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MEETING DATE: February 14, 2024

8a | Commission
Discussion

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Assistant Executive Officer

SUBJECT: Legislative Report (February 2024)

BACKGROUND

The last day for members of the Assembly and Senate to introduce new bills to the Legislature for the 2024 legislative session was February 16. The Legislature received a total of 2,124 newly introduced bills, a minor reduction in submittals compared to the 2,632 bills introduced during last year's session. In the coming weeks, proposed legislation will make its way through the various committees with a deadline of May 24 for bills to pass out of their house of origin.

At the most recent meeting of the CALAFCO Legislative Committee on February 16, there was continued discussion on progress of the Omnibus Bill and proposed legislation involving indemnification of LAFCOs by applicants, as both bills made it through the assignment of bill numbers (AB 3277 and SB 1209).

This report provides highlights of current language for AB 3277 and SB 1209 and summaries of other efforts of LAFCO interest.

LEGISLATION OF LAFCO INTEREST

AB 805 (Arambula) Sewer Service: Disadvantaged Communities

During the 2023 legislative session, this bill focused on consolidating failing sewer systems serving disadvantaged communities. However, the bill failed to move forward by not meeting committee deadlines and became a two-year bill. Recently amended, the bill proposes to allow the State Water Resources Control Board to designate an "Administrator" for an inadequate sewer system or a sewer system that has demonstrated reasonable potential to cause sewer service violations serving a disadvantaged community within incorporated or unincorporated territory. Accordingly, an "Administrator" is defined as the person whom the State Water Board has determined is competent to perform

administrative, technical, operational, legal, or managerial services. The State Board would work closely with the Administrator and the communities served by the inadequate or failing sewer system to improve within the shortest practical time adequate technical, managerial and financial capacity for the sewer system to deliver adequate sewer service and until the Administrator is no longer necessary.

At their February 16 meeting, the CALAFCO Legislative Committee voted to request the author amend the bill language to include a requirement for the State Board to consult with the local LAFCO in designating an Administrator for an inadequate or failing sewer system. The committee's recommendation for CALAFCO to adopt a "support if amended" position on AB 805 will be considered by the CALAFCO Executive Board at their next meeting on April 12. CALAFCO staff will be submitting proposed language to the bill author for consideration.

OC LAFCO staff supports an amendment to AB 805 to include consulting by the State Board with the local LAFCO as it aligns with the Commission's legislative policy to support legislation that encourages collaboration among LAFCOs, special districts and the public to address municipal service deficiencies. Staff is recommending the Commission adopt a **Watch** position on the bill at this time to allow for the bill author's response to CALAFCO's request. Staff will provide an update to the Commission on this effort in the April legislative report.

RECOMMENDED ACTION: Adopt a **Watch** position on AB 805.

SUPPORT: None on record.

OPPOSE: None on record.

BILL LOCATION/STATUS: Assembly Committee on Appropriation. No hearing date scheduled at the time of agenda distribution.

AB 3277 (Assembly Local Government Committee): Districts Property Tax

The Omnibus Bill is the annual legislation co-sponsored by CALAFCO and the Assembly Committee on Local Government to introduce technical and non-substantive amendments to the CKH Act that address minor inconsistencies and provide clarification to remove any ambiguity in the law. Currently, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) provides LAFCOs with the authority to process proposals for the formation of a district. For this change of organization, LAFCOs are required to determine the property tax exchange when the affected agency is seeking a share of the one percent ad valorem property tax. AB 3277 proposes to amend the CKH Act to allow LAFCOs to exclude this requirement if the affected agency is not seeking a share of the one percent ad valorem property tax.

The proposed amendment eliminates an unnecessary process during the formation of a special district when a proposal does not require the analysis to determine the share of the one percent ad valorem property tax. The amendment aligns with the Commission's legislative policy to

support legislation that enhances LAFCO's authority and implementation of the CKH Act. Therefore, staff is recommending the Commission adopt a **Support** position on AB 3277.

RECOMMENDED ACTION: Adopt a **Support** position on AB 3277.

SUPPORT: California Association of Local Agency Formation Commission.

OPPOSE: None on record.

BILL LOCATION/STATUS: Assembly. No hearing date scheduled at the time of agenda distribution.

SB 1209 (Cortese) Local Agency Formation Commission: Indemnification

Existing state law explicitly gives counties, cities, and special districts the authority to require an applicant to indemnify the public agency against litigation. Based on a recent ruling by the California Court of Appeals in the case of San Luis Obispo LAFCO v. City of Pismo Beach, the court opined that it was not the authority of LAFCOs to require indemnification by the applicant as a condition of processing an application. While OC LAFCO and several other LAFCOs have a local policy involving applicant indemnification, SB 1209 proposes an amendment to State law that would explicitly authorize LAFCOs to require applicants to indemnify the Commission against litigation.

Staff recommends the Commission adopt a **Support** position on SB 1209 as it aligns with the Commission's legislative policy to support legislation that is consistent with current OC LAFCO policy and would further implementation of the CKH Act.

RECOMMENDED ACTION: Adopt a **Support** position on SB 1209.

SUPPORT: California Association of Local Agency Formation Commission.

OPPOSE: None on record.

BILL LOCATION/STATUS: Senate Local Government Committee. No hearing date scheduled at the time of agenda distribution.

CALAFCO LEGISLATIVE EFFORT


Since the 2019 legislative session, CALAFCO and San Diego LAFCO have been working collaboratively on an effort to seek an amendment to clarify LAFCO's authority to determine exemption status for out-of-agency arrangements per the provisions included in the CKH Act. Over this time, CALAFCO and San Diego LAFCO have conducted outreach to multiple agencies (California Special Districts Association, League of California Cities, California State Association of Counties and Association of California Water Agencies), developed a white paper, and held

several discussions with legislative staff and potential bill authors. However, the effort has been further delayed due to other CALAFCO legislative priorities. CALAFCO staff will be discussing status of the effort, including expected opposition, with the CALAFCO Executive Board on April 12. Staff will continue to monitor and keep the Commission apprised of this effort.

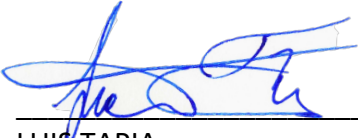
RECOMMENDED ACTIONS

1. Adopt a **Watch** position on AB 805.
2. Adopt a **Support** position on AB 3277 and SB 1209.
3. Direct staff to send position letters to respective bill authors.

Respectfully Submitted,



CAROLYN EMERY



LUIS TAPIA

Attachments:

1. Assembly Bill 805 (Arambula)
2. Assembly Bill 3277(Local Government Committee)
3. Senate Bill 1209 (Cortese)

Exhibits:

- A. Letter of Support – AB 3277
- B. Letter of Support – SB 1209


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AB-805 Sewer service: disadvantaged communities. (2023-2024)

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AMENDED IN ASSEMBLY JANUARY 22, 2024

AMENDED IN ASSEMBLY MARCH 09, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 805

Introduced by Assembly Member Arambula

February 13, 2023

An act to amend Sections ~~116682 and 116686 of the Health and Safety Code, relating to drinking water. 13288 and 13442 of, and to add Section 13289.5 to, the Water Code, relating to water quality, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 805, as amended, Arambula. ~~Drinking water consolidation: sewer service.~~ *Sewer service: disadvantaged communities.*

~~Existing law, the California Safe Drinking Water Act, provides for the operation of public water systems and imposes on the State Water Resources Control Board various responsibilities and duties. The act authorizes the state board to order consolidation with, or extension of service from, a receiving water system in either of the following circumstances: (1) a public water system or state small water system, serving a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, or is an at-risk water system, or (2) a disadvantaged community, in whole or in part, is substantially reliant on domestic wells that consistently fail to provide an adequate supply of safe drinking water, or are at-risk domestic wells.~~

~~This bill would authorize the state board, if sufficient funds are available, to order consolidation of sewer service along with an order of consolidation of drinking water systems when both of the receiving and subsumed water systems provide sewer service and after the state board engages in certain activities, including, but not limited to, consulting with the relevant regional water board and the receiving water system and conducting outreach to ratepayers and residents served by the receiving and subsumed water systems, as provided.~~

~~Existing law authorizes the state board, if sufficient funds are available, to contract with, or provide a grant to, an administrator to provide administrative, technical, operational, legal, or managerial services, or any combination of these services to a designated water system to assist with the provision of an adequate supply of affordable, safe drinking water.~~

~~The bill would also authorize the state board to require the administrator to provide administrative, technical, legal, or managerial services for any sewer service provided by the designated water system.~~

Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards regulate water quality in accordance with the Porter-Cologne Water Quality Control Act and the federal Clean Water Act. Existing law authorizes a regional board to order the provision of sewer service by a receiving sewer system, as defined, to a disadvantaged community served by an inadequate onsite sewage treatment system, as defined.

This bill would authorize the state board to require a sewer service provider to contract with an administrator designated or approved by the state board for administrative, technical, operational, legal, or managerial services to assist a designated sewer system with the provision of adequate sewer service, as defined. The bill would also authorize the state board to order a designated sewer system to accept those services, including full management and control of all aspects of the designated sewer system, from an administrator. The bill would define "designated sewer system" for these purposes as a sewer system that serves a disadvantaged community and that the state board finds to be either an inadequate sewage treatment system or a sewer system that has demonstrated difficulty in maintaining technical, managerial, and financial capacity to prevent fraud and mismanagement, or a sewer system that voluntarily accepts financial assistance for the provision of adequate sewer service.

The bill would require the state board to take specified actions before determining that a sewer service provider is a designated sewer system, including providing the sewer service provider an opportunity to show that it has taken steps to timely address its failure to provide adequate sewer service, conducting a public meeting, and providing an opportunity for public comment. The bill would authorize the state board to grant specified authority over the designated sewer system to the administrator, including the authority to expend money for various purposes and to set and collect sewer rates and fees, subject to approval by the state board. The bill would require the state board to work with the administrator and the communities served by the designated sewer system to develop, within the shortest practicable time, adequate technical, managerial, and financial capacity to deliver adequate sewer service so that the services of the administrator are no longer necessary.

Existing law creates the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund and continuously appropriates moneys in the account to the state board for specified purposes, including providing grants for cleaning up a waste, abating the effects of a waste on waters of the state, or addressing an urgent drinking water need, as provided.

This bill would authorize the state board to also use moneys in the account to provide grants to administrators to provide administrative, technical, operational, legal, or managerial services to a sewer service provider. By expanding the purposes for which moneys in a continuously appropriated account may be spent, the bill would make an appropriation.

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

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

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

SECTION 1. *Section 13288 of the Water Code is amended to read:*

13288. For purposes of this chapter, the following definitions apply:

(a) "Adequate sewer service" means sanitary sewer service provided by a sewer service provider that does not have the potential to cause a violation of water quality objectives, impair present or future beneficial uses of water, cause pollution, nuisance, or contamination of waters of the state, or unreasonably degrade the waters of the state.

(b) "Administrator" means a person whom the state board has determined is competent to perform the administrative, technical, operational, legal, or managerial services required for purposes of this chapter, pursuant to criteria set forth in the handbook described in subdivision (h) of Section 13289.5.

~~(a)~~

(c) "Affected residence" means a residence within a disadvantaged community that may be subject to provision of sewer service pursuant to this chapter.

~~(b)~~

(d) "Affected resident" means a resident or a property owner of an affected residence.

~~(e)~~

(e) "Annexation" has the same meaning as set forth in Section 56017 of the Government Code.

(f) "Designated sewer system" means a sewer system that serves a disadvantaged community and that the state board finds to be either an inadequate sewage treatment system or a sewer system that has demonstrated difficulty in maintaining technical, managerial, and financial capacity to prevent fraud and mismanagement. "Designated sewer system" also includes a voluntary participant.

~~(d)~~

(g) "Disadvantaged community" means a disadvantaged community as defined in Section 79505.5.

~~(e)~~

(h) "Extension of service" has the same meaning as set forth in Section 56133 of the Government Code.

~~(f)~~

(i) "Inadequate onsite sewage treatment system" means an onsite sewage treatment system that has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state.

(j) "Inadequate sewage treatment system" means a sewer system that has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state.

~~(g)~~

(k) (1) "Onsite sewage treatment system" means an onsite sewage treatment system, as defined in Section 13290, that is not operated by a local agency, as defined in Section ~~56064~~ 56054 of the Government Code, or a utility regulated by the Public Utilities Commission.

(2) "Onsite sewage treatment system" includes, but is not limited to, a septic tank, cesspool, leach field, and seepage pit.

~~(h)~~

(l) "Provision of sewer service" means the provision of sanitary sewer service, including the collection or treatment of sewage, to a disadvantaged community by any of the following processes:

- (1) Annexation where the receiving sewer system is a special district.
- (2) Extension of service where the receiving sewer system is a city, county, or special district.
- (3) Additional sewer service provided within city, county, or special district boundaries.

~~(i)~~

(m) "Receiving sewer system" means the sewer system that provides service to a disadvantaged community pursuant to this chapter.

(n) "Sewer service provider" means any local agency that provides sanitary sewer service.

~~(j)~~

(o) "Special district" means a special district as defined in Section 56036 of the Government Code.

(p) "Voluntary participant" means the owner of an onsite sewage treatment system or sewer service provider who has agreed to accept financial assistance for the provision of adequate sewer service.

SEC. 2. Section 13289.5 is added to the Water Code, immediately following Section 13289, to read:

13289.5. (a) (1) For a designated sewer system, the state board may do any of the following:

(A) (i) Require a sewer service provider to contract with an administrator designated or approved by the state board for administrative, technical, operational, legal, or managerial services, or any combination of those services, to assist the designated sewer system with the provision of adequate sewer service.

(ii) To fulfill the requirements of this section, a sewer service provider may contract with more than one administrator, but only one administrator may be used to provide services to a given designated sewer system. An administrator that is not designated or approved by the state board shall not be used for purposes of this section.

(iii) An administrator may provide services to more than one designated sewer system.

(B) Order a designated sewer system to accept administrative, technical, operational, legal, or managerial services, including full management and control of all aspects of the designated sewer system, from an administrator selected by the state board.

(C) Order a designated sewer system to accept administrative, technical, operational, legal, or managerial services from an administrator appointed by the state board for full oversight of construction or development projects related to an annexation or extension of service, including, but not limited to, accepting loans and grants issued by the state board and entering into contracts on behalf of the designated sewer system.

(2) In performing its duties pursuant to paragraph (1), the state board may use criteria from the handbook adopted pursuant to subdivision (g) of Section 116686 of the Health and Safety Code.

(b) The state board shall do all of the following before determining that a sewer service provider is a designated sewer system:

(1) Provide the sewer service provider with notice and an opportunity to show that the sewer service provider has taken steps to timely address its failure to provide adequate sewer service.

(2) (A) Conduct a public meeting in a location as close as feasible to the affected community.

(B) The state board shall make reasonable efforts to provide a 30-day notice of the public meeting to affected ratepayers, renters, and property owners.

(C) The state board shall provide representatives of the sewer service provider, affected ratepayers, renters, and property owners with an opportunity to present oral and written comments at the public meeting.

(D) The state board shall provide an opportunity for public comment at the meeting.

(3) Provide the public with an opportunity to submit comments by mail or electronically during the 30-day notice period and for at least one week after the public meeting described in paragraph (2).

(c) The state board shall make financial assistance available to an administrator of a designated sewer system, as appropriate and to the extent that funding is available.

(d) The authority granted to an administrator by the state board pursuant to subdivision (a) may include, but is not limited to, the authority to do all of the following:

(1) Expend available money for capital infrastructure improvements that the designated sewer system needs to provide adequate sewer service.

(2) Set and collect user sewer rates and fees, subject to approval by the state board. The state board shall consider affordability when approving sewer rates and fees. The provisions of this section are subject to all applicable constitutional requirements, including Article XIII D of the California Constitution.

(3) Expend available money for operation and maintenance costs of the designated sewer system.

(4) Expend available money necessary for an annexation or extension of service, including conducting feasibility or planning studies, or addressing outstanding technical or legal issues.

(e) The state board shall work with the administrator of a designated sewer system and the communities served by that designated sewer system to develop, within the shortest practicable time, adequate technical, managerial, and financial capacity to deliver adequate sewer service so that the services of the administrator are no longer necessary.

(f) A designated sewer system shall not be responsible for any costs associated with an administrator that are higher than the costs necessary to maintain the designated sewer system and provide adequate sewer service.

(g) A designated sewer system shall be responsible for funding the activities of an administrator to provide administrative, technical, operational, legal, or managerial services, or any combination of those services, to the designated sewer system. The state board shall not be responsible for providing funding for those activities.

(h) Before ordering a designated sewer system to accept administrative, technical, operational, legal, or managerial services from an administrator pursuant to subdivision (a), the state board shall develop standards, terms, and procedures, to be incorporated in the handbook adopted pursuant to subdivision (g) of Section 116686 of the Health and Safety Code, consistent with the process provided in subdivision (a) of Section 116760.43 of the Health and Safety Code, for all of the following:

(1) Ensuring compliance with subdivision (f).

(2) Providing opportunity for public comment on the selection of an administrator and the services to be provided.

(3) Providing public access to budgets, ownership and financial information, and other documents and records related to the provision of sewer service to affected residences and to the management of the designated sewer system by the administrator.

(4) Providing regular public meetings, notifications, opportunities for public comment, and other forms of engagement with customers of the designated sewer system for significant decisions or actions made on behalf of the designated sewer system, including, but not limited to, establishing operating budgets, altering sewer rates, adopting system policies, entering into long-term contracts or financing commitments, and developing system projects or plans.

(5) Formal requests to the state board to reverse or modify a decision of an administrator or to request substitution of an administrator.

(6) Ensuring an administrator acts in the best interests of the community served.

(7) Development and approval of a post-administrator sewer service plan to ensure compliance with subdivision (e). Development of the plan shall include, but is not limited to, an evaluation of long-term public governance or community ownership options.

(i) An administrator appointed pursuant to this section for a designated sewer system shall not be liable for claims by past or current ratepayers, or by those affected by the sewer service provided by the designated sewer system, in either of the following circumstances:

(1) If good faith, reasonable effort, and ordinary care were used by the administrator to assume possession of, or to operate, the sewer service provider.

(2) For any injury or damages that occurred before the commencement of the operation period.

(j) This section does not limit or supersede any other law authorizing claims against the state board or providing a defense to liability, and shall not be construed to create any new or expanded basis for liability.

(k) Nothing in this section shall be construed to do any of the following:

(1) Relieve a sewer service provider or any other entity from complying with any provision of federal or state law, including those pertaining to water quality.

(2) Impair any cause of action by the Attorney General, a district attorney, a city attorney, or other public prosecutor, or impair any other action or proceeding brought by, or on behalf of, a regulatory agency.

(3) Impair any claim alleging the taking of property without compensation within the meaning of either the Fifth Amendment to the United States Constitution or Section 19 of Article I of the California Constitution.

(4) Relieve any person or entity from liability for action or inaction in bad faith, or without reasonable effort or ordinary care.

(l) Nothing in this section shall absolve, indemnify, or protect a prior operator, designated sewer system, or individual from liability based on an act or failure to act prior to the operation period.

(m) Administrative and managerial contracts pursuant to this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and may be awarded on a noncompetitive bid basis as necessary to implement the purposes of this section.

(n) This section does not apply to a charter city, charter county, or charter city and county.

(o) For purposes of this section, an administrator is authorized to act on behalf of an affected residence to the same extent, and in the same manner, as a designated sewer system with the consent of the affected residence.

SEC. 3. *Section 13442 of the Water Code is amended to read:*

13442. (a) Upon application by an eligible entity, as described in subdivision (b), the state board may approve the payment of grant moneys from the account to that entity to assist in cleaning up a waste, abating the effects of a waste on waters of the state, *addressing actions required pursuant to Section 13289.5*, or addressing an urgent drinking water need without regard to whether the need for drinking water is a result of the discharge of waste.

(b) An entity is eligible to apply for funding pursuant to this section if that entity has authority to undertake the activity described in subdivision (a) for which it seeks moneys and the entity is any of the following:

(1) A public agency.

(2) A tribal government that is on the California Tribal Consultation List maintained by the Native American Heritage Commission and is a disadvantaged community, as defined in Section 79505.5, that agrees to waive tribal sovereign immunity for the explicit purpose of regulation by the state board pursuant to this division.

(3) A not-for-profit organization serving a disadvantaged community, as defined in Section 79505.5.

(4) A community water system, as defined in Section 116275 of the Health and Safety Code, that serves a disadvantaged community, as defined in Section 79505.5.

(5) An administrator, as defined in Section 13288.

(c) An eligible entity shall not become liable to the state board for repayment of moneys paid to the entity under this section and expended in accordance with the state board's approval of payment, but this shall not be a defense to an action brought pursuant to subdivision (c) of Section 13304 for the recovery of moneys paid under this section.

(d) Projects using moneys that are paid to an eligible entity pursuant to this section shall be exempt from state contracting and procurement requirements set forth in the Government Code and the Public Contract Code to the extent necessary to take immediate action to protect public health and safety.

(e) The state board may adopt guidelines for the allocation and administration of these moneys that shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. *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 authorize the State Water Resources Control Board to take appropriate action as soon as possible to ensure that adequate, sanitary sewer service is provided to communities, it is necessary for this act to take effect immediately.

~~SECTION 1. Section 116682 of the Health and Safety Code is amended to read:~~

~~116682.(a)(1)The state board, in circumstances described in subparagraph (A) or (B), may order consolidation with a receiving water system as provided in this section and Section 116684. The consolidation may be physical or operational. The state board may also order the extension of service to an area within a disadvantaged community that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. The consolidation shall occur within six months of the initiation of the extension of service. The state board may set timelines and performance measures to facilitate completion of consolidation:~~

~~(A)A public water system or a state small water system, serving a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, or is an at-risk water system.~~

~~(B)A disadvantaged community, in whole or in part, is substantially reliant on domestic wells that consistently fail to provide an adequate supply of safe drinking water, or are at-risk domestic wells.~~

~~(2)No later than July 1, 2020, the state board shall develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the state board to consider ordering consolidation. The state board shall adopt the policy in a policy handbook consistent with the process provided for in subdivision (a) of Section 116760.43.~~

~~(b)Before ordering consolidation or extension of service as provided in this section, the state board shall do all of the following:~~

~~(1)Encourage voluntary consolidation or extension of service.~~

~~(2)Consider other enforcement remedies specified in this article.~~

~~(3)Consult with, and fully consider input from, the relevant local agency formation commission regarding the provision of water service in the affected area, the recommendations for improving service in a municipal service review, whether the consolidation or extension of service is cost effective, and any other relevant information.~~

~~(4)Consult with, and fully consider input from, the Public Utilities Commission when the consolidation would involve a water corporation subject to the commission's jurisdiction. If a receiving water system is regulated by the Public Utilities Commission, the state board shall inform the commission at least 60 days before the consolidation order, and upon issuance of the order the commission shall open a proceeding to determine cost allocation, ratemaking, and commission public participation requirements for the consolidation process.~~

~~(5)Consult with, and fully consider input from, the local government with land use planning authority over the affected area, particularly regarding any information in the general plan required by Section 65302.10 of the Government Code.~~

~~(6)Consult with, and fully consider input from, the potentially receiving water system and all public water systems in the chain of distribution of the potentially receiving water system. The input from the potentially receiving water system may include, but is not limited to, information related to the classification of the potentially subsumed water system as an at-risk water system or a state small water system or of at-risk domestic wells.~~

~~(7)Consult with, and fully consider input from, any groundwater sustainability agency in a basin that provides groundwater supply, in whole or in part, to the affected area.~~

~~(8)(A)Notify the potentially receiving water system and the potentially subsumed water system, if any, and establish a reasonable deadline of no less than six months, unless a shorter period is justified, for the potentially receiving water system and the potentially subsumed water system, if any, to negotiate consolidation or another means of providing an adequate supply of safe drinking water.~~

~~(B)During this period, the state board shall provide technical assistance and work with the potentially receiving water system and the potentially subsumed water system to develop a financing package that benefits both the receiving water system and the subsumed water system.~~

~~(C)Upon a showing of good cause, the deadline may be extended by the state board at the request of the potentially receiving water system, potentially subsumed water system, the local agency formation commission with jurisdiction over the potentially subsumed water system, or the Public Utilities Commission.~~

~~(9)Consider the affordability of the anticipated monthly rates for drinking water service to residential customers of the potentially subsumed water system.~~

~~(10)(A)Hold at least one public meeting at the initiation of this process in a place as close as feasible to the affected areas. The state board shall make reasonable efforts to provide a 30-day notice of the meeting to the ratepayers, renters, and property owners to receive water service through service extension or in the area of the subsumed water system and all affected local government agencies and drinking water service providers. The 30-day notice shall include information about water quality concerns in the area, relevant information about health effects of water contaminants, and information about opportunities for consolidation or extension of service to address water quality issues. The meeting shall provide representatives of the potentially subsumed water system, affected ratepayers, renters, property owners, the potentially receiving water system, and the public an opportunity to present oral and written comments.~~

~~(B)The state board shall provide an opportunity to submit comments by mail or electronically during the notice period and for at least one week after the meeting.~~

~~(C)The state board shall review comments received during the meeting and received by mail and electronically during the notice period and for one week after the public meeting.~~

~~(11)If the potentially subsumed water system to be consolidated into the receiving water system is an at-risk water system, the state board shall do all of the following:~~

~~(A)Conduct outreach to ratepayers and residents served by the at-risk water system, including identifiable local community groups. These outreach efforts shall gauge community support for consolidation of the at-risk water system. The state board shall consider the results of this outreach when deciding whether to order consolidation of the at-risk water system.~~

~~(B)Consider any petition submitted pursuant to paragraph (2) of subdivision (a) by members of a disadvantaged community served by the at-risk water system.~~

~~(C)(i)If the potentially subsumed water system contends during the initial written comment period set forth in subparagraph (B) of paragraph (10) that it is not an at-risk water system, the state board shall consider during a public meeting any information provided by the potentially subsumed water system in support of its contention that it is not an at-risk water system.~~

~~(ii)The state board shall make reasonable efforts to provide a 30-day notice of the public meeting described in clause (i) to the ratepayers, renters, and property owners to receive water service through service extension or in the area of the subsumed water system and all affected local government agencies and drinking water service providers.~~

~~(c)If a consolidation or other means of providing an adequate supply of safe drinking water has not been negotiated by the potentially receiving water system and the potentially subsumed water system before the expiration of the deadline set by the state board pursuant to paragraph (8) of subdivision (b), the state board shall do the following:~~

~~(1)Consult with the potentially receiving water system and the potentially subsumed water system, if any.~~

~~(2)(A)If the consolidation has not concluded within six months following the first public meeting held pursuant to paragraph (10) of subdivision (b), conduct a public meeting in a location as close as feasible to the affected communities. The meeting shall be held after the state board has made the findings described in subdivision (d):~~

~~(B)The state board shall make reasonable efforts to provide a 30-day notice of the meeting to the ratepayers, renters, property owners to receive water service through service extension or in the area of the subsumed water system, and the public, and to all affected local government agencies and drinking water service providers.~~

~~(C)The meeting shall provide representatives of the potentially subsumed water system, affected ratepayers, renters, property owners, and the potentially receiving water system an opportunity to present oral and written comments:~~

~~(D)The meeting shall provide an opportunity for public comment.~~

~~(3)The state board shall make reasonable efforts to ensure that a receiving water system and a subsumed water system are informed on a regular basis of progress regarding actions taken pursuant to this section.~~

~~(d)Before ordering consolidation or extension of service, the state board shall find all of the following:~~

~~(1)The potentially subsumed water system has consistently failed to provide an adequate supply of safe drinking water or it is at risk of doing so, as determined by the state board.~~

~~(2)Reasonable efforts to negotiate voluntary consolidation or extension of service were made.~~

~~(3)Consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. In making this finding, the state board shall consider how many owners of dwelling units served by domestic wells in the service area have provided, or are likely to provide, written consent to extension of service. The state board need not find that any specific percentage of the owners of dwelling units served by domestic wells in the service area are likely to consent to the consolidation or extension of service to serve their dwelling unit.~~

~~(4)There is no pending local agency formation commission process that is likely to resolve the problem in a reasonable amount of time.~~

~~(5)Concerns regarding water rights and water contracts of the subsumed and receiving water systems have been adequately addressed.~~

~~(6)Consolidation or extension of service is an effective and cost-effective means to provide an adequate supply of safe drinking water.~~

~~(7)The capacity of the proposed interconnection needed to accomplish the consolidation is limited to serving the current customers of the subsumed water system, infill sites within the community served by the subsumed water system, residents of disadvantaged communities in existence as of the date of consolidation and that are located along the service line connecting the subsumed water system and the receiving water system, and vacant lots within the community served by the subsumed water system that are zoned to allow residential use and have no more than one other vacant lot between that parcel and an infill parcel, including capacity needed for services such as firefighting.~~

~~(e)Upon ordering consolidation or extension of service, the state board shall do all of the following:~~

~~(1)As necessary and appropriate, as determined by the state board, compensate the receiving water system for any capacity lost as a result of the consolidation or extension of service either by paying the water system's capacity charge set out in the water system's adopted rate structure or by providing additional capacity needed as a result of the consolidation or extension of service, and by paying legal fees. When the receiving water system is compensated for capacity lost by payment of a capacity charge, the capacity charge shall be paid only to the extent that it does not exceed the reasonable cost of providing the service in accordance with Section 66013 of the Government Code. If capacity beyond what is needed for consolidation is provided by a project funded through the state board, the state board shall retain an option to use that capacity for future consolidations, without paying additional capacity charges, for five years, unless it releases that option in writing. Funding pursuant to this paragraph is available for the general purpose of providing financial assistance for the infrastructure needed for the consolidation or extension of service and does not need to be specific to each individual consolidation project. The state board shall provide appropriate financial assistance for the water infrastructure needed for the consolidation or extension of service. The state board's existing financial assistance guidelines and policies shall be the basis for the financial assistance.~~

~~(2)Ensure payment of standard local agency formation commission fees caused by state board-ordered consolidation or extension of service.~~

~~(3)Adequately compensate the owners of a privately owned subsumed water system for the fair market value of the system, as determined by the Public Utilities Commission or the state board.~~

~~(4)Coordinate with the appropriate local agency formation commission and other relevant local agencies to facilitate the change of organization or reorganization.~~

~~(5)If ordering consolidation or extension of service between two water systems, consider any existing domestic wells within the service area that could also be subject to consolidation or extension of service pursuant to this section.~~

~~(6)If ordering consolidation or extension of service to a community containing residences served by domestic wells, promptly take all reasonable steps to obtain written consent to the consolidation or extension of service from an owner of each residence served by a domestic well.~~

~~(f)If funds are appropriated for this purpose, the state board may make funds available for the purposes of subdivision (e), as necessary and appropriate, to the receiving water system, the subsumed water system, or an administrator providing full oversight of construction or development projects related to a consolidation or extension of service.~~

~~(g)(1)For purposes of this section, fees, charges, and terms and conditions that may be imposed on new and existing customers of a receiving water system shall be subject to the following limitations:~~

~~(A)The consolidated water system shall not increase charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit.~~

~~(B)Except as provided in paragraph (2), fees or charges imposed on a customer of a subsumed water system~~

~~shall not exceed the costs of the service.~~

~~(C)Except as provided in paragraph (2), the receiving water system shall not charge any fees to, or place conditions on, customers of the subsumed water system that it does not charge to, or impose on, new customers that are not subject to the consolidation with the receiving water system.~~

~~(2)(A)Notwithstanding subparagraph (B) or (C) of paragraph (1), if costs incurred by the receiving water system in completing the consolidation or extension of service are not otherwise recoverable as provided in subparagraph (B) of this paragraph, the receiving water system may charge fees to customers of the subsumed water system to recover those costs.~~

~~(B)A receiving water system shall not charge a fee pursuant to subparagraph (A) for costs that are otherwise recoverable from the state, the federal government, programs administered by local agencies, parties responsible for causing contamination that the consolidation or extension of service is designed to address, or other sources, as determined by the state board.~~

~~(h)The state board shall not, pursuant to this section, fund public works or upgrades unrelated to the delivery of an adequate supply of affordable, safe drinking water, including, but not limited to, the installation of streetlights, sidewalks, curbs, and gutters. A local agency's decision whether to provide these public works or upgrades shall not delay the consolidation or extension of service.~~

~~(i)When a public water system is operated by a local educational agency, the state board may order a receiving water system to consolidate or extend service to a public water system operated by a local educational agency pursuant to this section if both the following additional conditions are met:~~

~~(1)The local educational agency serves students from one or more census blocks that are disadvantaged communities.~~

~~(2)The state board obtains a written determination from the local educational agency that the state board's analysis in the financing package, developed pursuant to subparagraph (B) of paragraph (8) of subdivision (b), indicates that consolidating or extending service would not result in additional unacceptable costs to the local educational agency and would result in safe drinking water being available to the local educational agency.~~

~~(j)An order pursuant to this section shall not require consolidation or extension of service to a residence served solely by a domestic well until an owner of the affected residence provides written consent to the consolidation or extension of service. Any domestic well owner within the consolidation or extended service area that does not provide written consent shall be ineligible, until the consent is provided, for any future water-related grant funding from the state other than funding to mitigate a well failure, disaster, or other emergency.~~

~~(k)A finding that a disadvantaged community, in whole or in part, is substantially reliant on at-risk domestic wells shall be based on the maps created pursuant to paragraph (1) of subdivision (a) of Section 116772 and inspection or testing of the domestic wells showing an imminent risk of failing to provide an adequate supply of safe drinking water.~~

~~(l)The state board may prioritize consolidation of an at-risk water system that has historically been overburdened by pollution and industrial development or faced other environmental justice hurdles.~~

~~(m)Division 3 (commencing with Section 56000) of Title 5 of the Government Code does not apply to an action taken by the state board pursuant to this section.~~

~~(n)If sufficient funding is available, the state board may order consolidation of sewer service along with an order of consolidation of drinking water pursuant to this section, when both the subsumed water system and receiving water system provide sewer service, after doing all of the following:~~

~~(1)Consulting with, and fully considering input from, the relevant regional water board.~~

~~(2)Consulting with, and fully considering input from, the receiving water system.~~

~~(3)Conducting outreach to ratepayers and residents served by the receiving water system and subsumed water system, including identifiable local community groups. These outreach efforts shall gauge community support for consolidation of the subsumed water system. The state board shall consider the results of this outreach when deciding whether to order consolidation of the sewer services of the subsumed water system.~~

~~SEC. 2. Section 116686 of the Health and Safety Code is amended to read:~~

~~116686.(a)(1)To provide an adequate supply of affordable, safe drinking water to disadvantaged communities, voluntary participants, and public water systems that have demonstrated difficulty in maintaining technical, managerial, and financial capacity and to prevent fraud, waste, and abuse, the state board may do any of the following, if sufficient funding is available:~~

~~(A)(i)Contract with, or provide a grant to, an administrator to provide administrative, technical, operational, legal, or managerial services, or any combination of those services, to a designated water system to assist the designated water system with the provision of an adequate supply of affordable, safe drinking water, which services may include steps necessary to enable consolidation:~~

~~(ii)To fulfill the requirements of this section, the state board may contract with more than one administrator, but only one administrator may be assigned to provide services to a given designated water system:~~

~~(iii)An administrator may provide services to more than one designated water system:~~

~~(B)Order a designated water system to accept administrative, technical, operational, legal, or managerial services, including full management and control of all aspects of the designated water system, from an administrator selected by the state board:~~

~~(C)Order a designated water system to accept administrative, technical, operational, legal, or managerial services from an administrator appointed by the state board for full oversight of construction or development projects related to a consolidation or extension of service, including, but not limited to, accepting loans and grants issued by the state board and entering into contracts on behalf of the designated water system:~~

~~(2)In performing its duties pursuant to paragraph (1), the state board may use criteria from the handbook adopted pursuant to subdivision (g):~~

~~(3)When contracting with, or ordering a designated water system to accept, an administrator pursuant to paragraph (1), the state board may also require the administrator to provide administrative, technical, legal, or managerial services for any sewer service provided by the designated water system:~~

~~(b)Unless the state board has already held a public meeting pursuant to subdivision (b) of Section 116682, the state board shall do all of the following to determine that a public water system or state small water system is a designated water system:~~

~~(1)Provide the public water system or state small water system with notice and an opportunity to show either of the following:~~

~~(A)That the public water system or state small water system has neither consistently failed to provide an adequate supply of affordable, safe drinking water nor is it an at-risk water system:~~

~~(B)That the public water system or state small water system has taken steps to timely address its failure to provide an adequate supply of affordable, safe drinking water and that it is not an at-risk water system:~~

~~(2)(A)Conduct a public meeting in a location as close as feasible to the affected community:~~

~~(B)The state board shall make reasonable efforts to provide a 30-day notice of the public meeting to affected ratepayers, renters, and property owners:~~

~~(C)The state board shall provide representatives of the public water system or state small water system, affected ratepayers, renters, and property owners with an opportunity to present oral and written comments at the public meeting:~~

~~(D)The state board shall provide at the meeting an opportunity for public comment:~~

~~(3)Provide the public with an opportunity to submit comments by mail or electronically during the 30-day notice period and for at least one week after the public meeting described in paragraph (2):~~

~~(4)If the public water system is operated by a local educational agency, obtain the local educational agency's agreement, in writing, to the appointment of an administrator:~~

~~(c)The state board shall make financial assistance available to an administrator of a designated water system, as appropriate and to the extent that funding is available:~~

~~(d)The authority granted to an administrator by the state board pursuant to subdivision (a) may include, but shall not be limited to, the authority to do all of the following:~~

~~(1) Expend available moneys for capital infrastructure improvements that the designated water system needs to provide an adequate supply of affordable, safe drinking water or to execute a consolidation ordered pursuant to Section 116682.~~

~~(2) Set and collect user water rates and fees, subject to approval by the state board. The state board shall consider affordability when approving water rates and fees. The provisions of this section are subject to all applicable constitutional requirements, including Article XIII D of the California Constitution.~~

~~(3) Expend available moneys for operation and maintenance costs of the designated water system.~~

~~(4) Expend available moneys necessary to achieve consolidation, including conducting feasibility or planning studies, or addressing outstanding technical or legal issues.~~

~~(e) The state board shall work with the administrator of a designated water system and the communities served by that designated water system to develop, within the shortest practicable time, adequate technical, managerial, and financial capacity to deliver an adequate supply of affordable, safe drinking water so that the services of the administrator are no longer necessary.~~

~~(f) A designated water system shall not be responsible for any costs associated with an administrator that are higher than the costs necessary to maintain the designated water system and provide an adequate supply of affordable, safe drinking water or provision of sewer service.~~

~~(g) Before ordering a designated water system to accept administrative, technical, operational, legal, or managerial services from an administrator pursuant to subdivision (a), the state board shall develop standards, terms, and procedures in a handbook adopted consistent with the process provided for in subdivision (a) of Section 116760.43 for all of the following:~~

~~(1) Ensuring compliance with subdivision (f).~~

~~(2) Providing opportunity for public comment on the selection of an administrator and the services to be provided.~~

~~(3) Providing public access to budgets, ownership and financial information, and other documents and records related to the provision of water service to the designated water system or affected residences and to the management of the designated water system by the administrator.~~

~~(4) Providing regular public meetings, notifications, opportunities for public comment, and other forms of engagement with customers of the designated water system for significant decisions or actions made on behalf of the designated water system, including, but not limited to, establishing operating budgets, altering water rates, adopting system policies, entering into long-term contracts or financing commitments, and developing system projects or plans.~~

~~(5) Formal requests to the state board to reverse or modify a decision of an administrator or to request substitution of an administrator.~~

~~(6) Ensuring an administrator acts in the best interests of the community served.~~

~~(7) Development and approval of a post-administrator drinking water service plan to ensure compliance with subdivision (e). Development of the plan shall include, but is not limited to, an evaluation of long-term public governance or community ownership options.~~

~~(h) An administrator appointed pursuant to this section for a designated water system shall not be liable for claims by past or existing ratepayers, or those who consumed water provided through the designated water system, if good faith, reasonable effort, and ordinary care were used by the administrator to assume possession of, or to operate, the designated water system.~~

~~(i) An administrator appointed pursuant to this section for a designated water system shall not be liable for claims by past or existing ratepayers, or those who consumed water provided through the designated water system, for any injury or damages that occurred before the commencement of the operation period.~~

~~(j) This section does not limit or supersede any other law authorizing claims against the state board or providing a defense to liability, and shall not be construed to create any new or expanded basis for liability.~~

~~(k) Nothing in this section shall be construed to do any of the following:~~

~~(1)Relieve a water district, water wholesaler, or any other entity from complying with any provision of federal or state law, including those pertaining to drinking water quality.~~

~~(2)Impair any cause of action by the Attorney General, a district attorney, a city attorney, or other public prosecutor, or impair any other action or proceeding brought by, or on behalf of, a regulatory agency.~~

~~(3)Impair any claim alleging the taking of property without compensation within the meaning of either the Fifth Amendment to the United States Constitution or Section 19 of Article I of the California Constitution.~~

~~(4)Relieve any person or entity from liability for action or inaction in bad faith, or without reasonable effort or ordinary care.~~

~~(l)Nothing in this section shall absolve, indemnify, or protect a prior operator, designated water system, or individual from liability based on an act or failure to act prior to the operation period.~~

~~(m)Administrative and managerial contracts pursuant to this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and may be awarded on a noncompetitive bid basis as necessary to implement the purposes of this section.~~

~~(n)For purposes of this section, a local government, as defined in Article XIII C of the California Constitution, that sets water rates in accordance with Article XIII D of the California Constitution shall be deemed to be providing affordable water.~~

~~(o)This section does not apply to a charter city, charter county, or charter city and county.~~

~~(p)(1)For purposes of this section, an administrator is authorized to act on behalf of an affected residence to the same extent, and in the same manner, as a designated water system with the consent of the affected residence.~~

~~(2)For purposes of this section, where an administrator is authorized to act on behalf of a designated public water system, it may also act on behalf of a voluntary participant.~~

~~(q)The Legislature finds and declares that the funding provided to a state small water system, affected residence, public water system, voluntary participant, or administrator for purposes of this section serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.~~

~~(r)For purposes of this section, the following terms have the following meanings:~~

~~(1)"Administrator" means a person whom the state board has determined is competent to perform the administrative, technical, operational, legal, or managerial services required for purposes of this section, pursuant to criteria set forth in the handbook adopted pursuant to subdivision (g). Notwithstanding any other law, a privately owned public utility may serve as an administrator for purposes of this section.~~

~~(2)"Designated water system" means any of the following:~~

~~(A)A public water system or state small water system that has been ordered to consolidate pursuant to Section 116682.~~

~~(B)A public water system or state small water system that serves a disadvantaged community and that the state board finds consistently fails to provide an adequate supply of affordable, safe drinking water.~~

~~(C)An at-risk water system.~~

~~(3)"Voluntary participant" means the owner of a domestic well or state small water system who has agreed to accept financial assistance pursuant to Chapter 4.6 (commencing with Section 116765) for the provision of an adequate and affordable supply of safe drinking water.~~


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AB-3277 Local agency formation commission: districts: property tax. (2023-2024)

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Date Published: 02/27/2024 09:00 PM

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 3277

Introduced by Committee on Local Government

February 27, 2024

An act to amend Section 56810 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 3277, as introduced, Committee on Local Government. Local agency formation commission: districts: property tax.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, establishes the sole and exclusive authority and procedures for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. Existing law requires proceedings for the formation of a district to be conducted as authorized by the principal act of the proposed district, and authorizes the local agency formation commission in each county to serve as the conducting authority, as specified. Existing law requires a commission to determine the amount of property tax revenue to be exchanged by an affected local agency, as specified, if the proposal includes the formation of a district, as defined.

This bill would, instead, require a commission to determine the amount of property tax revenue to be exchanged by an affected local agency if the proposal includes the formation of a district and the applicant is seeking a share of the 1% ad valorem property taxes. By adding to the duties of a local agency formation commission, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 56810 of the Government Code is amended to read:

56810. (a) (1) If the proposal includes the incorporation of a city, as defined in Section 56043, the commission shall determine the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section and Section 56815.

(2) If the proposal includes the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, *and if the applicant is seeking a share of the 1 percent ad valorem property taxes*, the commission shall determine the amount of property tax to be exchanged by the affected local agency pursuant to this section.

(b) The commission shall notify the county auditor of the proposal and the services which the new jurisdiction proposes to assume within the area, and identify for the auditor the existing service providers within the area subject to the proposal.

(c) If the proposal would not transfer all of an affected agency's service responsibilities to the proposed city or district, the commission and the county auditor shall do all of the following:

(1) The county auditor shall determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 93 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by each affected local agency in the prior fiscal year. For purposes of making this determination and the determination required by paragraph (3), "total amount of revenue from all sources available for general purposes" means the total amount of revenue which an affected local agency may use on a discretionary basis for any purpose and does not include any of the following:

(A) Revenue which, by statute, is required to be used for a specific purpose.

(B) Revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services.

(C) Revenue received from the federal government which is required to be used for a specific purpose.

(2) The commission shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal. For purposes of this paragraph, "total net cost" means the total direct and indirect costs that were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost that was funded by any revenues of that agency that are specified in subparagraphs (A), (B), and (C) of paragraph (1).

(3) The commission shall multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal. The county auditor shall adjust the amount described in the previous sentence by the annual tax increment according to the procedures set forth in Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code, to the fiscal year in which the new city or district receives its initial allocation of property taxes.

(4) For purposes of this subdivision, in any county in which, prior to the adoption of Article XIII A of the California Constitution, and continuing thereafter, a separate fund or funds were established consisting of revenues derived from the unincorporated area of the county and from which fund or funds services rendered in the unincorporated area have been paid, the amount of property tax revenues derived pursuant to paragraph (3), may, at the discretion of the commission, be transferred to the proposed city over a period not to exceed 12 fiscal years following its incorporation. In determining whether the transfer of the amount of property tax revenues determined pursuant to paragraph (3) shall occur entirely within the fiscal year immediately following the incorporation of the proposed city or shall be phased in over a period not to exceed 12 full fiscal years following the incorporation, the commission shall consider each of the following:

(A) The total amount of revenue from all sources available to the proposed city.

(B) The fiscal impact of the proposed transfer on the transferring agency.

(C) Any other relevant facts which interested parties to the exchange may present to the commission in written form.

The decision of the commission shall be supported by written findings setting forth the basis for its decision.

(d) If the proposal would transfer all of an affected agency's service responsibilities to the proposed city or district, the commission shall request the auditor to determine the property tax revenue generated for the affected service providers by tax rate area, or portion thereof, and transmit that information to the commission.

(e) The executive officer shall notify the auditor of the amount determined pursuant to paragraph (3) of subdivision (c) or subdivision (d), as the case may be, and, where applicable, the period of time within which and the procedure by which the transfer of property tax revenues will be effected pursuant to paragraph (4) of subdivision (c), at the time the executive officer records a certificate of completion pursuant to Section 57203 for any proposal described in subdivision (a), and the auditor shall transfer that amount to the new jurisdiction.

(f) The amendments to this section enacted during the 1985–86 Regular Session of the Legislature shall apply to any proposal described in subdivision (a) for which a certificate of completion is recorded with the county recorder on or after January 1, 1987.

(g) For purposes of this section, "prior fiscal year" means the most recent fiscal year for which data on actual direct and indirect costs and revenues needed to perform the calculations required by this section are available preceding the issuance of the certificate of filing.

(h) An action brought by a city or district to contest any determinations of the county auditor or the commission with regard to the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section shall be commenced within three years of the effective date of the city's incorporation or the district's formation. These actions may be brought by any city that incorporated or by any district that formed on or after January 1, 1986.

(i) This section applies to any city that incorporated or district that formed on or after January 1, 1986.

(j) The calculations and procedures specified in this section shall be made prior to and shall be incorporated into the calculations specified in Section 56815.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.


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SB-1209 Local agency formation commission: indemnification. (2023-2024)

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL
NO. 1209

Introduced by Senator Cortese

February 15, 2024

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1209, as introduced, 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, arising from or relating to the action or determination by the LAFCO.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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. 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 arising from or relating to the action or determination by the commission.

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Carolyn Emery

Executive Officer

Scott Smith

General Counsel

March 13, 2024

Honorable Juan Carillo, Chair
Assembly Local Government Committee
1020 N Street
Sacramento, CA 95814

RE: **Support** – AB 3277 (Committee on Local Government)
Omnibus Bill

Dear Chair Carillo:

The Local Agency Formation Commission of Orange County (OC LAFCO) is pleased to support the Assembly Local Government Committee Omnibus Bill (AB 3277), sponsored by the California Association of Local Agency Formation Commissions (CALAFCO).

AB 3277 proposes a technical and non-substantive change to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), which governs the work of LAFCOs. The CKH Act provides LAFCOs with the authority to process proposals for the formation of a district. In part to the formation of a district, LAFCOs are required to determine the property tax exchange when the affected agency is seeking a share of the one percent ad valorem property tax. The proposed amendment would allow LAFCOs to exclude the requirement of determining the property tax revenue to be exchanged if the affected agency is not seeking a share of the one percent ad valorem property tax.

The Commission appreciates the effort of CALAFCO and the Committee's authorship of this bill and support of the mission of LAFCOs.

Respectfully,

Donald P. Wagner
Chair

cc: Members, Assembly Committee on Local Government
Jimmy MacDonald, Consultant, Assembly Local Government Committee
Rene La Roche, Executive Director, CALAFCO
Orange County Legislators

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Scott Smith
General Counsel

March 13, 2024

Senator David Cortese
California State Senate
1021 O Street, Suite 6630
Sacramento, CA 95814

RE: **Support** – SB 1209 (Cortese) Local Agency Formation
Commission: Indemnification

Dear Senator Cortese:

The Local Agency Formation Commission of Orange County (OC LAFCO) is pleased to support Senate Bill 1209, sponsored by the California Association of Local Agency Formation Commissions (CALAFCO). SB 1209 proposes an amendment to State law that would explicitly authorize LAFCOs to require applicants to indemnify the Commissions against litigation. The proposed amendment seeks similar authority to that granted to counties, cities, and special districts.

SB 1209 addresses a decision made by the California Second District Court of Appeals in the case of San Luis Obispo LAFCO v. City of Pismo Beach. The court opined that it was not the authority of LAFCOs to require indemnification by the applicant as a condition of processing an application. Absent the indemnification authority and considering LAFCO funding is statutorily provided in three parts from the county, cities and special districts within a county, the costs to defend litigation would be absorbed by all of LAFCO's funding agencies.

Consequently, SB 1209 would provide LAFCOs the authority to require indemnification from applicants, which prevents costs associated with defending LAFCOs from litigation and removes the possibility of an applicant seeking litigation based on the recent court decision to challenge a decision made by LAFCOs.

OC LAFCO supports the effort of SB 1209 and appreciates your authorship of this important legislation.

Respectfully,

Donald P. Wagner
Chair

cc: Anton Favorini-Csorba, Consultant, Senate Republican Caucus
Rene La Roche, Executive Director, CALAFCO
Orange County Legislators