

**CALENDAR ITEM
100**

A Statewide

02/20/15

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**CONSIDER SPONSORING STATE LEGISLATION TO AMEND VARIOUS STATUTES
GOVERNING CESSIONS AND RETROCESSIONS OF LEGISLATIVE
JURISDICTION OVER FEDERAL LANDS WITHIN CALIFORNIA THAT ARE
IN CONFLICT WITH EXISTING LAW OR IN NEED OF CONSOLIDATION**

SUMMARY:

Pursuant to Government Code sections 113 and 126, the State Lands Commission (Commission) is the agency authorized, on behalf of the state, to either cede legislative jurisdiction to the Federal Government or accept back a retrocession of such authority in-kind. Changes in legislative jurisdiction occur only on federally owned or leased property. The type of legislative jurisdiction can vary from parcel to parcel. The type of jurisdiction underlying a property may affect how local, state, and federal laws are applied on that property.

This proposed legislation would make amendments to Government Code sections 113, 50367 and 50370, Streets and Highways Code section 77.5 and Public Resources Code section 8301. Sections 50367 and 50370 and 8301 govern cessions of legislative jurisdiction over federal lands within California and are now in conflict with existing law; specifically Government Code section 126, and should be repealed. Sections 113 and 77.5 concern retrocessions and can be consolidated and amended to have a simplified process for accepting a retrocession.

BACKGROUND AND ANALYSIS:

Government Code section 113: During the 2013-14 session of the Legislature, AB 2764 (Assembly Committee on Natural Resources, Chapter 512, Statutes of 2014) amended Government Code section 126 in a number of aspects but primarily to remove the requirement of a public hearing separate and apart from the public meeting at which the Commission makes a cession of legislative jurisdiction. Government Code section 113 authorizes the Commission to accept retrocessions of legislative jurisdiction from the United States and requires the Commission to conduct a public hearing prior to the acceptance. Historically the Commission has interpreted this to mean a public hearing separate from that at which the Commission formally accepts the retrocession. Such hearings are typically not attended by the public and not an efficient use of staff

CALENDAR ITEM NO. **100** (CONT'D)

resources. Staff proposes that section 113 be amended in the same manner as Government Code section 126 was to remove the requirement of a public hearing separate and apart from the one at which the acceptance is made. Such an amendment will conform the processes for cessions. The effect of this amendment is that the public will have only one opportunity to appear and be heard on a proposed retrocession. That opportunity would be a regularly scheduled, properly noticed public meeting of the Commission.

Government Code section 113 was enacted in 1967, but very little of the legislative history is known. It may be surmised, though, that a statutory mechanism was needed to accept retrocessions of legislative jurisdiction made by the United States. Up to that time, there was no administrative process and retrocessions made by the United States required a special act of the Legislature. In fact there were only two instances (1935 and 1941) where the United States did make a retrocession that required state action, and those instances involved the right of way for the Golden Gate Bridge through the Presidio of San Francisco and Fort Baker in Marin County. This is not surprising given the fact that from 1850 through 1955 federal law preferred exclusive jurisdiction and the fact that the United States was engaged in a number of wars and wanted to have exclusive control over its installations. However, beginning in 1940 federal law dropped the requirement of exclusive jurisdiction in response to California and other states retaining more of their legislative jurisdiction when the United States sought a cession. At play also was a desire by the United States to obtain help from civilian authorities to administer civil and criminal law over installations with housing areas and/or a large civilian workforce.

The purpose of the public hearing is to give notice of the proposed retrocession and to solicit comments from local government and its citizens. Since the enactment of section 113, the Commission has accepted a retrocession from the United States 65 times, the last in June 2014. Staff can recall only one instance where a member of the general public attended the public hearing and that was in the case of a retrocession over a portion of the Wawona area in Yosemite National Park. There have been, however, several instances where concerned citizens have appeared at Commission meetings and opposed proposed retrocessions. This was the case in a retrocession at the Marine Corps Air Station, El Toro and March Air Force Base. Both protests were in the context of base closure and were opposition to proposed reuse plans. In both cases, the Commission heard the protests and deferred its acceptance until the concerns were addressed by federal officials. More recently Commission staff declined to process a request for a retrocession by the Department of Agriculture because the City of Albany and the Department could not agree on the terms for the provision of fire suppression services over the federal lands after the retrocession. This disagreement was

CALENDAR ITEM NO. 100 (CONT'D)

subsequently resolved and the Commission accepted the Department's retrocession without further protest by the City.

By and large the public hearings are superfluous and have outlived their usefulness. They are an inefficient use of staff time and federal dollars. The United States has to pay all costs of a retrocession including the hearings. Staff proposes this public hearing requirement be eliminated and thereby conform the retrocession process to that mandated by Government Code section 126 concerning cessions of jurisdiction. Such an amendment will preserve a party's right to object while simultaneously streamlining the retrocession process.

Streets and Highways Code section 77.5: This code section permits the Governor to accept a retrocession of jurisdiction from the United States over rights of way or other lands used for highway purposes and granted to the state within federal installations. All such retrocessions must be recorded in the office of the county recorder and copies must be kept in the files of the Commission. This statute was enacted in 1967 in the same legislative session as Government Code section 113. Since its enactment there have been 18 retrocessions accepted by California's Governors. With the recent emphasis by the United States on base closure, there have been no retrocession requests under this statute since 1995.

There is no legislative history available in the Commission's in-house files giving background on the enactment of this statute. The primary differences between this statute and Government Code section 113 are that section 77.5 does not involve a public hearing and the United States does not have to bear any costs. Presumably the rationale for section 77.5 was that it would provide an expedited process by going through the Governor's Office and not having to conduct the section 113 public hearing. Another difference between the two statutes is that section 77.5 does not specify the degree of jurisdiction to be established at the conclusion of the retrocession process (i.e. proprietorial or concurrent) as does section 113.

As a practical matter, most of the retrocessions under this statute have been processed by Commission staff in a manner to facilitate prompt processing by the Governor's Office. Typically Commission staff works with the federal agency seeking the retrocession, prepares a draft response for the Governor and records the retrocession. This coordination between the Governor's Office and Commission staff avoids delays and ensures that the Commission receives a copy of the retrocession for its files. Assuming Government Code section 113 is amended and the public hearing requirement is removed, the processing time for a retrocession under either section 113 or section 77.5 will be approximately the same. There will be little difference in

CALENDAR ITEM NO. 100 (CONT'D)

Commission staff workload since Commission staff already does the bulk of the processing.

Section 77.5 presently requires recordation of the retrocession and inclusion of the retrocession in the index (of cessions and retrocessions) required by Government Code section 127. These requirements would be met under the provisions of section 113, as amended.

Staff recommends that Streets and Highways Code section 77.5 be repealed.

Government Code sections 50367 and 50370: These two sections are part of a series of statutes enacted in 1949 that permit local agencies to acquire lands and become indebted for the purchase of those lands and to convey them to the United States. Sections 50367 and 50370 provide that, when such lands have been conveyed to the United States, exclusive (all of the State's civil and criminal legislative) jurisdiction is then automatically ceded to the United States. Staff proposes that the sections pertaining to cession of jurisdiction be repealed but not the ability or right of the local agencies to acquire and convey land to the United States.

Chapter 82, Statutes of 1919 and Chapter 35, Statutes of 1921 were the predecessors of these statutes and Chapter 35 was enacted at the same time the Legislature ratified grants made by the City of San Diego to the United States for various naval installations. These two sections reflect the Legislature's acquiescence to federal policy at that time of the United States acquiring exclusive legislative jurisdiction over its lands.

Present Government Code section 126 has been California's primary cession statute since 1947 when all of the prior general cession statutes were repealed (See Chapter 181, Statutes of 1891, Chapter 56, Statutes of 1897 and Political Code section 34 enacted in 1872 as amended by Chapter 710, Statutes of 1939, all as codified in Government Code sections 111 – 117 in 1943 and repealed by Chapter 1532, Statutes of 1947). Presently section 126 cedes to the United States only concurrent criminal jurisdiction (reserving back to the State all of its civil jurisdiction) for the lesser of 10 years or so long as the United States owns the property. In contrast Sections 50367 and 50370 cede exclusive jurisdiction for an indefinite period, something that the general cession statute embodied in Political Code section 34 (the most frequently employed cession statute and the direct predecessor to section 126) has not done since 1939. Thus sections 50367 and 50370 exceed the Legislature's latest expression of the amount of its legislative authority it is willing to cede/share with the United States, i.e. concurrent criminal jurisdiction and are inconsistent with section 126.

CALENDAR ITEM NO. **100** (CONT'D)

Staff can find no instances where sections 50367 and 50370 have been invoked. And the only instance staff can find of their predecessor statutes being cited pertain to cessions of exclusive jurisdiction over various installations at Terminal Island in Los Angeles pursuant to Chapter 35, Statutes of 1921. Thus, it appears that these two sections have not been invoked for many, many years.

The wording, “The consent of the Legislature is given to the United States to acquire land,” in section 50367 is a term of art and it echoes article 1, section 8, clause 17 of the United States Constitution and reflects one of the ways by which the United States can acquire legislative jurisdiction – a consent to purchase statute. (The second way is through a cession statute.) “Consent of the Legislature” is not needed, strictly speaking, for the Federal Government to acquire land. It may do so regardless of whether a state gives its consent, and the repeal of this section will not impair the Federal Government’s ability to do so.

It should also be noted that the Legislature repealed Government Code section 25240 effective January 1, 2011. That section was similar to sections 50367 and 50370 and provided that counties could make cessions of exclusive jurisdiction. Staff is not aware of the impetus for the repeal but, as written, the statute was inconsistent with section 126.

Staff recommends that these sections 50367 and 50370 be repealed.

Public Resources Code Section 8301: This code section authorizes the Governor to convey parcels of sovereign land not exceeding 10 acres to the United States for the construction and use of navigation aids. It was originally enacted in 1907 as Political Code section 35 and codified as section 8301 in the Public Resources Code in 1943. For purposes of this discussion it is important to note that, upon conveyance of the property, exclusive jurisdiction vests in the United States. Only the service of criminal and civil process is reserved.

Staff is unaware of any grants of land or cessions of jurisdiction made pursuant to this statute in recent memory. Interestingly, a late 1950s federal jurisdiction index cites Chapter 181, Statutes of 1891 as the authority for exercising exclusive jurisdiction over light stations and not Section 35 or Chapter 181. The cession of exclusive legislative jurisdiction made by this code section is inconsistent with present Government Code section 126 which cedes only concurrent criminal jurisdiction for the lesser of 10 years or so long as the United States owns the land and which is the Legislature’s latest expression of its intent in this regard. Staff recommends that the statute be amended to delete all reference and power to cede legislative jurisdiction thereby allowing the

CALENDAR ITEM NO. 100 (CONT'D)

United States to seek a cession pursuant to Government Code section 126 if it so desires one.

In conclusion, the Government Code section 113 recommendation is made with the intent of streamlining the retrocession process to reflect the reality of the general public not attending the public hearings called for in the present statute. And the repeal of Streets and Highways Code section 77.5 would consolidate retrocessions over various highways and roads with that of other federal lands under section 113. In the end, Government Code section 113 would be the surviving statute governing all retrocessions.

Government Code sections 50637 and 50670 and Public Resources Code section 8301 all cede exclusive legislative jurisdiction and are inconsistent with Government Code section 126 as amended which now cedes concurrent criminal jurisdiction for the lesser of 10 years or so long as the United States owns the property. As a practical matter the repeal of these statutes will not bring about any change in the cession process because they have not been implemented for many, many years and will eliminate their inconsistency with section 126.

STAFF RECOMMENDATION:

Commission staff recommends that the Commission sponsor legislation in the 2015-16 legislation session to amend various statutes governing cessions and retrocessions of legislative jurisdiction over federal lands within California that are in conflict with existing law or in need of consolidation.

EXHIBIT:

- A. Proposed bill language.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Sponsor legislation in the 2015-16 legislation session to amend various statutes governing cessions and retrocessions of legislative jurisdiction over federal lands within California that are in conflict with existing law or in need of consolidation.

§ 113. Consent to retrocession of jurisdiction by United States Conditions for recording order or resolution

The Legislature of California, **acting through the State Lands Commission**, hereby consents to the retrocession of jurisdiction by the United States of **over** land within this state upon and subject to each and all of the following express conditions:

- (a) The United States must in writing have requested state acceptance of **the** retrocession, and unless there is an officer of the United States empowered by a United States statute to ~~cede~~ **retrocede** jurisdiction, the request shall be by the act of Congress. The retrocession may return all jurisdiction to the state or may provide for concurrent jurisdiction.
- (b) ~~When the conditions of subdivision (a) have been found and declared to have occurred and to exist, by the State Lands Commission, the commission shall hold a hearing to determine whether acceptance of the retrocession is in the best interests of the state. Notice of the hearing shall be published pursuant to Section 6061 in each county in which the land or any part of the land is situated and a copy of the notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of the hearings.~~ **The proposed retrocession is in the best interests of the State of California.**
- (c) **A notice of the proposed retrocession has been given to the clerk for the board of supervisors of the county in which the federal lands are located at least 15 days before the proposed retrocession is considered by the State Lands Commission.**
- (d) **The United States has agreed to bear all costs and expenses incurred by the State Lands Commission in making the retrocession.**
- (e) **The acceptance of the retrocession shall be made at a publicly noticed meeting of the State Lands Commission.** The determination of the State Lands Commission shall be final and **the retrocession** of jurisdiction accepted shall become effective when certified copies of its orders or resolutions have been recorded in the office of the county recorder of each county in which any part of the land is situated. The State Lands Commission shall keep copies of its orders or resolutions and make them available to the public upon request.

§ 77.5. Governor accepting retrocession of federal jurisdiction over property used for highway purposes; Recording acceptance of retrocession

~~Notwithstanding any other provision of law, the Governor of the State of California is authorized to accept any retrocession of legislative jurisdiction offered by the United States of America over real property upon which an easement for a right of way or any other interest for highway purposes has been granted by the federal government to the State of California.~~

~~The execution and delivery of acceptance of retrocession of legislative jurisdiction by the Governor of California shall be filed in the office of the county recorder where the land is located and in the office of the State Lands Commission. The State Lands Commission shall maintain a permanent public record of such acceptances as part of the index relating to jurisdiction of the United States of lands in the State of California required by Section 127 of the Government Code.~~

Section 77.5 is hereby repealed.

§ 50367. Consent of Legislature given to United States to acquire land

~~The consent of the Legislature is given to the United States to acquire land upon the conditions and for the purposes set forth in this article.~~

§ 50370. Exclusive jurisdiction ceded to United States; Concurrent jurisdiction reserved for certain purposes

~~The Legislature cedes to the United States exclusive jurisdiction over land conveyed pursuant to this article, reserving concurrent jurisdiction with the United States for the execution of all civil and criminal process, issued under authority of the State as if a conveyance had not been made.~~

§ 8301. Authority to convey tract: The Governor, on application therefor by a duly authorized agent, may convey to the United States any tract of land not exceeding 10 acres, belonging to the State and covered by navigable waters, for the site of a lighthouse, beacon, or other aid to navigation. ~~After conveyance, the United States shall have jurisdiction over the tract, subject to the right of the State to have concurrent jurisdiction so far that all process, civil or criminal, issued under authority of the State may be executed by the proper officers thereof within the tract, upon any person amenable thereto, in like manner and with like effect as if the conveyance had not been made.~~