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General Counsel

August 9, 2023

**TO:** Local Agency Formation Commission  
of Orange County

**FROM:** Executive Officer  
Assistant Executive Officer

**SUBJECT:** Legislative Report (August 2023)

**BACKGROUND**

The Legislature is in summer recess and will return on August 14 for the final quarter of the 2023 legislative session. The following are the remaining key deadlines for both houses:

2023 Legislative Deadlines	
September 1	Last day for fiscal committees to meet and pass bills to the Floor.
September 8	Last day to amend bills on the Floor.
September 14	Last day for the Governor to sign or veto bills passed by the Legislature.

Beginning on the next page of this report is an update on legislation previously reviewed by the Commission. Additionally, staff has identified recently introduced legislation of LAFCO interest for discussion and consideration by the Commission. A summary of the bill (AB 399) and staff recommended action are also provided in this report.

**PREVIOUSLY REVIEWED LEGISLATION**

The table below provides the status of each bill reviewed by the Commission during the current legislation session.

Bill	Description	Adopted Position	Status
<b>AB 557</b>	Proposes to remove the sunset date of January 1, 2024, which would terminate the ability for local agencies to hold meetings by teleconference during a state of emergency previously established through the signing of AB 361 by the Governor.	<b>Support</b>	AB 557 is currently under review in the Senate Judiciary Committee. Next hearing date not identified as of August 2, 2023.
<b>AB 1637</b>	Proposes that by January 1, 2029, a city or county maintains an internet website for public use and employee emails to use “.gov” top-level or a “.ca.gov” second-level domains.	<b>Neutral</b>	SB 1637 is currently under review in the Senate Appropriations Committee. Next hearing date not identified as of August 2, 2023.
<b>AB 1753</b>	Makes minor and/or non-substantive changes to the CKH Act.	<b>Support</b>	Signed by the Governor on June 29, 2023.
<b>SB 360</b>	Proposes to expand the list of offices that a locally elected official may be seated on concurrently involving the Coastal Commission, LAFCO, and Joint Powers Authority.	<b>Support</b>	Signed by the Governor on July 21, 2023.
<b>SB 878 SB 879 SB 880</b>	Yearly Validating Acts are meant to retroactively fix typographical, grammatical, and procedural errors that might invalidate boundary changes or bond issues.	<b>Support</b>	Signed by the Governor on June 29, 2023.

## NEWLY INTRODUCED LEGISLATION

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### **AB 399 (Boerner) Water Ratepayers Protection Act of 2023: County Water Authority Act**

The County Water Authority Act was signed into law by the Governor in 1944, and the only special district that has been formed under its provisions is the San Diego County Water Authority (SDCWA). SDCWA is an independent special district within San Diego County that provides wholesale water to six cities, 17 special districts, and Camp Pendleton. In 2020, two special districts, Fallbrook Public Utility District (Fallbrook PUD) and Rainbow Municipal Water District (Rainbow MWD), filed a joint application with San Diego Local Agency Formation Commission (San Diego LAFCO) to detach from SDCWA and concurrently annex to the Eastern Municipal Water District (EMWD), an independent district and wholesale water provider located in Riverside County. As wholesale water purveyors, SDCWA and EMWD receive water from the Southern California Metropolitan Water District (MWD). For the past three years, San Diego LAFCO's processing of the application has included the preparation of multiple studies and stakeholder outreach to the subject and affected agencies and other interested parties. Subsequent to this process and staff's determinations involving the detachment's feasibility, on July 10, 2023, SD LAFCO approved the application subject to a confirmation vote by a majority of the registered voters within Fallbrook PUD and Rainbow MWD service boundaries that is expected to occur this fall.

During the final part of the SD LAFCO process, related special legislation, AB 399 was introduced by Assemblymember Boerner. The bill includes language that requires, in addition to a confirmation vote by a majority of the registered voters within the two districts, a second but separate confirmation vote by a majority of the registered voters within the entire SDCWA's service boundary. In addition to requiring two separate votes, staff also notes the following concerns with AB 399:

- The bill undermines the LAFCO process conducted by San Diego LAFCO in accordance with the existing provisions of the Cortese-Knox-Reorganization Act (CKH) and the County Water Authority Act by requiring an additional vote of registered voters of the entire SDCWA boundary.
- The additional vote requiring a confirmation vote of registered voters within the entire SDCWA boundary is in conflict with the current provisions of state law that were assumed to apply at the time SD LAFCO deemed the application complete and acceptable for hearing by the Commission and subsequently approved. Current provisions require voter confirmation of the registered voters within the two districts, and the second confirmation vote proposed by AB 399 would disenfranchise those voters mostly impacted by the approved detachment by diluting their votes.
- AB 399 sets a troubling precedent for a local agency to seek special legislation when it does not agree with an action of the Commission.
- While approval of AB 399 would effect a substantial change and includes an urgency clause, it was introduced through the gut and amend legislative process raising concerns about lack of stakeholder notice and transparency regarding the bill and that only one hearing in the Legislature on the bill has occurred.

On June 14, 2023, San Diego LAFCO sent a letter opposing AB 399 to the author and sent another request to other LAFCOs to also oppose the bill. The California Association of Local Agency Formation Commissions (CALAFCO) has also submitted a letter of opposition and met with the author to discuss concerns with the proposed bill. For the reasons stated above staff is recommending the Commission also adopt an **Oppose** position to AB 399. The recommended position aligns with OC LAFCO's policy to oppose legislation that circumvents the LAFCO process as delineated in state law and undermines LAFCO's authority by imposing alternative conditions to those delineated to LAFCOs by state law.

**RECOMMENDED ACTION:** Adopt an **Oppose** position on AB 399.

**SUPPORT:** California Labor Federation, San Diego County Water Authority, San Diego Regional Chamber of Commerce.

**OPPOSE:** California Association of Local Agency Formation Commissions, Department of the Navy, Fallbrook Public Utilities District, Rainbow Municipal Water District, Riverside Local Agency Formation Commission, Los Angeles Local Agency Formation Commission, San Diego Local Agency Formation Commission.

**BILL LOCATION/STATUS:** Senate Governance and Finance Committee. No hearing date scheduled.

**RECOMMENDED ACTION**

Staff recommends the Commission:

1. Adopt an **Oppose** position for AB 399.
2. Direct staff to send position letter to the bill author.

Respectfully submitted,

  
CAROLYN EMERY

  
LUIS TAPIA

Attachment:

1. Assembly Bill AB 399 (Boerner)

Exhibit:

- A. Letter of Opposition – AB 399


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## AB-399 Water Ratepayers Protections Act of 2023: County Water Authority Act: exclusion of territory: p

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Date Published: 06/14/2023 09:00 PM

AMENDED IN SENATE JUNE 14, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

### ASSEMBLY BILL

### NO. 399

Introduced by Assembly Member **Ting Boerner**

February 02, 2023

~~An act to amend Section 14602.1 of the Vehicle Code, relating to vehicles.~~ *An act to amend Section 11 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water, and declaring the urgency thereof, to take effect immediately.*

#### LEGISLATIVE COUNSEL'S DIGEST

AB 399, as amended, **Ting Boerner**. ~~Vehicles: police pursuit data reporting.~~ *Water Ratepayers Protections Act of 2023: County Water Authority Act: exclusion of territory: procedure.*

*The County Water Authority Act provides for the formation of county water authorities and grants to those authorities specified powers with regards to providing water service. The act provides 2 methods of excluding territory from any county water authority, one of which is that a public agency whose corporate area as a unit is part of a county water authority may obtain exclusion of the area by submitting to the electors within the public agency, at any general or special election, the proposition of excluding the public agency's corporate area from the county water authority. Existing law requires that, if a majority of the electors approve the proposition, specified actions take place to implement the exclusion.*

*This bill, the Water Ratepayers Protections Act of 2023, would additionally require the public entity to submit the proposition of excluding the public agency's corporate area from the county water authority to the electors within the territory of the county water authority. The bill would require the 2 elections to be separate; however, the bill would authorize both elections to run concurrently. The bill would require a majority vote for withdrawal in both elections for the withdrawal of the public agency from the territory of the county water authority.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law requires every state and local law enforcement agency to report all vehicle pursuit data, as specified, to the Department of the California Highway Patrol no later than 30 days after a pursuit.~~

~~This bill would instead require every state and local law enforcement agency to report vehicle pursuit data to the department no later than 45 days after a pursuit.~~

Vote: ~~majority~~2/3 Appropriation: no Fiscal Committee: ~~yes~~no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *This act shall be known, and may be cited, as the Water Ratepayers Protections Act of 2023.*

**SEC. 2.** *Section 11 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as amended by Section 3 of Chapter 1408 of the Statutes of 1985, is amended to read:*

**Sec. 11.** (a) Exclusion of territory from any county water authority may be effected by either of the following methods:

(1) Territory excluded from the portion of the corporate area of any public agency—~~which that~~ lies within the exterior boundaries of a county water authority, the public agency being a unit of the authority, and—~~which that~~ exclusion occurs in accordance with the provisions of law applicable to those exclusions, shall thereby be excluded from and shall no longer be a part of the authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the ~~bounded~~ *bonded* or other indebtedness outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof shall be, at the time of the exclusion, subject to special taxes levied, or to be levied, by the county water authority pursuant to terms and conditions previously fixed under paragraph subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to those special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies.

Exclusion of territory from a county water authority pursuant to this paragraph shall not occur if two or more public agencies that are included in a county water authority as separate units are subject to a reorganization of their boundaries under applicable provisions of law—~~which that~~ would result in an exchange or transfer, but not an overlapping, of territory that is entirely within the county water authority. The boundaries of those agencies within the county water authority, upon that reorganization and the filing with the secretary of the county water authority of a copy of the certificate of completion prepared, executed, and filed by the executive officer of the local agency formation commission responsible therefore constitute the boundaries of the agencies for all purposes of the county water authority, without action by the board of directors of the county water authority. If the exchange includes territory subject to special conditions and tax levies pursuant to the terms of annexation at the time the territory became a part of the county water authority, the territory shall continue to be subject to those conditions and to be taxable by the county water authority or those levies.

From and after the effective date of the inclusion of the territory by the including public agency, the territory shall be considered to be a part of the corporate area of the including agency; provided, however, that, if the taxable property within the territory, or any portion thereof, is subject to special taxes levied or to be levied by the county water authority pursuant to terms and ~~condition~~ *conditions* previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the territory or portion thereof to the county water authority, then the taxable property within the territory shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of the special taxes pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been ~~or so~~ raised by the special tax levy.

(2) Any public agency whose corporate area as a unit has become or is a part of any county water authority may obtain the exclusion of the area therefrom *by elections conducted* in the following manner:

~~The~~

(A) (i) *The* governing body of any public agency may submit to the electors thereof at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority. ~~A~~

(ii) *The governing body of any public agency may submit to the electors within the territory of the county water authority at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors within the territory of the county water authority voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority.*

(iii) *The elections conducted pursuant to this subparagraph shall be separate elections; however, they may run concurrently with one another. A majority vote in both elections for withdrawal is necessary for the withdrawal of the public agency from the territory of the county water authority.*

(B) *A* certificate of the proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing of the certificate, the corporate area of the public agency shall be excluded from the county water authority and shall no longer be a part thereof; provided, that the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded area or any part thereof

is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to the terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded area or part thereof to the county water authority, the taxable property within the excluded area or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of the papers in ~~his or her~~ *the Secretary of State's* office and the exclusion of the corporate area of the public agency from the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.

(b) Whenever territory is excluded from any public agency in accordance with paragraph (1) of subdivision (a), the governing body, or clerk thereof, of the public agency shall file with the board of directors of the county water authority a statement of the change of boundaries of the public agency, setting forth the legal description of the boundaries of the public agency, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating the boundaries.

(c) Whenever any territory has been excluded from any public agency prior to the effective date of this section, under conditions ~~which~~ *that* would have resulted in the exclusion of the territory from a county water authority had paragraph (1) of subdivision (a) then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be excluded from and shall no longer be a part of, the authority, the last-mentioned provisions being as follows:

(1) The governing body of the public agency may adopt an ordinance ~~which;~~ *that*, after reciting that the territory has been excluded from the public agency by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date or dates upon which the exclusion became effective, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, excluded from the county water authority.

(2) The governing body, or clerk thereof, of the public agency shall file a certified copy of the ordinance with the Secretary of State. Upon the filing of the certified copy of the ordinance in the office of the Secretary of State, the territory shall be excluded from, and shall no longer be a part of, the county water authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion, and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed, and until the aggregate sums have been so raised by the special tax levies.

(3) Upon the filing of the certified copy of the ordinance, the Secretary of State shall, within 10 days issue a certificate describing the territory, reciting the filing of certified copy of the ordinance and the exclusion of the territory from the county water authority, and declaring that the territory is no longer a part of the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy of the certificate to the county clerk of the county in which the county water authority is situated.

(d) Whenever any territory has been exchanged or transferred pursuant to law prior to January 1, 1986, among two or more public agencies that are included in a county water authority as separate units, the territory shall not be deemed excluded from the county water authority, notwithstanding the failure of the county water authority to give its consent to the exchange or transfer of the territory, if there has been filed with the board of directors of the county water authority prior to January 1, 1986, a statement of the change of boundaries of the agencies, as so changed, and of the part within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

**SEC. 3.** *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to provide immediate relief for ratepayers to have a voice in decisions affecting their access to affordable and safe water, essential to public health, it is necessary that this act take effect immediately.*

~~SECTION 1. Section 14602.1 of the Vehicle Code is amended to read:~~

~~14602.1.(a) Every state and local law enforcement agency, including, but not limited to, city police departments and county sheriffs' offices, shall report to the Department of the California Highway Patrol, on a paper or electronic form developed and approved by the Department of the California Highway Patrol, all motor vehicle pursuit data.~~

~~(b) Effective January 1, 2006, the form shall require the reporting of all motor vehicle pursuit data, which shall include, but not be limited to, all of the following:~~

~~(1) Whether a person involved in a pursuit or a subsequent arrest was injured, specifying the nature of that injury. For all purposes of this section, the form shall differentiate between the suspect driver, a suspect passenger, and the peace officers~~



~~involved:~~

~~(2)The violations that caused the pursuit to be initiated:~~

~~(3)The identity of the peace officers involved in the pursuit:~~

~~(4)The means or methods used to stop the suspect being pursued:~~

~~(5)All charges filed with the court by the district attorney:~~

~~(6)The conditions of the pursuit, including, but not limited to, all of the following:~~

~~(A)Duration:~~

~~(B)Mileage:~~

~~(C)Number of peace officers involved:~~

~~(D)Maximum number of law enforcement vehicles involved:~~

~~(E)Time of day:~~

~~(F)Weather conditions:~~

~~(G)Maximum speeds:~~

~~(7)Whether a pursuit resulted in a collision, and a resulting injury or fatality to an uninvolved third party, and the corresponding number of persons involved:~~

~~(8)Whether the pursuit involved multiple law enforcement agencies:~~

~~(9)How the pursuit was terminated:~~

~~(c)In order to minimize costs, the department, upon updating the form, shall update the corresponding database to include all of the reporting requirements specified in subdivision (b):~~

~~(d)All motor vehicle pursuit data obtained pursuant to subdivision (b) shall be submitted to the Department of the California Highway Patrol no later than 45 days following a motor vehicle pursuit:~~

~~(e)The Department of the California Highway Patrol shall submit annually to the Legislature a report that includes, but is not limited to, the following information:~~

~~(1)The number of motor vehicle pursuits reported to the Department of the California Highway Patrol during that year:~~

~~(2)The number of those motor vehicle pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved third party occurred:~~

~~(3)The total number of uninvolved third parties who were injured or killed as a result of those collisions during that year:~~



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August 9, 2023

Assemblymember Tasha Boerner  
California State Assembly  
1021 O Street, Suite 4150  
Sacramento, CA 94249

RE: **Oppose** – AB 399 (Boerner) Water Ratepayers Protections Act of 2023: County Water Authority Act: Exclusion of Territory: Procedure.

Dear Assemblymember Boerner:

The Orange County Local Agency Formation Commission (OC LAFCO) respectfully opposes AB 399, which seeks to amend the County Water Authority Act (CWAA) through action that is in conflict with state law involving LAFCO proceedings for a special district detachment.

Currently, the CWAA provides that the approval of any member agency detachment from the San Diego County Water Authority (SDCWA) is contingent upon a confirmation vote of the registered voters of the affected agency. AB 399 seeks to require an additional confirmation vote of the registered voters within the entire SDCWA's boundary which is in conflict with the proceedings conducted by San Diego LAFCO for the detachment of the Fallbrook Utility District and Rainbow Municipal Water District from SDCWA. If enacted, AB 399 would disenfranchise the registered voters most affected by the detachment by effectively diluting their votes.

Additionally and of high concern for OC LAFCO is the precedent that AB 399 would set involving LAFCO actions. As you are aware, the Legislature granted LAFCOs authority over their respective local boundaries, and AB 399 opens the door for a public agency that is not in agreement with a Commission's action to seek remedy through the Legislature to undermine that granted authority.

For these reasons, OC LAFCO opposes AB 399. If you have any questions regarding the Commission's position, you may contact our Executive Officer, Carolyn Emery at (714) 640-5100 or [cemery@oclafco.org](mailto:cemery@oclafco.org).

Respectfully,

Douglass Davert  
Chair

cc: René LaRoche, Executive Director, CALAFCO  
Keene Simmonds, San Diego LAFCO  
Orange County Legislators