

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF AUGUST 26, 2020

REGULAR MEETING

TO: Shiva Frentzen, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Assistant Executive Officer

AGENDA ITEM #8A: OTHER BUSINESS – LEGISLATION

RECOMMENDATION

Staff recommends that the Commission receive the following update on the 2019-2020 Legislative Session, including the attached summary of LAFCO-related legislation and the authorized July 23, 2020 letter of Support for Senate Bill 414 (Caballero), regarding the Smally System Water Authority Act. No Commission action is requested.

REASON FOR RECOMMENDED ACTION AND BACKGROUND

SB 414 (Caballero) – Small System Water Authority Act of 2019.

As currently written, SB 414 gives the State Water Resources Control Board (SWRCB) authority to mandate the dissolution of existing drinking water systems (public, mutual, private) and authorize formation of a new small system water authority (SSWA) that will have powers to absorb, improve, and competently operate noncompliant public water systems. The SWRCB already has the authority to mandate consolidation of these systems, this would add the authority to mandate dissolution and formation of a new public agency; LAFCO would be responsible for dissolving any state mandated public agency dissolution, and the formation of the new water authority. The bill has been stuck in Assembly Appropriations placed on the suspense file since August 2019 but is not yet dead.

Introduced: 2-20-2019, last amended 6-25-2019.

Status: Assembly: 8-21-2019 Com. on Appropriations, placed on suspense file.

As currently written, SB 414 is very similar to AB 2050 (Caballero) from 2018, which passed the Legislature but was vetoed by Governor Brown. SB 414 is sponsored by the Eastern Municipal Water District and the CA Municipal Utilities Association. CALAFCO has been working cooperatively with the sponsors and author for several years now on the bill and have very few concerns with the bill as currently written, but strongly oppose the proposed amendments.

PROPOSED AMENDMENTS: There are currently proposed pending amendments not yet in print being negotiated by the author and sponsors with Assembly Appropriations that remove LAFCO authority in the formation of the new water authority and give that quasi-legislative authority to the SWRCB. Further LAFCO will no longer have any authority in the dissolution of a public water supplier as part of the formation of the new authority, and all LAFCO funding for what is required to be done by LAFCO is being eliminated.

The proposed pending amendments have a substantive negative impact to LAFCOs and set a dangerous precedent by giving a state agency (not the Legislature) quasi-legislative authority to for a new water authority. Though not yet in print, the amendments are currently being negotiated in the Assembly Appropriations Committee where the bill is currently being held in suspense. Appropriations is expected to take action on its suspense folder before August 24.

On July 23, CALAFCO sent out an urgent call for action to member LAFCOs, calling for two letters in opposition of the proposed amendments to address the policy and fiscal issues of the proposed amendments, one to Senator Caballero and one to the Assembly Appropriations Committee. CALAFCO sent similar letters in opposition of the proposed amendments, to Senator Caballero, the Assembly Committees on Appropriations, Environmental Safety and Toxic Materials, and Local Government; and the Senate Committees on Environmental Quality and Governance and Finance. Due to the time-sensitive nature of the request, your Executive Officer consulted with Chair Frentzen, consistent with the Commission's legislative policies, and authorized letters opposing the proposed amendments to Senator Caballero and the Assembly Appropriations Committee (**Attachments A and B**).

CALAFCO UPDATE AS OF 8/10/20: After discussions with the author's staff and sponsors regarding CALAFCO's concerns, additional amendments are expected that address some but not all of CALAFCO's previous concerns. The primary concerns of LAFCO exclusion from the formation process, LAFCO exclusion from the dissolution process, and unclear funding language are still cause for great concern and CALAFCO will retain an OPPOSE position. Further, CALAFCO has not yet reviewed the pending amendments to ensure they are as stated by the sponsors. Changes are reported to be as follows:

- Added language clarifying that LAFCOs are on the list of notified entities under Section 78033(a)(1) when the State Board intends to form a small system water authority (SSWA);
- Added language in 78033(a)(2)(A) to make sure the LAFCo is notified when an entity wishes to voluntarily join a SSWA;
- Added language in 78033(a)(2)(B) to notify a LAFCO when the public issues a petition to join a SSWA;
- Added language in 78033(b) to notify a LAFCo when a dependent special district wishes to opt-in to an authority;
- Added language identifying the "interim operator" in 78037 (a)(4) as the entity to whom the service, assets and liabilities should be transferred;

- Added language in 78035(c) requiring comments received by the LAFCO be considered by the SWRCB and formation coordinator on the draft conceptual formation plan prior to the document being made public;
- Added language in Section 78038 requiring the State board to respond to the contents of the report; and
- Removed reference to “extraordinary” costs to all allow all LAFCO costs to be funded by the SWRCB and added language in the Safe Drinking Water Fund Expenditure Plan clarifying that these costs are an eligible expense.

Although the second round of proposed amendments alleviate some of the minor concerns with the initial proposed amendments, they do not appear to address the larger issues. Until the amendments are finalized in print, it is difficult to know what exactly will, or will not, be included in the bill language. Staff will provide the amended bill language to the Commission prior to the August 26 meeting, if available.

Attachments

Attachment A: Signed Letter to Senator Caballero in Opposition of Proposed Amendments to SB 414

Attachment B: Signed Letter to the Assembly Appropriations Committee in Opposition of Proposed Amendments to SB 414

Attachment C: CALAFCO Daily Legislative Report as of August 17, 2020