



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 6d

TO: Local Agency Formation Commission

PREPARED BY: Peter Banning, Interim Executive Officer
Brendon Freeman, Analyst

MEETING DATE: June 1, 2015

SUBJECT: Legislative Report

RECOMMENDATION

Receive the verbal report from staff and discuss taking formal action to provide letters of support or opposition for any or all of the bills described in this report.

BACKGROUND

The California Association of LAFCOs or “CALAFCO” was established in 1971 to assist all 58 commissions in fulfilling their prescribed regulatory and planning duties. This includes serving as an advocacy resource in proposing and/or reviewing new legislation and facilitated through an appointed 16-member Legislative Committee. The Committee meets on a regular basis to review, discuss, and offer recommendations to the CALAFCO Board of Directors with regard to new legislation that would have either a direct impact on LAFCO law or laws LAFCO helps to administer. Committee actions are guided by the Board’s adopted policies, which are annually reviewed and amended to reflect current year priorities. LAFCO of Napa County (“Commission”) currently has one appointed representative on the Committee: Juliana Inman.

ANALYSIS

The Legislative Committee’s current staff report for its meeting of May 1, 2015 tracks a variety of bills and likely proposals not yet submitted. This report excerpts discussion of several bills of interest to Napa LAFCO and adds other analysis from a report from Carole Cooper of Sonoma LAFCO.

Juliana Inman, Chair
Councilmember, City of Napa

Greg Pitts, Commissioner
Councilmember, City of St. Helena

Joan Bennett, Alternate Commissioner
Councilmember, City of American Canyon

Diane Dillon, Vice Chair
County of Napa Supervisor, 3rd District

Brad Wagenknecht, Commissioner
County of Napa Supervisor, 1st District

Keith Caldwell, Alternate Commissioner
County of Napa Supervisor, 5th District

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Peter Banning
Interim Executive Officer

AB 402 (Dodd)

Pamela Miller, CALAFCO Executive Director

CALAFCO: NO POSITION

CALAFCO has taken no position on this bill. The bill was passed by the Assembly Committee on Local Government (ACLG) on May 13 with a substantial number of amendments (ACLG report included as Attachment One). The bill is being limited to a pilot program in three counties – Napa, Sonoma and San Bernardino – with a five year sunset and a clause is being added clarifying the definition of “planned use” to mean any project that is included in an approved specific plan.

Carole Cooper, Analyst, Sonoma LAFCO

This bill, carried by Assembly Member Bill Dodd of Napa, would expand LAFCO’s existing authority under §56133 of the LAFCO law to allow a city or district to provide new or extended services beyond an agency’s boundaries and sphere of influence to support existing or planned uses involving public or private properties without a determination of a health and safety threat. To do so, the bill would require LAFCO to make three findings at noticed public hearings:

1. The extension of service(s) deficiency was evaluated in a municipal service review;
2. The extension of service(s) will not result in adverse impacts on open-space or agricultural lands or have growth-inducing impacts; and
3. A later change of organization is not feasible or desirable based on local Commission policies.

The bill further specifies the local LAFCO as the sole authority in determining the application of the statute. The language, as proposed, is the same as what the CALAFCO Board considered in 2011 and 2013 but subsequently determined not to pursue when consensus among LAFCOs could not be reached. The CALAFCO Executive Director reiterated that position to the Assembly Member’s staff.

In December 2011, when changes to §56133 were proposed, the Commission directed the Executive Officer to write a letter of concern to CALAFCO. In that letter, it was noted that the changes proposed could be contrary to and could weaken LAFCO’s core principles of discouraging urban sprawl and protecting open space and agricultural lands; the letter further stated that the state statute, as the “binding agent” and foundation, would be eroded if too much discretion were given to individual LAFCOs.

At this time, CALAFCO has taken no position and requested the three pilot LAFCOs state their positions. *Staff recommends that the Commission discuss the proposed legislation and authorize staff to submit a letter stating its position.*

SB 239 (Hertzberg)

Pamela Miller, CALAFCO Executive Director

CALAFCO: OPPOSE

SB 239 was recently amended on April 23. While amendments for fire protection service extensions have been moved into the proper section of 56133, there are still a number of issues with the policies proposed. As amended, this bill still circumvents local District Board and LAFCO authority on service extensions relating to fire protection services by allowing unions the authority to approve/disapprove the service contracts. The bill calls for a Fire Protection Reorganization Contract to be submitted with the application, thereby confusing a service extension with a reorganization.

It is required for applications that (1) Transfer 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, all affected agency employee unions must approve the request and conduct a public hearing. The bill requires contents of the Contract Plan to include:

1. Cost of providing services to be extended;
2. Cost to customers;
3. Identification of existing service providers;
4. Financing plan;
5. Alternatives to the extension; and
6. Comprehensive fiscal analysis. 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. This new requirement is subjective and ambiguous as it is undefined and may set a precedent. The amendments do little to address CALAFCO's primary concerns that this is unnecessary given that §56133 already addresses service extensions.

Further, the bill continues to remove discretion from elected and appointed Boards of public agencies as well as from state agencies by requiring pre-approval of unions that are already fully protected by the Meyers Milias Brown Act (MMBA). The bill also requires a California state agency to apply for, and request LAFCO approval prior to undertaking an action that involves the provision of services outside of a public agency's current service area under contract or agreement. This sets another precedent. Finally, the bill addresses only one type of service provider, which fails to address the concern of why the provision of fire protection services, by contract or agreement, outside of a public agency's boundaries, requires a different level of review than other types of equally vital services or demands a heightened or weighted review from any commenter or affected agency.

The bill was set for hearing in Senate Governance & Finance (SG&F) on May 18. No updates have been provided by CALAFCO as of date.

Carole Cooper, Analyst, Sonoma LAFCO

Initially introduced as a “placeholder,” the only known information about this bill was that the California Professional Firefighters Association, its sponsor, was interested in having fire unions involved in decisions on extensions of service beyond an agency’s boundaries; no copy of the bill language was provided to CALAFCO, and no appointments or discussions with the Senator’s staff were offered.

The Firefighters Association states that, when contracts or agreements are made between two public agencies, “there is no process to provide oversight and ensure that the public services proposed...will be efficient and economical for the public agencies involved and meet the service demands for all residents....”

As proposed, this bill would:

1. Make the exercise of new or extended fire prevention services outside an agency’s “current service area” a change of organization, thus removing such consideration from the “extension of services” section (§56133) of the Cortese-Knox-Hertzberg Act;
2. Require that a comprehensive fiscal analysis be conducted prior to the Commission’s consideration of such an extension of services;
3. Add a new section to the law that would require, along with a resolution of application, a written agreement consenting to the proposal from each affected agency and from any recognized employee organization that represents firefighters.

During the Legislative Committee’s discussion, several broad-based concerns were raised, among them:

1. Setting a precedent...if this were to be allowed for fire services, what would keep any other union from requesting/demanding the same consideration?;
2. The requirement that unions must consent to a service extension;
3. The requirement that a comprehensive fiscal analysis (CFA) be performed (a CFA is required, in current law, only when incorporation of a city is proposed);
4. The cross-purposes of focused sections, i.e., extensions of service (§56133) v. changes of organization (§56021 et seq.); and
5. With such change, the requirement of a property exchange agreement between affected agencies.

After substantial discussion, the Legislative Committee directed the Executive Director to draft and hand deliver a letter to the Firefighters Association expressing deep concerns, as identified above, and offering suggestions as to how the Association could use existing law to get to what it might want to accomplish.

The bill has been referred to the SG&F Committee on May 18. Staff’s purpose, at this time, is to inform the Commission about the proposed legislation. *Until it is further vetted, staff does not recommend any action.* Staff will keep the Commission informed.

SB 272 (Hertzberg)

Pamela Miller, CALAFCO Executive Director

CALAFCO: WATCH

As amended on April 6, this bill requires all local agencies (including LAFCO) to create a catalogue of enterprise systems used by that agency and make that catalogue available to the public. For purposes of the bill, the author defines enterprise systems as a system that 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 bill is co-authored by the two local government committee chairs and is intended to strike up a conversation about access to public agency records. CALAFCO understands that amendments are still being taken by the author and that stakeholders are trying to work through what an enterprise system really is in the practical world. CALAFCO will maintain a Watch position pursuant to the Committee's prior discussion. The bill has unanimously passed through the SG&F and Judiciary Committees and is set for a May 4 Appropriations hearing. A copy of the amended bill is attached.

Carole Cooper, Analyst, Sonoma LAFCO

Introduced by the chairs of both the Senate Governance and Finance Committee and the Assembly Local Government Committee, this bill focuses on local government transparency and public access to information (Attachment 3). It would require all local agencies to conduct an inventory of all the data gathered by the agency. The inventory must include what the data is, who collects it, and the frequency with which it is collected. It is an unfunded mandate, i.e., no reimbursement would be provided from the State to local agencies for their cost in implementing the requirements.

As currently written, the bill provides no information about completion deadline, frequency and how the inventory would be made available to the public. The bill has been referred to the SG&F Committee. CALAFCO has adopted a Watch position. *Until further information is available, staff does not recommend Commission action*; staff will keep the Commission informed.

ATTACHMENT

- 1) ACLG Report on AB 402 (May 13, 2015)

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

AB 402 (Dodd) – As Amended May 5, 2015

SUBJECT: Local agency services: contracts.

SUMMARY: Expands existing law to allow local agency formation commissions (LAFCOs) to authorize a city or district to extend services outside of boundaries for additional purposes beyond responding to a threat to public health or safety. Specifically, **this bill:**

- 1) Allows LAFCOs to authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence, if consistent with adopted policy, to support *existing or planned uses* involving public or private properties, subject to approval at a noticed public hearing where LAFCO makes all of the following determinations:
 - a) The extension of service or services deficiency was identified and evaluated in a review of municipal services (MSR) prepared, pursuant to existing law;
 - b) The extension of service will not result in adverse impacts on open space or agricultural lands, or have growth inducing impacts; and,
 - c) A later change of organization involving the subject territory and its affected agency is not feasible under existing law or desirable based on the adopted policies of LAFCO.
- 2) Provides that existing law, which allows LAFCO to authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat of public health and safety, must be consistent with adopted policy.
- 3) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Establishes the Cortese-Knox-Hertzberg Act (Act), which defines the procedures for the organization and reorganization of cities, counties, and special districts.
- 2) Authorizes a city or district to provide new or extended services by contract or agreement *outside its jurisdictional boundaries*, if it requests and receives written approval from the LAFCO in the affected county.
- 3) Allows a LAFCO to authorize a city or district to provide new or extended services *outside its boundaries, but within its sphere of influence* in anticipation of a later change of organization.
- 4) Allows a LAFCO to authorize a city or district to provide new or extended services *outside its boundaries and outside its sphere of influence* to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, if both of the following requirements are met:

- a) The entity applying for the contract has provided LAFCO with documentation of a threat to the health and safety of the public or the affected residents; and,
 - b) The LAFCO has notified any alternate service providers, including any water corporation or sewer system corporation that has filed a map and statement of service capabilities with the LAFCO.
- 5) Establishes requirements and a timeframe for an executive officer upon receipt of a request for approval by a city or district of a contract to extend services outside boundaries. Requires, upon receipt of a complete request, the request to be placed on the agenda or a LAFCO meeting, unless the LAFCO has delegated the approval of requests to the executive commissioner.
- 6) Requires the LAFCO or executive officer to approve, disapprove, or approve with conditions the contract for extended services. Allows an applicant, if a contract is disapproved or approved with conditions, to request reconsideration and cite the reasons why.
- 7) Provides exemptions to the requirement in existing law for the following contracts or agreements:
- a) Contracts or agreements solely involving two or more public agencies where the public service is an alternative or substitute for public services already being provided by an existing public services provided, and there the level of service will be consistent with the level of service by the existing provider;
 - b) Contracts for the transfer of nonpotable or nontreated water;
 - c) Contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, as specified;
 - d) Extended service that a city or district was providing on or before January 1, 2001; and,
 - e) Local publicly owned electric utility, as defined, providing electric services that do not involve the acquisition, construction or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

FISCAL EFFECT: None

COMMENTS:

- 1) **Current Law.** The Cortese-Knox-Hertzberg Local Government Reorganization Act (Act) delegates the Legislature's power to control the boundaries of cities and special districts to local agency formation commissions (LAFCOs). The Legislature created LAFCOs to discourage urban sprawl, preserve open space and prime agricultural lands, encourage the orderly formation and development of local agencies, and to ensure the efficient provision of government services.

The Act requires that cities and districts must get a LAFCO's written approval before they can serve territory outside their boundaries pursuant to AB 1335 (Gotch), Chapter 1307, Statutes of 1993. This requirement was established because of a concern that some cities and

districts might be circumventing LAFCO review by signing contracts to provide services outside their boundaries without annexing the territory. AB 1335, however, recognized the need to accommodate unexpected local conditions and several exemptions were established. LAFCO approval is not required for contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting service provider. In 1999, the Legislature expanded these provisions to allow services outside spheres of influence to correct public health and safety problems, pointing to failing septic tanks and water wells to exemplify the necessity for the change.

- 2) **Bill Summary.** This bill further expands the provisions of law which allow service extensions outside sphere of influences and jurisdictional boundaries, beyond health and safety issues. Under this bill, LAFCOs may authorize, if consistent with their adopted policies, a city or district to extend services to support *existing or planned uses* involving public or private properties, if the approval is done at a noticed public hearing where LAFCO makes specified determinations. The determinations must include: 1) The extension of service or service deficiency was identified and evaluated in an MSR; 2) The extension of service will not result in adverse impacts on open space or agricultural lands, or have growth inducing impacts; and, 3) A later change of organization involving the subject territory and its affected agency is not feasible, or desirable based on the adopted policies of the LAFCO.

This bill is author-sponsored.

- 3) **Author's Statement.** According to the author, "There are instances when existing or approved developments lie outside a sphere of influence of a municipal service provider, and that are in need of those municipal services. For example, the ABAG Regional Housing Needs Allocation (RHNA) process may require the location of affordable housing outside the City of Napa's sphere of influence. Unfortunately, current law will not permit municipal services to be extended outside the service provider's sphere of influence unless a city or district receives written approval from the LAFCO in the affected county pursuant to a very limited set of special circumstances.

"An additional example would be Whetstone winery in Napa. This existing development lies adjacent to a city water line and is outside of the city's sphere of influence in an unincorporated area surrounded by agricultural lands. When the property owner submitted the application for water service to be extended to this property to allow for a fire hydrant to be serviced, the extension was denied because this was not a residential property and the health and safety exemption in [current law] could not be applied. The only means to extend water to this property would be to annex it into the city's sphere of influence. With a city water line running adjacent to the property, allowing Whetstone an exemption to access this city water rather than annexing the property into the city's sphere of influence would be a greater protection to the surrounding agricultural lands than extending the sphere of influence into the unincorporated area."

- 4) **Policy Considerations.** Proposed changes to the laws governing outside service extensions have been debated among LAFCOs for many years and have largely divided practitioners. On one hand, some LAFCOs can provide examples where outside service extensions seem to

be the only option because of local geography, politics, and other circumstances, so more flexibility is appealing. On the other hand, some LAFCOs feel that an expansion to this provision of law is fundamentally against the core purpose and mission of LAFCOs and could impact agricultural lands or have growth inducing effects.

- a) **Identified Solution Doesn't Match Identified Problem.** In support of the bill, Napa County argues that extending services outside spheres of influence may prevent unnecessary annexation of territory that might lead to unintentional sprawl. The examples raised in Napa County are unique in the sense that wineries on commercially zoned parcels have service needs for commercial purposes and are largely surrounded by agricultural land. In these instances annexation of territory has implications not only on the efficiency of services, potential growth and development, but also has financial impacts, due to sales taxes or transient occupancy taxes that may be collected in these territories. The Committee may wish to consider, given these factors, if it is appropriate to use the issues identified in Napa County to craft statewide policy that may have very different impacts in other counties. Additionally, the Committee may wish to consider asking the author to narrow the scope of the bill to more specifically address some of the examples raised.
- b) **Growth Inducing?** In opposition to this bill, the California Farm Bureau Federation argues that this bill will have a severely negative impact on farmland conservation efforts by encouraging leap-frog commercial and residential development.
- c) **Terminology.** The Committee may wish to ask the author to strike out the term "*existing or planned use*" to be consistent with the author's intent to address service extensions to existing developments.

The Committee may wish to consider whether it would be possible for LAFCO to approve an extension of services for a *planned use* that would not inherently have growth inducing impacts. The Committee may wish to consider if this bill may lead to costly litigation for LAFCOs if this bill requires substantive changes in LAFCO policies which will influence growth patterns and affect land use, thus leading to potential impacts to the environment that may be subject to CEQA.

- d) **Impact on Voters.** The Committee may wish to consider if this bill will result in more cities and districts extending services outside their boundaries instead of annexing territory into their boundaries. If more services are extended outside of boundaries, instead of annexing territory into a district, then voters within that territory cannot vote in the elections that directly impact the service they are receiving.
- 5) **Related Legislation.** This bill is substantially similar to SB 1498 (Emmerson) of 2012, which was never heard in the Senate Governance and Finance Committee.
 - 6) **Arguments in Support.** Napa County argues that this bill seeks to provide LAFCOs with more flexibility to approve service extensions outside of a sphere of influence without requiring annexation of territories that might lead to unintended sprawl.
 - 7) **Arguments in Opposition.** The California Farm Bureau Federation argues, "Unfortunately, extending urban services outside of cities' spheres of influence would have a severe negative

impact on farmland conservation efforts by encouraging leap-frog commercial and residential development."

REGISTERED SUPPORT / OPPOSITION:

Support

Napa County Board of Supervisors
San Bernardino Local Agency Formation Commission (if amended)

Opposition

California Farm Bureau Federation (unless amended)

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