

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF AUGUST 26, 2015

REGULAR MEETING

TO: Ken Humphreys, Chairman, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Policy Analyst

AGENDA ITEM #10A: OTHER BUSINESS – LEGISLATION

RECOMMENDATION

Staff recommends that the Commission receive the following summary of LAFCO-related legislation for the 2015-2016 Legislative Session, including the following letters sent on behalf of the Commission from your Executive Officer, since LAFCO last met at the May 27 meeting:

- Oppose As Amended for Senate Bill 239 (Hertzberg) – Local Services: Contracts: Fire Protection Services (Attachment A)
- Support for AB 1532 (Committee on Local Government) – Cortese-Knox-Hertzberg Omnibus Bill (Attachment B)

REASON FOR RECOMMENDED ACTION AND BACKGROUND

The State Legislature is in the first year of the current two-year legislative cycle. The following is a summary of current bills which may affect LAFCO:

Oppose

SB 239 (Hertzberg) – Local Services: Contracts: Fire Protection Services

Current law permits a city or district to provide extended services, as defined, outside its jurisdictional boundaries only if it first requests and receives written approval from the local agency formation commission in the affected county. Under current law, the commission may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under specified circumstances. This bill would, with certain exceptions, permit a public agency to exercise new or extended services outside the public agency's current service area pursuant to a fire protection contract, as defined, only if the public agency receives written approval from the local agency formation commission in the affected county.

As amended on June 1, SB 239 sets the following requirements for the application of service extensions relating to fire protection services. The bill calls for a Fire Protection Contract to be submitted to LAFCO if the fire service extension (1) affects an area

greater than 25% of the service area or (2) Changes the employment status of more than 25% of employees of any affected agencies. Prior to submitting the application for service extension to LAFCO, the applicants must provide either evidence that all affected agency employee unions consent to the request and conduct a public hearing; or, provide at least 30 days notice of the public hearing with such notice being sent to each affected public agency and all affected employee unions and shall include a copy of the proposed agreement. The bill requires contents of the Contract Plan to include: (1) Cost of providing services to be extended; (2) Cost to customers; (3) An ID of existing service providers; (4) Financing plan; (5) Alternatives to the extension; (6) Enumeration and description of services proposed; (7) Level and range of services proposed; (8) Timeline for services to be provided; and (9) Improvements or upgrades that would be imposed or required to provide services. Further, it requires a comprehensive Fiscal Analysis to be conducted. It further requires the CFA to include (1) Cost to provide services for three years; (2) Cost comparison; (3) Estimated revenue for three years; and (4) Cost/revenue effects to any affected agency. The bill also outlines determinations the commission must make that include the provider of services for the extension of service will build a "reasonable reserve" during the three years following the effective date of the contract.

In El Dorado County, Senate Bill 239 would undermine the efforts local fire districts are making towards contracting and shared services agreements with one another by requiring a costly comprehensive fiscal analysis and requiring that an agreement is subject to a review by the firefighters associations and a discretionary, conditional approval by LAFCOs, resulting in additional costs. The benefits of the process as outlined in SB 239 are unknown to this LAFCO; but the potential harm by requiring burdensome studies and unnecessary scrutiny is very large. It is conceivable that if these requirements were law, all of the negotiation efforts currently underway between the fire districts in El Dorado County would not only be discouraged, but stop altogether. El Dorado LAFCO staff believes that locally elected officials and their administrators are in the best position to provide the necessary direction to their agency in ensuring sustainable, cost effective fire and EMS services. If that means districts enter into contracts among themselves (or with CalFIRE) to achieve that goal, then they should retain that authority. To add more obstacles, such as giving LAFCOs the ability to amend or disapprove an agreement entered into by two or more local governing boards, undermines the discretion of those officials in pursuing contracts for service as a potential solution.

On May 27, 2015, El Dorado LAFCO sent a letter of opposition to Senate Bill 239. Since then, the bill has been substantially amended to remove some of those concerns; however, not all. After reviewing the amended bill, the Executive Officer sent a subsequent letter reaffirming this LAFCO's opposition to SB 239, dated July 13, 2015 (Attachment A).

Chaptered into State Law

SB 88 (Committee on Budget and Fiscal Review) – Water

Chaptered: SB 88 was signed by Governor Brown and chaptered into State Law on June 24, 2015. SB 88 authorizes the State Water Resources Control Board to order consolidation with a receiving water system where a public water system, or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water. This bill authorized the State Board to order the

extension of service to an area 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.

This bill is the same as AB 115. As amended and chaptered, SB 88 gives the State Water Resources Control Board (SWRCB) direct authority to mandate either an extension of service or consolidation of water systems, including public and private systems, and individual wells. The bill focuses on disadvantage communities. Prior to ordering the consolidation, the SWRCB must make certain determinations and take certain actions, including conducting a public hearing in the affected territory. They are also required to "consult with and fully consider input from the relevant LAFCO, the PUC, and either the city or county (whichever has land use authority). Entities are allowed six months to find workable solutions before the SWRCB mandates the action. Prior to making the order, the SWRCB must make certain determinations.

Upon making the order, the SWRCB must make funding available to the receiving water system for capacity building; however, no operations and maintenance funding is provided to adequately compensate the subsumed system, or for payment of LAFCO processing fees for the work they will need to do to facilitate the action (which is as of now undefined). The bill also contains certain CEQA exemptions and liability relief for the subsuming water entity, as well as various penalties. Finally, the bill makes legislative findings and declarations as to the reason for the SWRCB to have these powers, which has been taken directly from the legislative findings and declarations of CKH and the reason LAFCOs have the powers they do.

CALAFCO attempted to work with the administration for some time in defining the best possible process for these actions. However, for the most part, amendments proposed were dismissed. CALAFCO has a number of concerns regarding the proposed process, not the least of which is the language in section 116682 (g) (the way it is worded now, it exempts the entire consolidation process and there is a legal argument that this would divest LAFCO of any authority to complete the consolidation since that authority is solely contained in CKH). Further, CALAFCO requested indemnification for LAFCO as they implement section 11682(e)(4), a request that was also dismissed. In mid-July, the administration has once again reached out to LAFCOs to help with the implementation process. That meeting will take place August 13.

AB 115 (Committee on Budget) – Water

This bill is identical to SB 88, which was signed by Governor Brown and chaptered into State Law on June 24, 2015.

AB 1532 (Committee on Local Government) – Local Government: Omnibus

AB 1532 is the annual Omnibus bill for the Cortese-Knox-Hertzberg Reorganization Act of 2000, which makes technical, non-substantive clean-up corrections to the Act. This annual bill includes technical changes to the Act which are necessary to help clarify and streamline the LAFCO process, ultimately resulting in less ambiguity in the law. As LAFCO commissions across the State implement the Act, small inconsistencies are found or clarifications are needed to make the law as unambiguous as possible. AB 1532 makes several minor technical changes, corrects obsolete and incorrect code references, and makes minor updates to several outdated sections. Without making any policy changes, the revised language greatly clarifies the laws and eliminates

outdated and confusing language thereby creating a significant increase in the clarity of the Act for all stakeholders.

Chaptered: AB 1532 was signed by Governor Brown and chaptered into State Law on July 15, 2015. In addition to the May 27, 2015 letter of support from the Commission, the Executive Office sent a subsequent letter to Governor Brown (Attachment B) urging him to sign AB 1532 on July 8, 2015, at the request of CALAFCO.

Bills of Interest

SB 552 (Wolk) – Water

SB 552 is currently being amended as a vehicle to clean up the water consolidation legislation passed through budget trailer bill SB 88. Specifically, SB 552 defines the process for the State Water Resources Control Board to order the consolidation of public and/or state small water systems. At this time, the language in the bill is preliminary and further amendments are proposed. As currently amended, the bill contains language requiring the State to pay any LAFCO fees caused by a State Water Resources Control Board-ordered consolidation or extension of service. However, there are many aspects to the process that have still yet to be defined. SB 552 in its current form is included as Attachment C; staff will provide the most up-to-date version of SB 552 at the Commission meeting.

AB 402 (Dodd) – Local Agency Services: Contracts

AB 402 would establish a 5-year pilot program, until January 1, 2021, for the Napa and San Bernardino LAFCO Commissions to authorize an extension of services outside boundaries and spheres to support existing or planned uses pending the commission's determination that (1) a service deficiency was identified and evaluated in a MSR; and (2) the extension of services will not result in adverse impacts on open space or agricultural lands or have growth inducing impacts. AB 402 was amended June 30 to only be applicable for the Napa and San Bernardino LAFCOs.

AB 448 (Brown) – Local Government finance: Property Tax Revenue Allocations: Vehicle License Fee Adjustments

Current property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally provides that each jurisdiction shall be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. AB 448 would modify these reduction and transfer provisions, for the 2015-16 fiscal year and for each fiscal year thereafter, by providing for a vehicle license fee adjustment amount calculated on the basis of changes in assessed valuation.

As introduced, this bill is identical to AB 1521 (Fox) from last year. AB 448 reinstates the VLF payment (through ERAF) and changes the way that the growth in the VLF adjustment amount (property tax in lieu of VLF) is calculated starting in FY 2015-16 to include the growth of assessed valuation, including in an annexed area, from FY 2004-05 to FY 2015-16. Beginning in FY 2016-17, the VLF adjustment amount would be the jurisdiction's annual change in the assessed valuation.

AB 656 (Garcia, Cristina) – Joint Powers Agreements: Mutual Water Companies

As amended, AB 656 would authorize a mutual water company to enter into a joint powers agreement with a public water agency for the purposes of either risk-pooling or the provision of technical support, continuing education, safety engineering, operational and managerial advisory assistance to be provided to the members of that joint powers agency.

AB 707 (Wood) – Agricultural Land: Williamson Act Contracts: Cancellation

Current law provides for the procedure to cancel a Williamson Act contract entered into under the provisions of the California Land Conservation Act of 1965 and provides that the landowner and the Department of Conservation may agree on the cancellation value of the land. AB 707 would repeal the provision that allows cancellation of the valuation of the land.

AB 851 (Mayes) – Local Government: Organization: Disincorporations

Current law authorizes a local agency which is conducting proceedings for the incorporation of a city, formation of a district, change of organization, a reorganization, a change of organization of a city, or a municipal reorganization to propose the adoption of a special tax on behalf of the affected city or district in accordance with this procedure. AB 851 would additionally authorize a local agency conducting proceedings for the disincorporation of a city to propose the adoption of a special tax on behalf of an affected city in accordance with the above-described procedure.

As amended, AB 851 addresses the long-outdated statutes relating to disincorporation. Although many other areas of CKH have been updated over the past 52 years, the areas pertaining to disincorporations remain in their original format as written in 1963. This bill is sponsored by CALAFCO.

AB 851 does the following: (1) Clarifies the expectation for assignment of responsibility for debt that will continue in existence after disincorporation; (2) Establishes the parameters and requirements for the submission of the Plan for Service for a disincorporation proposal which outlines existing services, the proponent's plan for the future of those services, and whether or not a bankruptcy proceeding has been undertaken; (3) Establishes the responsibilities of LAFCOs in preparing a Comprehensive Fiscal Analysis for disincorporations, the determination of the transfer of property tax revenues previously received by the proposed disincorporating city, and the determination of the transfer of debt to a successor agency or agencies. Further, the bill retains LAFCOs existing authority to impose terms and conditions on a proposed disincorporation as well as the election requirements necessary for approval of disincorporation. The proposed disincorporation statutory changes use the incorporation provisions as a template to propose changes in the disincorporation process.

SB 13 (Pavley) – Groundwater

SB 13 would specify that the State Water Resources Control Board is authorized to designate a high- or medium-priority basin as a probationary basin. This bill would provide a local agency or groundwater sustainability agency 90 or 180 days, as prescribed, to remedy certain deficiencies that caused the board to designate the basin as a probationary basin. This bill would authorize the board to develop an interim plan

for certain probationary basins one year after the designation of the basin as a probationary basin.

While this bill has no direct affect on LAFCOs or water providers in El Dorado County, the formation of groundwater management agencies and groundwater management is of interest, therefore LAFCO will continue to watch the bill.

SB 25 (Roth) – Local Government Finance: Property Tax Revenue Allocation: Vehicle License Fee Adjustments

Reintroduced in December 2014, SB 25 is identical to SB 69 (Roth) from the 203-2014 legislative session. The bill calls for reinstatement of the Vehicle License Fee (VLF) through the Educational Revenue Augmentation Fund (ERAF) for cities that incorporated between January 1, 2004 and January 1, 2012, by providing for a VLF adjustment amount calculated on the basis of changes in assessed valuation. There are no provisions for back payments for lost revenue, but the bill does reinstate future payments beginning in the 2014-15 year for cities that incorporated between January 1, 2004 and January 1, 2012.

SB 272 (Hertzberg) – The California Public Records Act: Local Agencies: Inventory

As amended, SB 272 requires all local agencies (including LAFCOs) to create a catalogue of enterprise systems used by that agency and make that catalogue publicly available upon request in the local agency office, and to post the catalog on the local agency's Internet Web site. The bill would require the catalog to disclose a list of the enterprise systems utilized by the agency, and, among other things, the current system vendor and product.

For purposes of the bill, the author defines enterprise systems as a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both: (1) Is a multi-departmental system or system containing information collected about the public; and (2) A system of record for that agency. Further, the bill defines a system of record as a system that serves as an original source of data within an agency. The bill requires certain pieces of information be disclosed including (1) Current system vendor; (2) Current system product; (3) A brief statement of the system's purpose; (4) A general description of categories, modules, or layers of data; (5) The department that serves as the system's primary custodian; (6) How frequently system data is collected; and (7) How frequently system data is updated. The author has agreed to exclude 911 systems.

Attachments

Attachment A: Opposition Letter for Senate Bill 239 – Fire Service Extensions

Attachment B: Support Letter for Assembly Bill 1532 – CKH Omnibus Bill

Attachment C: SB 552

Attachment D: Legislation Report