governor Schwarzenegger signed SB 135 into law on September 22, 2005. The new CSD Law took effect on January 1, 2006.

Discovering Legislative Intent

Unlike the United State Congress, the California Legislature does not produce extensively detailed legislative histories for its bills. The official record consists of the bills themselves, plus the analyses prepared for the policy committees, fiscal committees, and Senate and Assembly Floors. When interpreting statutes, the California courts rely on rules of statutory construction. One court explained these rules this way:

The most fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Significance if possible should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. The various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. Further, wherever possible, the statute will be construed in harmony with the Constitution. The provision must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity. The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.

To ascertain the legislative intent behind a statutory amendment, we may rely upon committee reports provided they are consistent with a reasonable interpretation of a statute. Regarding reliance upon statements and letters of individual legislators in construing a statute, we do not consider the motives or understandings of individual legislators who cast their votes in favor of it. Nor do we carve an exception to this principle simply because the legislator whose motives are proffered actually authored the bill in controversy; no guarantee can issue that those who supported his proposal shared his view of its compass. A legislator's statement is entitled to consideration, however, when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion. The statute of an individual legislator has also been accepted when it gave some indication of arguments made to the Legislature and was printed upon motion of the Legislature as a letter of legislative intent. Correspondence within the Governor's file from interested parties does not represent the intent of the Legislature... [where] it is neither a statement of the legislator nor a report to the Legislature from the bill's proponents. Nor will the courts give much weight to post-enactment statements by administrators or other public officials to their understanding of the underlying legislative intent, even though such persons may

have actively supported the measure and irrespective of the fact that the subject matter of the enactment may have directly involved their official responsibilities under existing law.

[citations and quotation marks omitted]

Honey Springs Homeowners Assn v. Board of Supervisors (1984)
157 Cal.App.3d 1122, 1136, footnote 11.

A central purpose of this report is to record the efforts of the Working Group on Revising the Community Services District Law and the Senate Committee on Local Government, so that public officials, researchers, potential litigators, and the courts may have access to the thinking that the bill's drafters and its author invested in SB 135.

Summary of Policies, Powers, Procedures, and Oversight

The 2005 Community Services District Law differs from the 1955 statute in dozens of ways. One approach to understanding these changes is to look at how the bill affects CSDs' policies, powers, procedures, and oversight.

Policies. Some bills contain *explicit* policy statements. Specific findings and declarations of legislative intent are the most obvious ways for legislators to send signals to colleagues, constituents, and judges. A bill may enact a new section that overtly recites findings and declarations. Bills that create major programs often place these recitations immediately after the title of the new division. For lesser measures, a legislator may relegate these statements to an uncodified section. On rare occasions, bills state that they incorporate the changes recommended in outside reports, even citing the studies by name.

More often, legislative policy is *implicit*, to be detected and interpreted from the new statute's context. The ways that a bill arranges procedures, defines terms, limits authority, or raises revenues are clues to the author's intent. When a bill's intent is not plain from its own wording, the courts may look at secondary sources, such as committee bill analyses and reports from interim hearings.

The 1955 CSD Law did not contain any overt statements of legislative intent or statewide policy to guide the CSDs. SB135 opened the revised Law with seven legislative findings, recognizing the four roles that CSDs play in community governance, and reciting three statements of legislative intent (see the new Government Code §61001). Based on those policies, SB 135 strengthened CSDs' governance:

- Voters can elect directors at-large, by divisions, or from divisions (§61021 & §61025).
- Voters can convert dependent CSDs into independent districts (§61022 & §61027).
- All CSDs' boards of directors must have five directors (§61040 & §61041).
- Directors set policy; general managers implement policy (§61040 & §61051).
- Directors serve staggered, four-year terms (§61042).
- Directors must follow formal procedures (§61043, §61044 & §61045).

- General managers have defined roles (§61002 [f] & §61051).

Powers. Responsible and effective local governments need enough -- but not too much -- power to carry out their statutory policies. Policies and powers must match. Government power can be both *fiscal* and *regulatory*. If the Legislature sets ambitious policies, but fails to provide sufficient power, then administrators can't deliver the program that legislators wanted. Conversely, if the Legislature doesn't explain its policies, then public managers lack guidance on how to use government powers. But Californians and their legislators distrust powerful governments. Legislators search for balance between providing governmental powers that fulfill legitimate public policies and protecting their constituents' rights and incomes.

Special districts are limited-purpose governments that have only the powers that the Legislature has delegated to them. State law lets districts provide public facilities and services, but rarely gives them regulatory powers. In contrast, counties and cities are general-purpose local governments with broad police powers that let them regulate private behavior in the public interest. For example, counties and cities use zoning to regulate land use; districts can't. SB135 authorizes CSDs to exercise some specific regulatory powers and public services that are similar to the powers and services provided by the underlying counties and cities.

To avoid conflicts, SB 135 requires CSDs to get other public agencies' permission before they:

- Provide police protection and law enforcement (§61100 [i]).
- Improve public works that belong to another public agency (§61100 [l]).
- Underground utilities that belong to another public agency (§61100 [m]).
- Provide emergency medical services (§61100 [n]).
- Improve flood protection facilities that belong to another public agency (§61100 [r]).
- Remove snow from roads that belong to another public agency (§61100 [w]).
- Provide animal control services (§61100 [x]).
- Regulate streets that belong to another public agency (§61103).
- Grant franchises over public works that belong to another public agency (§61104).

The Working Group spent days scrutinizing the 1955 Law and recommending changes. SB135 contained these specific differences:

- Limits the purposes for paying stipends to directors (§61047).
- Clarifies how CSDs can manage their own finances (§61053).
- Consolidates the scattered sections authorizing CSDs' basic corporate powers (§61060).
- Consolidates the scattered sections authorizing 31 public services and facilities (§61100).
- Preserves nine special services for specific CSDs (§61105).
- Clarifies how CSDs can activate their latent powers (§61002 [h] & §61106).
- Requires CSDs to adopt budgets (§61110+).
- Requires CSDs to adopt annual appropriations limits (§61113).
- Explains how CSDs may raise additional revenues (§61120+).
- Explains how CSDs may generate capital for public works (§61125+).
- Increases the bid threshold for public works contracts (Public Contract Code §20682+).

Procedures. The reformist impulses of the Progressive Era and several Populist movements are still strong in California government and politics. Californians insist on fair access to decisions and to their decision-makers. State statutes that regulate procedures include the *Brown Act* (local officials' meetings must be open and public), the *Public Records Act* (insuring access to government documents), the *Political Reform Act* (requiring disclosure of economic interests), and a myriad of statutory requirements for public notice, public hearings, protests, and elections.

Senate Bill 135 reduced the bulk of the CSD Law from over 300 separate sections to 83 sections. SB 135 used a contemporary drafting format, clustering together related topics for quicker reference, and renumbering the entire CSD Law.

To improve effective administration and political accountability, SB 135 relied on the practice of "billboarding," providing statutory cross-references to other existing laws that apply to CSDs as well as to other local governments:

- Lawsuits to challenge CSDs' validity, debts, and decisions (§61006).
- Boundary changes under the Cortese-Knox-Hertzberg Act (§61007).
- Election procedures under the Uniform District Election Law (§61008).
- Open meetings under the Ralph M. Brown Act (§61044).
- Opportunities for initiative, referendum, and recall elections (§61046).
- Using the Joint Exercise of Powers Act (§61060).
- Changing a CSD's name (§61061).
- Record retention and destruction (§61061).
- Local land use planning and zoning (§61062)
- Procurement of supplies and equipment (§61063).
- Employee relations under the Meyers-Milias-Brown Act (§61065).
- Providing employee benefits (§61066).
- Providing public services and facilities just like municipal water districts, sanitary districts, fire protection districts, recreation & park districts, mosquito abatement & vector control districts, library districts, airport districts, and pest abatement districts (§61100).
- Annual appropriations limits under the Gann Initiative (§61113).
- Annual allocation of property tax revenues (§61114).
- Regular audits and annual financial reports (§61118).
- Adopting special taxes with 2/3-voter approval (§61121).
- Levying benefit assessments with property-owner approval (§61122 & §61129).
- Standby charges under the Uniform Standby Charge Procedures Act (§61124).

Oversight. Responsive government is accountable government. Spawned in righteous enthusiasm, some public programs outlive their usefulness but continue only because legislators forget about them. Institutional inertia, changing social and political climates, and automatic budgeting can combine to allow archaic and ineffective programs to persist. One of the politically least attractive -- but potentially most powerful -- legislative duties is to oversee existing programs. As the term limits imposed by Proposition 140 accelerate legislative turnover, the legislators who originally authored new laws may not be around to monitor their implementation.

Legislators can avoid creating perpetual programs by insisting that new programs contain oversight mechanisms: *regular records and reports*, *special studies*, and *sunset clauses*. One common practice requires administrators to evaluate a new program after its sixth year. That approach allows program managers to review five years worth of experience. Then the bill's sunset clause repeals the program after the seventh year unless a later statute extends the deadline. This practice forces legislators, legislative staff, program administrators, and interest groups to examine a program, react to its evaluation, and then consider the program's future. Legislative inaction automatically ends the program.

Senate Bill 135 promoted the CSDs' public accountability and responsiveness by:

- Distinguishing the roles of directors and general managers (§61040 & §61051).
- Staggering directors' four-year terms (§61042).
- Clarifying the use of the initiative, referendum, and recall (§61046).
- Restating the requirement to retain and destroy records (§61061).
- Requiring formal budgets and fiscal transparency (§61110+).
- Requiring regular audits and annual financial reports (§61118).

Other provisions. Besides enacting a new CSD Law, SB 135 also made conforming changes to these other state laws:

- LAFCOs cannot control districts' internal zones (Government Code §56036). SB 135 added CSDs' zones to this exemption in the Cortese-Knox-Hertzberg Act (§1 of the bill).
- State law governs how CSDs purchase materials and supplies for their construction projects (Public Contract Code §20680+). SB 135 clarified these procedures and raises the bidding threshold for contracts to \$25,000 (§4-§8).
- SB 135 noted that the new statute is based on the recommendations of the Working Group on Revising the Community Services District Law, convened by the Senate Local Government Committee (§9).
- SB 135 relied on the California Constitution to avoid paying for the costs of enforcing new crimes (§10).

The Working Group

To rewrite an out-of-date state law that so many local officials use requires detailed knowledge about the existing law as well as an appreciation for local customs and practices. As the Senate Local Government Committee's earlier successes demonstrate, a statutory revision requires a willingness to anticipate possible political objections to the recommended changes. With those objectives in mind, the goal of the Committee's staff was to work towards a near-consensus.

In October 2004, Senator Tom Torlakson was the Chair of the Senate Local Government Committee. He created a Working Group on Revising the Community Services District Law. When she succeeded as the Committee's Chair, Senator Kehoe confirmed the Committee's commitment to the project. The members of the 19-member Working Group were:

Three CSD directors:

Hon. Joan Gallegos, Kensington Police Protection and CSD
 Hon. Mary Beth Garrison, Golden Hills CSD
 Hon. Wayne Kuntz, Rancho Murieta CSD

Three CSD general managers:

David Aranda, Stallion Springs CSD
 Mel Aust, Hidden Valley Lake CSD
 John Yeakley, Bear Valley CSD

Six special district specialists:

Richard Andrews, general manager, Pebble Beach CSD
 Bob Braitman, Braitman & Associates
 Mike Dean, Meyers Nave
 Ralph M. Heim, Public Policy Advocates
 David McMurchie, McMurchie Law Office
 Rita Velasquez, retired general manager, Elk Grove CSD

Seven representatives of potentially affected groups:

Danielle Blacet, Association of California Water Agencies
 Bill Chiat, California Association of Local Agency Formation Commissions
 Hon. Ken Cooley, League of California Cities (Mayor, City of Rancho Cordova)
 Jon Coupal, Howard Jarvis Taxpayers Association
 Larry A. McCarthy, California Taxpayers Association
 Robert Shulman, California State Association of Counties (Nevada County Counsel)
 Catherine Smith, California Special Districts Association

Besides the 19 members of the formal Working Group, several other knowledgeable people served as advisors, contributing research, drafting, commentary, and sound advice:

Jennifer Abreu, Howard Jarvis Taxpayers Association
 Paul Antilla, Legislative Counsel Bureau
 Cindy Boyd, Governor's Office of Planning and Research
 Peter Detwiler, Senate Local Government Committee
 Ryan Eisberg, Senate Republican Office of Policy
 Chris Hill, Department of Finance
 Paul Hood, San Luis Obispo Local Agency Formation Commission
 Doug Houston, Houston Group
 David L. Jameson, Danville
 Katie Dokken Kolitsos, Assembly Local Government Committee
 Bob Maddow, Bold Polisner Maddow Nelson & Judson
 April Manatt, Sacramento
 Michael F. McGrew, Neumiller & Beardslee
 Hon. Elliot Mulberg, Elk Grove CSD
 Geoffrey Neill, California Special District Association
 Carl Nelson, Bold Polisner Maddow Nelson & Judson
 Marianne O'Malley, Legislative Analyst's Office
 Dave Randall, Madera Local Agency Formation Commission
 Lori Rose, Dublin San Ramon Services District

Jennifer Swenson, Senate Local Government Committee
 William Weber, Assembly Republican Caucus

A Brief Description of Community Services Districts

Focused service --- that's the answer to the question "*What's so special about special districts?*"

That question is also the title to the Senate Local Government Committee's citizen's guide which describes what special districts are and what they do. What's a special district? As the Committee's citizen's guide explains, special districts have four distinguishing characteristics:

- A form of local government,
- Governed by a board,
- Providing services and facilities,
- Within defined boundaries.

The Community Services District Law (Government Code §61000, et seq.) is just one of nearly 55 principal acts that form the statutory basis for governing California's nearly 3,300 special districts. Local voters have approved the formation of community services districts (CSDs) that serve a wide variety of diverse neighborhoods, rural towns, and sprawling suburbs. In 2002-03, the State Controller counted 318 CSDs. Because most CSDs' governing boards consist of five directly-elected directors, at least 1,500 local elected officials rely on the CSD Law. Like other types of special districts, it is possible to sort CSDs by their services, their geography, their territory, and their governance.

Services. Most CSDs provide just one or two public services. For example, the Lanare CSD (Fresno County) runs a small water system. Other CSDs are multi-purpose special districts, delivering several services; the Bear Valley CSD (Kern County) offers police protection, parks, road maintenance, waste disposal, water, and other services.

Geography. Some CSDs serve single neighborhoods; the boundaries of the Wallace CSD (Calaveras County) are the same as the Wallace Lake Estates subdivision. A few, like the Elk Grove CSD (Sacramento County) serve over 100,000 residents.

Territory. Most CSDs serve territory in just one county; Hidden Valley Lake CSD in Lake County is an example of a single-county CSD. The Dublin San Ramon Services District covers territory in both Alameda County and Contra Costa County; an example of a multi-county CSD.

Governance. The overwhelming number of CSDs rely on directly-elected boards of directors for their governance. For example, the Stallion Springs CSD (Kern County) has a board of directors elected by the registered voters who live inside that CSD's boundaries. Observers call these "independent special districts" (see Government Code §56044 and §61007 [d]). A small number of CSDs are dependent special districts; that is, they depend for their governance on a city council or a county board of supervisors. The Laguna Niguel City Council is the *ex officio* board of directors of the CSD (Orange County). Most CSDs, whether independent or de-

pendent, have five-member boards of directors, but the Mountain Meadows CSD (Kern County) had a three-member board as allowed by the 1955 CSD Law.

The Revision Project

The Working Group on Revising the Community Services District Law met seven times in Sacramento; three meetings in late 2004 and four more meetings in early 2005. The Working Group's members and advisors volunteered their time and paid their own expenses. Because of the length of the 1955 Law and the Working Group's zeal in understanding its provisions, the Working Group needed four meetings to review the former statute and recommend revisions: November 18, December 3, December 10, and January 7. The Working Group reviewed the First Draft of the replacement statute on February 11 and February 18. The Working Group's seventh meeting on June 3 focused on controversies over CSDs' road maintenance powers. The table on page 155 reports the Working Group members' attendance at these meetings.

November 18 meeting. Room 2040 in the State Capitol was the site of the Working Group's first meeting on Thursday, November 18, 2004 with 14 of the 19 members attending. The staff of the Senate Local Government Committee had prepared binders for the members of the Working Group, including a copy of the first half of the 1955 CSD Law (159 pages). Each statutory section appeared a separate page, along with the Committee staff's description and commentary. This "Text & Commentary" was the basis for the Working Group's review. The Committee's staff also gave the Working Group a "Disposition Table" that listed every section of the 1955 Law, its topic, and a place to indicate the section's proposed disposition. Other hand-outs included a three-page list of "Cases and Opinions Affecting Community Services Districts" and a list of "Special Statutory Provisions for Specific Districts" that covered four pages.

The initial meeting began at 9:30 a.m. and lasted until 4:30 p.m. Peter Detwiler welcomed the Working Group on behalf of Senator Tom Torlakson, the chair of the Senate Local Government Committee. Detwiler explained that Senator Torlakson had charged him with the duties of being inclusive, listening carefully, and driving the Working Group to "near consensus" in preparing a new CSD Law for introduction in 2005. Following self-introductions, Detwiler sketched the procedures that the Working Group would follow to recommend legislative changes. The revision efforts would focus on CSDs' organization, structure, powers, and finances.

To structure the discussion of each section in the 1955 Law, the Working Group relied on a rating sheet that offered four choices:

A = *This section is fine, just the way it is.*

B = *This section is in pretty good shape, but it needs this minor change: _____.*

C = *This topic should be retained, but the contents need an overhaul. It should include: _____.*

D = *This section is obsolete. Repeal it.*

At this first meeting, the Working Group members and advisors reviewed about 50 sections of the 1955 Law, from Government Code §61000 through §61223.

December 3 meeting. When eight of the Working Group’s members assembled in Room 3191 of the State Capitol for their second meeting on Friday, December 3, 2004, they learned that Senator Christine Kehoe had been named as the Senate Local Government Committee’s new chair. Peter Detwiler reported that he expected the project to continue without interruption or loss of legislative support. Detwiler distributed a list of CSDs and the services each of them provide, drawn from information supplied by the CSDs to the State Controller’s Office. Detwiler also noted that several CSDs had sent him copies of their mission statements; materials that would help when drafting legislative findings for the new CSD Law. The day’s discussions ran from 9:30 a.m. to 4:30 p.m., ending at Government Code §61602.

December 10 meeting. Nine members of the Working Group came back to Room 3191 in the State Capitol on Friday, December 10, 2004. Peter Detwiler handed out copies of the second half of the 1955 Law (pages 160 to 333), along with copies of a revised disposition table and the revised list of special provisions. Other hand-outs included outlines of alternatives to consider regarding CC&Rs and latent powers. The Working Group discussed those topics and then continued to review more sections of the 1955 Law. The conversations started at 9:30 a.m. and ended at 4:30 p.m. with Government Code §61626.7.

January 7 meeting. Friday, January 7, 2005, was the fourth Working Group meeting; 10 members came to Room 3191 in the State Capitol. The participants received information about the Committee’s new publication, Assessing The Benefits of Benefit Assessments (Second Edition). Peter Detwiler noted that four topics remained as open discussion items: dependent districts, directors’ benefits, financial independence, and eminent domain. The Working Group pushed through the rest of 1955 Law in a meeting that lasted from 9:30 a.m. to 4:30 p.m. It had taken the Working Group four meetings to discuss every section of the current law and to recommend changes.

Draft #1. On January 27, 2005, the Committee’s staff mailed out the text of Draft #1 of a proposed new Community Services District Law. The 113-page document reflected the staff’s understanding of the Working Group’s requests, along with notes covering each section’s “Topic, Derivation, and Comments.” The Committee’s staff placed similar statutory topics into 11 thematic chapters:

Introductory Provisions	General Powers
Formation	Authorized Services and Facilities
Initial Board of Directors	Finances
Reorganizing the Board of Directors	Alternative Revenues
Other Officers	Capital Financing
Zones	

The staff relied on the Fire Protection District Law, the Recreation and Park District Law, the Mosquito Abatement and Vector Control District Law, and the Public Cemetery District Law as models for this drafting exercise. The January 27 mailing also included a Source Table that identified the statutory origins of each section in Draft #1. The Committee’s staff invited the Working Group members and advisors to ask four questions about each section in Draft #1:

- *Does the proposed language do what the Working Group wanted?*
- *Is the proposed language clear and unambiguous?*

- *What's missing from the proposed language?*
- *What specific improvements are needed? Please bring specific wording with you.*

February 11 meeting. Ten members of the Working Group returned to Room 3191 in the State Capitol on Friday, February 11, 2005, to begin their review of Draft #1. They learned that Senator Kehoe had introduced SB 135 on February 1 as the legislative vehicle for the new CSD Law. Peter Detwiler gave the Working Group copies of the Kehoe bill and a background description. They also received two charts from the Senate Local Government Committee: "Comparing Local Taxes, Assessments, and Fees" and "Public Capital Formation: How Local Officials Use Debt to Accumulate Capital."

Starting with Government Code §61000, the Working Group started reviewing each section of Draft #1 and suggesting improvements. By the end of the day, the Working Group had covered the first 50 pages of Draft #1, up through the proposed Government Code §61061.

February 18 meeting. Discussions about Draft #1 resumed on Friday, February 18 when seven Working Group members met in a conference room in the Library & Courts Building II. The members and advisors received additional written materials including: a staff summary of "Utilities and the CSD Law," a list of utility lobbyists interested in SB 135, and a packet of detailed "Recommendations and Requests" from:

- David Aranda, Stallion Springs CSD general manager
- Mel Aust, Hidden Valley Lake CSD general manager
- Mike McGrew, Mountain House CSD legal counsel
- Carl Nelson, Dublin San Ramon Services District legal counsel
- Jeff Stava, California Special Districts Association bond counsel

Additional written materials came from:

- Kent Kauss, Pacific Gas & Electric Co. lobbyist
- Carolyn McIntyre, Sempra Energy lobbyist
- Elliot Mulberg, Elk Grove CSD director

Carolyn McIntyre, Sempra's lobbyist, told the Working Group's members and advisors that her company and other investor-owned utilities would oppose SB 135 if the bill gave CSDs the same retail electricity powers as public utility districts. The Working Group agreed to delete that provision and make other changes to CSDs' powers to generate hydroelectricity. After McIntyre left, the Working Group completed its review of Draft #1 by the end of the day's meeting.

Draft #2. Based on the Working Group's advice, the staff of the Senate Local Government Committee produced Draft #2, covering 114 pages. On February 25, the staff sent Draft #2 out for review and comment. More than 30 responses came back by mid-March, many of which contained very detailed comments and recommended specific revisions. The staff adjusted Draft #2 and then asked Legislative Counsel to convert the revised version into a set of formal amendments to SB 135. The March 29 version of SB 135 contains the revised Draft #2.

June 3 meeting. As SB 135 moved through the legislative process, several reviewers, interest groups, and individual CSDs asked for amendments. While some were technical improvements, others recommendation proposed substantive policy changes. To sort out those requests, 12 members of the Working Group convened again on Friday, June 3 in Room 112 of the State Capitol. The Working Group used a document called, “Requested Amendments to Senate Bill 135 (Kehoe), The Community Services District Law,” to guide its discussions of 14 proposed changes. The Working Group also received a June 1, 2005 letter from William W. Abbott on behalf of his client, Castle & Cook Saddle Creek, Inc. and the Saddle Creek CSD, and an undated letter from Dennis Merrill, president of the Saddle Creek CSD. Abbott attended the meeting, as did:

- Dan Carrigg, League of California Cities lobbyist
- Hope Leja, Cameron Estates CSD general manager
- [Charlie Martin, Saddle Creek CSD general manager]
- Mikki Sorensen, SBC Pacific Bell representative
- Bill Wright, Cameron Estates CSD legal counsel

The Working Group went through the list of requested amendments, paying particular attention to the topics of telecommunications and gated roads. The results of the day’s discussions became the basis for June 13 amendments to SB 135.

The Legislative History of SB 135

Senator Christine Kehoe introduced SB 135 on February 1, 2005. The original version of SB 135 was a “spot bill,” introduced to create a legislative vehicle for the statutory revisions that the Working Group was still preparing. Knowing that the substantive language wasn’t yet ready, Senator Kehoe needed to author a place-holder before the legislative deadline for introducing new bills. As introduced, this one-page version of SB 135 merely inserted a statutory cross-reference to the Ralph M. Brown Act into the 1955 CSD Law.

Copies of the text of each version of SB 135, copies of the analyses prepared on the bill, and records of the legislative votes on the measure are available from the website maintained by the Legislative Counsel: www.leginfo.ca.gov.

March 29, first version. The results of the Working Group’s efforts appeared in print when Senator Kehoe amended SB 135 in late March. Those amendments repealed the 1955 CSD Law and instead proposed the enactment of the new CSD Law. This 49-page bill became the foundation for the versions that follow.

April 20, policy committee hearing. The Senate Local Government Committee heard SB 135 at its April 20 hearing. In the previous week, the Committee’s staff had released a seven-page bill analysis that described how the measure affected CSDs’ policies, powers, procedures, and oversight mechanisms, as well as how SB 135 amended related statutes. The analysis also drew the Committee members’ attention to how the bill treated the CSDs’ latent powers and what the

analysis called the “strange case of CC&Rs.” The bill’s treatment of retail electricity powers also earned a comment in the Committee analysis. In addition to the Committee’s bill analysis, the staff of the Senate Republican Office of Policy reviewed SB 135 for the Committee’s Republican members. The five-page document recommended a “support” position.

At the hearing, Senator Kehoe presented SB 135 to her legislative colleagues. She said that “SB 135 is an ‘extreme make-over’ that changes the [CSD] Law’s shape, but not its essential personality.” After her introductory remarks, four speakers told the Committee about their support for the measure:

- Rita Velasquez, speaking for the California Special Districts Association.
- Dan Carrigg, representing the League of California Cities.
- Ken Cooley, also representing the League of California Cities.
- Richard Harris, on behalf of his client, the Dublin San Ramon Services District.

No one opposed the bill. Senator Machado moved the bill which then passed the Committee on a unanimous 9 to 0 roll call vote.

May 2, fiscal committee review. Because SB 135 allowed CSDs to adopt ordinances and because violations of those ordinances can be misdemeanors or infractions, the bill created a new category of crimes. By creating a new crime, SB 135 created a state-mandated local program. All bills that result in new state-mandated local programs go to the Senate Appropriations Committee. When the Chair of the Senate Appropriations Committee, Senator Carole Migden, reviewed SB 135, she determined that the bill did not need a formal hearing because the measure contained the constitutionally appropriate language disclaiming the state’s responsibility to pay for the cost of new crimes. On May 2, Senator Migden invoked Senate Rule 28.8 and sent SB 135 to the Senate Floor.

May 9, Senate approval. To prepare for the Senate’s action on SB 135, the Office of Senate Floor Analyses released a 10-page analysis that generally followed the one prepared by the Senate Local Government Committee’s staff. Because no “no” votes had been cast against the bill and because there was no recorded opposition to the measure, SB 135 qualified for the Senate’s Special Consent Calendar #4. Following its custom and practice, there was no Floor debate on SB 135 or any of the other bills on that Consent Calendar which the Senate passed by a roll call vote of 38 to 0.

June 13, second amendments. Senator Kehoe amended her SB 135 to get the bill ready for its hearing by the Assembly Local Government Committee. The June 13 amendments:

- Added five other Senators as coauthors.
- Inserted language explaining how voters approve the formation of a new CSD (§61014).
- Clarified that directors may be volunteer firefighters, as allowed by current law (§61040).
- Clarified that water service CSDs can change their directors’ stipends (§61047 [b]).
- Resolved any conflicts between the new CSD Law and other statutes (§61100).
- Deleted the authority for telecommunications facilities and services (§61100).
- Clarified the authority for some CSDs to enforce CC&Rs (§61105).
- Inserted the authority for some CSDs to provide telecommunications (§61105).
- Inserted language recognizing that some CSDs use two-year budgets (§61110, §61112).
- Inserted the reference to “facilities” in the language relating to fees (§61115).

- Corrected minor drafting and typographical errors.

June 29, policy committee hearing. The Assembly Local Government Committee's seven-page bill analysis prepared for its June 29 hearing described the bill's key features and commented on the provisions relating to intergovernmental approvals, latent powers, CC&Rs, and electricity services. The staff analysis also alerted the Committee's Assembly Members that Senator Kehoe would propose seven technical amendments when she presented the bill. At the hearing, Senator Kehoe thanked the Committee's staff and the Assembly Republican staff for helping the Working Group's efforts and she offered the predicted technical amendments. The Committee approved the bill, as amended, by a roll call vote of 7 to 0.

July 1, third amendments. The July 1 version of the bill reflects the changes adopted by the Assembly Local Government Committee on June 29 when it passed the bill. The July 1 amendments:

- Conformed SB 135 to AB 1234 (Salinas) for reimbursing directors' expenses (§61047)
- Banned a CSD's latent power if another agency already served the area (§61106).
- Deleted the reference to "fees" from CSDs' fiscal powers (§61115).
- Corrected minor drafting and typographical errors.

July 13, fiscal committee hearing. Based on a one-page staff analysis of SB 135, the Assembly Appropriations Committee passed the bill without debate as part of its Consent Calendar on July 13.

August 22, Assembly approval. The analysis prepared for the Assembly Floor was essentially the same as the analysis used by the Assembly Local Government Committee in late June. Assembly Member Simón Salinas, Chair of the Assembly Local Government Committee, presented SB 135 on the Assembly Floor on August 22. The roll call vote of 76 to 0 sent the bill back to the Senate for concurrence in the Assembly's amendments.

August 29, Senate concurrence. The concurrence analysis prepared by the Office of Senate Floor Analyses mentioned that the Assembly amendments clarified CSDs' latent powers, cross-referenced AB 1234, and corrected drafting problems. When Senator Kehoe presented the amended version of SB 135 to the Senate on August 29, her statement also noted that the Assembly amendments had added coauthors and removed the City of Elk Grove's opposition. Without debate, the Senate concurred in the Assembly amendments by the roll call vote of 36 to 1. Although Senator Tom McClintock voted against the bill, he did not explain his reasons.

September 22, Governor's signature. On August 31, Senator Kehoe sent a formal letter to Governor Arnold Schwarzenegger, asking him to sign SB 135. After sketching the bill's origins, she candidly noted that her bill still had two remaining opponents. Although the City of Elk Grove had withdrawn its earlier opposition, the League of California Cities remained opposed. The State Department of Finance also opposed SB 135, even though the Department had declined to participate in the Working Group. Senator Kehoe drew attention to the bill's long list of supporters, many of whom wrote directly to the Governor to request his signature. Senator Kehoe's letter declared that local "communities and the districts that serve them deserve a governing statute that reinforces the basic democratic values of political accountability and managerial respon-

sibility.” She concluded by saying that the new CSD Law was “carefully written” so that it “should last for another 50 years.”

Following the standard practice, SB 135 went through the formal enrollment procedures, reaching Governor Schwarzenegger on September 2. On September 12, the Legislative Counsel formally notified the Governor that the bill’s title and form were sufficient and constitutional.

On September 22, Governor Schwarzenegger signed SB 135 into law as Chapter 249 of the Statutes of 2005. The newly enacted Community Services District Law became effective on January 1, 2006.

Text and Commentary

**CALIFORNIA GOVERNMENT CODE
TITLE 6. DISTRICTS
DIVISION 3. COMMUNITY SERVICES DISTRICTS
PART 1. GENERAL PROVISIONS
CHAPTER 1. INTRODUCTORY PROVISIONS**

61000. This division shall be known and may be cited as the Community Services District Law.

Topic, Derivation, and Comments: Name. Based on §61000.

The Working Group wanted the new CSD Law to start with the same name and the same section as the 1955 Law. There was no interest in renumbering the new CSD Law as §60000 which is where it originally started in 1951.

61001. (a) The Legislature finds and declares all of the following:

- (1) The differences among California's communities reflect the broad diversity of the state's population, geography, natural resources, history, and economy.
- (2) The residents and property owners in California's diverse communities desire public facilities and services that promote the public peace, health, safety, and welfare.
- (3) Responding to these communities' desires, the Legislature enacted the Community Services District Law in 1951, and reenacted the Community Services District Law in 1955.
- (4) Between 1955 and 2005, the voters in more than 300 communities have formed community services districts to achieve local governance, provide needed public facilities, and supply public services.
- (5) Since then, the Legislature has amended the Community Services District Law in many ways, resulting in a statute that can be difficult for residents, property owners, and public officials to understand and administer.
- (6) There is a need to revise the Community Services District Law to achieve statutory clarity and provide a framework for local governance that California's diverse communities can adapt to their local conditions, circumstances, and resources.
- (7) The enactment of this division is necessary for the public peace, health, safety, and welfare.

(b) The Legislature finds and declares that for many communities, community services districts may be any of the following:

- (1) A permanent form of governance that can provide locally adequate levels of public facilities and services.
- (2) An effective form of governance for combining two or more special districts that serve overlapping or adjacent territory into a multifunction special district.
- (3) A form of governance that can serve as an alternative to the incorporation of a new city.
- (4) A transitional form of governance as the community approaches cityhood.

(c) In enacting this division, it is the intent of the Legislature:

- (1) To continue a broad statutory authority for a class of limited-purpose special districts to provide a wide variety of public facilities and services.
- (2) To encourage local agency formation commissions to use their municipal service reviews, spheres of influence, and boundary powers, where feasible and appropriate, to combine special districts that serve overlapping or adjacent territory into multifunction community services districts.
- (3) That residents, property owners, and public officials use the powers and procedures provided by the Community Services District Law to meet the diversity of the local conditions, circumstances, and resources.

[THE COMMENTARY APPEARS ON THE NEXT PAGE]

Topic, Derivation, and Comments: Legislative Findings and Intent. New.

This section formally expresses the Legislature’s intent in enacting the new CSD Law. The 1955 Law lacked a formal statement of legislative intent, so the Working Group wanted to explain the reasons for the revision. Several of the concepts come from CSDs’ mission statements.

Subdivision (a) recites the circumstances that led to the new CSD Law.

Subdivision (b) lists the different institutional roles that CSDs can have in different communities.

Subdivision (c) declares three statements of legislative intent, including encouraging LAFCOs to convert single-function districts into CSDs, “where feasible and appropriate.”

The Working Group considered other, similar statutory preambles:

County Service Areas	Government Code §25210.1
Fire protection districts	Health & Safety Code §13801
LAFCOs	Government Code §56001
Mosquito abatement districts	Health & Safety Code §2001
Public cemetery districts	Health & Safety Code §9001
Recreation & park districts	Health & Safety Code §5780

61002. Unless the context requires otherwise, as used in this division, the following terms shall have the following meanings:

- (a) "At large" means the election of members of the board of directors all of whom are elected by the voters of the entire district.
- (b) "Board of directors" means the board of directors of a district that establishes policies for the operation of the district.
- (c) "By divisions" means the election of members of the board of directors who are residents of the division from which they are elected only by voters of the division.
- (d) "District" means a community services district created pursuant to this division or any of its statutory predecessors.
- (e) "From divisions" means the election of members of the board of directors who are residents of the division from which they are elected by the voters of the entire district.
- (f) "General manager" means the highest level management appointee who is directly responsible to the board of directors for the implementation of the policies established by the board of directors.
- (g) "Graffiti abatement" means the power to prevent graffiti on public or private property, receive reports of graffiti on public or private property, provide rewards not to exceed one thousand dollars (\$1,000) for information leading to the arrest and conviction of persons who apply graffiti on public or private property, abate graffiti as a public nuisance pursuant to Section 731 of the Civil Code, remove graffiti from public or private property, and use the services of persons ordered by a court to remove graffiti.
- (h) "Latent power" means those services and facilities authorized by Part 3 (commencing with Section 61100) that the local agency formation commission has determined, pursuant to subdivision (h) of Section 56425, that a district did not provide prior to January 1, 2006.
- (i) "President" or "chair" means the presiding officer of the board of directors.
- (j) "Principal county" means the county having all or the greater portion of the entire assessed valuation, as shown on the last equalized assessment roll of the county or counties, of all taxable property in the district.
- (k) "Secretary" means the secretary of the board of directors.
- (l) "Voter" means a voter as defined by Section 359 of the Elections Code.
- (m) "Zone" means a zone formed pursuant to Part 4 (commencing with Section 61140).

[THE COMMENTARY BEGINS ON THE NEXT PAGE]

Topic, Derivation, and Comments: Definitions.

These definitions apply throughout the entire division. This section brings together several statutory definitions that were scattered throughout the 1955 Law.

Subdivision (a) is new, but the language is derived from §34871 for general law cities.

Subdivision (b) is based on §61013.

Subdivision (c) is new and derived from §34871 (d) for general law cities and Health & Safety Code §5785 (b) for recreation and park districts.

Subdivision (d) is based on §61012. Some CSDs (e.g., Dublin San Ramon Services District) do not use the phrase “community services district” in their names. Nevertheless, if a district operates under the CSD Law, it’s still a CSD. See the new §61061 (b) for the authority to change a CSD’s name.

Subdivision (e) is new and derived from §34871 (d) for general law cities and Health & Safety Code §5785 (b) for recreation and park districts.

Subdivision (f) is new. The Working Group wanted the CSD Law to define the general manager’s position and duties because the new statute requires districts to appoint general managers; see the new §61050 (a).

Subdivision (g) is new and based on §61601.1. The Working Group recommended adding this definition in order to simplify the new §61100.

Subdivision (h) is new. In effect, this language grandfathers the services and facilities that CSDs already provided before January 1, 2006, the effective date of the new CSD Law. When LAFCOs adopt or revise special districts’ spheres of influence, they must inventory the districts’ services (§56425 [h]). In 2000, the Legislature set January 1, 2006 as the deadline for LAFCOs to update all of their spheres of influence (§56425 [f]). Those inventories would document all CSDs’ existing powers. Everything else becomes a “latent power” that requires LAFCO’s approval before activation. After the Legislature passed SB 135, it extended LAFCOs’ deadline to update spheres of influence by two years, to January 1, 2008, by passing AB 1746 (Assembly Local Government Committee, 2006) as Chapter 347 of the Statutes of 2005. Nevertheless, January 1, 2006 remains LAFCOs’ base date for determining CSDs’ latent powers.

Subdivision (i) is based on §61014. The Working Group noted that some CSDs call their presiding officer the “chair,” so this language recognizes that usage as well.

Subdivision (j) is based on §61017. It is nearly identical to the definition used in other special districts’ principal acts and the Cortese-Knox-Hertzberg Act (§56066). However, UDEL’s

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definition relies on a district's acreage not its assessed value (Elections Code §10500 [a][10]). Note that it's possible (although probably uncommon) that a district's principal county will change if the amount of a CSD's assessed value in one county becomes larger than the amount of the CSD's assessed value in its earlier principal county.

Subdivision (k) is based on §61015.

Subdivision (l) is based on §61016 and derived from Public Resources Code §5780.1 (i). The Elections Code distinguishes between "elector" and "voter." A voter is an elector who has registered to vote.

Subdivision (m) is new, but the concept is derived from §61770, et seq.

61003. (a) This division provides the authority for the organization and powers of community services districts. This division succeeds the former Division 3 (commencing with Section 61000) as added by Chapter 1746 of the Statutes of 1955, as subsequently amended, and any of its statutory predecessors.

(b) Any community services district organized or reorganized pursuant to the former Division 3 or any of its statutory predecessors which was in existence on January 1, 2006, shall remain in existence as if it had been organized pursuant to this division.

(c) Any improvement district of a community services district formed pursuant to the former Chapter 5 (commencing with Section 61710) of the former Part 5 or any of its statutory predecessors which was in existence on January 1, 2006, shall be deemed to be a zone as if it had been formed pursuant to Chapter 5 (commencing with Section 61140) of Part 3.

(d) Any zone of a community services district formed pursuant to the former Chapter 2 (commencing with Section 61770) of the former Part 6 or any of its statutory predecessors which was in existence on January 1, 2006, shall remain in existence as if it had been organized pursuant to this division.

(e) Any indebtedness, bond, note, certificate of participation, contract, special tax, benefit assessment, fee, election, ordinance, resolution, regulation, rule, or any other action of a district taken pursuant to the former Division 3 or any of its statutory predecessors which was taken before January 1, 2006, shall not be voided solely because of any error, omission, informality, misnomer, or failure to comply strictly with this division.

(f) Any approval or determination, including, but not limited to terms and conditions made with respect to a district by a local agency formation commission prior to January 1, 2006, shall remain in existence.

Topic, Derivation, and Comments: Succession and Savings Clauses. New and derived from Public Resources Code §5780.3.

The 1955 Law lacked any mention that its provisions succeed the 1951 Law. This section makes it clear that the new CSD Law is the successor to the 1955 Law.

Note that subdivision (c) converts any existing “improvement districts” into zones without any loss in their authority, powers, or limitations.

61004. This division shall be liberally construed to effectuate its purposes.

Topic, Derivation, and Comments: Liberal Construction. New and derived from Public Resources Code §5780.7.

The 1955 Law did not direct the courts to broadly interpret the statute. If someone sues a CSD for stretching its statutory authority, this language will be useful in defending the CSD's actions. This approach is consistent with the Legislature's desire to set up CSDs with enough power to serve diverse communities and adapt to local conditions, circumstances, and resources; see the new §61001.

61005. If any provision of this division or the application of any provision of this division in any circumstance or to any person, county, city, special district, school district, the state, or any agency or subdivision of the state is held invalid, that invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application of the invalid provision, and to this end the provisions of this division are severable.

Topic, Derivation, and Comments: Severability. New and derived from Public Resources Code §5780.7.

The 1955 Law lacked a severability clause, so this language is here just in case a court finds that some piece of the new CSD Law is invalid. If that happens, the rest of the new CSD Law will still remain on the books.

61006. (a) Any action to determine the validity of the organization of a district shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(b) Any action to determine the validity of any bonds, warrants, contracts, obligations, or evidence of indebtedness of a district shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) Any judicial action to compel performance of an action by a district, its officers, or its directors shall be brought pursuant to Section 1084 of the Code of Civil Procedure.

(d) Any judicial review of any administrative act taken after a hearing by a district shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure.

Topic, Derivation, and Comments: Lawsuits.

Subdivision (a) is based on §61119.

Subdivision (b) is based on §61671.2.

Subdivisions (c) and (d) are new and derived from Health and Safety Code §9006. The 1955 Law did not provide any standards of review.

61007. (a) Territory, whether incorporated or unincorporated, whether contiguous or noncontiguous, whether in one or more counties, may be included in a district.

(b) Except as provided in this part, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5, shall govern any change of organization or reorganization of a district. In the case of any conflict between that division and this division, the provisions of this division shall prevail.

(c) A district shall be deemed an “independent special district,” as defined by Section 56044, except when a county board of supervisors or a city council is the board of directors.

Topic, Derivation, and Comments: Area and Boundaries.

Subdivision (a) is based on §61800 and derived from Health & Safety Code §9007 (a). This language clearly identifies which territory can be included in a CSD.

Subdivision (b) is new and derived from Health & Safety Code §9007 (b). The Cortese-Knox-Hertzberg Act already governs CSDs’ boundary changes, but the 1955 Law did not provide an overt cross-reference to the LAFCO law. This provision will supplant several sections in the 1955 Law which set out the procedures for forming new CSDs. This new subdivision clearly links the procedures for forming a new CSD (see the new Chapter 2 which begins at the new §61010) with the LAFCO law.

Subdivision (c) is new and derived from Health & Safety Code §9007 (c). Representatives of independent special districts can be LAFCO commissioners (see §56332). Independent special districts share the cost of LAFCO’s budget when special district representatives sit on LAFCO (§56381 [b]). The Cortese-Knox-Hertzberg Act defines “independent special district” to include special districts composed of either directly elected members or members who have been appointed to fixed terms. CSDs fit the former category, except when county supervisors or a city council is *ex officio* board of directors. This statutory language is a reminder that most CSDs are independent special districts. Therefore, the 13 CSDs that are governed by county boards of supervisors and the five CSDs that are governed by city councils are “dependent special districts.”

61008. (a) Except as otherwise provided in this division, districts are subject to the Uniform District Election Law, Part 4 (commencing with Section 10500) of Division 10 of the Elections Code.

(b) A board of directors may require that the election of members to the board of directors shall be held on the same day as the statewide general election pursuant to Section 10404 of the Elections Code.

(c) A district may conduct any election by all-mailed ballots pursuant to Division 4 (commencing with Section 4000) of the Elections Code.

(d) A district may hold advisory elections pursuant to Section 9603 of the Elections Code.

Topic, Derivation, and Comments: Elections.

Subdivision (a) is based on §61400 and derived from Public Resources Code §5787. This language omits the reference to “special district elections” and Elections Code §10100.

Subdivision (b) is new and derived from Public Resources Code §5787.1.

Subdivision (c) is new and provides a “billboard” to mailed ballot elections. Elections Code §4108 already allows all special districts to use mailed ballots.

Subdivision (d) is new and this cross-reference reminds CSDs that they can put advisory questions on the ballot.

61009. Whenever the boundaries of a district or a zone change, the district shall comply with Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Boundary Filings. New and derived from Public Resources Code §5786.31.

Existing law requires all local governments to file their boundary changes with the State Board of Equalization. The 1955 Law was silent on this topic. This section is a “billboard” provision, reminding CSDs to comply with this existing law.

CHAPTER 2. FORMATION

61010. A new district may be formed pursuant to this chapter.

Topic, Derivation, and Comments: Initiation Authority. Based on §61100 (a) and derived from Public Resources Code §5782.

This section formally signals the beginning of the chapter that lays out the statutory procedures for forming a new CSD.

61011. (a) A proposal to form a new district may be made by petition. The petition shall do all of the things required by Section 56700. In addition, the petition shall do all of the following:

- (1) State which of the services listed in Section 61100 it is proposed that the district be authorized to provide upon formation.
- (2) Set forth the proposed methods, including, but not limited to, special taxes, benefit assessments, and fees, by which the district will finance those services.
- (3) Propose a name for the district.
- (4) Specify the method of selecting the initial board of directors, as provided in Chapter 1 (commencing with Section 61020) of Part 2.

(b) The petitions, the proponents, and the procedures for certifying the sufficiency of the petitions shall comply with Chapter 2 (commencing with Section 56700) of Part 3 of Division 5. In the case of any conflict between that chapter and this chapter, the provisions of this chapter shall prevail.

(c) The petition shall be signed by not less than 25 percent of the registered voters residing in the area to be included in the district, as determined by the local agency formation commission.

Topic, Derivation, and Comments: Formation Petition.

Subdivision (a) is based on §61101 and derived from Public Resources Code §5782.1. By cross-referencing the Cortese-Knox-Hertzberg Act provisions, this language places the CSD formation procedures solidly within the LAFCO context. For example, §56700 requires petitions to include basic information about a proposed boundary change. The list in subdivision (a) requires the petitioners to list the additional detailed information that the Working Group wanted.

Subdivision (b) is new and derived from Public Resources Code §5782.1. This language directs everyone to the standard LAFCO procedures.

Subdivision (c) is based on §61103 and derived from Public Resources Code §5782.1. Note, however, the Working Group recommended that the new CSD Law raise the signature threshold from 10% to 25%. The Working Group argued that the formation of a new, probably multi-function, local government is a serious undertaking, one that should have substantial public support. The 25% threshold is the same as other statutes require for new cities, fire protection districts, recreation and park district, mosquito abatement districts, and public cemetery districts. Also note that only registered voters --- not landowners --- can petition to form a CSD.

61012. (a) Before circulating any petition, the proponents shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for forming the district, the proposed services that the district will provide, and the proposed methods by which the district will be financed. The notice shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the territory proposed to be included in the district. If the territory proposed to be included in the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each of the counties.

(b) The notice shall be signed by one or more of the proponents, and shall be in substantially the following form:

“Notice of Intent to Circulate Petition

“Notice is hereby given of the intention to circulate a petition proposing to form the _____ [name of the district]. The reasons for forming the proposed district are: _____ . The proposed service(s) that the district will provide are: _____ . The proposed method(s) by which the district will finance those services are: _____ .”

(c) Within five days after the date of publication, the proponents shall file with the executive officer of the local agency formation commission of the principal county a copy of the notice together with an affidavit made by a representative of the newspaper or newspapers in which the notice was published certifying to the fact of the publication.

(d) After the filing required by subdivision (c), the petition may be circulated for signatures.

Topic, Derivation, and Comments: Notice of Intention. Based on §61102 and derived from Public Resources Code §5782.3.

Even before the formation petition can be circulated, the proponents must publicly state their intentions and file a statement with LAFCO. This language goes beyond the requirements in the former §61102. Consistent with the new §61011, this language requires the proponents to list the services the proposed district will provide and the proposed methods of financing those services.

61013. (a) A proposal to form a new district may also be made by the adoption of a resolution of application by the legislative body of any county, city, or special district which contains any of the territory proposed to be included in the district. Except for the provisions regarding the signers, the signatures, and the proponents, a resolution of application shall contain all of the matters specified for a petition in Section 61011.

(b) Before adopting a resolution of application, the legislative body shall hold a public hearing on the resolution. Notice of the hearing shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the county, city, or special district. At least 20 days before the hearing, the legislative body shall give mailed notice of its hearing to the executive office of the local agency formation commission of the principal county. The notice shall generally describe the proposed formation of the district and the territory proposed to be included in the district.

(c) The clerk of the legislative body shall file a certified copy of the resolution of application with the executive officer of the local agency formation commission of the principal county.

Topic, Derivation, and Comments: Application by Resolution. Based on §61106 and derived from Public Resources Code §5782.5.

Unlike the 1955 Law, this language also allows any special district to adopt a resolution of application. The omission of special districts caused a minor problem in Sacramento County when two special districts were thinking about combining their operations into a single CSD. Even though they were willing, they lacked the statutory authority to adopt a resolution to apply to LAFCO. This provision resolves that problem.

61014. (a) Once the proponents have filed a sufficient petition or a legislative body has filed a resolution of application, the local agency formation commission shall proceed pursuant to Part 3 (commencing with Section 56650) of Division 3 of Title 5.

(b) Notwithstanding any other provision of law, a local agency formation commission shall not approve a proposal that includes the formation of a district unless the commission determines that the proposed district will have sufficient revenues to carry out its purposes.

(c) Notwithstanding subdivision (b), a local agency formation commission may approve a proposal that includes the formation of a district where the commission has determined that the proposed district will not have sufficient revenue provided that the commission conditions its approval on the concurrent approval of special taxes or benefit assessments that will generate those sufficient revenues. In approving the proposal, the commission shall provide that if the voters or property owners do not approve the special taxes or benefit assessments, the proposed district shall not be formed.

(d) If the local agency formation commission approves the proposal for the formation of a district, then the commission shall proceed pursuant to Part 4 (commencing with Section 57000) of Division 3 of Title 5.

(e) Notwithstanding Section 57075, the local agency formation commission shall take one of the following actions:

(1) If a majority protest exists in accordance with Section 57078, the commission shall terminate proceedings.

(2) If no majority protest exists, the commission shall do either of the following:

(A) Order the formation subject to the approval by the voters.

(B) Order the formation subject to the approval by the voters of a special tax or the approval by the property owners of a special benefit assessment, pursuant to subdivision (c).

(f) If the local agency formation commission orders the formation of a district pursuant to paragraph (2) of subdivision (e), the commission shall direct the board of supervisors to direct county officials to conduct the necessary elections on behalf of the proposed district.

Topic, Derivation, and Comments: LAFCO Proceedings.

Subdivision (a) is based on §61107.

Subdivisions (b) and (c) are new and derived from Health & Safety Code §5782.7. This language prohibits a LAFCO from approving a proposed CSD if it lacks sufficient revenue. The Working Group was concerned that a LAFCO might bow to local pressure to form a new CSD, but then the voters would turn down the needed taxes or assessments. Subdivisions (b) and (c) require the LAFCO to figure out if the proposed district can afford the proposed services.

[THE COMMENTARY CONTINUES ON THE FOLLOWING PAGE]

Subdivisions (b) and (c) dovetail with the provisions of the Cortese-Knox-Hertzberg Act that require a LAFCO to consider service needs and costs (§56668 [b]), service capacity and revenues (§56668 [j]), and governance alternatives (§56886.5). When thinking about the sufficiency of the proposed district's future revenues, a LAFCO can consider rates and fees in addition to special taxes and benefit assessments. In short, the LAFCO must link the formation with the funding. Note, however, that subdivision (c) makes the formation of an underfunded district contingent on new special taxes and new benefit assessments, but not new fees. If the community rejects the new taxes or assessments, the formation fails. The Working Group wanted to avoid creating a CSD that would be merely a "hollow shell." In other words: "No dollars, no district."

Subdivisions (d), (e), and (f) explain how a proposed district gets to the ballot. The Working Group rejected the idea that a CSD could be formed without an election. The former §61111 used to allow county supervisors to form a CSD without voter approval if 80% of the proposed district's voters filed a petition with the LAFCO executive officer. The Working Group believed that all proposed CSDs should go before the voters at an election.

PART 2. INTERNAL ORGANIZATION

CHAPTER 1. INITIAL BOARD OF DIRECTORS

61020. The initial board of directors of a district formed on or after January 1, 2006, shall be determined pursuant to this chapter.

Topic, Derivation, and Comments: Authority. Based on §61120.

This section clearly explains that this chapter does not affect any of the existing CSDs.

61021. (a) Except as provided in this chapter, the initial board of directors shall be elected.

(b) The directors may be elected by one of the following methods:

- (1) At large.
- (2) By divisions.
- (3) From divisions.

(c) The elections and terms of office shall be determined pursuant to the Uniform District Election Law, Part 4 (commencing with Section 10500) of the Elections Code.

Topic, Derivation, and Comments: Elected Board of Directors.

The Working Group expressed a preference for forming new CSDs as independent special districts and discouraging county-governed CSDs. If a county board of supervisors wants to set up and govern a special district to deliver focused services, it can form a County Service Area.

Subdivision (a) is based on §61121, however this language omits the possibility of allowing a county board of supervisors to appoint a CSD's board of directors. See the new §61022 which allows a county board of supervisors to appoint itself as the new CSD's board of directors. Also see the new §61048 which allows a CSD's board to appoint an advisory committee to help it make decisions about the district's programs and services. Serving as the *ex officio* CSD board of directors, a county board of supervisors can appoint an advisory committee to help it make decisions.

Subdivision (b) is new and derived from Public Resources Code §5783.11 (b). This language gives CSDs the same three electoral choices as general law cities (§34871). The new CSD Law defines these terms. See the new §61002 (a), (c), and (e).

Subdivision (c) is new and derived from Public Resources Code §5783.11 (a). The 1955 Law told CSDs to follow UDEL (§61400), but this "billboard" language is a reminder.

61022. (a) In the case of a proposed district which contains only unincorporated territory in a single county and less than 100 voters, the local agency formation commission may provide, as a term and condition of approving the formation of the district, that the county board of supervisors shall be the initial board of directors until conversion to an elected board of directors.

(b) The board of supervisors shall adopt a resolution pursuant to subdivision (b) of Section 61027, placing the question of having an elected board of directors on the ballot when any of the following occurs:

(1) When the registrar of voters certifies in writing that the number of voters in the district has reached or exceeded 500.

(2) When the registrar of voters certifies in writing that the number of voters in the district has reached or exceeded a lower number specified by the local agency formation commission as a term and condition of approving the formation of the district.

(3) Ten years after the effective date of the district's formation.

(4) The local agency formation commission has required, as a term and condition of approving the formation of the district, placing the question of having an elected board of directors on the ballot in less than 10 years after the effective date of the district's formation.

(c) At the election, the voters shall also elect members to the district's board of directors. Those persons shall take office only if a majority of the voters voting upon the question of having an elected board are in favor of the question.

(d) If the question is submitted to the voters at a general district election, the notice required by Section 12112 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

Topic, Derivation, and Comments: County Supervisors as Board of Directors. Based on §61121 and §61200.1.

This section creates the exception to the general rule in the new §61021 that new CSDs must have directly elected boards of directors. After extended discussions, the Working Group recognized that there may be situations that justify the formation of new dependent CSDs. For example, county supervisors may agree with a developer's proposal to build a large development project where there are no or only a few registered voters. In that situation, the Working Group wanted the new CSD Law to set up a mandatory conversion election, asking the voters if they wanted an independent district.

Subdivision (b) sets out four possible situations that would trigger a conversion election.

Like the new §61027, subdivision (c) requires the election of the replacement directors at the conversion election. Having candidates campaign at the same time increases the political likelihood of converting a dependent CSD to independent status.

CHAPTER 2. REORGANIZING THE BOARD OF DIRECTORS

61025. (a) If a majority of the voters voting upon the question are in favor of the question at a general district or special election, a board of directors may be elected by one of the following methods:

- (1) At large.
- (2) By divisions.
- (3) From divisions.

(b) The board of directors may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 25 percent of the registered voters of the district, the board of directors shall adopt a resolution placing the question on the ballot.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 12112 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

(d) If the majority of voters voting upon the question approves of the election of directors either by divisions or from divisions, the board of directors shall promptly adopt a resolution dividing the district into five divisions. The resolution shall assign a number to each division. Using the last decennial census as a basis, the divisions shall be as nearly equal in population as possible. In establishing the boundaries of the divisions, the board of directors may give consideration to the following factors:

- (1) Topography.
- (2) Geography.
- (3) Cohesiveness, contiguity, integrity, and compactness of territory.
- (4) Community of interests of the divisions.

(e) If the majority of voters voting upon the question approves of the election of directors either by divisions or from divisions, then at the next election, the members of the board of directors shall be so elected. Each member elected by division or from division shall be a resident of the election division by which or from which he or she is elected. At the district general election following the approval by the voters of the election of directors either by divisions or from divisions, the board of directors shall assign vacancies on the board of directors created by the expiration of terms to the respective divisions and the vacancies shall be filled either by or from those divisions.

(f) If the majority of voters voting on the question approves of the election of directors at large, the board of directors shall promptly adopt a resolution dissolving the divisions which had existed.

[THE COMMENTARY APPEARS ON THE NEXT PAGE]

Topic, Derivation, and Comments: Electoral Conversions. New. Derived from §34871 for general law cities and Public Resources Code §5785 and §5785.3 for recreation and park districts. The 1955 Law required directors to be elected at large (§61200), and didn't allow voters to elect their boards of directors by divisions or from divisions. The Working Group wanted CSDs to have the same three choices that are available to general law cities, fire protection districts, and recreation and park districts.

Subdivision (a) gives CSDs three ways to elect their boards of directors. The new CSD Law defines these terms. See the new §61002 (a), (c), and (e).

Converting the basis for electing directors is a major governance question. That's why subdivision (a) requires majority voter approval and subdivision (b) requires a petition signed by 25% of the CSD's voters; the same as formation elections and formation petitions. The language is derived from Public Resources Code §5785 (c) and (d).

Subdivision (c) is derived from Public Resources Code §5785 (e).

Subdivision (d) is derived from Public Resources Code §5785 (f).

Subdivision (e) is derived from Public Resources Code §5785 (g).

Subdivision (f) is derived from Public Resources Code §5785 (h).

61026. In the case of a board of directors elected by divisions or from divisions, the board of directors shall adjust the boundaries of the divisions before November 1 of the year following the year in which each decennial census is taken. If at any time between each decennial census, a change of organization or reorganization alters the population of the district, the board of directors shall reexamine the boundaries of its divisions. If the board of directors finds that the population of any division has varied so that the divisions no longer meet the criteria specified in subdivision (d) of Section 61025, the board of directors shall adjust the boundaries of the divisions so that the divisions shall be as nearly equal in population as possible. The board of directors shall make this change within 60 days of the effective date of the change of organization or reorganization.

Topic, Derivation, and Comments: Reapportionment. New. Derived from Public Resources Code §5785.1 (a).

The board of directors must follow these procedures for reapportioning their own electoral divisions after a federal census or after significant boundary changes.

61027. (a) This section applies only to a district where the board of supervisors is the district's board of directors and more than five years have passed since the effective date of the district's formation.

(b) Upon receipt of a petition signed by at least 10 percent of the voters of the district, the board of directors shall adopt a resolution placing the question on the ballot. Alternatively, the board of directors may adopt a resolution placing the question on the ballot. The petition or resolution shall specify whether the board of directors will be elected at large, by divisions, or from divisions.

(c) If a majority of the voters voting upon the question at a general district or special election are in favor, the district shall have an elected board of directors.

(d) At the election, the voters shall also elect members to the district's board of directors. Those persons shall take office only if a majority of the voters voting upon the question of having an elected board of directors are in favor of the question.

(e) If the question is submitted to the voters at a general district election, the notice required by Section 12112 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

Topic, Derivation, and Comments: Dependent to Independent. Based on §61222.

According to the State Controller's Special District Annual Report 2001-02, there are 13 county-governed dependent CSDs; the county boards of supervisors are the districts' boards of directors. This section describes how a county-governed, dependent CSD can become an independent special district.

Converting a CSD from dependent to independent status is a major governance question. That's why subdivision (c) requires majority voter approval. Nevertheless, in subdivision (b) the Working Group agreed to retain the 10% petition threshold that's found in the former §61222 rather than the 25% requirement for formation petitions. That lower threshold marks the Working Group's preference for independent districts.

Subdivision (d) requires the new board to be elected at the same time. The Working Group wanted this departure from the former §61222 (d) because having active candidates for office creates a political advantage in favor of converting to independent status.

Note that this section does not apply to the five city-governed dependent CSDs where city councils are the districts' boards of directors. Encouraging an independent CSD that would be located exclusively within a city's limits would diffuse and confuse the accountability for local public facilities and services.

61028. (a) Before circulating any petition pursuant to Section 61025 or Section 61027, the proponents shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. The notice shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the district. If the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each county.

(b) The notice shall be signed by at least one, but not more than three, proponents and shall be in substantially the following form:

“Notice of Intent to Circulate Petition

“Notice is hereby given of the intention to circulate a petition affecting the Board of Directors of the _____ (name of the district). The petition proposes that _____ (description of the proposal).”

(c) Within five days after the date of publication, the proponents shall file with the secretary of the board of directors a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of publication.

(d) After the filing required by subdivision (c), the petition may be circulated for signatures.

(e) Sections 100 and 104 of the Elections Code shall govern the signing of the petition and the format of the petition.

(f) A petition may consist of a single instrument or separate counterparts. The proponents shall file the petition, together with all counterparts, with the secretary of the board of directors. The secretary shall not accept a petition for filing unless the signatures have been secured within six months of the date on which the first signature was obtained and the proponents submitted the petition to the secretary for filing within 60 days after the last signature was obtained.

(g) Within 30 days after the date of filing a petition, the secretary of the board of directors shall cause the petition to be examined by the county elections official, in accordance with Section 9113 to 9115, inclusive, of the Elections Code, and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

(h) If the certificate of the secretary shows the petition to be insufficient, the secretary shall immediately give notice by certified mail of the insufficiency to the proponents. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, the proponents may file with the secretary a supplemental petition bearing additional signatures.

[THE TEXT AND COMMENTARY CONTINUE ON THE NEXT PAGE]

(i) Within 10 days after the date of filing a supplemental petition, the secretary shall cause the supplemental petition to be examined by the county elections official.

(j) The secretary shall sign and date a certificate of sufficiency. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the secretary's examination. The secretary shall mail a copy of the certificate of sufficiency to the proponents.

(k) Once the proponents have filed a sufficient petition, the board of directors shall take the actions required pursuant to Section 61026 or Section 61027.

Topic, Derivation, and Comments: Petition Procedures. New and derived from Public Resources Code §5785.5.

This section explains how the proponents can force a board of directors to call an election on proposals to reorganize an existing board of directors. These procedures are similar to the procedures for qualifying petitions to form a new CSD.

61029. (a) Notwithstanding any other provision of this chapter, the Board of Supervisors of San Joaquin County shall be the Board of Directors of the Mountain House Community Services District, until conversion to a directly elected board of directors.

(b) When the registrar of voters certifies in writing that the number of voters in the district has reached or exceeded 1,000, the Board of Supervisors of San Joaquin County shall adopt a resolution placing the question of having an elected board of directors on the ballot. The resolution shall specify whether the board of directors will be elected at large, by divisions, or from divisions.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 12112 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

(d) If a majority of voters voting upon the question approves of electing the board of directors, the members of the board of directors shall be elected at the next general district election.

Topic, Derivation, and Comments: Mountain House CSD's Board of Directors. Based on §61200.1.

When the Legislature adopted the special provisions for the Mountain House CSD (SB 1397 (Johnston, 1994), the bill included this procedure for converting the county-dependent district to independent status.

61030. (a) Notwithstanding any other provision of this part, the local agency formation commission, in approving either a consolidation or reorganization of two or more special districts into a single community services district may, pursuant to subdivisions (k) and (n) of Section 56886, temporarily increase the number of members to serve on the board of directors of the consolidated or reorganized district to 7, 9, or 11, who shall be members of the boards of directors of the districts to be consolidated or reorganized as of the effective date of the consolidation or reorganization.

(b) Upon the expiration of the terms of the members of the board of directors of the consolidated or reorganized district whose terms first expire following the effective date of the consolidation or reorganization, the total number of members on the board of directors shall be reduced until the number of members equals five.

(c) In addition to the powers granted under Section 1780, in the event of a vacancy on the board of directors of the consolidated or reorganized district at which time the total number of members of the board of directors is greater than five, the board of directors may, by majority vote of the remaining members of the board, choose not to fill the vacancy. In that event, the total membership of the board of directors shall be reduced by one member. Upon making the determination not to fill a vacancy, the board of directors shall notify the board of supervisors of its decision.

(d) This section applies only to a consolidation or reorganization in which each subject agency was an independent special district prior to the initiation of the consolidation or reorganization.

(e) As used in this section, “consolidation” means a consolidation as defined by Section 56030, “special district” means a special district as defined by Section 56036, “independent special district” means an independent special district as defined by Section 56044, and “reorganization” means a reorganization as defined by Section 56073.

Topic, Derivation, and Comments: Temporarily Expanded Boards. Based on §61201.1.

With minor editing for clarity, this language is nearly identical to §61201.1, added to the 1955 Law by SB 228 (Kelley, 1997). LAFCOs can temporarily increase the size of a CSD’s board of directors to accomplish a consolidation or reorganization. Having a larger board may ease the tension that sometimes can be a political obstacle to combining special districts.

CHAPTER 3. BOARD OF DIRECTORS

61040. (a) A legislative body of five members known as the board of directors shall govern each district. The board of directors shall establish policies for the operation of the district. The board of directors shall provide for the implementation of those policies which is the responsibility of the district's general manager.

(b) No person shall be a candidate for the board of directors unless he or she is a voter of the district or the proposed district. No person shall be a candidate for the board of directors that is elected by divisions or from divisions unless he or she is a voter of that division or proposed division.

(c) All members of the board of directors shall exercise their independent judgment on behalf of the interests of the entire district, including the residents, property owners, and the public as a whole in furthering the purposes and intent of this division. Where the members of the board of directors have been elected by divisions or from divisions, they shall represent the interests of the entire district and not solely the interests of the residents and property owners in their divisions.

(d) Service on a municipal advisory council established pursuant to Section 31010 or service on an area planning commission established pursuant to Section 65101 shall not be considered an incompatible office with service as a member of a board of directors.

(e) A member of the board of directors shall not be the general manager, the district treasurer, or any other compensated employee of the district, except for volunteer firefighters as provided by Section 53227.

Topic, Derivation, and Comments: Board of Directors.

The first sentence of subdivision (a) is based on §61200 and §61300. The 1955 Law allowed CSDs to have boards of directors with either three or five members. The Working Group was aware some CSDs have three-member boards (e.g., Mountain Meadows CSD). The Working Group's consensus was that all CSDs should have five-member boards of directors. The Working Group also agreed to repeal the requirement that CSDs' boards must be elected at large.

The balance of subdivision (a) is based on §61301 and derived from Public Resources Code §5784. Not only does this language clearly assign governance to the board of directors, it also distinguishes the board's role in making policy from the general manager's role in implementing the board's policies. This statutory distinction is important to avoid situations where a board might micro-manage a CSD's operations, and to avoid situations where the general manager might usurp the board's policy-making role. This section must be read in conjunction with the new Chapter 4 and the new §61060, regarding the duties of the CSD's employees.

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]

Subdivision (b) is new and derived from Public Resources Code §5784 (c) for recreation and park districts and Water Code §21100 (a) for irrigation districts. Because the 1955 Law did not allow for the election of CSD directors by divisions or from divisions, there hasn't been a need to clearly state that candidates and directors must be registered voters in their own divisions. This language provides that clarity.

Subdivision (c) is new and derived from Government Code §56321.1 for LAFCOs, from Health & Safety Code §9022 (b) for public cemetery districts, and from Health & Safety Code §2022 for mosquito abatement districts. This statutory admonition reminds CSD directors that they're supposed to act in the wider public interest and not solely for parochial reasons.

Subdivision (d) is new and based on Public Resources Code §5784 (d). The common law doctrine of incompatible offices might prevent a CSD director from serving on a municipal advisory council (MAC) or an area planning commission (APC). But in some communities, it may be squarely within the public interest to have the same people running the CSD, the MAC, and the APC. Communities that are evolving their governance structures towards city incorporation, may find it useful to combine these duties. That was the practice in Mission Viejo in Orange County. In other communities where incorporation is infeasible or unnecessary, it may be useful to elect the CSD board and then have the county board of supervisors appoint those five people to the MAC and APC. Some commentators have recommended overlapping roles:

- The CSD supplies the public facilities and services.
- The MAC provides the political leadership and advice to the county supervisors.
- The APC serves as the unincorporated community's planning commission.

They call this concept a "County Town."

Subdivision (e) is based on §61241, but the Working Group added the "billboard" to §53227.

61041. Notwithstanding subdivision (a) of Section 65040, this section applies only to those districts that on December 31, 2005, had boards of directors that consisted of three members. Those districts shall continue to have boards of directors that consist of three members until the next general district election after January 1, 2006, after which date those districts shall have boards of directors that consist of five members. At that election, the voters shall fill the two vacancies on the board of directors. Those two members of the board of directors shall serve for the terms of office determined pursuant to Section 10506 of the Elections Code.

Topic, Derivation, and Comments: Larger Boards. New.

The 1955 Law allowed CSDs to have boards of directors with either three or five members (§61200). The Working Group's consensus was that all CSDs should have five-member boards of directors. The new §61040 requires all CSDs to have five-member boards of directors. The Working Group was aware of some CSDs that have three-member boards (e.g., Mountain Meadows CSD). This language is a transition rule, requiring CSDs to expand their boards by adding two more directors at the next election. Elections Code §10506 is the section of UDEL that requires the existing directors to set the terms of office for the newly elected directors.

61042. (a) The term of office of each member of a board of directors is four years or until his or her successor qualifies and takes office. Directors shall take office at noon on the first Friday in December following their election.

(b) For districts formed before January 1, 2006, where the members of the board of directors are not serving staggered terms, at the first meeting after January 1, 2006, the members shall classify themselves by lot into two classes. One class shall have three members and the other class shall have two members. For the class that has three members, the terms of the offices that begin after the next general district election shall be four years. For the class that has two members, the initial terms of the offices that begin after the next general district election shall be two years. Thereafter, the terms of all members shall be four years.

(c) Any vacancy in the office of a member elected to a board of directors shall be filled pursuant to Section 1780.

Topic, Derivation, and Comments: Terms.

The 1955 Law didn't specify how long a director's term lasts, but UDEL provides for four-year terms (Elections Code §10507). The Working Group wanted the new CSD Law to clearly provide for staggered four-year terms. Staggered terms provide continuity in governance and leadership.

Subdivision (a) is based on §61206 and derived from Elections Code §10505 and §10507, clarifying when a term begins.

Subdivision (b) is new and derived from Elections Code §10505 (c), phasing-in the staggered terms of office.

Subdivision (c) is based on §61204 and derived from Public Resources Code §5784.3 (d). By referring to §1780, this language avoids the situation that gave rise to Price v. Tennant Community Services District (1987) 197 Cal.App.3d 491. The Price decision said that the sole remaining CSD board member couldn't appoint replacements because that duty shifts to the county supervisors when a CSD board loses its quorum. Referring to §1780 takes care of that problem in the future. Because the new CSD Law no longer provides for county boards of supervisors or city councils to appoint CSDs' boards of directors, there's no need to cross-reference §1779 which explains how to fill vacancies on appointed boards.

61043. (a) Within 45 days after the effective date of the formation of a district, the board of directors shall meet and elect its officers. Thereafter, within 45 days after each general district or unopposed election, the board of directors shall meet and elect the officers of the board of directors. A board of directors may elect the officers of the board of directors annually.

(b) The officers of a board of directors are a president and a vice-president. The president shall preside over meetings of the board of directors and the vice-president shall serve in the president's absence or inability to serve.

(c) A board of directors may create additional offices and elect members to those offices, provided that no member of a board of directors shall hold more than one office.

Topic, Derivation, and Comments: Officers.

Subdivision (a) is based on §61220 and derived from Public Resources Code §5784.7. The 1955 Law required CSD boards to pick their officers within 30 days and this language gives them 45 days after the election. The longer deadline fits better with the terms of office that begin in early December. See the new §61042. By requiring the boards to pick their officers after each general district election, this language implies that the president and vice-president serve for two-year terms because general district elections occur every two years. But the last sentence of this subdivision also makes it clear that CSDs can opt for one-year terms for their officers. Note that this language does not limit the number of times that a director can be elected to be the president or vice-president; there are no term limits.

Subdivision (b) is based on §61221 (a) and derived from Public Resources Code §5784.7 (b). The Working Group reported that CSDs usually call their presiding officers "president" instead of "chair," and this language uses that term. Because the new §61002 uses the terms "president" and "chair" interchangeably, it's not necessary to insert "chair" every place that this language uses the term "president." This language also creates the office of vice-president and adds the second sentence that describes the officers' duties.

Subdivision (c) is new and derived from Public Resources Code §5784.7 (b).

For the provisions relating to the offices of district secretary and district treasurer, see the new Chapter 4.

61044. A board of directors shall hold a regular meeting at least once every three months. Meetings of the board of directors are subject to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Meetings. Based on §61221 (b) and (c) and §61229, and derived from Public Resources Code §5784.11.

The 1955 Law required CSDs to hold regular meetings, but didn't specify how often. This language requires, at a minimum, quarterly board meetings.

The 1955 Law didn't cross-reference the Brown Act, but required public meetings. This "bill-board" section makes it clear that CSDs must comply with the Brown Act.

61045. (a) A majority of the total membership of the board of directors shall constitute a quorum for the transaction of business.

(b) The board of directors shall act only by ordinance, resolution, or motion.

(c) Except as otherwise specifically provided by law, a majority vote of the total membership of the board of directors is required for the board of directors to take action.

(d) The minutes of the board of directors shall record the aye and no votes taken by the members of the board of directors for the passage of all ordinances, resolutions, or motions.

(e) The board of directors shall keep a record of all its actions, including financial transactions.

(f) The board of directors shall adopt rules or bylaws for its proceedings.

(g) The board of directors shall adopt policies for the operation of the district, including, but not limited to, administrative policies, fiscal policies, personnel policies, and the purchasing policies required by this division.

Topic, Derivation, and Comments: Actions.

Subdivision (a) is based on §61224 and derived from Public Resources Code §5784.13 (a). Note that a quorum is a majority of the board's total membership, not merely a majority of the sitting members. The Working Group asked for this clarification.

Subdivision (b) is based on §61223 and derived from Public Resources Code §5784.13 (b). See the new §61060 (b) for the method of adopting ordinances.

Subdivision (c) is based on §61225 and derived from Public Resources Code §5784.13 (c). Note that actions require a majority of the board's total membership and not just those present and voting. In other words, when only three members of a five-member board are present, the successful vote must be 3-0, not merely 2-1. The new CSD Law carves out some exceptions, requiring higher votes. For example, see the new §61112 regarding budget reserves.

Subdivision (d) is based on §61226. Note that this language omits the provision in the 1955 Law that avoided roll calls on unanimous votes.

Subdivision (e) is based on §61226 and derived from Public Resources Code §5784.13 (d). For the provisions relating to the retention and destruction of these records, see the new §61061 (c).

Subdivision (f) is new and derived from Public Resources Code §5784.13 (e).

Subdivision (g) is new. The Working Group felt strongly that CSDs must have written policies.

61046. (a) Ordinances may be passed by the voters by initiative pursuant to Article 1 (commencing with Section 9300) of Chapter 4 of Division 9 of the Elections Code.

(b) Legislative acts may be disapproved by the voters by referendum pursuant to Article 2 (commencing with Section 9340) of Chapter 4 of Division 9 of the Elections Code.

(c) Members of the board of directors may be recalled by the voters pursuant to Chapter 1 (commencing with Section 11000) of Division 11 of the Elections Code.

Topic, Derivation, and Comments: Initiative, Referendum, and Recall.

This section spells out the opportunities for direct democracy, providing “billboard” language back to the relevant provisions of the Elections Code.

Subdivision (a) is based on §61450, with minor editing.

Subdivision (b) is based on §61451, with minor editing.

Subdivision (c) is new.

61047. (a) The board of directors may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for each day of service. A member of the board of directors shall not receive compensation for more than six days of service in a month.

(b) The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation that may be received by members of the board of directors.

(c) The board of directors may provide, by ordinance or resolution, that its members may receive their actual and necessary traveling and incidental expenses incurred while on official business. Reimbursement for these expenses is subject to Section 53232.2 and 52232.3.

(d) A member of the board of directors may waive any or all of the payments permitted by this section.

(e) For the purposes of this section, a “day of service” means any of the following:

(1) A meeting conducted pursuant to the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5.

(2) Representation of the district at a public event, provided that the board of directors has previously approved the member’s representation at a board of directors’ meeting and that the member delivers a written report to the board of directors regarding the member’s representation at the next board of directors’ meeting following the public event.

(3) Representation of the district at a public meeting or a public hearing conducted by another public agency, provided that the board of directors has previously approved the member’s representation at a board of directors’ meeting and that the member delivers a written report to the board of directors regarding the member’s representation at the next board of directors’ meeting following the public meeting or public hearing.

(4) Representation of the district at a meeting of a public benefit nonprofit corporation on whose board the district has membership provided that the board of directors has previously approved the member’s representation at a board of directors’ meeting and the member delivers a written report to the board of directors regarding the member’s representation at the next board of directors meeting following the corporation’s meeting.

(5) Participation in a training program on a topic that is directly related to the district, that the board of directors has previously approved the member’s participation at a board of directors’ meeting and that the member delivers a written report to the board of directors regarding the member’s participation at the next board of directors’ meeting following the training program.

Topic, Derivation, and Comments: Stipends and Reimbursements.

Subdivision (a) is based on §61207 and derived from Health & Safety Code §9031 (a). This language retains the maximum stipend per meeting at the current \$100 and retains the current limit of six days of service a month. Note that subdivision (e) defines “day of service.”

[THE COMMENTARY CONTINUES ON THE FOLLOWING PAGE]

Subdivision (b) is new and derived from Health & Safety Code §9031 (b). This language cross-references the 1984 statute that already gave CSDs the ability to raise their board members' stipends. Water Code §20202 allows several types of special districts which provide water service as a primary function to increase stipends by up to 5% a year, up to 10 days a month. For those CSDs, subdivision (b) preserves this existing authority to increase the amount of the stipends, and to increase the number of days of compensated service.

Subdivision (c) is based on §61207 and derived from Public Resources Code §5784.15 (c). The second sentence links reimbursement practices back to the requirements for adopting policies and keeping records that the Legislature created when it enacted AB 1234 (Salinas, 2005).

Subdivision (d) is new and derived from Health & Safety Code §9031 (d). This language allows a director to accept a lower stipend or no stipend at all. For example, if a CSD provides stipends of \$75 a meeting, a director could decide to accept only a \$50 stipend. Or nothing.

Subdivision (e) is new and derived from SB 1272 (Ortiz, 2004), as amended April 27, 2004. Senator Ortiz introduced her bill after some special districts' casual practices attracted press criticism and legislative attention, leading to calls for a tighter definition of what constitutes a reimbursable event. Although the Ortiz bill didn't pass, the Working Group liked the way that the bill defined "day of service." The Working Group added the fourth paragraph at the urging of the Elk Grove CSD. Note that this language is a closed-end list of what constitutes "a day of service." Unless an event meets one of these five definitions, it is not reimbursable.

Note that the new §61067 allows CSDs to provide benefits to the members of their boards of directors, just like other local governments. Those benefits are in addition to the stipends and reimbursements that this section allows.

61048. A board of directors may appoint one or more advisory committees to advise the board of directors about the district's finances, policies, programs, and operations.

Topic, Derivation, and Comments: Advisory Committees. New and derived from Health & Safety Code §9041 (o).

The new CSD Law omits the provisions of the 1955 Law that allowed a county board of supervisors or a city council to appoint the members of a CSD's board of directors. When a county board of supervisors or a city council serves as a CSD's board of directors, it may want to form an advisory group. This language allows that practice.

This section also allows any CSD board of directors to set up any advisory committees it wants. Note that there are no limits on who may serve or for how long. Here are some examples of how CSDs might use advisory committees:

- A multi-function CSD might want to set up an advisory committee of local technical experts to provide advice on specialized programs like emergency medical services.
- When a community combines its park district, library district, and fire district into a multi-function CSD, topical advisory committees may help ease the political transition.
- A CSD that runs a big community center might want an advisory committee to help it write and monitor policies for using the center.
- A CSD that serves several smaller rural communities may find it useful to have advisory committees for those different geographic areas.

CHAPTER 4. DISTRICT OFFICERS

61050. (a) The board of directors shall appoint a general manager.

(b) The county treasurer of the principal county shall serve as the treasurer of the district. If the board of directors designates an alternative depository pursuant to Section 61053, the board of directors shall appoint a district treasurer who shall serve in place of the county treasurer.

(c) The board of directors may appoint the same person to be the general manager and the district treasurer.

(d) The general manager and the district treasurer, if any, shall serve at the pleasure of the board of directors.

(e) The board of directors shall set the compensation, if any, for the general manager and the district treasurer, if any.

(f) The board of directors may require the general manager to be bonded. The board of directors shall require the district treasurer, if any, to be bonded. The district shall pay the cost of the bonds.

Topic, Derivation, and Comments: District Officers.

Subdivision (a) is based on §61240 (a). The 1955 Law was nearly identical to the parallel provisions in the County Water District Law (see Water Code §30540, et seq.). Every CSD must appoint a general manager. Even though the 1955 Law required boards of directors to appoint general managers, the Working Group was aware that some CSDs lacked managers; some didn't have any employees at all. The Working Group wanted to increase the professionalism of CSDs' operations by making it clear that the person who held the general manager's title was responsible for implementing the board's policies and supervising the CSD's activities. Nevertheless, this language doesn't mean that a general manager has to be an employee. A CSD can contract with someone for services and assign the general manager's title to the contractor.

Subdivision (b) is based on §61730 and §61737.40. See the new §61052 for a description of the county treasurer's duties and the new §61053 for a description of the district treasurer's duties.

Subdivision (c) is based on §61240 (b).

Subdivisions (d) and (e) are based on §61242 and §61737.04.

Subdivision (f) is based on §61245 and derived from Public Resources Code §5786.23. The Working Group agreed that if a CSD requires its staff officers to be bonded, the district should pay for the bond.

61051. The general manager shall be responsible for all of the following:

(a) The implementation of the policies established by the board of directors for the operation of the district.

(b) The appointment, supervision, discipline, and dismissal of the district's employees, consistent with the employee relations system established by the board of directors.

(c) The supervision of the district's facilities and services.

(d) The supervision of the district's finances.

Topic, Derivation, and Comments: General Manager. New.

The Working Group wanted the new CSD Law to require every CSD to have a general manager. See the new §61050 (a). The Working Group also wanted the new CSD Law to spell out the general manager's responsibilities. The County Water District Law describes a general manager's duties (See Water Code §30580 and §30851). State law also describes a city manager's duties (See §34856).

Subdivision (a) complements the language in the new §61040 (a) which gives the board of directors the power to set policy, but assigns implementation responsibilities to the general manager.

Subdivision (b) is derived from §34856, a city manager's personnel powers. It recognizes the new §61065 (b) which lets a board of directors establish an employee relations system.

Subdivision (c) acknowledges the list of facilities and services in the new §61100.

Subdivision (d) acknowledges that the general manager supervises a CSD's finances, even though the county treasurer or a district treasurer may have specific duties.

61052. (a) Except as provided by Section 61053, the county treasurer of the principal county shall be treasurer of the district and shall be the depository and have the custody of all of the district's money.

(b) All claims against a district shall be audited, allowed, and paid by the board of directors by warrants drawn on the county treasurer.

(c) As an alternative to subdivision (b), the board of directors may instruct the county treasurer to audit, allow, and draw his or her warrant on the county treasury for all legal claims presented to him or her and authorized by the board of directors.

(d) The county treasurer shall pay the warrants in the order in which they are presented.

(e) If a warrant is presented for payment and the county treasurer cannot pay it for want of funds in the account on which it is drawn, the treasurer shall endorse the warrant, "NOT PAID BECAUSE OF INSUFFICIENT FUNDS" and sign his or her name and the date and time the warrant was presented. From that time until it is paid, the warrant bears interest at the maximum rate permitted pursuant to Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2.

Topic, Derivation, and Comments: County Treasurer's Duties.

Subdivision (a) is based on §61730.

Subdivisions (b) through (e) replace the detailed provisions of §61731-§61736, and are derived from Public Resources Code §5788.23 (b) through (e).

61053. (a) Notwithstanding Section 61052, a district may establish an alternative depository pursuant to this section.

(b) The board of directors shall appoint a district treasurer who shall serve in the place of the county treasurer.

(c) The board of directors shall adopt a resolution that does each of the following:

(1) State its intention to withdraw its money from the county treasury.

(2) Fix the amount of the bond for the district treasurer and other district employees who will be responsible for handling the district's finances. The district shall pay the cost of the bonds.

(3) Adopt a system of accounting and auditing that shall completely and at all times show the district's financial condition. The system of accounting and auditing shall adhere to generally accepted accounting principles.

(4) Adopt a procedure for drawing and signing checks, provided that the procedure adheres to generally accepted accounting principles. The procedure shall provide that bond principal and salaries shall be paid when due. The procedure may provide that checks to pay claims and demands need not be approved by the board of directors before payment if the district treasurer determines that the claims and demands conform to the district's approved budget.

(5) Designate a bank, a savings and loan association, or a credit union as the depository of the district's money. A bank, savings and loan association, or credit union may act as a depository, paying agent, or fiscal agency for the holding or handling of the district's money, notwithstanding the fact that a member of the board of directors, whose funds are on deposit in that bank or savings and loan association is an officer, employee, or stockholder of that bank or savings and loan association, or of a holding company that owns any of the stock of that bank or savings and loan association.

(d) The board of directors and the board of supervisors of the principal county shall determine a mutually acceptable date for the withdrawal of the district's money from the county treasury, not to exceed 15 months from the date on which the board of directors adopts its resolution.

(e) In implementing this section, the district shall comply with Article 1 (commencing with Section 53600) and Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5. Nothing in this section shall preclude the district treasurer from depositing the district's money in the county treasury of the principal county or the State Treasury pursuant to Article 11 (commencing with Section 16429.1) of Chapter 2 of Part 2 of Division 4 of Title 2.

(f) The district treasurer shall make quarterly or more frequent written reports to the board of directors, as the board of directors shall determine, regarding the receipts and disbursements and balances in the accounts controlled by the district treasurer. The district treasurer shall sign the reports and file them with the general manager.

[THE COMMENARY APPEARS ON THE NEXT PAGE]

Topic, Derivation, and Comments: District Treasurer's Duties.

Based on §61737.01-61737.09, and derived from Health & Safety Code §9077.

This section explains how a CSD can appoint a district treasurer to manage its own money, without using the county treasurer.

Note that a "depository" is a *person* to whom something is entrusted, while a "depository" is the *place* where something is kept for safekeeping.

The 1955 Law did not set a threshold for the size of a CSD's budget before the CSD can gain this fiscal independence. Smaller CSDs may not have the technical knowledge or sophistication to manage their own money. The Working Group recommended against setting a statutory threshold.

CHAPTER 5. GENERAL POWERS

61060. A district shall have and may exercise all rights and powers, expressed and implied, necessary to carry out the purposes and intent of this division, including, but not limited to, the following powers:

(a) To adopt ordinances following the procedures of Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 3.

(b) To adopt, by ordinance, and enforce rules and regulations for the administration, operation, and use and maintenance of the facilities and services listed in Part 3 (commencing with Section 61100).

(c) To sue and be sued in its own name.

(d) To acquire any real or personal property within or outside the district, by contract or otherwise, to hold, manage, occupy, dispose of, convey and encumber the property, and to create a leasehold interest in the property for the benefit of the district.

(e) To acquire by eminent domain any real or personal property within or outside the district. If a district acquires real or personal property of a public utility by eminent domain, the district shall also pay for the cost of the removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles that must be moved to a new location.

(f) To appoint employees, to define their qualifications and duties, and to provide a schedule of compensation for performance of their duties.

(g) To engage counsel and other professional services.

(h) To enter into and perform all contracts, including, but not limited to, contracts pursuant to Article 43 (commencing with Section 20680) of Chapter 1 of Part 3 of the Public Contract Code.

(i) To adopt a seal and alter it.

(j) To enter joint powers agreements pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1.

(k) To provide insurance pursuant to Part 6 (commencing with Section 989) of Division 3.6 of Title 1.

(l) To provide training that will assist the members of the board of directors in the governance of the district.

[THE TEXT AND COMMENTARY CONTINUE ON THE FOLLOWING PAGE]

(m) To construct any works along, under, or across any street, road, or highway, subject to the consent of the governing body in charge, and along, under, or across any other property devoted to a public use.

(n) To take any and all actions necessary for, or incidental to, the powers expressed or implied by this division.

Topic, Derivation, and Comments: **Corporate Powers.** This section brings together several items from the 1955 Law. The opening sentence is based on §61622 and derived from Public Resources Code §5786.1.

Subdivision (a) is new and derived from Public Resources Code §5786.1 (i). This language allows CSDs to adopt ordinances by using the same procedures followed by county boards of supervisors. This provision is relevant to §61045 (b) (board must act by ordinance, resolution, or motion), §61060 (b) (rules and regulations), and §61064 (violations of ordinances).

Subdivision (b) is based on §61621.5 and derived from Public Resources Code §5786.1 (j). The Working Group asked to add the qualifier “by ordinance.”

Subdivision (c) is based on §61612 and derived from Public Resources Code §5786.1 (a). The Working Group suggested adding the phrase, “in its own name.”

Subdivision (d) is based on §61610 and §61611, and derived from Public Resources Code §5786.1 (b). The Working Group believed that this language clearly allows CSDs to engage in lease financing arrangements.

Subdivision (e) is based on §61610 and derived from Public Resources Code §5786.1 (c). Note that the second sentence requires CSDs to pay for relocating public utilities (just as in the former §61610) even though some in the Working Group wanted to omit that requirement because other local governments aren’t required to pay for those relocation costs.

Subdivision (f) is based on §61244 and §61619, and derived from Public Resources Code §5786.1 (d). This language must be read in conjunction with the new §61040 (a) and §61045 (g), regarding the board of directors’ policy-making duties. Also see the new §61065 which recognizes the Myers-Milias-Brown Act and employee relations. Note that this subdivision relates to employees, while subdivision (g) relates to professional service contracts.

Subdivision (g) is based on §61244 and §61619, and derived from Public Resources Code §5786.1 (e).

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]



Subdivision (h) is based on §61616 and derived from Public Resources Code §5786.1 (f). This “billboard” language refers CSDs to the article in the Public Contract Code that requires CSDs to get public bids on contracts for construction, materials, and supplies.

Subdivision (i) is based on §61618 and derived from Public Resources Code §5786.1 (h).

Subdivision (j) is based on §61623 and §61624, and derived from Public Resources Code §5786.1 (k).

Subdivision (k) is new and derived from Public Resources Code §5786.1 (l).

Subdivision (l) is new and derived from Health & Safety Code §9041 (n). This language gives CSDs the clear authority to train their directors in governance.

Subdivision (m) is based on §61625, with editing for clarity.

Subdivision (n) is based on §61622 and derived from Public Resources Code §5786.1 (m). This section should be read in conjunction with the new §61004 which allows for a liberal construction of the new CSD Law.

61061. (a) A district shall have perpetual succession.

(b) A board of directors may, by resolution, change the name of the district. The resolution shall comply with the requirements of Chapter 23 (commencing with Section 7530) of Division 7 of Title 1. Notwithstanding Section 7530, any district formed on and after January 1, 2006, and any district that changes its name on or after January 1, 2006, shall have the words “community services district” within its name. Within 10 days of its adoption, the board of directors shall file a copy of its resolution with the Secretary of State, the county clerk, the board of supervisors, and the local agency formation commission of each county in which the district is located.

(c) A district may destroy a record pursuant to Chapter 7 (commencing with Section 60200) of Division 1.

Topic, Derivation, and Comments: Basic Operations.

Subdivision (a) is based on §61617 and derived from Public Resources Code §5786.9 (a).

Subdivision (b) is based on §61230 and derived from Public Resources Code §5786.9 (b). Note that newly-formed CSDs and existing CSDs that change their names under the new CSD Law must have “community service district” in their names.

Subdivision (c) is new. In 2004, the Legislature revised the state law that governs how special districts retain their old records (AB 474, Salinas, 2004). The revised law allows special districts to destroy old records if they follow prescribed procedures, similar to those used by other types of local governments. The statute prohibits a special district from destroying 12 specified categories of documents (Government Code §60201). This “billboard” language cross-references that uniform statute.



61062. (a) When acquiring, improving, or using any real property, a district shall comply with Article 5 (commencing with Section 53090) of Chapter 1 of Part 1 of Division 2 of Title 5, and Article 7 (commencing with Section 65400) of Chapter 1 of Division 1 of Title 7.

(b) When disposing of surplus land, a district shall comply with Article 7 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Property Management.

Subdivision (a) is new and derived from Health & Safety Code §9042 (a). This “billboard” language reminds CSDs that current law requires most special districts to comply with the building ordinances and zoning ordinances of the underlying county or city (Government Code §53090). However, state law allows a special district to override those ordinances by a 4/5-vote of the district’s board (Government Code §53096 [a]). This language also reminds CSDs that current law requires most special districts to comply with the general plan of the underlying county or city (Government Code §65401 and §65402). However, state law allows a special district to override the local general plan by a majority-vote of the district’s board (Government Code §65402 [c]).

Subdivision (b) is new and derived from Health & Safety Code §9042 (b). This “billboard” language reminds CSDs that all local agencies must follow established statutory procedures when they dispose of surplus land.

61063. (a) Each district shall adopt policies and procedures, including bidding regulations, governing the purchasing of supplies and equipment not governed by Article 43 (commencing with Section 20680) of Chapter 1 of Part 3 of the Public Contract Code. Each district shall adopt these policies and procedures by rule or regulation pursuant to Article 7 (commencing with Section 54201) of Chapter 5 of Division 2 of Title 5.

(b) A district may request the State Department of General Services to make purchases of materials, equipment, or supplies on its behalf pursuant to Section 10298 of the Public Contract Code.

(c) A district may request the purchasing agent of the principal county to make purchases of materials, equipment, or supplies on its behalf pursuant to Article 7 (commencing with Section 25500) of Chapter 5 of Division 2 of Title 3.

(d) A district may request the purchasing agent of the principal county to contract with persons to provide projects, services, and programs authorized by this division pursuant to Article 7 (commencing with Section 25500) of Chapter 5 of Division 2 of Title 3.

Topic, Derivation, and Comments: Purchasing. New and derived from Health & Safety Code §9044.

This section delivers four “billboard” reminders to existing law.

Subdivision (a) reminds CSDs that existing law already requires all special districts to adopt written purchasing policies, and distinguishes these purchases from the purchases governed by the Public Contract Code.

Subdivision (b) reminds CSDs that all local agencies can use the state’s purchasing programs.

Subdivisions (c) and (d) remind CSDs that §25505 allows special districts to use county purchasing programs. For smaller counties with populations under 200,000, the dollar limit for county purchasing agents is \$50,000 (§25502.3). In the bigger counties, the purchasing agent’s limit is \$100,000 (§25502.5).



61064. (a) Violation of any rule, regulation, or ordinance adopted by a board of directors is a misdemeanor punishable pursuant to Section 19 of the Penal Code.

(b) Any citation issued by a district for violation of a rule, regulation, or ordinance adopted by a board of directors may be processed as an infraction pursuant to subdivision (d) of Section 17 of the Penal Code.

(c) To protect property and to preserve the peace at facilities owned or managed by a district, a board of directors may confer on designated uniformed district employees the power to issue citations for misdemeanor and infraction violations of state law, city or county ordinances, or district rules, regulations, or ordinances when the violation is committed within a facility and in the presence of the employee issuing the citation. District employees shall issue citations pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

Topic, Derivation, and Comments: Misdemeanors and Infractions. New.

Subdivision (a) is new and derived from Public Resources Code §5786.17 (a). This “billboard” language cross-references the standard Penal Code provisions for misdemeanors. See the new §61060 (b) for the method to adopt ordinances.

Subdivision (b) is new and derived from Public Resources Code §5786.17 (b). Instead of prosecuting a violation as a misdemeanor, this language lets a CSD treat the violation as an infraction by following the standard Penal Code provisions.

Subdivision (c) is new and derived from Public Resources Code §5786.17 (c). This language requires a CSD’s board of directors to designate the district employees who have the authority to issue citations.

61065. (a) The Meyers-Milias-Brown Act, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 applies to all districts.

(b) A board of directors may establish an employee relations system that may include, but is not limited to, a civil service system or a merit system.

Topic, Derivation, and Comments: Employee Relations. New.

Subdivision (a) is new and derived from Public Resources Code §5786.19 (a). This “billboard” language reminds CSDs that the Meyers-Milias-Brown Act applies to all local agencies.

Subdivision (b) is new and derived from Public Resources Code §5786.19 (b). This language lets CSDs adopt any type of locally acceptable employee relations system.

Note that this language does not include the provision found in Public Resources Code §5786.19 (c) which allows a CSD to ask the underlying county board of supervisors or the city council for permission to make the CSD’s employees subject to the county or city’s employee relations system. The Working Group wanted to emphasize the CSD’s status as an independent local government.

61066. A board of directors may require any employee or officer to be bonded. The district shall pay the cost of the bonds.

Topic, Derivation, and Comments: Employee Bonds.

Based on §61245 derived from Public Resources Code §5786.25. Unlike the 1955 Law, this language explicitly requires the CSD to pay for its employees' bonds.

Note that the new §61050 (f) also allows the board of directors to require bonds for the general manager and the secretary.

Note that if a CSD appoints a district treasurer to manage its funds, the CSD must require a bond for that person; see the new 61050 (f) and §61053 (c)(2).

61067. A board of directors may provide for any program for the benefit of its employees and members of the board of directors pursuant to Chapter 2 (commencing with Section 53200) of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Benefits. New and derived from Public Resources Code §5786.27.

Current law allows local governments to provide various benefits to their employees and to their governing boards. The 1955 Law was silent on that topic. This language “billboards” the standard law that applies to all local governments. Note that these benefits are in addition to the stipends and reimbursements that directors may receive under the new §61047.

61068. A board of directors may authorize its members and the employees of the district to attend professional or vocational meetings and conferences. A board of directors may reimburse its members and the employees of the district for their documented, actual, and necessary traveling and incidental expenses while on official business.

Topic, Derivation, and Comments: Meetings and Conferences. New and derived from Public Resources Code §5786.29.

This language allows directors and employees to attend meetings and conferences to increase their knowledge and skills. This section fits with the new §61060 (1) which allows training for directors. Note that these expenses are in addition to any compensation and reimbursements that directors may receive under the new §61047.

61069. (a) A district may request an inspection and abatement warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. The warrant shall state the location which it covers and shall state its purposes. A warrant may authorize district employees to enter property only to do one or more of the following:

- (1) Inspect to determine the presence of public nuisances that the district has the authority to abate.
- (2) Abate public nuisances, either directly or by giving notice to the property owner to abate the public nuisance.
- (3) Determine if a notice to abate a public nuisance has been complied with.

(b) Where there is no reasonable expectation of privacy and subject to the limitations of the United States Constitution and the California Constitution, employees of a district may enter any property within the district for any of the following purposes:

- (1) Inspect the property to determine the presence of public nuisances that the district has the authority to abate.
- (2) Abate public nuisances, either directly or by giving notice to the property owner to abate the public nuisance.
- (3) Determine if a notice to abate a public nuisance has been complied with.

Topic, Derivation, and Comments: Enter Private Property. Based on §61612.5 and derived from Health & Safety Code §2053.

From Conner v. Santa Ana 897 F.2d 1487 (9th Cir. 1990), Gleaves v. Waters (1985) 175 Cal.App. 3d 413, and Camara v. Municipal Court of San Francisco (1967) 387 U.S. 523, public officials understand that when local government employees want to inspect private property or abate nuisances in areas where the residents have a reasonable expectation of privacy under the Fourth Amendment, the employees should either ask for consent or obtain an inspection warrant under Code of Civil Procedure §1822.50, et seq. That's what subdivision (a) requires.

If the inspection occurs some distance from a residence, there is no reasonable expectation of privacy. In that situation, the employee doesn't need to ask permission and doesn't need a warrant. That's what subdivision (b) allows.

Note that the limiting language in (a)(1) and (b)(1) refers to "public nuisances that the district has the authority to abate."

61070. A district may contract with any local agency, state department or agency, federal department or agency, or any tribal government for the provision of any facilities, services, or programs authorized by this division, within or without the district, subject to compliance with Section 56133.

Topic, Derivation, and Comments: Agency Contracts. Based on §61740.

The 1955 Law allowed CSDs to contract with federal agencies for water facilities. The Working Group recommended broadening that authority so that CSDs can contract with any local, state, federal agency. The Working Group also recommended allowing CSDs to contract with tribal governments. This language works both ways --- allowing a CSD to contract with another agency to provide facilities and services inside the district and allowing a CSD to provide facilities and services to other agencies that are outside its boundaries.

Note that this section is broader than the new §61060 (j) which allows CSDs to sign joint powers agreements with other public agencies. Tribal governments can't be parties to JPAs because they're not defined as public agencies in the Joint Exercise of Powers Act.

PART 3. PURPOSES, SERVICES, AND FACILITIES

CHAPTER 1. AUTHORIZED SERVICES AND FACILITIES

61100. Within its boundaries, a district may do any of the following:

(a) Supply water for any beneficial uses, in the same manner as a municipal water district, formed pursuant to the Municipal Water District Law of 1911, Division 20 (commencing with Section 71000) of the Water Code. In the case of any conflict between that division and this division, the provisions of this division shall prevail.

(b) Collect, treat, or dispose of sewage, waste water, recycled water, and storm water, in the same manner as a sanitary district, formed pursuant to the Sanitary District Act of 1923, Division 6 (commencing with Section 6400) of the Health and Safety Code. In the case of any conflict between that division and this division, the provisions of this division shall prevail.

(c) Collect, transfer, and dispose of solid waste, and provide solid waste handling services, including, but not limited to, source reduction, recycling, composting activities, pursuant to Division 30 (commencing with Section 40000), and consistent with Section 41821.2 of the Public Resources Code.

(d) Provide fire protection services, rescue services, hazardous material emergency response services, and ambulance services in the same manner as a fire protection district, formed pursuant to the Fire Protection District Law, Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

(e) Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to, parks and open space, in the same manner as a recreation and park district formed pursuant to the Recreation and Park District Law, Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code.

(f) Organize, promote, conduct, and advertise programs of community recreation, in the same manner as a recreation and park district formed pursuant to the Recreation and Park District Law, Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code.

(g) Acquire, construct, improve, maintain, and operate street lighting and landscaping on public property, public rights of way, and public easements.

(h) Provide for the surveillance, prevention, abatement, and control of vectors and vectorborne diseases in the same manner as a mosquito abatement and vector control district formed pursuant to the Mosquito Abatement and Vector Control District Law, Chapter 1 (commencing with Section 2000) of Division 3 of the Health and Safety Code.

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(i) Provide police protection and law enforcement services by establishing and operating a police department that employs peace officers, pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(j) Provide security services, including but not limited to burglar and fire alarm services, to protect lives and property.

(k) Provide library services, in the same manner as a library district formed pursuant to either Chapter 8 (commencing with Section 19400) or Chapter 9 (commencing with Section 19600) of Part 11 of Division 1 of Title 1 of the Education Code.

(l) Acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works. A district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent.

(m) Convert existing overhead electric and communications facilities, with the consent of the public agency or public utility that owns the facilities, to underground locations pursuant to Chapter 28 (commencing with Section 5896.1) of Part 3 of Division 7 of the Streets and Highways Code.

(n) Provide emergency medical services, pursuant to the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act., Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(o) Provide and maintain public airports and landing places for aerial traffic, in the same manner as an airport district formed pursuant to the California Airport District Act, Part 2 (commencing with Section 22001) of Division 9 of the Public Utilities Code.

(p) Provide transportation services.

(q) Abate graffiti.

(r) Plan, design, construct, improve, maintain, and operate flood protection facilities. A district shall not plan, design, construct, improve, maintain, or operate flood protection facilities within the boundaries of another special district that provides those facilities unless the other special district gives its written consent. A district shall not plan, design, construct, improve, maintain, or operate flood protection facilities in unincorporated territory unless the board of supervisors gives its written consent. A district shall not plan, design, construct, improve, maintain, or operate flood protection facilities within a city unless the city council gives its written consent.

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(s) Acquire, construct, improve, maintain, and operate community facilities, including but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities.

(t) Abate weeds and rubbish pursuant to Part 5 (commencing Section 14875) of the Health and Safety Code. For that purpose, the board of directors shall be deemed to be a “board of supervisors” and district employees shall be deemed to be the “persons” designated by Section 14890 of the Health and Safety Code.

(u) Acquire, construct, improve, maintain, and operate hydroelectric power generating facilities and transmission lines, consistent with the district’s water supply and waste water operations. The power generated shall be used for district purposes, or sold to a public utility or another public agency that generates, uses, or sells electrical power. A district shall not acquire hydroelectric power generating facilities unless the facilities’ owner agrees.

(v) Acquire, construct, improve, maintain, and operate television translator facilities.

(w) Remove snow from public streets, roads, easements, and rights-of-way. A district may remove snow from public streets, roads, easements, and rights-of-way owned by another public agency, only with the written consent of that other public agency.

(x) Provide animal control services pursuant to Section 30501 of the Food and Agricultural Code. Whenever the term “board of supervisors,” “county,” “county clerk,” or “animal control officer” is used in Division 14 (commencing with Section 30501) of the Food and Agricultural Code, those terms shall also be deemed to include the board of directors of a district, a district, the general manager of the district, or the animal control officer of a district, respectively. A district shall not provide animal control services in unincorporated territory unless the county board of supervisors gives its written consent. A district shall not provide animal control services within a city unless the city council gives its written consent.

(y) Control, abate, and eradicate pests, in the same manner as a pest abatement district, formed pursuant to Chapter 8 (commencing with Section 2800) of Division 3 of the Health and Safety Code. A district’s program to control, abate, or eradicate local pine bark beetle infestations shall be consistent with any required plan or program approved by the Department of Forestry and Fire Protection.

(z) Construct, maintain, and operate mailboxes on a district’s property or right-of-way.

(aa) Provide mail delivery service under contract to the United States Postal Service.

(ab) Own, operate, improve, and maintain cemeteries and provide interment services, in the same manner as a public cemetery district, formed pursuant to the Public Cemetery District Law, Part 4 (commencing with Section 9000) of Division 8 of the Health and Safety Code.

[THE TEXT AND COMMENTARY CONTINUE ON THE NEXT PAGE]



(ac) Finance the operations of area planning commissions formed pursuant to Section 65101.

(ad) Finance the operations of municipal advisory councils formed pursuant to Section 31010.



(ae) Acquire, own, maintain, and operate land within or without the district for habitat mitigation or other environmental protection purposes to mitigate the effects of projects undertaken by the district.

Topic, Derivation, and Comments: Services and Facilities. Based on §61600.

This section lists the 31 services and facilities that CSDs can provide. (Noting the 31 items, some wags have taken to calling CSDs “the Baskin-Robbins of special districts.) The order of the subdivisions generally tracks the order in which they appeared in the 1955 Law. The 1955 Law allowed specified CSDs to provide additional services and facilities, but this language makes several of these services and facilities generally available to any CSD. Note that the opening phrase limits CSDs to providing services and facilities within their boundaries.

Subdivision (a) is based on §61600 (a). Because the Working Group wanted CSDs to have more modern powers over water supply, this subdivision refers to the Municipal Water District Law.

Subdivision (b) is based on §61600 (b). Because the Working Group wanted CSDs to have more modern sewage powers, this subdivision refers to the Sanitary District Law.

Subdivision (c) is based on §61600 (c) and derived from Public Resources Code §40057. The Working Group wanted the new CSD Law to use modern terms, including references to recycling and source reduction. Note the particular cross-reference to Public Resources Code §41821.2 which requires special districts to comply with city and county plans for source reduction, recycling, and hazardous wastes.

Subdivision (d) is based on §61600 (d) and (m), and §61623.4, and derived from Health & Safety Code §13862. Note the reference to the Fire Protection District Law. Note that while the 1955 Law allowed a CSD to contract for ambulance services, the new CSD Law allows a CSD to provide ambulance services directly. Note that this language does not mention emergency medical services; subdivision (n) authorizes those services.

Subdivision (e) is based on §61600 (e) and derived from Public Resources Code §5786 (c). The Working Group wanted to separate parks, which are covered in this subdivision, from recreation programs, which are covered in subdivision (f). Note the reference to the Recreation and Park District Law. The Working Group wanted that reference, thinking that it should help state officials understand that CSDs should be eligible for state park bond funding.

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Subdivision (f) is based on §61600 (e) and derived from Public Resources Code §5786 (a). The Working Group wanted to separate recreation programs, which are covered in this subdivision, from parks, which are covered in subdivision (e). Note the reference to the Recreation and Park District Law.

Subdivision (g) is based on §61600 (f), §61601.20 (Nipomo CSD), and §61601.21 (Jurupa CSD). The Working Group wanted all CSDs to be able to provide landscaping programs.

Subdivision (h) is based on §61600 (g). Note that this language allows CSDs to abate any vectors, not just mosquitoes. Note the reference to the Mosquito Abatement and Vector Control District Law.

Subdivision (i) is based on §61600 (h). The Working Group wanted to separate police protection and law enforcement services, which are covered in this subdivision, from security services, which are covered in subdivision (j). Note the reference to the Penal Code chapter. Specifically note that Penal Code §830.1 (a) gives “peace officer” status to police officers who are employed by a district that is authorized by statute to maintain a police department. Penal Code §830.1 (a) also spells out where these peace officers can exercise their authority: (1) “within the political subdivision” that employs the peace officer, (2) outside the political subdivision with the prior consent of the city police chief or county sheriff, and (3) anywhere if there is “immediate danger.” Before a CSD police officer can routinely operate outside the CSD’s boundaries, he or she must have permission from the city police chief to operate in that city or from the county sheriff to operate in other unincorporated areas.

Subdivision (j) is based on §61600 (h) and §61601.14 (b). The Working Group wanted to separate security services, which are covered in this subdivision, from law enforcement services, which are covered in subdivision (i). A CSD’s security guard is not a “peace officer.” The references to burglar and fire alarm services came from the former §61601.14 (b) which applied only to the Rancho Murieta CSD. The Working Group wanted all CSDs to have that power.

Subdivision (k) is based on §61600 (i). The Working Group wanted the new CSD Law to allow CSDs to provide library services, not just library buildings. Note the references to the principal acts of two types of library districts. There isn’t much difference anymore between these two types of library districts.

Subdivision (l) is based on §61600 (j) and (k). The Working Group wanted to keep the provision requiring the consent of the public agency that owns the roads or other public works. For example, with the county’s consent, a CSD could fix potholes in a county road that runs through the CSD. This language does not require a CSD to get the county’s consent to fix roads that the CSD owns or roads on private property for which the CSD holds a public easement. However, this language does not authorize a CSD to fix private roads that aren’t open to the public.

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Subdivision (m) is based on §61600 (l). The Working Group wanted to simplify the language and PG&E insisted on retaining the language requiring the consent of the public agency or public utility that owns the facilities.

Subdivision (n) is new and derived from Health & Safety Code §13862 (c). The 1955 Law allowed a CSD to contract for ambulance services, but was silent on providing higher level emergency medical services. Ambulance services are now covered in subdivision (d). Note the reference to the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act.

Subdivision (o) is based on §61600 (n) and derived from Public Utilities Code §22553 (c). However, note that this language omits “spaceports.” Note the reference to the California Airport District Act.

Subdivision (p) is based on §61600 (o).

Subdivision (q) is based on §61600 (p). Graffiti abatement is defined in the new §61002 (g).

Subdivision (r) is based on §61600 (q). The Working Group wanted to simplify the language, but retain the consent requirements.

Subdivision (s) is new, although the 1955 Law specifically mentioned recreational buildings (§61600 [e]) and libraries (§61600 [i]). Using the 1955 Law, some CSDs provided community facilities under their broad authority to provide recreational facilities. This specific language is derived from Government Code §53313 and §53313.5 (Mello-Roos Act). The Working Group wanted CSDs to have clear authority to provide a wide range of community facilities to serve local needs as part of their existing broad authority to provide recreational facilities.

Subdivision (t) is new and based on §61601.25 (Bear Valley CSD) and §61601.26 (c) (Mountain House CSD), and §61623.5, and derived from Health & Safety Code §13879 for fire protection districts. The Working Group wanted all CSDs to have weed abatement powers.

Subdivision (u) is new and based on §61601.3. The Working Group wanted all CSDs to have a standard authority to generate hydroelectric power. Although the Working Group would have preferred a broader authorization, investor owned utilities (including PG&E and Sempra) objected. This language is an edited version of §61601.3 that retains the requirement for the owner’s consent before acquiring existing hydroelectric facilities.

Subdivision (v) is new and based on §61601.6 (Baker CSD) and §61601.8 (Bear Valley CSD). The Working Group wanted all CSDs to have the power to provide TV translators. These signal repeaters are different from providing telecommunication services. The Working Group wanted the new CSD Law to authorize a broad range of telecommunication services, but the June 13 amendments deleted that language after SBC Pacific Bell objected. El Dorado Hills CSD, Rancho Murieta CSD, and Mountain House CSD have broader television and telecommunications powers. See the new §61105 (h) and (i)

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Subdivision (w) is new and derived from Public Utilities Code §16486 which allows the Kirkwood PUD to remove snow from public roads, subject to prior consent. Note the requirement for prior consent from the public agency that owns the road (e.g., city, county, Caltrans).

Subdivision (x) is new, based on §61601.24 (Leavitt Lake CSD and Westwood CSD) and §61601.26 (a) (Mountain House CSD), and derived from Food & Agricultural Code §30501. Note the requirement for prior consent from the underlying city or county that would usually have police power jurisdiction for animal control services.

Subdivision (y) is new and based on §61601.25 (a) (1) (Bear Valley CSD). The Working Group wanted all CSDs to have pest abatement powers. Note the reference to the principal act for pest abatement districts. A “pest” (Health & Safety Code §2800) is not the same as a “vector” (Health & Safety Code §2002 [k]). Note that this language retains the requirement that a CSD’s pine bark beetle programs must be consistent with CDF’s programs.

Subdivision (z) is new and based on §61601.22 (Stallion Springs). The Working Group wanted all CSDs to be able to provide mailboxes on district property. Note that this language omits the 1955 Law’s discussion of rules and fees. The new CSD Law gives all CSDs the power to adopt rules (the new §61060 [b]) and charge fees for any of their facilities and services (the new §61623). There was no need to repeat that language in this subdivision.

Subdivision (aa) is new and based on §61601.25 (b) (Bear Valley CSD). Even though the Bear Valley CSD hadn’t used its power under the 1955 Law to contract with the U.S. Postal Service for mail delivery, the Working Group wanted all CSDs to have this power. Note that this language omits the 1955 Law’s authorization to lease district property. The new CSD Law gives all CSDs the power to lease their property (the new §61060 [d]). There was no need to repeat that language in this subdivision.

Subdivision (ab) is new and derived from Health & Safety Code §9040 (a). The Working Group wanted all CSDs to have cemetery powers. Note the reference to the Public Cemetery District Law. This authorization may help local officials combine a cemetery district with other types of special districts that serve the same community into a single, multi-purpose district.

Subdivision (ac) is new and derived from §25210.4a (9) for county service areas. A county board of supervisors can create and delegate land use powers to an “area planning commission.” The APC serves as the county planning commission for the designated geographic area and is responsible for land use planning and development decisions: general plan, specific plans, zoning, variances, subdivisions, and use permits. Just like the county planning commission, an APC’s decisions can be appealed to the county supervisors. By letting a CSD pay for an APC, this language allows local residents and county supervisors to create a “County Town” that weaves together a CSD (for services and facilities), an APC (for land use review), and a MAC (for political identity). The County Town could be an intermediate step towards cityhood, or it could be a locally-satisfactory substitute for incorporation.



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Subdivision (ad) is new and derived from §25210.4a (12) for county service areas. A county board of supervisors can create a “municipal advisory council” to advise the county supervisors on any topic affecting that designated area. The county supervisors can appoint residents to the MAC or they can require the MAC members to be directly elected. Although the MAC provides advice, the county supervisors still make any final decisions. By letting a CSD pay for a MAC, this language allows local residents and county supervisors to create a “County Town” that weaves together a CSD (for services and facilities), an APC (for land use review), and a MAC (for political identity). The County Town could be an intermediate step towards cityhood, or it could be a locally-satisfactory substitute for incorporation.

Subdivision (ae) is new and based on §61601.26 (e) (Mountain House CSD). Some on the Working Group wanted CSDs to get into the habitat mitigation business. Note that this subdivision allows a CSD to mitigate only the effects of its own projects, not the effects of private land developments. In other words, this language doesn’t allow a CSD to get into the habitat mitigation banking business for private development projects.

61101. A district may provide the facilities and services authorized by Section 61100 outside its boundaries, subject to Section 56133.

Topic, Derivation, and Comments: Extraterritorial Services. New.

This language acknowledges the Cortese-Knox-Hertzberg Act's authority over extraterritorial services. Note, however, that this language refers only to the services listed in the new §61100 and not to the special services listed in the new §61105 for some specific CSDs.

The common understanding of special districts is that they have limited powers --- limited in *what* they provide as well as *where* they provide services and facilities. Special districts' boundaries limit where they serve.

This language recognizes that there are local circumstances that justify extraterritorial services. Sometimes there is a political history. For example, the Dublin San Ramon Services District provides sewer services outside its boundaries because of how cities incorporated in the past. In other situations, public health concerns justify extending sewer lines into a neighborhood with failed septic tanks but annexation would not be appropriate.

The Legislature anticipated these situations and enacted §56133 so that LAFCOs can sort out the appropriate circumstances for extraterritorial service.

61102. A district may provide electricity within its boundaries if the local agency formation commission designated the district as the successor to another special district that was extinguished as the result of any change of organization or reorganization, and that other special district had provided electricity pursuant to the principal act under which that other special district had operated.

Topic, Derivation, and Comments: Retail Electricity Services. New, based on §61601.11, and derived from §56065 and §56886 (m).

In 1982, the Legislature authorized the El Dorado Hills CSD to get into the retail electricity business but it never used that authority. See §61610.11. No other CSD has statutory authorization to be in the retail electricity business.

The Working Group wanted to authorize all CSDs to provide retail electrical services but PG&E, Sempra, and other investor owned utilities objected.

The Working Group recommended this compromise. If a CSD takes over another special district that was already a retail electricity provider, then as the “successor agency” the CSD can provide electricity services within its boundaries. For example, if a CSD provides fire protection to a community that is also served by a public utility district that provides retail electricity service, the LAFCO could dissolve the PUD and transfers its powers to the CSD. Another example would be if a recreation and park district and a PUD that provides retail electricity serve the same community. LAFCO could approve a reorganization that dissolves the park district, dissolves the PUD, and forms a new CSD.

This new language uses the appropriate terms from the Cortese-Knox-Hertzberg Act. See §56866 (m) for LAFCO’s power to designate a successor agency. See §56065 for the definition of “principal act.”

61103. (a) A district that acquires, constructs, improves, and maintains streets, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works pursuant to subdivision (1) of Section 61100 shall have the powers, duties, and authority of a county for those works, including, but not limited to:

(1) Chapter 2 (commencing with Section 940), Chapter 5.5 (commencing with Section 1450), and Chapter 6 (commencing with Section 1480) of Division 2 of the Streets and Highways Code.

(2) Part 3 (commencing with Section 8300) of the Streets and Highways Code.

(4) Division 11 (commencing with Section 21000) of the Vehicle Code.

(5) Article 4 (commencing with Section 35700) of Chapter 5 of Division 15 of the Vehicle Code.

(b) A district shall not exercise those powers, duties, and authority for any of those works if it is owned by another public agency unless that other public agency gives its written consent.

Topic, Derivation, and Comments: Road Commissioner's Powers. Based on §61621.5 (c).

The Working Group wanted the new CSD Law to clarify that a CSD has the same powers as the county for any streets owned by the CSD. For county roads that a county allows a CSD to maintain, this language allows the county to delegate its powers to the CSD.

In 1984, the Attorney General said that a county board of supervisors can't put up stop signs and create speed zones on roads owned and maintained by a CSD; 67 Ops.Cal.Atty.Gen. 145. Nothing in this section changes that interpretation.

61104. (a) A district that acquires, constructs, improves, and maintains streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental work pursuant to subdivision (1) of Section 61100 may grant franchises pursuant to any of the following:

(1) Section 53066.

(2) Chapter 6 (commencing with Section 49500) of Part 8 of Division 30 of the Public Resources Code.

(3) Division 3 (commencing with Section 6001) of the Public Utilities Code.

(b) A district shall not grant a franchise over any work owned by another public agency unless that other public agency gives its consent.

Topic, Derivation, and Comments: Franchises. New.

The Working Group wanted the new CSD Law to allow the districts to grant franchises over their own roads and rights-of-way, just like counties and cities can. Note the requirement for prior consent before a CSD can grant a franchise over another public agency's property.

61105. (a) The Legislature finds and declares that the unique circumstances that exist in some communities justify the enactment of special statutes for specific districts. In enacting this section, the Legislature intends to provide specific districts with special statutory powers to provide special services and facilities that are not available to other districts.

(b) The Los Osos Community Services District may borrow money from public or private lenders and loan those funds to property owners within the district to pay for the costs of decommissioning septic systems and constructing lateral connections on private property to facilitate the connection of those properties to the district's wastewater treatment system. The district shall lend money for this purpose at rates not to exceed its cost of borrowing and the district's cost of making the loans. The district may require that the borrower pay the district's reasonable attorney's fees and administrative costs in the event that the district is required to take legal action to enforce the provisions of the contract or note securing the loan. The district may elect to have the debt payments or any delinquency collected on the tax roll pursuant to Section 61116. To secure the loan as a lien on real property, the district shall follow the procedures for the creation of special tax liens in Section 53328.3 of this code and Section 3114.5 of the Streets and Highways Code.

(c) The Heritage Ranch Community Services District may acquire, construct, improve, maintain, and operate petroleum storage tanks and related facilities for its own use, and sell those petroleum products to the district's property owners, residents, and visitors. The authority granted by this subdivision shall expire when a private person or entity is ready, willing, and able to acquire, construct, improve, maintain, and operate petroleum storage tanks and related facilities, and sell those petroleum products to the district and its property owners, residents, and visitors. At that time, the district shall either (1) diligently transfer its title, ownership, maintenance, control, and operation of those petroleum tanks and related facilities at a fair market value to that private person or entity, or (2) lease the operation of those petroleum tanks and related facilities at a fair market value to that private person or entity.

(d) The Wallace Community Services District may acquire, own, maintain, control, or operate the underground gas distribution pipeline system located and to be located within Wallace Lake Estates for the purpose of allowing a privately owned provider of liquefied petroleum gas to use the underground gas distribution system pursuant to a mutual agreement between the private provider and the district or the district's predecessor in interest. The district shall require and receive payment from the private provider for the use of that system. The authority granted by this subdivision shall expire when the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates. At that time, the district shall diligently transfer its title, ownership, maintenance, control, and operation of the system to the Pacific Gas and Electric company.

(e) The Cameron Park Community Services District, the El Dorado Hills Community Services District, the Golden Hills Community Services District, the Mountain House Community Services District, the Rancho Murieta Community Services District, the Salton

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Community Services District, the Stallion Springs Community Services District, and the Tenaja Meadows Community Services District, which enforced covenants, conditions, and restrictions prior to January 1, 2006 pursuant to the former Section 61601.7 and former Section 61601.10, may continue to exercise the powers set forth in the former Section 61601.7 and the former Section 61601.10.

(f) The Bear Valley Community Services District, the Bell Canyon Community Services District, the Cameron Estates Community Services District, the Lake Sherwood Community Services District, the Saddle Creek Community Services District, and the Wallace Community Services District may, for roads owned by the district and that are not formally dedicated to or kept open for use by the public for the purpose of vehicular traffic, by ordinance, limit access to and the use of those roads to the landowners and residents of that district.

(g) Notwithstanding any other provision of law, the transfer of the assets of the Stonehouse Mutual Water Company, including its lands, easements, rights, and obligations to act as sole agent of the stockholders in exercising the riparian rights of the stockholders, and rights relating to the ownership, operation, and maintenance of those facilities serving the customers of the company, to the Hidden Valley Community Services District is not a transfer subject to taxes imposed by Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(h) The El Dorado Community Services District and the Rancho Murieta Community Services District may each acquire, construct, improve, maintain, and operate television receiving, translating, or distribution facilities, provide television and television-related services to the district and its residents, or authorize the construction and operation of a cable television system by franchise or license. In authorizing the construction and operation of a cable television system by franchise or license, the district shall have the same powers as a city or county under Section 53066.

(i) The Mountain House Community Services District may provide facilities for television and telecommunications systems, including the installation of wires, cables, conduits, fiber optic lines, terminal panels, service space, and appurtenances required to provide television, telecommunications, and data transfer services to the district and its residents by franchise or license, except that the district may not provide or install any facilities pursuant to this subdivision unless one or more cable franchises or licenses have been awarded under Section 53066 and the franchised or licensed cable television and telecommunications services are permitted equal access to the utility trenches, conduits, service spaces, easements, utility poles, and rights-of-way in the district necessary to construct their facilities concurrently with the construction of the district's facilities. The district shall not have the authority to operate television, cable, or telecommunications systems. The district shall have the same power as a city or county under Section 53066 in granting a franchise or license for the operation of a cable television system.

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Topic, Derivation, and Comments: Special Provisions. New and based on §61600.3, §61601.7, §61601.8, §61601.9, §61601.10, §61601.14, §61601.26, §61601.30, §61621.8, §61850.

The California Constitution prohibits special legislation when a general law could apply (Article IV, §16 [b]). But special legislation is acceptable when the Legislature explains why a general statute isn't sufficient.

Subdivision (a) explains the Legislature's interest in narrowly tailoring solutions to fit specific special circumstances.

Subdivision (b) for the Los Osos CSD is based on §61600.3, with minor editing.

Subdivision (c) for the Heritage Ranch CSD is based on §61601.8, with minor editing. The Heritage Ranch has asked for two changes. First, it wanted to be able to divest itself of this power, and second, it wanted to be able to lease the gas station instead of selling it. This language makes both changes.

Subdivision (d) for the Wallace CSD is based on §61601.30 (c) and (d). The Working Group learned that the Wallace CSD uses this authority, so the new CSD Law retained it.

Subdivision (e) is based on §61601.7 and §61601.10. This provision allows the eight CSDs that enforce CC&Rs to continue enforcing them: Cameron Park, El Dorado Hills, Golden Hills, Mountain House, Rancho Murieta, Salton, Stallion Springs, and Tenaja. The Working Group had two very lively and extended discussions on this topic before finally coming to this recommendation. Conversely, subdivision (e) means a CSD that was authorized to enforce CC&Rs under the 1955 Law but did not use that power can't enforce CC&Rs under the new CSD Law: Bel Marin Keys, Big River, Brooktrails, Cameron Estates, Golden West, Lake Shastina, Ranch House Estates, Sea Oasis, Springfield Meadows, and Wallace.

Subdivision (f) is based on §61621.8 (a) and (b). This provision allows six CSDs to limit access to roads that they own where the roads are not dedicated or kept open for public use.

Subdivision (g) restates §61850 for the Hidden Valley Lake CSD. The CSD said that its right to exercise the riparian rights that it acquired from the Stonehouse Mutual Water Company could be challenged at any time; there is no statute of limitations. The CSD asked that the new CSD Law continue its special provision.

Subdivision (h) is based on §61601.9 for the El Dorado Hills CSD and §61601.14 (a) and (b) for the Rancho Murieta CSD. This provision retains their television services and cable TV franchise powers.

Subdivision (i) is based on §61601.26 (f) for the Mountain House CSD. This provision retains the language that gives Mountain House CSD a wider range of television and telecommunications services than any other CSD.

61106. (a) If a board of directors desires to exercise a latent power, the district shall first receive the approval of the local agency formation commission, pursuant to Article 1.5 (commencing with Section 56824.10) of Chapter 5 of Part 3 of Division 3.

(b) After receiving the approval of the local agency formation commission, the board of directors may, by ordinance, order the exercise of that power.



Topic, Derivation, and Comments: Latent Powers. Based on §61601.

The Working Group recognized that the requirement in the 1955 Law for voter approval of latent powers predated the creation of LAFCOs in 1963 and the expansion of their powers over special districts' latent powers in 1970 and 2000. This language omits the need for voter approval in favor of LAFCO's review and approval.

Subdivision (a), in effect, grandfathers the services that CSDs already provided before January 1, 2006, the effective date of the new CSD Law. When LAFCOs adopt or revise special districts' spheres of influence, they must inventory the districts' services (§56425 [h]). The LAFCO inventories document all CSDs' existing powers. Everything else becomes a "latent power" that requires LAFCO's approval before activation. The new §61002 (h) defines "latent power."

On October 5, 2005, after Governor Schwarzenegger signed SB 135, Senator Kehoe wrote to all of the LAFCO executive officers, reminding them of this provision and the January 1, 2006, effective date. The California Association of LAFCOs and the California Special Districts Association also notified their members of this provision of the new CSD Law.

The Working Group noted that the LAFCO can authorize a CSD --- or any district --- to activate a latent power without the funding to pay for it. The Legislature may want to amend §56824.14 to parallel the new CSD formation procedures --- requiring LAFCO disapproval unless there's a clear way to pay for the new facilities or services, and conditioning approval based on new special taxes, benefit assessments, or user fees. See the new §61014.

Subdivision (b) requires a CSD's board of directors to activate the latent power by adopting an ordinance which would be referendable. In this way, those who might object to the new service still retain their ability to stop the board of directors.



61107. (a) If a board of directors desires to divest itself of a power that is authorized pursuant to this chapter and if the termination of that power would require another public agency to provide a new or higher level of services or facilities, the district shall first receive the approval of the local agency formation commission. To the extent feasible, the local agency formation commission shall proceed pursuant to Article 1.5 (commencing with Section 56824.10) of Chapter 5 of Part 3 of Division 3. After receiving the approval of the local agency formation commission, the board of directors may, by ordinance, divest itself of that power.

(b) Notwithstanding subdivision (b) of Section 56824.14, the local agency formation commission shall not, after a public hearing called and held for that purpose pursuant to subdivisions (b) and (c) of Section 56824.14, approve a district's proposal to exercise a latent power if the local agency formation commission determines that another local agency already provides substantially similar services or facilities to the territory where the district proposes to exercise that latent power.

(c) If a board of directors desires to divest itself of a power that is authorized pursuant to this chapter and if the termination of that power would not require another public agency to provide a new or higher level of services or facilities, the board of directors may, by ordinance, divest itself of that power.

Topic, Derivation, and Comments: Divestiture of Powers. Based on §61602.

The Working Group recognized that the requirement in the 1955 Law for voter approval of latent powers predated the creation of LAFCOs in 1963 and the expansion of their powers over special districts' latent powers in 1970 and 2000.

Like the new §61106, subdivisions (a) and (c) omit the need for voter approval in favor of LAFCO review and approval when divestiture puts a burden on another public agency (not just another local government). For example, if a CSD that provides police protection services wants to close down its police department, that action could increase the county sheriff's workload. Subdivision (a) requires LAFCO review. When there's no additional service burden, subdivision (c) doesn't require LAFCO review. In both cases, however, divestiture requires the board of directors to adopt a referendable ordinance. In this way, those who might object to stopping a service still retain their ability to stop the board of directors.

The July 1 amendments to SB 135 added subdivision (b) to defuse a political controversy that had threatened the bill. The Elk Grove CSD and the City of Elk Grove were arguing over which local agency should provide parks and recreation services. City officials worried that the Elk Grove CSD might persuade the Sacramento LAFCO to allow the CSD to start providing other, duplicate services inside the city limits. The addition of subdivision (b) to this section satisfied the City of Elk Grove which withdrew its earlier opposition to SB 135.

Subdivision (b) contains an obvious drafting error. The word "housing" should be "hearing."

CHAPTER 2. FINANCE

61110. (a) On or before July 1 of each year or, for districts using two one-year budgets or a biennial budget cycle, every other year, the board of directors may adopt a preliminary budget that conforms to generally accepted accounting and budgeting procedures for special districts.

(b) The board of directors may divide the preliminary budget into categories, including, but not limited to, the following:

- (1) Maintenance and operation.
- (2) Services and supplies.
- (3) Employee compensation.
- (4) Capital outlay.
- (5) Interest and redemption for indebtedness.
- (6) Designated reserve for capital outlay.
- (7) Designated reserve for contingencies.

(c) On or before July 1 of each year or, for districts using two one-year budgets or a biennial budget, every other year, the board of directors shall publish a notice stating all of the following:

(1) Either that it has adopted a preliminary budget or that the general manager has prepared a proposed final budget which is available for inspection at a time and place within the district specified in the notice.

(2) The date, time, and place when the board of directors will meet to adopt the final budget and that any person may appear and be heard regarding any item in the budget or regarding the addition of other items.

(d) The board of directors shall publish the notice at least two weeks before the hearing in at least one newspaper of general circulation in the district pursuant to Section 6061.

(e) At the time and place specified for the hearing, any person may appear and be heard regarding any item in the budget or regarding the addition of other items. The hearing on the budget may be continued from time to time.

(f) On or before September 1 of each year or, for districts using two one-year budgets or a biennial budget, every other year, the board of directors shall adopt a final budget that conforms to generally accepted accounting and budgeting procedures for special districts. The general manager shall forward a copy of the final budget to the auditor of each county in which the district is located.

[THE COMMENTARY APPEARS ON THE NEXT PAGE]

Topic, Derivation, and Comments: Budgets. New and derived from Public Resources Code §5788, §5788.1, and §5788.3.

The 1955 Law did not require CSDs to adopt annual budgets. This section begins a series which explains CSDs' budgets.

Subdivision (a) authorizes, but does not require, the adoption of a preliminary budget. This language accommodates CSDs that use biennial budgets, like the Dublin San Ramon Services District. In drafting subdivision (a), the Working Group substituted "generally accepted accounting and budgeting procedures" instead of the reference in Public Resources Code §5788 to the State Controller's regulations for special districts' budgets in the California Code of Regulations. The Working Group learned that CSDs consider the State Controller's regulations to be out-dated.

Subdivision (b) lists the budget categories. Derived from Public Resources Code §5788, with editing.

Subdivisions (c), (d), and (e) add to transparency by requiring CSDs to notify the public about their preliminary budgets. Derived from Public Resources Code §5788.1 and §5788.3.

Subdivision (f) sets September 1 as the deadline for adopting a final budget; that's two months after the start of the usual fiscal year.

61111. (a) At any regular meeting or properly noticed special meeting after the adoption of its final budget, the board of directors may adopt a resolution amending the budget and ordering the transfer of funds between categories, other than transfers from the designated reserve for capital outlay and the designated reserve for contingencies.

(b) The board of directors may authorize the general manager to transfer funds between budget categories, other than transfers from the designated reserve for capital outlay and the designated reserve for contingencies.

Topic, Derivation, and Comments: Budget Transfers. New and derived from Public Resources Code §5788.7.

This section allows transfers among budget categories, except for the two designated reserves. The new §61112 governs those transfers.

61112. (a) In its budget, the board of directors may establish a designated reserve for capital outlay and a designated reserve for contingencies. When the board of directors establishes a designated reserve, it shall declare the exclusive purposes for which the funds in the reserve may be spent. The funds in the designated reserve shall be spent only for the exclusive purposes for which the board of directors established the designated reserve. The reserves shall be maintained according to generally accepted accounting principles.

(b) Any time after the establishment of a designated reserve, the board of directors may transfer any funds to that designated reserve.

(c) If the board of directors finds that the funds in a designated reserve are no longer required for the purpose for which it established the designated reserve, the board of directors may, by a four-fifths vote of the total membership of the board of directors, discontinue the designated reserve or transfer any funds that are no longer required from the designated reserve to the district's general fund.

(d) Notwithstanding any other provision of this section, in a state of emergency or in a local emergency, as defined in Section 8558, a board of directors may temporarily transfer funds from the designated reserve for capital outlay or the designated reserve for contingencies to the district's general fund. The board of directors shall restore these funds to the designated reserves when feasible.

(e) The board of directors of each district that has designated an alternative depository pursuant to Section 61053 and appointed a district treasurer shall adopt and annually review a policy for the management of reserves.

Topic, Derivation, and Comments: Designated Reserves. New and derived from Public Resources Code §5788.9 and Health & Safety Code §2071.

Subdivisions (a), (b), and (c) explain how a CSD manages its designated reserves. Derived from Public Resources Code §5788.9. The Working Group was aware of the Little Hoover Commission's 2000 report, Special Districts: Relics of the Past or Resources for the Future?, that criticized special districts for keeping large unallocated general reserves. Subdivision (c) requires a 4/5-vote before a CSD can move money from a designated reserve into its general fund. A super-majority vote is a departure from the usual majority vote; see the new §61045 (c).

Subdivision (d) anticipates the legitimate need to spend reserve funds in emergencies. Derived from Health & Safety Code §2071, this language requires the existence of a declared and defined state of emergency or a local emergency. Unlike subdivision (c), this language requires only a majority vote. Note that this language requires the CSD to restore its reserves when feasible.

Subdivision (e) requires CSDs to adopt and annually review reserve policies if they have their own district treasurers. This oversight enforces the district treasurer's accountability.

61113. On or before July 1 of each year, the board of directors shall adopt a resolution establishing its appropriations limit, if any, and make other necessary determinations for the following fiscal year pursuant to Article XIII B of the California Constitution and Division 9 (commencing with Section 7900).

(b) Pursuant to subdivision (c) of Section 9 of Article XIII B of the California Constitution, this section shall not apply to a district which existed on January 1, 1978 and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12½ cents per one hundred dollars (\$100) of assessed value.

(c) This section shall not apply to any district that has previously transferred services and all of the property tax revenue allocation associated with those services to another local agency.

Topic, Derivation, and Comments: Annual Appropriations Limit. New and derived from Health & Safety Code §2072.

In 1979, the voters amended the California Constitution by passing Proposition 4 (the Gann Initiative), requiring each local government to set an annual appropriations limit (the "Gann Limit"). The 1955 Law was silent on this constitutional requirement.

Subdivision (a) cross-references the uniform statutory procedures for setting local appropriations limits, plus it sets the July 1 deadline.

Subdivision (b) notes that the Gann Initiative exempted some special districts from the requirement to adopt annual appropriations limits. Anecdotally --- perhaps apocryphally --- some say that Paul Gann intended this exemption to apply to mosquito abatement districts that he knew about in the Central Valley. Certainly, any special district qualifies if it had a low property tax rate in 1977-78.

Subdivision (c) recognizes that some CSDs may have transferred away all of their property tax revenue when they transferred away service responsibilities, thereby eliminating any "proceeds of taxes" for which they must adopt an annual appropriations limit. This situation applies at least to the Dublin San Ramon Services District.

61114. The auditor of each county in which a district is located shall allocate to the district its share of property tax revenue pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

Topic, Derivation, and Comments: Property Tax Allocation. New and derived from Public Resources Code §5788.13.

In 1978, the voters passed Proposition 13 and constitutionally removed the ability of local agencies to set their own property tax rates. The 1% maximum property tax rate is fixed by Article XIII A, §1 (a) of the California Constitution. The Legislature adopted implementation statutes (“AB 8”) that tell county auditor-controllers how to allocate the resulting revenues. The 1955 Law didn’t refer to those procedures. The 1955 Law still told how CSDs set their annual property tax rates.

The Working Group wanted to get rid of those obsolete provisions. Therefore, this “billboard” language cross-references the standard property tax allocation statutes, replacing the obsolete property tax provisions of the 1955 Law.

61115. (a) The board of directors may, by resolution or ordinance do the following:

(1) Establish rates or other charges for services and facilities that the district provides.

(2) Provide for the collection and enforcement of those rates or other charges.

(3) Among the permissible methods for collection and enforcement are:

(A) To provide that the charges for any of these services may be collected with the rates or charges for any other services and facilities provided by the district, and that all charges may be billed on the same bill and collected as one item.

(B) To provide that if all or part of a bill is not paid, the district may discontinue any or all services.

(C) To provide for a basic penalty for the nonpayment of charges of not more than 10 percent, plus an additional penalty of not more than 1 percent per month for the nonpayment of the charges and the basic penalty. The board of directors may provide for the collection of these penalties.

(b) The board of directors may provide that any charges and penalties may be collected on the tax roll in the same manner as property taxes. The general manager shall prepare and file with the board of directors a report that describes each affected parcel of real property and the amount of charges and delinquencies for each affected parcel for the year. The general manager shall give notice of the filing of the report and of the time and place for a public hearing by publishing the notice pursuant to Section 6066 in a newspaper of general circulation, and by mailing the notice to the owner of each affected parcel. At the public hearing, the board of directors shall hear and consider any objections or protests to the report. At the conclusion of the public hearing, the board of directors may adopt or revise the charges and penalties. The board of directors shall make its determination on each affected parcel and its determinations shall be final. On or before August 10 of each year following these determinations, the general manager shall file with the county auditor a copy of the final report adopted by the board of directors. The county auditor shall enter the amount of the charges and penalties against each of the affected parcels of real property as they appear on the current assessment roll. The county tax collector shall include the amount of the charges and penalties on the tax bills for each affected parcel of real property and collect the charges and penalties in the same manner as property taxes.

(c) The board of directors may recover any charges and penalties by recording in the office of the county recorder of the county in which the affected parcel is located, a certificate declaring the amount of the charges and penalties due, the name and last known address of the person liable for those charges and penalties. From the time of recordation of the certificate, the amount of the charges and penalties constitutes a lien against all real property of the delinquent property owner in that county. This lien shall have the force, effect, and priority of a judgment lien. Within 30 days of receipt of payment for all amounts due, including the recordation fees paid by the district, the district shall record a release of the lien. In filing any instrument for recordation, the district shall pay the fees required by Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3.

[THE TEXT AND COMMENTARY CONTINUE ON THE NEXT PAGE]

(d) A district shall reimburse the county for the reasonable expenses incurred by the county pursuant to this section.

(e) Any remedies for the collection and enforcement of rates or other charges are cumulative and the district may pursue remedies alternatively or consecutively.

Topic, Derivation, and Comments: Charges and Collection. Based on §61621, §61621.2, and §61621.3, §61621.4.

The 1955 Law allowed CSDs to “collect rates or other charges” for their services and facilities (the former §61621) and also allowed CSDs to adopt regulations that included “reasonable charges” to use those facilities (the former §61621.5). There were two ways to recover delinquent charges; either on the property tax roll or by recording liens. This section simplifies the 1955 Law.

Subdivision (a) is based on the first four paragraphs of §61621, and derived from Public Utilities Code §12811 for municipal utility districts. The drafting of subdivision (a) may be important for four reasons:

Duties. Note that this language imposes duties on the “board of directors” and not generally on the “district,” as in the 1955 Law.

Method. Allowing CSDs to act by either resolution or ordinance avoids any contradiction between the 1984 case that held that a CSD had to set fees by ordinance (*Cavalier Acres, Inc. v. San Simeon Acres Community Services District* [1984] 151 Cal.App. 3d 798) and the 2004 decision that allowed a CSD to amend its fee ordinance by resolution (*Richmond v. Shasta Community Services District* [2004] 32 Cal. 4th 409). Under this subdivision, the form of the adoption doesn’t matter; a CSD can act by either ordinance or resolution.

Charges. The former §61621 allowed CSDs to “collect rates or other charges” for their services and facilities and the former §61621.5 allowed CSDs to adopt regulations that included “reasonable charges” for their facilities. The Working Group recommended language allowing CSDs to charge “rates, fees, and other charges,” and that phrase remained in SB 135 from the March 29 amendments until the July 1 amendments. The City of Elk Grove objected to that phrase and requested the July 1 amendment that resulted in the phrase, “rates or other charges.” An attorney for the Elk Grove CSD explained that it was in litigation with the City of Elk Grove over a CSD’s authority to impose development impact fees under the Mitigation Fee Act. The CSD contended that it had the authority to impose development impact fees, while the City contended that only counties and cities have that authority under their police powers to control land use. The City was concerned that if this section of the new CSD Law used the term “fee,” then the Elk Grove CSD could argue that the new CSD Law was an independent statutory

[THE COMMENTARY CONTINUES ON THE NEXT PAGE]

authorization for CSDs to impose development impact fees. The July 1 amendment to this language went back to the phrase in the 1955 Law, so that SB 135 could side-step that controversy. With the July 1 amendments, the Elk Grove CSD withdrew its opposition to SB 135, as confirmed by the August 3, 2005, letter from Kevin T. Collins of Best Best & Krieger LLP, an attorney for the Elk Grove CSD.

Collection. Note that (a)(3)(B) specifically allows a CSD to discontinue a service other than the service for which a bill is not paid.

Penalties. Note that (a)(3)(C) allows CSDs to charge an additional penalty of 1% a month. The 1955 Law limited the monthly penalty to ½%. A 1996 court decision invited CSDs to seek a statutory increase if they thought that limit was inadequate (Waterman Convalescent Hospital, Inc. v. Jurupa Community Services District [1996] 53 Cal.App. 4th 1550). At the Working Group's recommendation, this language increases the monthly penalty. Based on research by Ernest Conant (Young Wooldridge LLP), other special districts can already charge similar amounts:

Municipal utility districts	10% penalty, plus 1½% interest per month	PUC §12811
California water districts	10% penalty, plus 1½% interest per month.	Water Code §35470.5
Water storage districts	10% penalty, plus 1% interest per month	Water Code §47182

Subdivision (b) is based on §61621.2 and §61675.2 - §61675.6. Note that this language assigns the duties to the general manager, not to the CSD's secretary. Like those former provisions that the Legislature added in 1979, this paragraph supersedes the 1972 Attorney General's opinion that said a county tax collector couldn't collect CSDs' delinquent service charges on county property tax bills (55 Ops.Cal.Atty.Gen. 379).

Subdivision (c) is based on the fifth and sixth paragraphs of §61621 and §61621.3, and derived from Public Utilities Code §12811.1. The Working Group recommended removing the three-year and 10-year limits on these liens. Note that the requirement for a CSD to pay recording fees is broader than the specific statutory references in the 1955 Law.

Subdivision (d) is based on §61621.4. CSDs must pay the counties' costs.

Subdivision (e) reassures CSDs that these remedies are cumulative.

61116. (a) A district may accept any revenue money, grants, goods, or services from any federal, state, regional, or local agency or from any person for any lawful purpose of the district.

(b) In addition to any other existing authority, a district may borrow money and incur indebtedness pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840), Article 7.6 (commencing with Section 53850), and Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Contributions and Borrowing. New and derived from Public Resources Code §5788.17.

Subdivision (a) allows CSDs to accept any kind of help from public agencies or private sources. This subdivision has an obvious typographical error; there should be a comma after “revenue” and before “money.”

Subdivision (b) allows CSDs to engage in short-term borrowing by referring to the standard statutes that apply to all local governments. These “billboard” provisions include a variety of tax and revenue anticipation notes.

61117. The board of directors may establish a revolving fund pursuant to Article 15 (commencing with Section 53950) of Chapter 4 of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Revolving Fund. New and derived from Health & Safety Code §2078.

This “billboard” language cross-references the standard statute that allows all special districts to set up revolving funds to make change and pay small bills.

61118. (a) The board of directors shall provide for regular audits of the district's accounts and records pursuant to Section 26909.

(b) The board of directors shall provide for the annual financial reports to the State Controller pursuant to Article 9 (commencing with Section 53890) of Chapter 4 of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Audits and Reports. New and derived from Public Resources Code §5788.2.

This “billboard” language reminds CSDs about the two standard statutes that already require them to provide for regular audits and annual financial reports. CSDs should remember that §26909 (b) requires them to send their audits to State Controller and the county auditor.

61119. All claims for money or damages against a district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1.

Topic, Derivation, and Comments: Claims. Based on §61628.

This language is another “billboard” provision, reminding CSDs of the standard way for handling claims for money or damages.



CHAPTER 3. ALTERNATIVE REVENUES

61120. Whenever the board of directors determines that the amount of revenue available to the district or any of its zones is inadequate to meet the costs of operating and maintaining the facilities, programs, and services authorized by this division, the board of directors may raise revenues pursuant to this chapter or any other provision of law.

Topic, Derivation, and Comments: Revenue Authority. New and derived from Public Resources Code §5789.

This section introduces the chapter that lists CSDs' alternative revenue sources. The revenue sources listed in this chapter are already available to CSDs, so this chapter serves as a "bill-board" to remind CSDs about their statutory alternatives.

61121. A district may levy special taxes pursuant to:

(a) Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5. The special taxes shall be applied uniformly to all taxpayers or all real property within the district, except that unimproved property may be taxed at a lower rate than improved property.

(b) The Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Special Taxes. Based on §61615.1.

The California Constitution requires 2/3-voter approval for special districts' special taxes. See both Article XIII A, §4, and Article XIII C, §2.

Subdivision (a) is based on §61615.1.

Subdivision (b) is new, but reflects local governments' existing ability to levy special taxes under the Mello-Roos Act for specified services: police protection, fire protection, ambulance, paramedics, recreation programs, library services, museum and cultural services, park and open space maintenance, flood protection and storm drainage services, and the removal of hazardous substances. The new CSD Law authorizes most of these services; see the new §61100.

Note that this language does not allow CSDs to get graffiti prevention tax revenues under the former §61615.5. The Working Group recommended deleting that section of the existing law.

Also see the new §61128 that allows CSDs to issue bonds under the Mello-Roos Act to finance public works projects.

61122. A district may levy benefit assessments for operations and maintenance consistent with the requirements of Article XIII D of the California Constitution, including, but not limited to, benefit assessments levied pursuant to any of the following:

(a) The Improvement Act of 1911, Division 7 (commencing with Section 5000) of the Streets and Highways Code.

(b) The Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the Streets and Highways Code.

(c) The Municipal Improvement Act of 1913, Division 12 (commencing with Section 10000) of the Streets and Highways Code.

(d) The Landscaping and Lighting Assessment Act of 1972, Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code, notwithstanding Section 22501 of the Streets and Highways Code.

(e) Any other statutory authorization enacted on or after January 1, 2006.

Topic, Derivation, and Comments: Benefit Assessments. New and derived from Public Resources Code §5789.3.

CSDs can already use the 1911, 1913, 1915, and 1972 Acts. This language acts as a “billboard” to remind CSDs that they can levy benefit assessments for operations and maintenance, provided that they follow the procedures required by Proposition 218 (1996).

Note that this section parallels the new §61128 in the following chapter on “Capital Financing.” That other section refers to the use of assessment bonds to finance public works construction. This section focuses on the operation and maintenance of public facilities.

61123. (a) A board of directors may charge a fee to cover the cost of any service which the district provides or the cost of enforcing any regulation for which the fee is charged. No fee shall exceed the costs reasonably borne by the district in providing the service or enforcing the regulation for which the fee is charged.

(b) Before imposing or increasing any fee for property-related services, a board of directors shall follow the procedures in Section 6 of Article XIII D of the California Constitution.

(c) A board of directors may charge residents or taxpayers of the district a fee authorized by this section which is less than the fee which it charges nonresidents or nontaxpayers.

(d) A board of directors may authorize district employees to waive the payment, in whole or in part, of a fee authorized by this section when the board of directors determines that payment would not be in the public interest. Before authorizing any waiver, a board of directors shall adopt a resolution which specifies the policies and procedures governing waivers.

Topic, Derivation, and Comments: Fees. New and derived from Public Resources Code §5789.5.

Although many CSDs charge fees for their programs and facilities, there was no explicit authority for the practice in the 1955 Law. This section provides the statutory basis for CSDs' fees.

Subdivision (a) repeats the constitutional standard that a fee can't exceed the cost.

Subdivision (b) is based on California Constitution Article XIII D, §6 (Proposition 218). That requirement is self-executing and there is no statutory implementation.

Subdivision (c) tells CSDs that they can undercharge their residents and taxpayers. Because residents and taxpayers already support many CSDs through property taxes, a CSD might want to charge them less than the full cost of the service. CSDs can continue to charge full costs to nonresidents, but they can't overcharge.

Subdivision (d) lets CSDs waive or partially waive fees, if they adopt written policies. For example, a CSD might waive service fees for senior citizens, youngsters, or poor people.

61124. (a) A district may charge standby charges for water, sewer, or water and sewer services pursuant to the Uniform Standby Charge Procedures Act, Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5.

(b) A standby charge charged by a district pursuant to the former Chapter 1 (commencing with Section 61750) of the former Part 6 of the former Division 1 shall be exempt from subdivision (a), provided that any subsequent increases shall be subject to subdivision (a).

Topic, Derivation, and Comments: Standby Charges. Based on §61765.

The 1955 Law contained 13 sections that allowed specific CSDs to raise their standby charges higher than the standard amount (§61765.7-§61767). By 1988, the Legislature had tired of adding separate sections for CSDs and other special districts that provide water and sewer services, and instead enacted the Uniform Standby Charge Procedures Act. The Working Group agreed that the new CSD Law should omit those special provisions in favor of a cross-reference to the Uniform Act. That's what subdivision (a) provides.

Subdivision (b) grandfathers any existing standby charges that CSDs adopted before the voters added new constitutional rules by passing Proposition 218 (1996). This language parallels the provision of Proposition 218 that allows existing standby charges to remain in place, but requires compliance with the new procedures for future increases.

CHAPTER 4. CAPITAL FINANCING

61125. Whenever the board of directors determines that the amount of revenue available to the district or any of its zones is inadequate to acquire, construct, improve, rehabilitate, or replace the facilities authorized by this division, or for funding or refunding any outstanding indebtedness, the board of directors may incur debt and raise revenues pursuant to this chapter or any other provision of law.

Topic, Derivation, and Comments: Debt Authority. New and derived from Public Resources Code §5790 (a).

This section introduces the chapter that lists the ways in which CSDs can incur debt for their facilities. The debt instruments listed in this chapter are already available to CSDs, so this chapter serves as a “billboard” to remind CSDs about their statutory alternatives.

61126. (a) Whenever a board of directors determines that it is necessary to incur a general obligation bond indebtedness for the acquisition or improvement of real property, the board of directors may proceed pursuant to Article 11 (commencing with Section 5790) of Chapter 4 of Division 5 of the Public Resources Code.

(b) Notwithstanding subdivision (a), a district shall not incur bonded indebtedness pursuant to this section that exceeds 15 percent of the assessed value of all taxable property in the district at the time that the bonds are issued.



Topic, Derivation, and Comments: General Obligation Bonds. Based on §61613 and §61650 - §61787, and derived from Health & Safety Code §9082.

The California Constitution requires 2/3-voter approval before a local government can issue G.O. bonds and levy an extraordinary ad valorem property tax rate to pay for them (Article XIII A, §1 [b][2]).

The 1955 Law allowed CSDs to issue G.O. bonds with 2/3-voter approval. The Working Group reported that it's not common for CSDs to have G.O. bonds, so they had very little experience with the statutory procedures.

Instead of repeating the extensive procedures of the 1955 Law, subdivision (a) merely cross-references the recreation and park districts' G.O. bond procedures. That's the same approach used in the Public Cemetery District Law (Health & Safety Code §9082). For drafting purposes, a cross-reference is an economical approach that avoids adding bulk to the new CSD Law for a topic that CSDs rarely use.

Note that this language could have cross-referenced the statutory methods used by counties (§29900, et seq.) or the cities' G.O. bond statute (§43600, et seq.), but did not.

The 1955 Law set a 20% limit on the amount of G.O. bonds that a CSD can issue (§61613). Subdivision (b) caps a CSDs' G.O. bonds at 15% of the district's assessed value. That's the same limit for cities (§43605) and counties (§29909). Other types of special districts have lower G.O. bond limits. The Working Group recommended the 15% cap because many CSDs provide more than one type of facility, just like cities and counties.

61127. A board of directors may finance any enterprise and issue revenue bonds pursuant to the Revenue Bond Law of 1941, Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Revenue Bonds. Based on §61613.1 and §61670.

This “billboard” section allows CSDs to issue revenue bonds under the Revenue Bond Law of 1941, with majority-voter approval, to pay for any enterprise that the CSD can run. See the new §61100 for the list of authorized services and facilities.

61128. A district may finance facilities and issue bonds pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: Mello-Roos Act Bonds. New.

The Mello-Roos Act allows any local government to finance any public work projects by issuing bonds backed by parcel taxes. Parcel taxes are special taxes, so they require 2/3-voter approval. This “billboard” language reminds CSDs that they can use the Mello-Roos Act to finance public works.

Also see the new §61121 (b) that allows CSDs to levy special taxes under the Mello-Roos Act to pay for selected services.

61129. A district may levy benefit assessments to finance facilities consistent with the requirements of Article XIII D of the California Constitution, including, but not limited to, benefit assessments levied pursuant to any of the following:

(a) The Improvement Act of 1911, Division 7 (commencing with Section 5000) of the Streets and Highways Code.

(b) The Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the Streets and Highways Code.

(c) The Municipal Improvement Act of 1913, Division 12 (commencing with Section 10000) of the Streets and Highways Code.

(d) The Landscaping and Lighting Assessment Act of 1972, Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code, notwithstanding Section 22501 of the Streets and Highways Code.

(e) Any other statutory authorization enacted on or after January 1, 2006.

Topic, Derivation, and Comments: Assessment Bonds. New and derived from Public Resources Code §5789.3.

CSDs can already use the 1911, 1913, 1915, and 1972 Acts to finance public works with assessment bonds. This language acts as a “billboard” to remind CSDs that they can issue assessment bonds, paid by benefit assessments, provided that they follow the procedures required by Proposition 218 (1996).

Note that this section parallels the new §61122 in the previous chapter on “Alternative Revenues.” That other section refers to the use of benefit assessments to pay for the operation and maintenance of public facilities. This section focuses on public works construction.

61130. A district may acquire and improve land, facilities, or equipment and issue securitized limited obligation notes pursuant to Article 7.4 (commencing with Section 53835) of Chapter 4 of Part 1 of Division 2 of Title 5.

Topic, Derivation, and Comments: SLONs. New.

In 2004, the Legislature allowed any special district to issue up to \$2 million in securitized limited obligation notes (SLONs) for 10 years (SB 1770, Senate Local Government Committee, 2004). This “billboard” language reminds CSDs that they can issue SLONs.

61131. (a) A district may issue promissory notes to borrow money and incur indebtedness for any lawful purpose, including, but not limited to, the payment of current expenses, pursuant to this section.

(b) The total amount of indebtedness incurred pursuant to this section outstanding at any one time shall not exceed 5 percent of the district's total enterprise and nonenterprise revenues in the preceding fiscal year. Any indebtedness incurred pursuant to this section shall be repaid within five years from the date on which it is incurred. Any indebtedness incurred pursuant to this section shall bear interest at a rate which shall not exceed the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5.

(c) Each indebtedness incurred pursuant to this section shall be authorized by resolution adopted by a four-fifths vote of the total membership of the board of directors and shall be evidenced by a promissory note signed by the president of the board of directors and the general manager.

Topic, Derivation, and Comments: Promissory Notes. Based on §61742-§61749, and derived from Public Resources Code §5788.21.

The Working Group recommended retaining the ability to issue five-year promissory notes because several CSDs use them. This language compresses several existing sections into a single section.

Subdivision (a) is based on §61742 and §61743.



The 1955 Law capped the amount of promissory notes at 1% of a CSD's assessed value (§61749). The Working Group noted that because CSDs pay their promissory notes from current revenues, there's no rationale for measuring the cap against a CSD's assessed value. A more logical basis is a CSD's annual revenues.

Subdivision (b) sets a new 5% limit on the amount of outstanding promissory notes. The State Controller's Special Districts Annual Report contains information on special districts' total "operating revenues" from enterprise activities in Tables 2 through 8, and their "total revenues" from non-enterprise activities in Table 10. The phrase "total enterprise and non-enterprise revenues" would be the sum of those revenues.

Subdivision (b) is also based on §61744 for the five-year term, but relies on the standard statute for local governments' interest rates instead of the 6% maximum rate in the 1955 Law.

Subdivision (c) is based on §61745. A 2/3-vote of a five-member board of directors requires four affirmative votes, so this language recasts the voting requirement as 4/5. The provision is another exception to the usual requirement for majority votes in the new §61045 (c).

CHAPTER 5. ZONES

SPECIAL AREA PROJECTS?



61140. (a) Whenever a board of directors determines that it is in the public interest to provide different services, provide different levels of service, provide different facilities, or raise additional revenues within specific areas of the district, it may form one or more zones pursuant to this chapter.

(b) The board of directors shall initiate proceedings for the formation of a new zone by adopting a resolution that does all of the following:

- (1) States that the proposal is made pursuant to this chapter.
- (2) Sets forth a description of the boundaries of the territory to be included in the zone.
- (3) States the reasons for forming the zone.
- (4) States the different services, different levels of service, different facilities, or additional revenues that the zone will provide.
- (5) Sets forth the methods by which those services, levels of service, or facilities will be financed.
- (6) Proposes a name or number for the zone.

(c) A proposal to form a new zone may also be initiated by a petition signed by not less than 10 percent of the registered voters residing within the proposed zone. The petition shall contain all of the matters required by subdivision (b).

(d) Upon the adoption of a resolution or the receipt of a valid petition, the board of directors shall fix the date, time, and place for the public hearing on the formation of the zone. The board of directors shall publish notice of the hearing, including the information required by subdivision (b), pursuant to Section 6061 in one or more newspapers of general circulation in the district. The board of directors shall mail the notice at least 20 days before the date of the hearing to all owners of property within the proposed zone. The board of directors shall post the notice in at least three public places within the territory of the proposed zone.

Topic, Derivation, and Comments: Forming Zones. Based on §61770-§61792.4, and derived from Public Resources Code §5791.

Subdivision (a) introduces a new chapter which allows CSDs to form internal zones that can segregate the costs and benefits of different services and facilities. Because zones are manifestations of a CSD, they are not separate government agencies. The Working Group wanted to note that the new Law doesn't segregate tort liability by zone. Any liability exposure falls on the CSD.

Subdivision (b) lets a CSD's board of directors initiate the formation of a zone by resolution and subdivision (c) lets the area's voters initiate the formation; just as in the former §61771. But the Working Group recommended lowering the petition threshold from 25% to 10% of the voters in the proposed zone.

61141. (a) At the hearing, the board of directors shall hear and consider any protests to the formation of the zone. If, at the conclusion of the hearing, the board of directors determines either that more than 50 percent of the total number of voters residing within the proposed zone have filed written objections to the formation, or that property owners who own more than 50 percent of the assessed value of all taxable property in the proposed zone have filed written objections to the formation, then the board of directors shall terminate the proceedings. If the board of directors determines that the written objections have been filed by 50 percent or less of those voters or property owners who own 50 percent or less than the assessed value of all taxable property, then the board of directors may proceed to form the zone.

(b) If the resolution or petition proposes that the zone use special taxes, benefit assessments, fees, standby charges, bonds, or notes to finance its purposes, the board of directors shall proceed according to law. If the voters or property owners do not approve those funding methods, the zone shall not be formed.

Topic, Derivation, and Comments: Hearing and Protest. Based on §61770-§61792.4, and derived from Public Resources Code §5791.1.

Majority protest by either voters or property owners stops the formation of the zone. If there is less than a majority protest then, if necessary, the board of directors must ask voters or property owners to approve the financing method. If they reject the financing method, the formation of the zone stops.

61142. A board of directors may change the boundaries of a zone or dissolve a zone by following the procedures in Section 61140 and 61141.

Topic, Derivation, and Comments: Zone Boundaries. Based on §61770-§61792.4, and derived from Public Resources Code §5791.3.

61143. A local agency formation commission shall have no power or duty to review and approve or disapprove a proposal to form a zone, a proposal to change the boundaries of a zone, or a proposal to dissolve a zone.

Topic, Derivation, and Comments: No LAFCO Control. Based on §61770-§61792.4, and derived from Public Resources Code §5791.5.

This language complements the Cortese-Knox-Hertzberg Act's definition of "district" which makes it clear that LAFCOs can't control special districts' internal improvement districts or zones (§56036). SB 135 made complementary amendments to that section. See pages 122 and 123 of this report.

61144. (a) As determined by the board of directors, a district may provide any service, any level of service, or any facility within a zone that the district may provide in the district as a whole.

(b) As determined by the board of directors and pursuant to the requirements of this division, a district may exercise any fiscal powers within a zone that the district may exercise in the district as a whole.

(c) Any special taxes, benefit assessments, rates, fees, charges, standby charges, bonds, or notes which are intended solely for the support of services or facilities within a zone, shall be levied, assessed, and charged within the boundaries of the zone.

(d) A district shall not incur a general obligation bonded indebtedness for the benefit of a zone pursuant to this section that exceeds 5 percent of the assessed value of all taxable property in the zone at the time that the bonds are issued. In computing this limit, the 5 percent shall include any other general obligation bonded indebtedness applicable to that zone.

(e) A district shall not issue promissory notes for the benefit of a zone pursuant to Section 61131 that exceed 5 percent of the zone's total enterprise and nonenterprise revenues in the preceding fiscal year. In computing this limit, the 5 percent shall include any other promissory notes applicable to that zone.

Topic, Derivation, and Comments: Services, Facilities, and Finance. Based on §61770 - §61792.4, and derived from Public Resources Code §5791.7.

SECTION 1. Section 56036 of the Government Code is amended to read:

56036. (a) "District" or "special district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. "District" or "special district" includes a county service area, but excludes all of the following:

- (1) The state.
- (2) A county.
- (3) A city.
- (4) A school district or a community college district.
- (5) A special assessment district.
- (6) An improvement district.
- (7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.
- (8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.
- (9) An air pollution control district or an air quality maintenance district.
- (10) A zone of any of the following:
 - (A) A fire protection district.
 - (B) A mosquito abatement and vector control district.
 - (C) A public cemetery district.
 - (D) A recreation and park district.
 - (E) A community services district.

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or a "special district" for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or a "special district:"

- (A) A unified or union high school library district.
- (B) A bridge and highway district.
- (C) A joint highway district.
- (D) A transit or rapid transit district.
- (E) A metropolitan water district.
- (F) A separation of grade district.

(2) Any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving an entity described in paragraph (1) shall be conducted pursuant to the principal act authorizing the establishment of that entity.

(c) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or "special district" for purposes of this division.

[THE TEXT AND COMMENTARY CONTINUE ON THE NEXT PAGE]

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or "special district" if the commission of the principal county determines, in accordance with Sections 56127 and 56128, that the entity is not a "district" or "special district."

- (A) A flood control district.
- (B) A flood control and floodwater conservation district.
- (C) A flood control and water conservation district.
- (D) A conservation district.
- (E) A water conservation district.
- (F) A water replenishment district.
- (G) The Orange County Water District.
- (H) A California water storage district.
- (I) A water agency.
- (J) A county water authority or a water authority.

(2) If the commission determines that an entity described in paragraph (1) is not a "district" or "special district," any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving the entity shall be conducted pursuant to the principal act authorizing the establishment of that entity.

Topic, Derivation, and Comments: "District" Definition.

This amendment to the Cortese-Knox-Hertzberg Act's definition of "district" clarifies that LAF-COs don't control CSDs' internal zones.

SEC. 2. Division 3 (commencing with Section 61000) of Title 6 of the Government Code is repealed.

SEC. 3. Division 3 (commencing with Section 61000) is added to Title 6 of the Government Code, to read:

Topic, Derivation, and Comments: Community Services District Law.

Section 2 of SB 135 repealed the Community Services District Law, as enacted in 1955 and subsequently amended, to make way for the new CSD Law.

Section 3 of SB 135 enacted the new Community Services District Law.



SEC. 4. Section 20682 of the Public Contract Code is repealed.

Contract policies

SEC. 5. Section 20682 is added to the Public Contract Code, to read:

20682. (a) A district may purchase materials and supplies for the construction or completion of any building, structure, or improvements in the open market when the cost does not exceed twenty-five thousand dollars (\$25,000).

(b) Contracts for materials and supplies for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(c) The district shall publish notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least one week before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the materials and supplies to be purchased.

(d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that the notice shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.

(e) At its discretion, the board of directors may reject any bids presented and readvertise.

(f) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(g) As an alternate to the procedures required by this section, a district may rely on the Uniform Public Construction Cost Accounting Act, Chapter 2 (commencing with Section 22000) of Part 3 of Division 2.

Topic, Derivation, and Comments: Contracts for Construction Materials. Based on Public Contract Code §20685 (c).

This language raises the bidding threshold from \$15,000 to \$25,000. This language also provides the procedures for conducting the bidding, derived from Public Contract Code §20813 for fire protection districts and Public Contract Code §20815.3 for recreation and park districts. The language also draws on Public Contract Code §20192 (municipal utility districts) and §20201 (public utility districts).

SEC. 6. Section 20682.5 is added to the Public Contract Code, to read:

20682.5. (a) A district may construct or complete any building, structure, or improvement with its own forces or by contract without bidding when the cost does not exceed twenty-five thousand dollars (\$25,000).

(b) All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(c) The district shall publish notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.

(d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that the notice shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.

(e) If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.

(f) At its discretion, the board of directors may reject any bids presented and readvertise.

(g) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(h) The board of directors may, subject to the provisions of Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(i) The district shall keep cost records of the work in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

(j) As an alternate to the procedures required by this section, a district may rely on the Uniform Public Construction Cost Accounting Act, Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code.

[THE COMMENTARY APPEARS ON THE NEXT PAGE]

Topic, Derivation, and Comments: Construction Contracts.

Based on Public Contract Code §20685 and derived from Public Contract Code §20813 for fire protection districts, and from Public Contract Code §20815.3 for recreation and park districts.

Subdivision (a) raises the bidding threshold from \$15,000 to \$25,000. This language also provides the procedures for conducting the bidding.

The alternative procedure in subdivision (d) is derived from Public Contract Code §20192 for municipal water districts and Public Contract Code §20201 for public utility districts.

Subdivision (e) is derived from Public Contract Code §20192 for municipal water districts and Public Contract Code §20204.1 for public utility districts.

Mirroring the provision for fire protection districts, subdivision (h) allows (but doesn't require) CSDs to require contractors to post performance bonds. Civil Code §3247 requires contractors to post bonds for public works projects.

SEC. 7. Section 20685 of the Public Contract Code is repealed.

SEC. 8. Section 20685.5 of the Public Contract Code is amended and renumbered to read:

~~20685.5.~~ 20683. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

- (a) Cash.
- (b) A cashier's check made payable to the district.
- (c) A certified check made payable to the district.
- (d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

Topic, Derivation, and Comments: Bid Security. Renumbered.

SB 135 merely renumbered Public Contract Code §20685.5 as Public Contract Code §20683.

SEC. 9. This act is based on the recommendations of the Working Group on Revising the Community Services District Law, convened by the Senate Committee on Local Government.

Topic, Derivation, and Comments: Source. New.

This uncodified section signals future reviewers, including the courts, about the source of these statutory changes. This language is similar to uncodified sections that the Senate Local Government Committee added at the end of its other revision efforts. See:

Section 5 of Chapter 15 of the Statutes of 2001 (SB 707)
Recreation and Park District Law

Section 11 of Chapter 395 of the Statutes of 2002 (SB 1588)
Mosquito Abatement and Vector Control District Law

Section 6 of Chapter 57 of the Statutes of 2003 (SB 341)
Public Cemetery District Law

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Topic, Derivation, and Comments: State Mandate Disclaimer.

In 1979, the voters amended the California Constitution by passing Proposition 4 (the Gann Initiative). Besides requiring local governments to set annual appropriations limits (see the new §61113), the Gann Initiative also required the state government to reimburse local governments for the costs of new state-mandated local programs. However, the voters carved out three exceptions. The second of those three exceptions is that the state doesn't have to pay local governments for the costs of new crimes. See California Constitution, Article XIII B §6 (a)(2).

Because the new §61064 makes it a crime to violate a CSD's rules, regulations, or ordinances, the Legislative Counsel identified SB 135 as creating a new state-mandated local program. This section, however, avoids the state's responsibility for funding that mandate by using the constitutionally permitted disclaimer.

Source Table

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DIVISION 3. COMMUNITY SERVICES DISTRICTS
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61008	Elections (a) UDEL applies (b) Consolidated elections (c) Mailed ballot elections (d) Advisory elections	61400, PRC §5787 New, PRC §5797.1 New New
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61029	Mountain House CSD's Board of Directors	61200.1
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	(y) Pest abatement	New, 61601.25 (a)(1)
	(z) Mailboxes	New, 61601.22
	(aa) Mail service	New, 61601.25 (b)

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61100 continued	(ab) Cemeteries (ac) Area planning commissions (ad) Municipal advisory councils (ae) Habitat mitigation	New, HSC §9040 (a) New, 25210.4a (9) New, 25210.4a (12) New, 61601.26 (e)
61101	Extraterritorial Services	New
61102	Retail Electricity Services	New, 61601.11, 56065, 56886 (m)
61103	Road Commissioner's Powers	61621.5 (c)
61104	Franchises	New
61105	Special Provisions (a) Special circumstances (b) Los Osos CSD's sewer loans (c) Heritage Ranch CSD's gas station (d) Wallace CSD's LPG system (e) 8 CSDs' enforcement of CC&Rs (f) 6 CSDs' road restrictions (g) Hidden Valley Lake CSD's water rights (h) 2 CSDs' television services (i) Mountain House CSD's telecom services	New 61600.3 61601.8 61601.30 (c) & (d) 61601.7, 61601.10 61621.8 (a) & (b) 61850 61601.9, 61601.14 (a) & (b) 61601.26 (f)
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61113	Annual Appropriations Limit	New, HSC §2072
61114	Property Tax Allocation	New, PRC §5788.13
61115	Charges and Collection	61621, 61621.2, 61621.3, 61621.4

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61129	Assessment Bonds	New, PRC §5789.3
61130	SLONs	New
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61141	Hearing and Protest	61770-61792.4, PRC §5791.1
61142	Zone Boundaries	61770-61792.4, PRC §5791.3
61143	No LAFCO Control	61770-61792.4, PRC §5791.5
61144	Services, Facilities, and Finances	61770-61792.4, PRC §5791.7



SEC. 1.	Amend Government Code §56036 “District” defined, Cortese-Knox-Hertzberg Act
SEC. 2.	Repeal Government Code §61000, et seq. Repeal the 1955 Community Services District Law
SEC. 3.	Add Government Code §61000, et seq. Enact the new Community Services Law
SEC. 4.	Repeal Public Contract Code §20682 Construction Contracts
SEC. 5	Add Public Contract Code §20682 Contracts for Construction Materials
SEC. 6.	Add Public Contract Code §20682.5 Construction Contracts
SEC. 7	Repeal Public Contract Code §20685 Bidding
SEC. 8.	Renumber Public Contract Code §20685.5 as §20683 Bid Security
SEC. 9.	Uncodified section Source
SEC. 10.	Uncodified section State Mandate Disclaimer

LEGEND:

Food & Ag = Food and Agricultural Code
HSC = Health and Safety Code
PRC = Public Resources Code
PUC = Public Utilities Code

Disposition Table

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1955 Law Section	Topic	SB 135 Disposition
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61764	Standby charge procedures	61124
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1955 Law Section	Topic	SB 135 Disposition
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61765.11	Smith River CSD's standby charges	Repealed
61765.12	Cambria CSD's standby charges	Repealed
61765.13	San Bernardino County's CSDs' standby charges	Repealed
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61765.16	Grizzly Flats CSD's standby charges	Repealed
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1955 Law Section	Topic	SB 135 Disposition
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61791.1	Voter protests	Repealed
61791.2	Landowner protests	Repealed
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Chapter 3. Effect Of Inclusion In Incorporated Territory [REPEALED]

Chapter 4. Exclusion of Territory [REPEALED]

Chapter 5. Withdrawal of Territory [REPEALED]

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LEGEND:

*	=	These sections have the same section number.
PCC	=	Public Contract Code

Participation in the Working Group Meetings

	<u>Nov 18</u>	<u>Dec 3</u>	<u>Dec 10</u>	<u>Jan 7</u>	<u>Feb 11</u>	<u>Feb 18</u>	<u>June 3</u>	<u>Total</u>
<u>Trustees</u>								
Gallegos	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
Garrison	Yes	No	No	Yes	No	No	No	2
Kuntz	Yes	No	Yes	No	Yes	No	No	3
<u>Managers</u>								
Aranda	Yes	Yes	Yes	Yes	Yes	No	Yes	6
Aust	No	No	No	No	No	No	No	0
Yeakley	Yes	Yes	Yes	No	Yes	No	Yes	5
<u>Experts</u>								
Andrews	Yes	No	No	No	No	No	Yes	2
Braitman	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
Dean	Yes	Yes	Yes	No	Yes	No	Yes	5
Heim	No	No	No	No	No	No	No	0
McMurchie	Yes	No	No	No	Yes	Yes	No	3
Velasquez	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
<u>Associations</u>								
Blacet (ACWA)	Yes	No	No	Yes	No	(Davis)	Yes	4
Chiat (CALAFCO)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
Smith, (CSDA)	Yes	No	Yes	Yes	No	Yes	Yes	5
Shulman (CSAC)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
McCarthy (CalTax)	No	No	No	No	No	No	No	0
Coupal (HJTA)	No	No	No	No	No	No	No	0
Cooley (League)	Yes	No	Yes	Yes	No	No	Yes	4
<u>Totals:</u>	14	8	9	10	10	7	12	

Sources & Credits

In researching and writing this report, the staff of the Senate Local Government Committee relied on the materials prepared for the Working Group, plus the following sources:

Peter M. Detwiler, “An Approach To Analysis,” (memo) Sacramento: Senate Local Government Committee, revised November 18, 2004.

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Steve Westly, Special Districts Annual Report, Fiscal Year 2002-03, Sacramento: State Controller’s Office, May 2005.



Peter Detwiler, staff director for the Senate Local Government Committee, prepared this report with production assistance from Elvia Diaz, the Committee Assistant.

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