



**Local Agency Formation Commission of Napa County**  
Subdivision of the State of California

1754 Second Street, Suite C  
Napa, California 94559  
Phone: (707) 259-8645  
[www.napa.lafco.ca.gov](http://www.napa.lafco.ca.gov)

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*We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture*

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**Agenda Item 5d (Consent/Information)**

**TO:** Local Agency Formation Commission

**PREPARED BY:** Brendon Freeman, Executive Officer *BF*

**MEETING DATE:** October 7, 2024

**SUBJECT:** Legislative Report

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**BACKGROUND AND SUMMARY**

This is a consent item for information purposes only. Accordingly, if interested, the Commission is invited to pull this item for additional discussion with the concurrence of the Chair. No formal action will be taken as part of this item.

On April 8, 2024, the Commission directed staff to submit letters to the Legislature supporting Assembly Bill (AB) 817 (*open meetings: teleconferencing*) and Senate Bill (SB) 1209 (*indemnification*). The Commission also discussed AB 3277 (*districts: property tax*) and agreed to watch the bill.

Staff previously submitted letters in support of AB 817 and SB 1209 to the Legislature, and those letters were included as part of Legislative Reports on past meeting agendas. In addition, staff recently submitted a letter requesting the Governor sign SB 1209, included as Attachment 1.

AB 3277 was signed into law on July 2, 2024.

AB 817 failed a deadline pursuant to Rule 61(b)(13) and is a dead bill.

SB 1209 was signed into law on September 28, 2024. A statement from Senator Dave Cortese on the importance of SB 1209 is provided on the following page.

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Margie Mohler, Commissioner  
Councilmember, Town of Yountville

Beth Painter, Commissioner  
Councilmember, City of Napa

Mariam Aboudamous, Alternate Commissioner  
Councilmember, City of American Canyon

Anne Cottrell, Chair  
County of Napa Supervisor, 3rd District

Belia Ramos, Commissioner  
County of Napa Supervisor, 5th District

Joelle Gallagher, Alternate Commissioner  
County of Napa Supervisor, 1st District

Kenneth Leary, Vice Chair  
Representative of the General Public

Eve Kahn, Alternate Commissioner  
Representative of the General Public

Brendon Freeman  
*Executive Officer*

Senator Dave Cortese issued the following statement regarding the California Senate's approval of his SB 1209:

*“Ultimately, SB 1209 is about good governance which aims to protect taxpayers and ratepayers from being saddled with additional, unexpected, and unnecessary fees. It does so by extending the same indemnification provisions afforded to city, county, and special district jurisdictions to Local Agency Formation Commissions (LAFCOs),” said Senator Cortese. “By indemnifying LAFCOs, we prevent the buck from being passed down onto consumers.”*

*“I am pleased and grateful to learn that the Assembly has approved SB 1209 and we are one step close to the bill becoming law. Approval of SB 1209 will provide California LAFCOs with the same indemnification authority currently held by counties, cities, and special districts. This authority is essential to LAFCOs’ ability to meet their statutory obligations and make decisions without being hindered by the potential costs of defending lawsuits,” said Margie Mohler, CALAFCO Chair and Mayor, Town of Yountville.*

*For most applications to public agencies, such as those for land-use, private parties indemnify the involved city or county. Similarly, LAFCOs have normally required an indemnification provision in applications and conditions of approval.*

*However, in 2022, the Second District Court of Appeals determined that LAFCO, despite prevailing in the underlying court case, could not require or rely upon indemnification because it is not expressly authorized in the Cortese-Knox-Hertzberg Local Government Act of 2000.*

*Without the ability to indemnify, the LAFCO will necessarily have to consider whether to make concessions to the applicant, or to not defend its actions. Applicants are typically public agencies (cities and districts), a small percentage are developers, and an even smaller percentage are a member of the general public.*

## **ATTACHMENTS**

- 1) SB 1209 Request for Governor Signature
- 2) SB 1209 as Signed by Governor



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August 27, 2024

The Honorable Gavin Newsom  
 Governor, State of California  
 1021 O Street, Suite 9000  
 Sacramento, CA 95814

Re: **SB 1209** (Cortese): Local agency formation commission: indemnification - **REQUEST FOR SIGNATURE**

Dear Governor Newsom,

The Napa Local Agency Formation Commission (LAFCO) respectfully requests your signature on **SB 1209**, which would authorize a Local Agency Formation Commission (LAFCO) to require an applicant to indemnify the LAFCO, its agents, officers, and employees from and against any claim, action, or proceeding that may stem from a LAFCO decision to approve an application.

Specifically, SB 1209 adds new language to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (The Act) that authorizes LAFCOs to enter into indemnification agreements with applicants. Counties and cities are already empowered to enter into, and require, indemnification and routinely do so with respect to discretionary land-use approvals. SB 1209 will provide LAFCOs with a similar authority in this situation.

This bill is in response to a 2022 decision of the Second District Court of Appeals, which found that existing State law does not provide LAFCOs with the explicit authority needed to require indemnification. Absent an indemnification authority - and because LAFCO funding is statutorily required from the county, cities, and special districts within a county - any costs to defend litigation end up being absorbed by a LAFCO's funding agencies. Consequently, SB 1209 will allow LAFCOs to use indemnification agreements which, in turn, will ensure they can meet their statutory obligations and make decisions without being hindered by the potential costs of defending lawsuits.

Thus, for the above reasons, Napa LAFCO respectfully requests that you sign SB 1209.

Yours sincerely,

Brendon Freeman  
 Executive Officer  
 Napa LAFCO

cc: Honorable Dave Cortese, California State Senate  
 Brady Borcharding, Deputy Legislative Secretary to the Governor  
 René LaRoche, Executive Director, CALAFCO

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 Councilmember, Town of Yountville

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Brendon Freeman  
 Executive Officer

**Senate Bill No. 1209**

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Passed the Senate August 26, 2024

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*Secretary of the Senate*

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Passed the Assembly August 22, 2024

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*Chief Clerk of the Assembly*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2024, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_

*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Section 56383.5 to the Government Code, relating to local government.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1209, Cortese. Local agency formation commission: indemnification.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts, except as specified. The act continues in existence in each county a local agency formation commission (LAFCO) that consists of members appointed, as specified, and oversees those changes of organization and reorganization. The act authorizes a LAFCO to, among other things, review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, as specified.

This bill would authorize a LAFCO to require, as a condition for, among other things, processing a change of organization or reorganization, that the applicant agrees to defend, indemnify, and hold harmless the LAFCO, its agents, officers, and employees from and against any claim, action, or proceeding, as specified, to attack, set aside, void, or annul an approval by the LAFCO. The bill would require the LAFCO to promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the LAFCO and require the LAFCO to fully cooperate in the defense. The bill would specify that an applicant who is a party to the agreement is not responsible to defend, indemnify, or hold harmless the LAFCO if the LAFCO fails to notify the applicant or cooperate fully in the defense, and is not required to pay or perform any settlement relating to the agreement, unless the applicant approves the settlement. The bill would specify that nothing in its provisions are to be construed to prohibit the LAFCO from participating in the defense of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the commission if specified conditions are met, including that the

LAFCO bears its own attorney's fees and costs of the claim, action, or proceeding.

*The people of the State of California do enact as follows:*

SECTION 1. Section 56383.5 is added to the Government Code, to read:

56383.5. (a) The commission may require, as a condition for processing a change of organization or reorganization, a sphere amendment or a sphere update, or any other action or determination requested from the commission, that the applicant agrees to defend, indemnify, and hold harmless the commission, its agents, officers, and employees from any claim, action, or proceeding against the commission, its agents, officers, or employees to attack, set aside, void, or annul an approval by the commission.

(b) (1) An agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall require the commission to promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the commission and shall require the commission to cooperate fully in the defense.

(2) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be responsible to defend, indemnify, or hold harmless if the commission fails to notify the applicant or cooperate fully in the defense pursuant to paragraph (1).

(c) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be required to pay or perform any settlement relating to the agreement, unless the applicant approves the settlement.

(d) Nothing in this section shall be construed to prohibit the commission from participating in the defense of any claim, action, or proceeding to attack, set aside, void or annul an approval by the commission if both of the following conditions are met:

(1) The commission bears its own attorney's fees and costs of the claim, action, or proceeding.

(2) The commission defends the claim, action, or proceeding in good faith.

Approved \_\_\_\_\_, 2024

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*Governor*