

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MARCH 23, 2016

REGULAR MEETING

SUPPLEMENTAL REPORT

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 #8A: OTHER BUSINESS – LEGISLATION

RECOMMENDATION

Staff recommends that the Commission receive the following updated information regarding LAFCO-related legislation for the 2015-2016 Legislative Session and consider directing staff to send letters of support/opposition, as appropriate.

REASON FOR RECOMMENDED ACTION AND BACKGROUND

Since the mailing of the March 23 Commission meeting packet, there have been several updates and proposed amendments to LAFCO-related legislation.

OPPOSE:

SB 1318 (Wolk) – Local Agencies and Water Infrastructure

After much discussion at the March 18 CALAFCO Legislative Committee meeting, CALAFCO has taken a strong Oppose position against SB 1318. As outlined in the Legislation staff memo, SB 1318 will have a significant impact on LAFCOs, including divesting LAFCO of the authority to extend services or annex certain DUCs, adding significant unfunded mandates to LAFCOs, and divesting LAFCO of the authority to approve SOIs involving certain DUCs and instead transferring that authority to voters. For these reasons, staff recommended the Commission authorize a letter of opposition to SB 1318.

However, the window to go on record in opposition to this bill is very limited. Earlier this week CALAFCO issued an urgent call for legislative action from all LAFCOs. SB 1318 is set for its first hearing on March 30 and in order to be listed in the staff analysis as opposed, opposition letters need to be to the committee consultant by close of business March 23. Due to this short deadline which will have passed by the time the Commission meets, the Executive Officer sent a letter of opposition (Attachment C) to Senator Wolk on March 22, on behalf of the Commission.

Opposition letter sent March 22, 2016

SB 1266 (McGuire) – Joint Exercise of Powers Act

Despite strong concerns that SB 1266 might ultimately open the door to LAFCOs having oversight of JPAs, staff initially recommended taking a neutral position towards SB 1266 rather than oppose a bill for what it may lead to in the future. However, at the March 18 CALAFCO Legislative Committee meeting, an additional amendment to Government Code 56430 was proposed as a part of this bill. GC 56430 is the section of the Cortese-Knox-Hertzberg Act (CKH) which directs LAFCOs in conducting municipal service reviews. The tentative amendment is proposed in order to make a cross-reference in CKH to the previously referenced legislation; however, it is not merely a benign cross-reference. The proposed language (underlined) reads, *“In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area, including – but not limited to – information provided to the commission pursuant to Government Code Section 6503.6 and 6503.8...”* This amendment would create a clear link between JPAs and which agencies are to be studied by LAFCO under §56430, which is exactly the concern this LAFCO had regarding this bill. Section 56430 is included in its entirety with the proposed amendment as Attachment D.

Although the proposed amendment has been approved by the CALAFCO Legislative Committee, it has not been vetted yet with any outside stakeholders so it remains uncertain whether it will actually be proposed. If SB 1266 is amended to include the proposed changes to GC 56430 (which won't be known until mid-April), staff recommends the Commission authorize staff to send a letter of opposition to CALAFCO.

Recommendation: OPPOSE IF AMENDED

SUPPORT:**AB 2910 (Committee on Local Government) – Local Government: Omnibus Bill**

AB 2910 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. The bill number and language of the 2016 Omnibus Bill just became available this week, after the packet was sent out. This 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. CALAFCO is the sponsor of this bill.

At the request of the California Professional Firefighter's Association, AB 2910 also includes technical changes to SB 239 to provide consistency in the law. Changes to SB 239 include striking out the word “comprehensive” from “comprehensive fiscal analysis” and changing the wording from “current service area” to “jurisdictional boundaries.” Clarification that the fiscal analysis required by SB 239 is not a “comprehensive fiscal analysis” is a tremendous relief, as that was one of the primary reasons for this LAFCO's opposition to SB 239 last year. These changes are supported by CALAFCO. Due to the size, the full text of AB 2910 is not included as an attachment; however, it is available from staff upon request.

Recommendation: SUPPORT

Attachment C: Opposition Letter to SB 1318

Attachment D: Additional Proposed Amendments to SB 1266

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

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March 22, 2016

Senator Lois Wolk
California State Senate
State Capitol Room 5114
Sacramento, CA 95814

RE: OPPOSITION TO SB 1318

Dear Senator Wolk:

On behalf of the El Dorado Local Agency Formation Commission (LAFCO), I regretfully must oppose your bill, Senate Bill 1318. All Californians deserve adequate and safe drinking water, wastewater facilities and adequate levels of public safety services. This Commission supports your ongoing efforts to address these problems, which persist in many counties, and we support them partnering with you to find the appropriate solutions.

While we share the primary goal behind this legislation, our primary concern is that the outcome of this legislation does not result in any changes to community services or facilities, or address the root causes of the lack of acceptable municipal services to residents and properties located within disadvantaged unincorporated communities (DUCs). We are aware that the California Association of Local Agency Formation Commissions (CALAFCO) has shared concerns with your staff and the bill's sponsor, and we echo those concerns.

Specifically, this bill:

1. **Creates a Significant Unfunded Mandate to LAFCO and Local Agencies.** The studies, analysis and preparation of recommendations regarding underserved disadvantaged communities that would be required imposes an unfunded mandate on all LAFCOs. By law LAFCO is forced to pass those costs on to the cities, counties and special districts which fund the commissions. In these challenging economic times for local agencies this is a difficult proposition. LAFCOs have no other revenue source to fund the required studies. With limited staff, many of these studies will require outside consultants at an added cost.

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COMMISSIONERS

Public Member: Dyana Anderly • Alternate Public Member: Niles J. Fleege
City Members: Mark Acuna, Austin C. Sass • Alternate City Member: John Clerici
County Members: Shiva Frentzen, Brian Veerkamp • Alternate County Member: Michael Ranalli
Special District Members: Dale Coco, MD, Ken Humphreys • Alternate Special District Member: Holly Morrison

STAFF

José C. Henríquez, Executive Officer • Erica Sanchez, Policy Analyst
Denise Tebaldi, Interim Commission Clerk • Kara K. Ueda, Commission Counsel

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2. **Studies Outside of a Sphere.** This legislation would require LAFCOs, for the first time, to study territory outside of an agency's sphere of influence (sphere). This is a significant new requirement and costly study process. The term "adjacent" is undefined and since these communities have no boundary it is impossible to know what constitutes "adjacent."
3. **Studies of Non-Public Agencies.** This legislation would also require LAFCOs, for the first time, to identify the level of water and wastewater services provided by public or private utilities and mutual water companies that serve disadvantaged communities and DUCs. LAFCO has no authority over these entities, and would be prohibited from allowing an extension of service from a city or public agency within or adjacent to a sphere for influence if a private company, public or private utility or mutual water company provided unsafe drinking water or inadequate wastewater infrastructure or services within or adjacent to the same sphere of influence. While LAFCOs support efficient delivery of public services to all residents, the Legislature has not granted LAFCO the authority to regulate or approve service extensions of the non-public service providers included in this legislation. This will surely lead to confusion, potential conflict and likely litigation.
4. **Precedent-setting Change in Final Authority of Spheres.** The bill changes existing law by removing from LAFCO authority the final sphere approval and instead puts that authority in the hands of the voters. This is in direct conflict with the existing definition of a sphere. The legislature has established a framework that gives voters and landowners the final say in changes of jurisdiction. Spheres are not jurisdictional changes; they are planning tools. Planning functions are not typically delegated to voters. In addition, the bill proposes an inconsistent use of the term "voters" and "residents", thereby creating confusion as to the intent. Finally, the bill is silent on how the costs for these elections will be covered, creating another State unfunded mandate whose costs will be borne by some local agency.
5. **Removes LAFCO Discretion.** When considering a change of organization pursuant to Government Code Section 56133, LAFCO has the discretion to consider the unique local circumstances and conditions that exist. This is an important and basic construct within the legislatively stated purpose of LAFCOs. This bill removes that discretion and authority.
6. **One size does not fit all.** We are concerned that the bill has unintended consequences in the ability to provide necessary services to an existing DUC. For example, if it is reasonable to extend services to a particular DUC but not to others, this bill prevents the extension of services to the area that can reasonably be serviced. The same is true for those areas currently contained within a city's sphere, where it may make better sense to have another service provider providing the service. In the latter case, the bill proposes an election, and we are concerned not only with the precedent-setting nature of a voter-approved sphere, but also the cost of the election. These changes are complicated by the fact the bill interchangeably uses the term "disadvantaged community" and "disadvantaged unincorporated community".

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- 7. Changes Governmental Reorganization Recommendations from May to Shall.** The amended language requires LAFCO to assess governmental reorganizations and non-governmental service provisions in all sphere determinations, rather than allowing commission discretion. This will add costly, time consuming and often wasted studies to every sphere review and can create unintended litigation issues. Current law allows LAFCO to determine those cases where a reorganization study may be appropriate to further the goals of orderly development as well as efficient and affordable service delivery. To require it in all cases creates costly, unnecessary studies.

LAFCOs were created with the intent of implementing State law while taking into account local conditions. The Legislature and the Governor recognized that in a state as diverse as California, one-size-fits-all solutions coming out of Sacramento were not the best ways for local agencies to govern. This was the impetus for designing LAFCOs the way the Legislature did when it delegated the power to regulate the service boundaries of local government to them in 1963. LAFCOs do best when the State and the Legislature empower them with tools and flexibility to carry out their work.

El Dorado LAFCO and CALAFCO remain committed to help find solutions to the disparities in service delivery to disadvantaged communities. We recognize, however, that simply changing the boundaries or spheres of local agencies does little to ensure adequate services are actually delivered. A major obstacle remains the infrastructure and operational funding for these services. We believe that addressing the needs of disadvantaged communities through the planning process and finding tools to support the infrastructure deficiencies remain a very important part of the solution.

Yours sincerely,



José C. Henríquez
Executive Officer

Cc: Members, Senate Governance & Finance Committee
Pamela Miller, Executive Director, CALAFCO
Anton Favorini-Csorba, Consultant, Senate Local Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus

SB 1266: Proposed Amendments to Government Code 56430 (underlined)

56430. (a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

(1) Growth and population projections for the affected area.

(2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.

(3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.

(4) Financial ability of agencies to provide services.

(5) Status of, and opportunities for, shared facilities.

(6) Accountability for community service needs, including governmental structure and operational efficiencies.

(7) Any other matter related to effective or efficient service delivery, as required by commission policy.

(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area, **including – but not limited to – information provided to the commission pursuant to Government Code Section 6503.6 and 6503.8.** The commission may assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies.

(c) In conducting a service review, the commission may include a review of whether the agencies under review, including any public water system as defined in Section 116275, are in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code). A public water system may satisfy any request for information as to compliance with that act by submission of the consumer confidence or water quality report prepared by the public water system as provided by Section 116470 of the Health and Safety Code.

(d) The commission may request information, as part of a service review under this section, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, and private utilities, as defined in Section 1502 of the Public Utilities Code.

(e) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or 56426.5 or to update a sphere of influence pursuant to Section 56425.