

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MAY 24, 2017

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, Policy Analyst

AGENDA ITEM #9: **CONSIDER THE PROCESS TO REVIEW AND RESPOND TO
PENDING LEGISLATION AND ADOPTION OF LOCAL
LEGISLATIVE POLICIES**

RECOMMENDATION

Staff recommends that the Commission:

1. Consider creating a formal process to review and possibly respond to pending legislation when the Commission's meeting schedule precludes a timely response; and
2. Adopt local legislative policies to establish clear parameters regarding legislative positions.

REASON FOR RECOMMENDED ACTION AND BACKGROUND

El Dorado LAFCO staff provides updates on pending legislation affecting LAFCOs at each meeting. On occasion, CALAFCO requests its member LAFCOs to take a formal position on a piece of legislation and to send letters of support or opposition by a certain date. In these instances, staff brings the request to the Commission at the next scheduled hearing for its consideration. If warranted, the Commission then directs the Executive Officer to send a letter of support or opposition to the author of a bill and any applicable committees and members, stating this LAFCO's position and/or concerns.

In order to effectively engage in legislative matters, which primarily includes taking positions on pending legislation, there is a need for more flexibility in order to communicate in a timelier manner with members of the State legislature and their staffs. There is usually a tight timeframe for legislators and committees to receive stakeholder responses in order to be considered during the next step of the legislative process. The expeditious submittal of position letters is essential to either move a bill forward in the process, to make amendments, or to stall a bill that may be detrimental to LAFCOs.

Unfortunately, sometimes the Legislature takes action on bills that merit a formal response, or CALAFCO puts out a call for action on a specific bill, between scheduled Commission meetings. Consequently, there are times when El Dorado LAFCO's input is missing from the discussion because it is unable to respond within the short timeline. Letters sent after the requested date are still encouraged, to be listed for future analysis of the bill; nevertheless, the deadline to be considered during important committee hearings or floor votes is still missed. With only 11 scheduled meetings per year, several of which are typically cancelled, the Commission doesn't meet frequently enough to respond effectively in the rapid legislative process.

The ultimate authority to take positions on legislation lies with the Commission, and to the extent possible, positions should be decided by the full Commission at regular meetings, where staff can be directed to relay positions appropriately to the Legislature. However, given the time constraints for consideration of legislation that is often developed and considered in the Legislature under compressed timeframes, staff recommends the Commission consider the following options to establish a process for the Commission and staff to take positions in a responsive fashion.

REVIEW AND RESPONSE OPTIONS

Option 1 – Form a Legislative Committee

Form a legislative committee to meet with staff on an as-needed basis (in person, by phone, or via email), to review and take a position on pending legislation in instances where a response is needed before the next Commission meeting date. The committee would consist of no more than three Commissioners and last for the duration of the 2017-2018 legislative session.

The committee would be authorized to send formal position letters to the Legislature on the Commission's behalf, and to speak on the Commission's behalf, if needed. The Commission could follow a structure similar to the CALAFCO legislative committee, which operates under a set of legislative policies that guide the committee when considering bills (refer to Attachment A).

If a bill proves to be contentious, the CALAFCO legislative committee refers the bill to the full Board of Directors. Similarly, if the proposed ad hoc legislative committee finds a bill to be particularly controversial or is unable to reach a consensus, the committee would refer the bill to the full LAFCO Commission at the next scheduled meeting.

Ad Hoc vs. Standing committee

The key difference is that an ad hoc committee is formed for a limited purpose with the intent of disbanding after it completes its work and does not have either "continuous subject matter jurisdiction" or a regular meeting time and place. It is possible for an ad hoc committee to be formed to quickly respond to legislation if, for example, there is a particularly sensitive legislative session where the Commission's work will be directly affected and quick action is needed. The idea would be for the committee to just meet during this particular legislative session due to the urgency involved and then it would disband and legislation would be reviewed by the full Commission as usual.

An example of this would be between 1997-2000, the State Legislature established the Commission on Local Governance for the 21st Century (CLG) to rewrite and update LAFCO Law. This Commission could have formed an ad hoc to review and to respond to the CLG's work on behalf of the entire Commission. Because the work of the CLG was a one-time event (albeit it lasted for three years), when the CLG disbanded presumably so would the work of the ad hoc committee.

An ad hoc committee format is the most flexible, as it would only meet as needed, with the option of meeting in-person, by conference call or via email; there would be no requirement to notice the meeting or to make it open to the public. The committee would be active for the 2017-2018 legislative session, with the possibility of being renewed every other year at the beginning of the two-year legislative cycle.

A standing committee has much less flexibility because it would be subject to Brown Act requirements, meaning the regular meetings would need to be properly noticed and open to the public. This would require much more coordination on behalf of the committee members and staff to accommodate a meeting date and time that works for all members, partially negating the intent for an expedited review and response.

While staff recommends forming an ad hoc committee, based on the definition above – the committee would have the ability to act on behalf of LAFCO in between Commission meetings, and on a fairly regular basis – the only real option is to form a standing committee. Please note that a standing committee will introduce its own set of procedures that will have to be worked out, such as ensuring the proper notice is provided and dictating the method and times in which the committee may meet.

Option 2 – Delegate Authority to the Executive Officer

Alternatively, the Commission could defer forming the committee and instead delegate authority to the Executive Officer to prepare letters of support or opposition to specific bills. This approach would work best if the Commission adopted a clear set of legislative policies that the Executive Officer could use to respond to legislation, provided the bill is not, in staff's view, particularly debatable.

A number of other LAFCOs have opted for an approach that is somewhat of a hybrid between a legislative committee and total delegation to the EO. Some LAFCOs delegate authority to the Executive Officer to submit letters of support or opposition to specific bills with consent from the Chair and/or Vice Chair. In this example, the EO would email the Chair and Vice Chair a brief explanation of the bill, a draft letter of support or opposition along with the reasoning behind the position. If both Commissioners are in agreement, the letter could then be signed by the EO (or Chair) and sent out. If the Commission selects Option 2, staff recommends that EO authority be granted in this manner, requiring approval from the Chair and Vice Chair.

Option 3 – Continue the Status Quo

Currently, staff informs the Commission of pending legislation at regular Commission meetings and does not send a position letter unless directed to do so by the full Commission. The disadvantage to this approach is that there are times which this LAFCO is unable to respond to fast moving legislation within the given timeframe; therefore, our position is not heard or considered at the most effective time.

An example of this can be seen in this month's legislation report (Item 10A), where CALAFCO put out a call for legislative action on four bills between April 3-10 and requested position letters by April 20-27 in order to be considered at the next committee hearing. Unfortunately, any response from this Commission will not be sent until after May 24, too late to be considered at the intended committee hearing. While CALAFCO's support or opposition to a bill carries some weight with the Legislature, letters from individual LAFCOs also have a tremendous effect on the final outcome of a bill.

LEGISLATIVE POLICIES

El Dorado LAFCO does not have local legislative policies. If inclined to adopt such policies, staff recommends that the Commission consider the following draft policies. The advantage is that these policies would provide a framework for the legislative committee or Executive Officer when the LAFCO meeting cycle prohibits consideration by the full Commission in order to send a timely position letter. The policies will also offer guidance to the full Commission in evaluating legislation that is brought up during regular meetings.

LAFCOs across the state vary in how actively they participate in the legislative process. Some LAFCOs are very proactive in the legislative process and have detailed legislative policies along with standing legislative committees that regularly evaluate legislation and take strong positions. Other LAFCOs take a more reactive role, meaning they do not have adopted legislative policies and may or may not review proposed bills and provide feedback during the legislative process. The more "middle of the road" LAFCOs either have moderate legislative policies (similar to the draft policies presented) or have adopted CALAFCO's legislative policies as a basis for evaluating legislation. Options 1 and 2 would fit under the "middle of the road" approach.

The draft policies outlined below would be a new section in your Commission's Policies and Guidelines. There are two sections labeled X.X.1, depending on whether the Commission opts for Option 1 (legislative committee) or Option 2 (EO authority with consent from the Chair and Vice Chair). If the Commission chooses Option 3 (continue as-is), staff still recommends consideration of the section labeled X.X.2 Legislative Policies, which makes clear Commission priorities as they relate to new legislation. The priorities presented in this section are not meant to be an all-inclusive list of priorities, but instead a starting point from which the Commission can build upon.

[DRAFT]

X.X LEGISLATIVE PROCESS PARTICIPATION

In order to effectively engage in legislative relations, which primarily includes taking positions on pending legislation, El Dorado LAFCO recognizes a need for flexibility with regard to timely communications with members of the State legislature and their staffs.

The ultimate authority to take positions on legislation lies with the Commission, and to the extent possible, positions should be adjudicated by the Commission at regular meetings, where staff can be directed to relay positions appropriately to the legislature.

However, given the time constraints for consideration of legislation that is often developed and considered in the Legislature under compressed timeframes, the Commission is adopting these legislative policies to provide avenues for the Commission and staff to take positions in a responsive fashion.

Option 1

X.X.1 Legislative Committee [Option 1]

- (a) *The Commission may appoint no more than three members to a legislative committee for the duration of each two-year California State Legislative Cycle, or as needed.*
- (b) *In situations when proposed legislation affecting LAFCO cannot be considered by the full Commission due to timing, the Executive Officer is authorized to call for a meeting of the legislative committee to review the legislation.*
- (c) *Subsequent to discussion, the legislative committee will determine what, if any position, it wishes to take in support of or in opposition to pending legislation, consistent with the Commission’s adopted legislative policies.*
- (d) *If a response is warranted, the Executive Officer, in consultation with the legislative committee, is authorized to provide written or email correspondence regarding the Commission's position, if the position is consistent with the adopted legislative policies of the Commission.*
- (e) *After submission, the Executive Officer shall forward an electronic (digital) the approved letter to the Commission as soon as possible and include copies of those letters in the packet for the next scheduled Commission meeting.*
- (f) *The item will be placed on the next regular LAFCO meeting agenda as either informational or for discussion purposes.*

OR

Option 2

X.X.1 Process for Expeditious Legislative Relations [Option 2]

- (a) *In situations when proposed legislation affecting LAFCO cannot be considered by the full Commission at a regular meeting due to timing, the Executive Officer is authorized to consult with the Chair and Vice Chair to review the legislation.*
- (b) *If a response is warranted, the Executive Officer, in consultation with the Chair and Vice Chair, is authorized to provide written or email correspondence regarding the Commission's position, if the position is consistent with the adopted legislative policies of the Commission.*

- (c) *The Chair and Vice Chair shall review and approve the letter prior to it being submitted for consideration. The Executive Officer is authorized to sign the letter(s) on behalf of the Commission.*
- (d) *After submission, the Executive Officer shall forward an electronic (digital) approved letter to the Commission as soon as possible and include copies of those letters in the packet for the next scheduled Commission meeting.*
- (e) *The item will be placed on the next regular LAFCO meeting agenda as either informational or for discussion purposes.*

X.X.2 Legislative Policies

- (a) *The Commission may, either as a result of action taken at a regular Commission meeting or through the [ad hoc legislative committee / delegation of authority to the Executive Officer] process outlined above, authorize the Executive Officer to provide written or e-mail correspondence or verbal testimony regarding the Commission's position on legislation that:*
 - 1. *Does not restrict the Commission's ability to make decisions based on local circumstances;*
 - 2. *Does not create an unfunded mandate.*
 - 3. *[Other legislative priorities, as determined by the Commission]*

Attachment

Attachment A: CALAFCO Legislative Policies