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30 March 2012

The Honorable Henry T. Perea
California State Assembly
State Capitol, Room 4112
Sacramento, CA 95814

RE: AB 2238 (Perea) – LAFCo MSR Studies – OPPOSE

Dear Assembly Member Perea:

On behalf of the California Association of Local Agency Formation Commissions, I write to respectfully express our opposition to your bill, AB 2238, which would add significant and unfunded research responsibilities to local agency formation commissions (LAFCo). While we continue to support efforts to improve service delivery to disadvantaged unincorporated communities, the LAFCo-related elements of this bill will result in the expenditure of significant unfunded resources and is not likely to improve services for any disadvantaged community which could not be achieved under existing law.

We appreciate the recent amendments which limit the scope for LAFCo; however they still include an unfunded and new research mandate to LAFCo that is unlikely to result in any improvement in service. Nearly half of the thousands of Municipal Service Reviews conducted by LAFCo include water or wastewater agencies. LAFCos do not have the resources or expertise to study reorganizations in all of these cases and would require the retention of consultants. There is no funding for these studies and therefore the costs would be passed on to all counties, cities and special districts. More importantly, since LAFCo is powerless to implement any study, our experience is that the affected agencies will resist any consolidation suggestion. Allowing a LAFCo to make a determination to not conduct a study opens the LAFCo to legal action by those wishing a reorganization. In either case very limited local resources are expended over a study that has no likelihood of implementation.

LAFCo works best when it is able to collaboratively interact with affected agencies in finding mutually agreeable reorganization solutions. Current law allows LAFCo to include such a review and recommendation when it is likely such recommendation will be implemented. We believe current law is sufficient to meet the desired goals of this bill.

Because AB 2238 creates an unfunded and unproductive requirement for studies, we must regrettably oppose this legislation. Were the provision to require LAFCo to conduct these studies amended out of the bill, and other wording changes considered, we could remove our opposition. Thank you for your consideration of our comments

Yours sincerely,

William Chiat,
Executive Director

c: Chair Smyth, Assembly Local Government Committee
Debbie Michael, Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

AMENDED IN ASSEMBLY APRIL 11, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011—12 REGULAR SESSION

ASSEMBLY BILL

No. 2238

Introduced by Assembly Member Perea

February 24, 2012

An act to amend ~~Sections 56378~~ and *Section* 56430 of the Government Code, to amend Section 116326 of the Health and Safety Code, and to amend Section 75125 of, and to add Section 75129.5 to, the Public Resources Code, relating to public water systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2238, as amended, Perea. Public water systems: drinking water.

Existing law requires the State Department of Public Health to administer programs to fund improvements and expansion of small community water systems using specified priorities. Existing law requires the department to encourage the consolidation of small community water systems that serve disadvantaged communities if consolidation will help the affected agencies and the state meet specified goals. Existing law allows funding of studies regarding the feasibility of consolidating 2 or more community water systems, at least one of which is a small community water system that serves a disadvantaged community. Existing law requires the department to give funding priority to projects involving physical restructuring of 2 or more community water systems into a single, consolidated system when it is shown that the consolidation would further specified goals.

This bill would require the department to promote the consolidation and merger of small community water systems that serve disadvantaged

communities, as specified, and would require the studies performed prior to a construction project to include the feasibility of consolidating or merging community water systems. This bill would prohibit the department from determining the consolidation or merger to be infeasible if the local agency formation commission (LAFCO) also conducted a study or service review of the project *within the previous 5 calendar years* and determined the project was feasible. This bill would also require the department to give priority to funding projects involving managerial consolidation or merger when the consolidation or merger would further specified goals.

Existing law requires LAFCOs to conduct a service review of the municipal services provided in the county, as specified, and to review all of the agencies that provide the service within a designated geographic area. Existing law permits LAFCOs to assess various alternatives for improving efficiency and affordability of infrastructure and service delivery, as specified.

This bill would require LAFCOs to also assess various alternatives for improving efficiency and affordability of infrastructure and service delivery for drinking water and wastewater services. By imposing additional duties on local officials, this bill would impose a state-mandated local program.

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative measure, provides funding for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements. Existing law establishes the Strategic Growth Council and appropriates \$500,000 from the funding provided by the initiative to support the council and its activities. Existing law requires the council to manage and award grants and loans to support the planning and development of sustainable communities, as specified.

This bill would provide that LAFCOs intending to fund consolidation, merger, or extension of services projects for the purposes of promoting water conservation, and to support the planning and development of sustainable communities, are eligible for funding under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

1 ~~of the commission makes a written determination that the~~
2 ~~assessment is not reasonable under the circumstances.~~

3 (c) In conducting a service review, the commission may include
4 a review of whether the agencies under review, including any
5 public water system as defined in Section 116275, are in
6 compliance with the California Safe Drinking Water Act (Chapter
7 4 (commencing with Section 116270) of Part 12 of Division 104
8 of the Health and Safety Code). A public water system may satisfy
9 any request for information as to compliance with that act by
10 submission of the consumer confidence or water quality report
11 prepared by the public water system as provided by Section 116470
12 of the Health and Safety Code.

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

20 (e) The commission shall conduct a service review before, or
21 in conjunction with, but no later than the time it is considering an
22 action to establish a sphere of influence in accordance with Section
23 56425 or 56426.5 or to update a sphere of influence pursuant to
24 Section 56425.

25 SEC. 3. Section 116326 of the Health and Safety Code is
26 amended to read:

27 116326. In administering programs to fund improvements and
28 expansions of small community water systems, the department
29 shall do all of the following:

30 (a) Give priority to funding projects in disadvantaged
31 communities.

32 (b) Promote the consolidation or merger of small community
33 water systems that serve disadvantaged communities in instances
34 where consolidation or merger will help at least one of the affected
35 agencies and the state to meet all of the following goals:

- 36 (1) Improvement in the quality of water delivered.
- 37 (2) Improvement in the reliability of water delivery.
- 38 (3) Reduction in the cost of drinking water for ratepayers.

39 (c) Pursuant to subdivision (b), require that funding for
40 feasibility studies performed prior to a construction project include

1 studies of the feasibility of consolidating two or more community
2 water systems or merging a community water system with a city
3 water system, if at least one of the water systems is a small
4 community water system that serves a disadvantaged community,
5 unless the department makes a written determination that
6 consolidation or merger is not feasible under the circumstances.
7 The department shall not make a determination of infeasibility if,
8 *within the previous five calendar years*, the local agency formation
9 commission conducted a study, pursuant to Section 56378 of the
10 Government Code, or conducted a service review, pursuant to
11 Section 56430 of the Government Code, which found the
12 consolidation or merger feasible.

13 (d) If it is shown that small community water system
14 consolidation or merger will further the goals of subdivision (b),
15 give priority to funding construction projects that involve the
16 physical restructuring and managerial consolidation of two or more
17 community water systems or merger of one or more community
18 water systems, at least one of which is a small community water
19 system that serves a disadvantaged community, into a single,
20 consolidated system.

21 SEC. 4. Section 75125 of the Public Resources Code is
22 amended to read:

23 75125. The council shall do all of the following:

24 (a) Identify and review activities and funding programs of
25 member state agencies that may be coordinated to improve air and
26 water quality, improve natural resource protection, increase the
27 availability of affordable housing, improve transportation, meet
28 the goals of the California Global Warming Solutions Act of 2006
29 (Division 25.5 (commencing with Section 38500) of the Health
30 and Safety Code), encourage sustainable land use planning, and
31 revitalize urban and community centers in a sustainable manner.
32 At a minimum, the council shall review and comment on the
33 five-year infrastructure plan developed pursuant to Article 2
34 (commencing with Section 13100) of Chapter 2 of Part 3 of
35 Division 3 of the Government Code and the State Environmental
36 Goals and Policy Report developed pursuant to Section 65041 of
37 the Government Code.

38 (b) Recommend policies and investment strategies and priorities
39 to the Governor, the Legislature, and to appropriate state agencies
40 to encourage the development of sustainable communities, such

1 as those communities that promote equity, strengthen the economy,
2 protect the environment, and promote public health and safety,
3 consistent with subdivisions (a) and (c) of Section 75065.

4 (c) Provide, fund, and distribute data and information to local
5 governments and regional agencies that will assist in developing
6 and planning sustainable communities.

7 (d) Manage and award grants and loans to support the planning
8 and development of sustainable communities, pursuant to Sections
9 75127, 75128, 75129, and 75129.5. To implement this subdivision,
10 the council may do all of the following:

11 (1) Develop guidelines for awarding financial assistance,
12 including criteria for eligibility and additional consideration.

13 (2) Develop criteria for determining the amount of financial
14 assistance to be awarded. The council shall award a revolving loan
15 to an applicant for a planning project, unless the council determines
16 that the applicant lacks the fiscal capacity to carry out the project
17 without a grant. The council may establish criteria that would allow
18 the applicant to illustrate an ongoing commitment of financial
19 resources to ensure the completion of the proposed plan or project.

20 (3) Provide for payments of interest on loans made pursuant to
21 this article. The rate of interest shall not exceed the rate earned by
22 the Pooled Money Investment Board.

23 (4) Provide for the time period for repaying a loan made
24 pursuant to this article.

25 (5) Provide for the recovery of funds from an applicant that fails
26 to complete the project for which financial assistance was awarded.
27 The council shall direct the Controller to recover funds by any
28 available means.

29 (6) Provide technical assistance for application preparation.

30 (7) Designate a state agency or department to administer
31 technical and financial assistance programs for the disbursing of
32 grants and loans to support the planning and development of
33 sustainable communities, pursuant to Sections 75127, 75128,
34 75129, and 75129.5.

35 (e) (1) No later than July 1, 2010, and every year thereafter,
36 provide a report to the Legislature that shall include, but is not
37 limited to, all of the following:

38 (A) A list of applicants for financial assistance.

39 (B) Identification of which applications were approved.

40 (C) The amounts awarded for each approved application.

1 (D) The remaining balance of available funds.

2 (E) A report on the proposed or ongoing management of each
3 funded project.

4 (F) Any additional minimum requirements and priorities for a
5 project or plan proposed in a grant or loan application developed
6 and adopted by the council pursuant to subdivision (c) of Section
7 75126.

8 (2) A report submitted pursuant to paragraph (1) shall be
9 submitted in accordance with Section 9795 of the Government
10 Code.

11 SEC. 5. Section 75129.5 is added to the Public Resources Code,
12 to read:

13 75129.5. To support the planning and development of
14 sustainable communities, the council shall manage and award
15 financial assistance to a city, county, local area formation
16 commission, special district, nonprofit organization, or entity
17 formed pursuant to Chapter 5 (commencing with Section 6500)
18 of Division 7 of Title 1 of the Government Code, or a local agency
19 formation commission formed pursuant to Chapter 4 (commencing
20 with Section 56425) of Division 7 of Title 1 of the Government
21 Code, if at least one of the parties to the joint powers agreement
22 qualifies as an eligible applicant, for the preparation, planning,
23 and implementation of a public water system consolidation, merger,
24 or extension of services project for the purposes of promoting
25 water conservation. The financial assistance provided pursuant to
26 this section shall be funded from moneys made available pursuant
27 to subdivision (c) of Section 75065. The council shall give priority
28 to funding projects proposed by an economically disadvantaged
29 community.

30 SEC. 6. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

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