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LAFCO: IS IT IN CONTROL OF SPECIAL DISTRICTS?

The growth of metropolitan areas in the United States over the past 30 years\(^1\) is a matter of common knowledge. A rather common appendage of this growth has been the use of the special district form of government in an effort to solve some of the problems this growth has generated.\(^2\) Consequently, as metropolitan areas and population have grown, the number of special districts has grown. This increase in the number of special districts has generated certain inherent problems: the overlap of special district boundaries, uneconomic use of local resources, inefficiency in local government, increases in taxes, and the problems of administration caused by the tremendous numbers alone.\(^3\)

The proliferation of special districts is demonstrated by the fact that there are presently 81,248 units of local government in the United States,\(^4\) and of these 21,264 are special districts, an increase of 6,840 since 1957 when there were 14,424 such units.\(^5\) California presents a microcosm of the national situation, as there are more special districts in California than in any state except Illinois.\(^6\) California has five to six times as many special districts as it has cities.\(^7\) This enormous number of special districts was brought about as a result of the voluminous growth of California's population following World War II.\(^8\)

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2. See J. BOLLENS, SPECIAL DISTRICT GOVERNMENT IN THE UNITED STATES 48-52 (1961) [hereinafter cited as BOLLENS].
3. See notes 31-33 & accompanying text infra.
5. Id. at 1.
6. INSTITUTE FOR LOCAL SELF GOVERNMENT, BERKELEY, CAL., SPECIAL DISTRICTS OR SPECIAL DYNASTIES? DEMOCRACY DENIED 5 (1970) [hereinafter cited as SPECIAL DYNASTIES].
7. Id. See BOLLENS, supra note 2, at 2, where the author states that there are thirty-five states, including California, which have more special districts than any other class of government.
8. Comment, New Control Over Municipal Formation and Annexation, 4 SANTA CLARA LAW. 125 (1964). That the rapid expansion of California has resulted in the proliferation of special districts in this state is demonstrated by a comparison of the total number of special districts existent in California in different years. At the end of fiscal year 1955-56, for example, there were no less than 2,780 special districts in the state of California. The figures for fiscal year 1962-63 show a total of 3,342.
In an effort to deal with the problems presented by the proliferation of special districts, and in order to bring about orderly growth and development in local areas, the California Legislature, in 1963, established a Local Agency Formation Commission (LAFCO) in each county, and in 1965, enacted the District Reorganization Act of 1965, which increased the responsibility of LAFCO to control the proliferation of special districts in California. The purpose of this note is to illustrate the cause for the extended use of the special district in California and the resulting problems encountered. Furthermore, the attempts of the California Legislature to rectify the problem through the establishment of LAFCO and the enactment of the District Reorganization Act of 1965 will be discussed. Finally, some suggestions will be made as to ways in which LAFCO can better be structured to accomplish its intended tasks with suggested guidelines to that end. This note will only deal with LAFCO's relation to special districts, as opposed to its broad grant of authority to deal with the development of local agencies in general.

The Use of the Special District in California

A special district is a form of governing body which has been used to help solve the problems of metropolitan life. Special districts are a unique form of local government. One of the key characteristics of special districts, which sets them apart from other forms of local government, is their limited function. Also, special districts, unlike other types of local government, often have overlapping territorial boundaries. Furthermore, the inhabitants of a special district may participate in its affairs or elections on the basis of property ownership. Although this

These figures indicate a growth of 562 special districts in a period of just seven years; an average of approximately 80 new districts per year. See R. Legates, California Local Agency Formation Commissions 52 (1970) [hereinafter cited as Legates].

11. See Legates, supra note 8, at 48.
14. See Bollens, supra note 2, at 1-3, 247-49.
15. Id.
16. Id. at 248.
17. Id. at 249-50. Thus, residents who own no property within the district may be entirely precluded from participation. On the other hand, nonresidents who own property within the district may be eligible to participate, and, in some instances, voting rights are directly proportional to the amount of land owned. Id.
characteristic is not common to all special districts, it is one not found in most cities or towns. Another significant characteristic is the separate financial status of special districts. Although they have a far more restricted revenue base than other types of local government, they are not usually subject to the constitutional debt limitations placed on cities and counties. These characteristics differentiate special districts from other forms of local governments.

These characteristics of special districts have a crucial bearing on the purposes for which they are often used. Special districts are mainly created to perform one or a very limited number of functions or activities, usually a specific function in a restricted geographic area. For example, when there are too few people in a rural area to incorporate into a city or town, the special district provides a useful method by which a needed municipal service can be rendered for the area.

In addition, special districts are often used to solve a problem or provide a needed service when the existing local government is unable or unwilling to do so. The unwillingness of a local government to provide the service may be because of political or administrative attitudes that the service is unnecessary or undesirable. Also, the local government may be unable to provide the service because of statutory or constitutional limitations, or it may be easier for the state to estab-

18. Id. at 250. Bollens points out that the primary use of property as a condition for participation in nondistrict government is for the elections pertaining to some local bond issues. Id.
19. Id. at 42.
20. This restricted base is usually confined to the levy of a service charge for the service performed, or the levy of a service charge combined with a property tax. Id.
21. See id. at 7-8, 118-20. For a discussion of the California position see F. Starnes, GENERAL OBLIGATION BOND FINANCING BY LOCAL GOVERNMENTS 1, 26 (1961) [hereinafter cited as STARNER].
22. BOLLENS, supra note 2, at 247-49.
23. Interview with Mr. J. S. Connery, Administrative Analyst, Office of the County Administrator, Contra Costa County, Sept. 30, 1971. Mr. Connery is also the Executive Officer of the LAFCO of Contra Costa County. A special gratitude is due to him for his time and perceptive and revealing comments regarding LAFCO. [hereinafter cited as INTERVIEW]. See also BOLLENS, supra note 2, at 5-7.
lish a special district than for the existing local government to act.27

An important limitation on the ability of an existing city or county to solve a problem is found when states limit, either in their constitutions28 or their statutes,29 the indebtedness which these local governments may incur.30 Special districts have been created in an effort to circumvent these debt limitations and to provide a needed service which the existing municipality is unable to provide.31 This is because the special district may have a debt limitation separate and distinct from that of a city with which it may be coterminous.32

Although the purposes for which special districts may be used are basically laudable, their use as a problem-solving device has presented problems. They have been criticized as performing only stop-gap measures and providing no long-run, effective solution for problems presented at the local level.33 The over-utilization of the special district has resulted in "overlap, duplication, waste and inefficiency."34 The proliferation of special districts has also resulted in an increased tax burden on the people within their boundaries.35 In addition, special districts often "provide short-sighted and inefficient government"36 simply because their functions are often not coordinated with adjoining or overlapping districts.37 They have failed to lend themselves to promoting any general scheme of local government. Rather, it appears they have caused a piecemeal approach to local government formation, leading to inefficiency and duplication of effort.38

27. Voter Restrictions, supra note 25, at 639.
28. E.g., CAL. CONST. art. XIII, § 40.
29. E.g., CAL. GOV'T CODE § 29909 (West 1968) (limitations on counties); id. § 43605 (West 1966) (limitations on cities).
30. See generally Rafalko, supra note 26, at 29-33.
32. See Makielski, supra note 26, at 1187; Constitutional Restrictions, supra note 26, at 478.
33. See Hankerson, Special Governmental Districts, 35 TEX. L. REV. 1004, 1007-09 (1957); Makielski, supra note 26, at 1194-96.
34. Meeting of the Assembly Interim Committee on Municipal and County Government, Transcript of Hearing, On the Subject "Uniform Consolidation, Dissolution and Withdrawal Procedures for Special Districts" 4 (Jan. 16, 1964) quoting former California Governor Brown [hereinafter cited as 1964 Hearings]; see id. at 1.
36. LeGATES, supra note 8, at 7.
37. See id.
38. See Report of the Executive Officer to the Local Agency Formation Commission of Alameda County on "Dissolution of the Eden Township County Water District." Although this district was dissolved by the LAFCO, its existence dem-
The argument has also been advanced that special districts provide an undemocratic form of local government. Usually, only their board members are elected, and more often than in other forms of local government, the incumbents run unopposed. In many situations, no official is actually chosen by the electorate. The charge that special districts do not provide a democratic form of local government is significant when one considers that one of the fundamental principles of local government "is its representative, democratic nature." The statement has been made that special districts are unresponsive to the people they are created to serve, and that they are "an intolerable anomaly in today's sensitively democratic society."

Special districts have also been criticized because of their invulnerability to public control. This is caused in part because of public apathy. The proliferation of the special district has created a state of indifference; people cannot focus their attentions on so many units and a lack of control over special districts results.

These negative aspects of special districts indicate the problems that are presented by their unrestricted, uncontrolled use. There is no justification for several different special districts operating within the same geographic area resulting in a duplication of effort and a waste of local resources. Despite any advantages that may be offered by the use of a special district as a problem-solving device, their proliferation has generally been found to present an intolerable problem of inefficiency, waste and overlap in local government.

One of the reasons for the extensive use of special districts in California has been to circumvent the constitutional and statutory debt limitations placed upon cities and counties in the state. Under the California Constitution, no city or county is permitted to incur any in-

39. LEGATES, supra note 8, at 6. See SPECIAL DYNASTIES, supra note 6, at iii, 1-4, 15-21; BOLLENS, supra note 2, at 248-50.
40. BOLLENS, supra note 2, at 248-50.
41. Id.
42. SPECIAL DYNASTIES, supra note 6, at iii.
43. Id. at 2.
44. BOLLENS, supra note 2, at 252-56.
45. Id.
46. See 1964 Hearings, supra note 34, at 4, 21, 45.
47. See note 8 supra.
48. See STARNER, supra note 21, at 1, 3, 26; J. VIEG, CALIFORNIA LOCAL FINANCE 230-31 (1960) [hereinafter cited as VIEG].
debtedness which exceeds in any year the income which will be provided in that year without first gaining the approval of two-thirds of the electorate. Special districts are not subject to this constitutional restriction. Most of the laws that establish special districts require a two-thirds voter approval of indebtedness, but there are many others which require only a simple majority. Hence, in numerous situations a special district can be created to finance a project or provide a needed service where a city or county might be unable to act.

A second limitation, encouraging the use of special districts, placed on the indebtedness of cities and counties is found in the California Government Code. The code limits the ability of a city to incur indebtedness for improvements to “15 percent of the assessed value of all real and personal property of the city.” The code limits the amount of bonded indebtedness of a county to “5 percent of the taxable property of the county as shown by the equalized assessment roll.” Special districts are not subject to these limitations: on the contrary, they are only subject to the debt limitations established for them in their en-

49. CAL. CONST. art. XIII, § 40. The constitution specifically states: “No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds of the qualified electors, voting on any one of such propositions, vote in favor thereof, such proposal shall be deemed adopted.”

50. STARNER, supra note 21, at 1, 26.
51. Id. at 26.
52. Id. at 3, 26.
53. CAL. GOV'T CODE § 29909 (West 1968); id. § 43605 (West 1966).
54. Id. § 43605 (West 1966). The section provides: “A city shall not incur an indebtedness for public improvements which exceeds in the aggregate 15 percent of the assessed value of all real and personal property of the city. Within the meaning of this section ‘indebtedness’ means bonded indebtedness of the city payable from the proceeds of taxes levied upon taxable property in the city.”
55. Id. § 29909 (West 1968). The section specifically states: “The total amount of bonded indebtedness shall not at any time exceed 5 percent of the taxable property of the county as shown by the last equalized assessment roll. If water conservation, flood control, irrigation, reclamation, or drainage works, improvements or purposes or the construction of select county roads is included in any proposition submitted, the total amount of bonded indebtedness may exceed 5 percent but shall not exceed 15 percent of the taxable property of the county as shown by the last equalized assessment roll.”
abling legislation. These limitations on the indebtedness of cities and counties have served as an incentive for the creation of special districts to provide needed services, when the services could have been provided by the city or county in the absence of the debt limitations.

This growth of special districts has, in turn, resulted in the growth of the many problems commonly associated with a large number of special districts.

**The Creation of LAFCO**

**The Knox-Nisbet Act**

In an effort to control the use of the special district and to insure the "orderly formation and development of local governmental agencies," the California Legislature passed the Knox-Nisbet Act in 1965. This act amended the 1963 legislation which created the Local Agency Formation Commissions (LAFCO) and provided:

- Among the purposes of a local agency formation commission are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local governmental agencies based upon local conditions and circumstances.

This language, though it applies to all local agencies, such as cities, counties, towns, and special districts, is an implied recognition of the problems created by the uninhibited growth of independent special districts.

This attempt by California "to rationalize the proliferation of local governments was without precedent in the nation" and in its final form was the result of a compromise between various factions within

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56. See, e.g., CAL. HEALTH & S. CODE § 24370 (West 1967); CAL. PUB. UTIL. CODE § 12842 (West 1965).
57. VIEG, supra note 48, at 230-31.
58. See LEGATES, supra note 8, at 48.
60. Id. §§ 54773-799.2 (West 1966), as amended, (Supp. 1971).
61. Id. at § 54774 (West Supp. 1971). The California District Court of Appeal in City of Ceres v. City of Modesto, 274 Cal. App. 2d 545, 79 Cal. Rptr. 168 (1969), specifically stated that this was the purpose of LAFCO. The court said: "It is immi-

ently clear, from a careful reading of section 54774, that LAFCO was created by the Legislature for a special purpose, i.e., to discourage urban sprawl and to encourage the orderly formation and development of local government agencies. In short, LAFCO is the 'watchdog' the Legislature established to guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies." Id. at 553, 79 Cal. Rptr. at 172.

62. LOCAL AGENCY FORMATION COMMISSIONS, 1966 STATEWIDE SURVEY (Inter-
governmental Council on Urban Growth, 1966) [hereinafter cited as 1966 STATEWIDE SURVEY].
the state. The Governor's Commission on Metropolitan Area Problems was in favor of a powerful statewide commission which would have the final approval of all boundary changes, incorporations of cities, annexation of territory into cities, formation of special districts and the like. The opposite extreme of this position was presented by the County Supervisors Association of California, which favored a commission with advisory powers only. The ensuing legislative compromise resulted in the establishment of a LAFCO in each county of California. At the present time, there are 57 commissions in operation under the Knox-Nisbet Act in California, San Francisco County being the only county without a LAFCO.

The District Reorganization Act of 1965

The District Reorganization Act of 1965 was enacted by the legislature in an attempt to deal specifically with the proliferation of special districts. The act provides procedures to be followed whenever a special district undergoes a change in organization, which is defined to include any annexation or detachment of territory to or from a district, any merger of one district with another, the consolidation of two districts into one, and the dissolution of any district. It also provides the procedures to be followed when there is a district reorganization which includes a change of organization which is proposed for each of two or more districts. This act adds to the authority of LAFCO by empowering the commission to deal with special districts regarding matters other than their formation. While the Knox-Nisbet Act amended the act which created LAFCOs, the DRA established a uniform procedure to be followed for change of organization, reorganization, consolidation, and dissolution of special districts and pro-

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64. LEGATES, supra note 8, at 16-17.
65. GOLDBACH, supra note 63, at 13; LEGATES, supra note 8, at 15.
66. CAL. GOV'T CODE § 54780 (West Supp. 1971). Although the commissions are located at the county level, and are made up of county and city officials, they are a state agency. 45 OP. CAL. ATT'Y GEN. 82, 84 (1965).
67. See LEGATES, supra note 8, at 21.
69. See LEGATES, supra note 8, at 48.
70. CAL. GOV'T CODE § 56001 (West 1966).
71. Id. § 56028 (West Supp. 1971).
72. Id. § 56001 (West 1966).
73. Id. § 56068 (West Supp. 1971).
74. Id. § 56001 (West 1966).
vided that LAFCO would supervise and dispose of any proceedings brought in accordance with its provisions.\textsuperscript{75}

**The Operation of LAFCO**

As previously discussed LAFCOs operate under the statutory authority granted by two acts of the state legislature—the Knox-Nisbet Act\textsuperscript{76} and the District Reorganization Act\textsuperscript{77} of 1965. The former amended the legislation which created the LAFCOs and empowered them to deal with the growth and development of local agencies and areas.\textsuperscript{78} The latter empowered the LAFCOs to deal with the proliferation of special districts.\textsuperscript{79}

Specifically the Knox-Nisbet Act grants LAFCO the powers to carry out its purpose of encouraging the orderly growth and development of local governmental agencies.\textsuperscript{80} Under this act the LAFCOs are given the power to approve or disapprove:\textsuperscript{81} the incorporation of cities;\textsuperscript{82} the formation of special districts;\textsuperscript{83} the annexation of territory to cities, special districts and other local agencies;\textsuperscript{84} the exclusion of territories from cities;\textsuperscript{85} the disincorporation of cities;\textsuperscript{86} and the development of new communities within their jurisdiction.\textsuperscript{87} The commissions also may adopt their own standards for the evaluation of any proposals submitted to them.\textsuperscript{88} In addition, they may establish rules pertaining to the conduct of their hearings, expend funds necessary for performing their functions, employ staff personal, and contract for professional services to help them carry out their functions.\textsuperscript{89} Moreover, the commissions have the power to review the boundaries of any territory involved in any proposals before them and to waive certain restrictions of other parts of the code if they find the restrictions would be detrimental to the orderly and rational development of the community.\textsuperscript{90}

In granting LAFCOs additional powers in order to deal with special districts, the District Reorganization Act empowers the commis-
sion to approve or disapprove: proposals for changes in organization; proposals for reorganization which are not required to be reviewed by a reorganization committee; and reports on recommendations of the reorganization committee. The commissions must determine if the proposals, reports, or recommendations of the committee are in accord with specific or general plans of the county or cities. The commission may approve or disapprove any proposals, recommendations, or reports conditionally or unconditionally.

In both the Knox-Nisbet Act and the District Reorganization Act the power to initiate proceedings for proposals for formation, reorganization, incorporation, or dissolution is not granted to LAFCOs. Legislation was proposed to grant the commissions the power to initiate proposals but was never passed. Under the District Reorganization Act, the initiation of proposals to dissolve a district must be made by either a petition of landowner-voters, a petition of resident-voters, or resolution of a county, city, or district legislative body. The commission can then set a hearing for the proposal, after which it makes a resolution of determinations. After the commission makes its determinations, and if it approves the petition or resolution for a dissolution, the county board of supervisors then adopts a resolution in compliance with the determination, initiating proceedings for a dissolution. Under the present legislation, the commission must wait for a petition or resolution before it can eliminate an inefficient district.

Before the board of supervisors orders a dissolution of a district, in compliance with the commission's resolution of determinations, it must make one of the following findings:

91. Id. § 56250(a)(1) (West 1966).
92. Id. § 56250(a)(2). A reorganization committee is composed of "a member of the legislative body . . . and an officer or employee" of each district which is being considered for a reorganization. Id. § 56223. Members of the public may serve on the committee if LAFCO appoints them. Id. § 56232. The reorganization committee makes a study of and a report and recommendation on any proposal for a reorganization which LAFCO refers to it. Id. §§ 56215, 56234.
93. Id. § 56250(a)(3).
94. See id.
95. Id. § 56250.
96. The code defines "initiate" as follows: "'Initiate' or 'initiation' means, in the case of proceedings, the first procedural step authorized or required by any law for the commencement of such proceedings. . . ." Id. § 54775(g) (West Supp. 1971).
98. CAL. Gov'T Code § 56130 (West 1966); id. § 56183 (West Supp. 1971).
99. Id. § 56130 (West 1966); id. § 56173 (West Supp. 1971).
100. Id. § 56195 (West 1966).
101. Id. § 56270 (West Supp. 1971).
102. Id. § 56360 (West 1966).
103. Id. § 56292 (West Supp. 1971).
(a) That there has been a nonuser of corporate powers . . . . and a reasonable probability that such nonuser may continue.
(b) That the dissolution of the district will be for the interest of landowners or present or future inhabitants within such district or both.
(c) That the district is a resident-voter district and is uninhabited. If the board makes findings under subsections (a) or (c) above, it may dissolve the district with or without a vote of the electors. If the board rests its determination solely on the ground that dissolution "will be for the interest of landowners or present or future inhabitants within such district," then such dissolution is subject to a confirmation by the voters. With the requirement of voter confirmation of a dissolution, LAFCO becomes involved in the political realities of convincing the voters that dissolution of a district is for their best interests. This presents a serious obstacle to LAFCO's ability to dissolve a district because it is often difficult for the commission to demonstrate in concrete, absolute terms that dissolution is necessary. If a district is inefficient, it is frequently difficult, if not impossible, for the commission to prove that consolidation or dissolution will indeed bring about a greater efficiency with reduced cost to the public.

The Powers of LAFCO Should Be Expanded

In order to determine whether present legislation is sufficient, a brief review of the effectiveness of LAFCOs in carrying out their purpose of encouraging the orderly growth and development of special districts is necessary. At the end of fiscal year 1963-64, the year when LAFCO was created, there were 3,317 special districts in California. At the end of fiscal year 1968-69, there were 3,442 special districts in California. This shows a growth of only 125 special districts in a period of five years. In fact, during the first year of the commis-
sions' operations, just seventeen new districts were approved—compared to 186 new districts established in 1963, prior to the formation of LAFCO. Some of the LAFCOs have also helped to reduce the "patchwork effect" of districts and other agencies "by requiring, whenever feasible, that the boundaries of newly formed districts coincide with those of existing districts." There is another benefit from LAFCOs which is not found in the statistics; many district formation proposals are not brought before the LAFCOs when such proposals are of a questionable nature. This is probably true because "LAFCOs appear to be less receptive to proposals for the formation of new special districts than to any other kinds of proposals concerning local agencies." Moreover, the fact that LAFCO decisions do not appear to be appealable to any other administrative body further increases the effectiveness of the commissions.

California courts have been hesitant to interfere with the agencies' decisions. In effect, they have ruled that the commissions are political bodies and so have sustained their actions where challenged. Therefore, LAFCO decisions are generally final.

113. Goldbach, supra note 63, at 44.
115. Legates, supra note 8, at 50.
116. Legates, supra note 9, at 50; see Goldbach, supra note 63, at 87-88.
117. Legates, supra note 8, at 21.
118. Goldbach, supra note 63, at 47.
119. Legates, supra note 8, at 21. In fact, there have been only two California appellate court cases that did review LAFCO determinations: City of Ceres v. City of Modesto, 274 Cal. App. 2d 545, 79 Cal. Rptr. 168 (1969), and San Mateo County Harbor Dist. v. Board of Supervisors, 273 Cal. App. 2d 165, 77 Cal. Rptr. 871 (1969). The decisions in both of these cases demonstrate that the courts have neither limited the powers of LAFCO nor allowed review of LAFCO decisions except in special or unusual circumstances. In Ceres, the LAFCO attempted to establish the future boundaries for the city of Ceres. The court held that it could not set future boundaries as this would be beyond its authority. The court held that LAFCO had only those powers expressly granted to it by statute, and the power to establish future boundaries being not granted to it in the statute, LAFCO could not establish them. In regard to this the court specifically said: "A local agency formation commission, commonly referred to as LAFCO is a creature of the Legislature and has only those express (or necessarily implied) powers which are specifically granted to it by statute. In short, LAFCO is a public entity created by legislative fiat, and like similarly constituted public entities is a body of special and limited jurisdiction..." 274 Cal. App. 2d at 550, 79 Cal. Rptr. at 170.

In Harbor District, LAFCO did not make its own determinations of the facts and attempted to delegate this authority to the board of supervisors of the county. The court held that the LAFCO must make its own determinations and that it could not delegate its authority. Both of these cases clearly support the conclusion that LAFCO decisions will be reviewed only on rare occasions, such as attempts by the LAFCOs to go considerably beyond their express statutory grant of authority.
Although the performance of the LAFCOs to date appears to have been relatively successful in curbing special district proliferation, there is need for improvement. In view of the inefficiency and duplication of effort caused by the continued increase in the number of various local agencies, and also by the unnecessary continuation of many existing agencies, the rate of increase of special districts in California should be halted or even reversed. At the present time, however, the LAFCOs lack sufficient power to effectively deal with the mounting problem.

Although LAFCO has been somewhat effective in diminishing the growth rate of special districts in California, it is presently unable to solve the problem of existing districts. LAFCO is presently hampered in two ways: first, it is unable to initiate proposals for dissolution which, in effect, forces it to remain passive and immobile until a petition for dissolution is brought before it; and more importantly, LAFCO cannot dissolve a district when it believes it would be for the best interest of future or present inhabitants without a confirmation of the voters located within the district. If the problems presented by the sheer number of special districts in California are ever to be effectively treated, each of these limitations on the ability of LAFCO to act must be corrected by legislative action.

The legislature should give LAFCO the power to initiate proposals for dissolution of a district under the District Reorganization Act. It should also increase LAFCO's power by eliminating the requirement for voter confirmation when the district is sought to be dissolved for the benefit of the landowners or residents. These additions would greatly increase LAFCO's ability to carry out its legislative purpose.

Concurrent with this additional grant of power to LAFCOs, the legislature should mandate guidelines for the commissions to follow with respect to the dissolution of special districts. Although there are presently guidelines stated by the legislature for general application, other guidelines should be specifically tailored for the dissolution of special

120. See text accompanying notes 111-117 supra.
121. See Bollens, supra note 2, at 250-56; 1964 Hearings, supra note 34, at 2-5.
122. See Letter from Mr. J. S. Connery to Mr. H. V. Worthington of May 12, 1971.
123. Compare note 8 supra with text accompanying notes 111-116 supra.
124. The code defines "dissolution" to mean "the dissolution, disincorporation, extinguishment and termination of the existence of a district and the cessation of all its corporate powers, except for the purposes of winding up the affairs of said district." Cal. Gov't Code § 56038 (West 1966).
125. See text accompanying notes 106-09 supra.
127. See notes 58-61 & accompanying text supra.
districts which the commission determines should be dissolved for the benefit of the landowners or residents within the district. An extension of the powers of LAFCO, as proposed, would be ineffective unless certain guidelines imposing a mandatory duty on the agency to dissolve anachronistic, inefficient special districts were also promulgated. These guidelines, along with the additional powers, should change the nature of LAFCO from that of a passive to an active organization intent on seeking out special districts with no useful purpose, and eliminating them or combining them with other districts to prevent providing duplication of services.

Guidelines To Be Followed

Present Criteria

At present, the Knox-Nisbet Act\textsuperscript{129} establishes certain guidelines for the LAFCOs to follow in carrying out their functions. These guidelines are as follows:

Factors to be considered in the review of a proposal shall include but not be limited to: (a) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

(b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for such services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

(c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests and on the local governmental structure of the county.

(d) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.

(e) Conformity with appropriate city or county general and specific plans.\textsuperscript{130}

These guidelines are substantial, and set forth the factors LAFCOs should consider whenever a proposal is before them. They do not, however, as a close reading reveals, require any affirmative action on the part of LAFCO, nor do they deal specifically with the dissolution of special districts.

\textsuperscript{129} Id. §§ 54773-799.2 (West 1966), as amended, (Supp. 1971).

\textsuperscript{130} Id. § 54796 (West Supp. 1971).
Guidelines, however, are provided for the dissolution of special districts under the District Reorganization Act in the sense that the board of supervisors must make one of three findings before it orders the dissolution of a special district. These guidelines can be basically stated as: a nonuser of corporate powers on the part of the district to be dissolved, that the district is a resident-voter district and there are no residents within its boundaries, that dissolution would be for the benefit of landowners or future or present residents. Again, however, these guidelines require no affirmative action on the part of the LAFCOs. They do not provide specificity with respect to the problems which proliferation of special districts can cause. The "nonuser" and "lack-of-resident" guidelines provide useful tools for dissolution of districts which are either inactive, as in the case of a district dissolved under the nonuser provision, or unnecessary, as in the case of a resident-voter district with no residents. Although the final guidelines for dissolution—the benefit of landowners or residents—is general, it has more flexibility than the other two.

Recommended Additional Guidelines

In addition to the guidelines applicable to the function of LAFCO generally, the commissions need more specific guidelines to follow should they be granted the additional powers as previously proposed. First, LAFCO should be required by the legislature to actively study the special districts in the county to determine which ones should be dissolved. Under this affirmative power and duty, it should investigate whether or not there is a waste of local resources because more than one special district is attempting to solve the same or similar problems. Furthermore, it should question whether there is inefficiency in local government as a result of too many special districts in the county even though the districts might be performing different functions. As a part of this active study, the commission should be required to determine whether the existence of the districts is placing too great a tax burden on the people in the county, and if so, to seek methods of eliminating some of the districts. If the commission finds any or all of the above problems during its survey, and it determines that the districts involved cannot be consolidated or somehow changed...
so as to alleviate the problems, the commision should be required to initiate a proposal to dissolve them.

Second, the LAFCOs then should be required to hold hearings on dissolution. These hearings would provide a forum for the persons opposing the projected dissolutions and enable LAFCO to maximize the information available before its final decision. Without such a forum, special hardships that might ensue if the district were dissolved may be inequitably overlooked.

Third, with the problems defined and determined by LAFCO, there should be a presumption that the district should be dissolved unless the particular district's proponents can demonstrate at the public hearing a further need for the district. Considering the purpose of LAFCO and the problems caused by the proliferation of special districts, LAFCO could better perform its functions if the burden of proof was placed on those wanting to keep the district. If the presumption is not overcome by the people within the district or those who favor its retention, then LAFCO should be required to make a resolution of determinations that the special district(s) involved be dissolved.

In conjunction with these guidelines, the Knox-Nisbet Act and the District Reorganization Act should provide that mandamus proceedings be available against the LAFCOs by a citizen should the commissions refuse to act. Mandamus is presently available and may be issued by a court "to compel the performance of an act which the law specially enjoins." \(^135\) Although it is normally available to a private citizen only when the citizen has some special interest to be preserved or some special right to be protected, \(^136\) mandamus is also available to a private citizen when it is the object of the writ to procure performance of a public duty and a public right is involved. \(^137\)

LAFCO should be mandated by the legislature to perform its functions, and a procedure should be available for people to insure that it carries out its purposes. The availability of a mandamus against it for failure to act would provide that insurance. Finally, these procedures under the proposed additional grants of power should be reviewed by the courts only to determine if LAFCO has exceeded its statutory

grant of authority.\textsuperscript{138} This would appear to be a sufficient safeguard to an abuse of power by any of the commissions under the proposed guidelines.

**Conclusion**

The special district form of government has been extensively used throughout the nation, and in particular in California,\textsuperscript{139} as a problem-solving device. It has been used at times for laudable, necessary purposes, and at other times as a method of circumventing constitutional and statutory debt limitations placed upon municipalities and counties. This proliferation of special districts has resulted in inefficiency, waste, and duplication of effort. This extensive use of the special district has resulted in problems which are more serious than those it was created to solve.

One of the primary reasons for the creation of LAFCO was to control the proliferation of independent special districts in California.\textsuperscript{140} Yet, there are more independent special districts in California at present than there were at the end of the first year of LAFCO's operation.\textsuperscript{141} This is true despite the enactment of the District Reorganization Act of 1965 which was designed to provide stricter control over special districts. This continued proliferation of special districts is a result of insufficient powers granted to LAFCO rather than poor performance on its part. This insufficiency of the powers of LAFCO can be eliminated in two ways.

First, LAFCOs would be far more effective organizations if they were given the power to initiate proceedings and proposals under the Knox-Nisbet Act and the District Reorganization Act of 1965. This can be accomplished\textsuperscript{142} by an amendment to those two acts granting the LAFCOs this additional power. Then the LAFCOs could make studies and initiate proceedings without having to convince others that a dissolution would be beneficial.

Second, the requirement in California Government Code section 56368 for a confirmation of the voters when a district is dissolved for the benefit of the future or present inhabitants should be removed from the act. LAFCO should be given the final decision-making power.

\begin{itemize}
  \item \textsuperscript{138} See note 119 \textit{supra}.
  \item \textsuperscript{139} See text accompanying notes 4-6 \textit{supra}.
  \item \textsuperscript{140} \textsc{LeGates, supra} note 8, at 48.
  \item \textsuperscript{141} See text accompanying notes 111-12 \textit{supra}.
  \item \textsuperscript{142} The legislature has the power to grant these additional powers to LAFCO. There is not any constitutional barrier, federal or state, impeding its action. The authority is vested solely in the legislature, and this body should exercise it and grant these needed additional powers to LAFCO. \textit{See, e.g.,} Hunter v. City of Pittsburgh, 207 U.S. 161 (1907).
\end{itemize}
in this area. Any objection that the commission might not consider the desires of the people is overcome by the fact that a majority of the members of the commissions are elected members of the community. The voters could demonstrate their displeasure with LAFCO actions at election time.

If the legislature should grant these additional powers, the commission should be mandated to take an active role in special district dissolution. To properly supervise this grant of power the legislature should expand LAFCO's guidelines to include those proposed in this note. To revise LAFCOs powers without these specific affirmative guidelines from the legislature will not insure the correction of the problem and would thus defeat the legislative purpose.

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143. See CAL. GOV'T CODE § 54780 (West Supp. 1971) (Majority of its members are appointed from the county board of supervisors and city officer positions).
144. See text accompanying notes 131-38 supra.
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