



March 10, 2021

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CAROLYN EMERY
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Executive Officer
Policy Analyst

SUBJECT: Legislative Report (March 2021)

BACKGROUND

As expected, since the previous legislative report in January, several bills have been introduced in the Legislature. Amendments to propose legislation are anticipated as the bills move through the multiple committees represented by the Senate and Assembly members.

Through the participation with the California Association of LAFCOs (CALAFCO) Legislative Committee, staff has identified several bills of LAFCO interest. This report provides a review of legislation introduced in recent months, continued efforts from the previous legislative session, and an update on San Diego LAFCO's legislative effort discussed by the Commission during the January regular meeting.

As many of the bills and potential legislation discussed in this report are in the introductory stage and/or expected to experience varying amendments, this report does not include recommended positions for Commission consideration. However, staff will continue to monitor these efforts and schedule further discussion of them by the Commission accordingly. Should any items require immediate action of the Commission, staff will coordinate the appropriate response with the Chair.

PROPOSED BILLS OF LAFCO INTEREST

ASSEMBLY BILLS

Omnibus Bill (Assembly Committee on Local Government)

The Omnibus Bill is the vehicle used by CALAFCO to introduce technical and non-substantive changes to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act). In part to this effort, the CALAFCO Legislative Committee, comprised of staff and Commissioners from LAFCOs across the state, jointly review and recommend potential amendments to the CKH Act that assist with clarifying and providing consistency in applying the provisions throughout the State. The following amendments to the CKH Act have been submitted to the Assembly Local Government Committee for consideration:

- Clarification of the definition of principal county involving changes of organization, reorganization, and sphere of influence determinations.
- Clarification of the Commission's authority involving the approval or denial of an agency's request to provide a new or extended service outside its boundary.
- Clarification that the independent judgment of members provision within the CKH Act applies to all fifty-eight LAFCOs, including those with special seats.
- Amendment to the sphere of influence statute to provide consistency throughout the CKH Act.
- Amendment of the process of dissolving an inactive district by removing the property tax exchange requirement.

Additionally, changes within the provisions involving the protest proceedings have been included within the proposed Omnibus Bill. Currently being reviewed by the appropriate legislature staff, the amendments include the removal of several protest provisions that are specific to four LAFCOs (Marin, Los Angeles, Santa Clara, and Santa Cruz). The proposal to remove the protest provision is a result of the ongoing discussions involving representatives of CALAFCO, California Special District Association, League of California Cities, and the California State Association of Counties. There was agreement through this collaboration that these areas of the protest provisions are obsolete and warrant removal. Once the Omnibus Bill is available in print, staff will review and provide a recommendation to the Commission.

AB 339 (Lee and Garcia) State and Local Government: Open Meetings

California law establishes the public's right to access public meetings of state and local governments. The statutory provisions for this process are codified in the Bagley-Keene Open Meeting Act (Bagley-Keene Act) and the Ralph M. Brown Act (Brown Act). The

Bagley-Keene Act summarizes the California law governing all state boards and commissions. It generally requires these bodies to notice their meetings publicly, prepare meeting agendas, accept public testimony, and publicly conduct meeting proceedings unless specifically authorized to meet in closed sessions. Similarly, the Brown Act outlines the provisions that govern public access to the meetings of local government agencies such as counties and cities. These two Acts allow public members to attend any meeting held by a state body or a local agency's legislative body.

This bill seeks to amend the provisions of the Bagley-Keene Act and the Brown Act to improve the accessibility of public meetings for the public. The proposed amendments include:

- Requires the opportunity for the public members to attend meetings through a call-in option or an internet-based service option that has closed captioning services.
- Requires that the public has the opportunity to address the legislative body remotely when attending the meeting through call-in or internet-based service option.
- Requires that the public has access to translation services during public meetings for the ten most spoken languages in California, and allow those members of the public commenting in a language other than English to have double the time to comment as those commenting in English.
- Requires that the agendas and instructions to accessing public meetings be translated into all languages for which 5% of the population governed by the state body's jurisdiction or local agency are speakers.

The amendments to both Acts are expected to impact all state and local agencies, including LAFCOs. The bill is currently in the early developmental stage and is being reviewed by many key stakeholders and affected parties, including CALAFCO. Staff will continue to monitor the effort of AB 339 and bring forward a recommendation to the Commission commensurate with the progress of the bill.

AB 361 (Rivas) Open Meetings: Local Agencies: Teleconferences

Under the California Emergency Service Act, the Governor or the Director of Emergency Services has the authority to proclaim a state of emergency. Additionally, the Emergency Act authorizes a legislative body or designated official to proclaim a local state of emergency. Under the existing law, a local health officer can declare a local public health emergency that must be subsequently ratified by the respective county board of supervisors or city council.

This bill would authorize legislative bodies to hold a teleconference meeting to declare or ratify a local emergency without complying with the Ralph M. Brown Act's teleconferencing requirements. The proposed language would only apply when the state has imposed a state emergency or local health officials have recommended measures to promote social distancing. The bill also proposes eliminating the provision that currently requires the attendance of one or more legislative body members to physically be at the meeting location if there is a health risk. The legislative body notice of the agenda must be appropriately posted and include how meetings may be publicly accessed and provide an opportunity for public comments.

The bill's proposed amendments to the Brown Act will impact all state and local agencies, including LAFCOs. The bill is currently in the early developmental stage and is being reviewed by many key stakeholders and affected parties, including CALAFCO. Staff will continue to monitor the effort of AB 361 and bring forward a recommendation to the Commission commensurate with the progress of the bill.

SENATE BILLS

SB 13 (Dodd) Local Agency Services: Counties of Napa and San Bernardino

During the 2015 legislative session, the Governor signed into law AB 402, which established a pilot program involving LAFCO proceedings for Napa and San Bernardino's Counties. Currently, under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), an agency may only provide new or extended service outside its jurisdictional boundary if it receives written approval from the LAFCO in the county in which the extension of service is proposed. The pilot program allows the Commissions in each of the counties to authorize a city or district to provide a new or extended service outside its jurisdictional boundary and its sphere of influence to support existing planned uses involving private or public properties upon making the following determinations:

- The extension of service was identified or evaluated in a municipal service review.
- The extension of service will not have an adverse impact on open space and agricultural lands.
- The adjustment of an agency's sphere of influence to include the area to receive new or extended service is not feasible or desirable by the agency.
- The definition of "planned use" for this section means any project included in an approved specific plan as of July 1, 2015.

Since the pilot program was established, Napa and San Bernardino LAFCOs have authorized several agencies' requests to extend services outside of the respective

jurisdictional boundaries to support efficient delivery of services. However, the pilot program ended on January 1, 2020 and an effort to extend the legislation failed to move forward during last year's session. More recently, the bill author and both LAFCOs have worked collaboratively to continue the efforts of the program through a new bill, SB 13. The application of the statute applies to Napa and San Bernardino LAFCOs only and inclusion of a new sunset date within the provision are currently being discussed by the affected LAFCOs, respective agencies and legislative staff. Staff will continue to monitor the effort of SB 13 and bring forward a recommendation to the Commission commensurate with any progress of the bill.

SB 55 (Stern and Allen) Very High Fire Hazard Severity Zone: State Responsibility Area: Development Prohibition

The existing statute requires that the Director of Forestry and Fire Protection identify those areas of the state that are very high fire hazard severity zones. Additionally, the State Board of Forestry and Fire Protection is required to determine if the State is financially responsible for preventing and suppressing fires within the areas. Following the Director's designation of a high hazard severity zone, local agencies have 120 days after receiving notice from the State to identify the area as a very high fire hazard severity zone by ordinance. Additionally, if an area has not been identified by the Director, local agencies also have the opportunity to identify an area as a very high hazard severity zone by providing substantial evidence.

SB 55 would, in furtherance of specified state housing production and wildfire mitigation goals, prohibit the creation or approval of a new development in an area within a very high fire hazard severity zone or state responsibility area. For purposes of this bill, a development is defined as a project containing residential dwellings and proposed commercial, retail, and industrial uses.

Currently, during the review of a proposed organization or reorganization (i.e., annexations), LAFCOs are required to review several factors. One of the factors includes identifying if the subject area of a proposed organization or reorganization is within a very high fire hazard zone and has been included in the appropriate agency's local hazard mitigation plan and the safety element of the general plan. The bill is currently under development, and at this time, it is unclear if it will impact LAFCOs. Staff will continue to monitor SB 55 and keep the Commission informed.

SB 273 (Hertzberg) Water Quality: Municipal Wastewater Agencies

Under state law, the State Water Resources Control Board and the California regional water quality control boards determine stormwater discharge requirements by municipalities and industries. The requirements are identified according to the National Pollutant Discharge Elimination System permit program and the Porter-Cologne Water

Quality Control Act. Existing law requires that municipalities and industries obtain a stormwater permit.

This bill would authorize a municipal wastewater agency to enter into agreements with other agencies responsible for stormwater management to manage stormwater and dry weather runoff. The agreement would allow the agency to acquire, construct, expand, operate, maintain, and provide facilities for managing stormwater and dry weather water runoff. The bill would require that the exercise of any new authority granted under this legislation is subject to the appropriate proceedings of the CKH Act.

The bill is currently in the early developmental stage and is being reviewed by many key stakeholders and affected parties, including CALAFCO. Staff will continue to monitor the effort of SB 273 and bring forward a recommendation to the Commission commensurate with any progress of the bill.

SB 274 (Wieckowski) Local Government Meetings: Agendas and Documents

The Ralph M. Brown Act (Brown Act) requires a local agency's regular and special meetings of a legislative body to be open to the public and held within the local agency's jurisdictional boundaries. Currently, the Brown Act requires that if the public requests a copy of an agenda or all the documents constituting the agenda packet, a copy shall be mailed by the legislative body.

This bill would require a local agency with an internet website or its designee to email a copy of the agenda packet or send the link to access the agenda packet. If the local agency determines that it is technologically unfeasible to send the request by email, it may send the requested information by mail.

The bill is currently in the early developmental stage and is being reviewed by many key stakeholders and affected parties, including CALAFCO. Staff will continue to monitor the effort of SB 274 and bring forward a recommendation to the Commission commensurate with any progress of the bill.

OTHER LEGISLATIVE EFFORTS

Creation of Small System Water Authority Act

During the 2020 legislative session, the Commission reviewed and adopted an opposing position on Senate Bill 414 (Caballero). The bill proposed to create the Small System Water Authority Act of 2020 that would authorize the creation of small system water authorities with the powers to absorb, improve, and completely operate noncompliant public water systems. Additionally, the bill did not include the LAFCO process as part

of the intended actions. The Commission's opposing position involved concerns with the exclusion of the LAFCO process and local control.

While the effort died during last year's session, the effort has been revived by the previous author and Eastern Municipal Water District. Over the past month, members of the CALAFCO Legislative Committee have participated in several discussions with the bill author's staff and the District regarding including the LAFCO process within the bill's language. It is expected that the proposed legislation will be introduced during the current session. Staff will continue to monitor the effort and bring forward a recommendation to the Commission commensurate with any progress of the bill.

San Diego's LAFCO Proposal to Amend G.C. Section 56133

At the January 13, 2021 meeting, the Commission received a report on the effort by San Diego LAFCO to propose a legislative amendment to G. C. Code Section 56133. Generally, the amendment seeks to clarify LAFCOs' exclusive authority to determine exception status for out-of-agency arrangements per G.C. 56133. During the meeting, the Commission expressed general support of the effort and directed staff to provide an update on support of the effort from other LAFCOs and more specific language involving the amendment proposed by San Diego LAFCO.

Since January, San Diego LAFCO has reached out to the 58 LAFCOs seeking support of this effort. Over the recent months, several LAFCOs (El Dorado, Los Angeles, Riverside, Santa Clara, and Yolo) throughout the CALAFCO four regions have joined in support, and many others that include Alameda, Amador, Fresno, Mendocino, and Ventura are expected to seek support from their respective Commissions.

Additionally, San Diego LAFCO has begun engaging key stakeholders such as the California Special District Association to discuss the mutual benefit of clarifying the statute for LAFCOs and their respective local agencies. San Diego LAFCO is also diligently seeking an author to introduce the proposed amendment to the statute (See Attachment A) during the 2022 legislative session. Staff will continue to monitor the effort and keep the Commission informed.

RECOMMENDED ACTION

Staff recommends that the Commission:

1. Receive and file the March 10, 2021 Legislative Report.

Respectfully Submitted,



CAROLYN EMERY



LUIS TAPIA

Attachment:

- A. Proposed Amendment to G.C. Section 56133 (as provided by San Diego LAFCO)

Prepared by San Diego LAFCO
Government Code Section 56133
Proposed Amendment Regarding Exception Determination

56133.

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted policy, the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following **as determined by the commission or the executive officer:**

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) The provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus

water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

(f) This section applies only to the commission of the county in which the extension of service is proposed.