Assembly Bill 2032 (Linder) – Disincorporation -- Letters dated April 13 and March 29, 2016 and AB 2032 as Amended April 11, 2016

Attachment 4

LAFCO

Local Agency Formation Commission
for San Bernardino County

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Established by the State of California to serve the Citizens, Cities, Special Districts and the County of San Bernardino

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REBECCA LOWERY
Clerk to the Commission

LEGAL COUNSEL

CLARK H. ALSOP

April 13, 2016

Assembly Member Eric Linder
California State Assembly
State Capitol, Room 2016
Sacramento, CA 95814

RE: **REMOVAL OF OPPOSITION TO AB 2032 AS AMENDED APRIL 5, 2016**

Dear Assembly Member Linder:

On behalf of the Local Agency Formation Commission for San Bernardino County (LAFCO), I am writing to inform you we are removing our opposition to your bill, AB 2032. This position is based on the amendments made in the April 5, 2016 version of the bill which mitigate all of the concerns outlined in our letter of March 29, 2016.

We appreciate your willingness to accept the amendments agreed to by CALAFCO as well as the other stakeholders with whom CALAFCO worked last year on AB 851 (Mayes). The process of disincorporation is a complex one, and certainly a difficult conversation to have among stakeholders. We appreciate the sensitive nature of the subject, and your willingness to address the stated concerns through these amendments.

We understand there is one more set of pending amendments agreed upon between your office, the sponsor, and CALAFCO (as well as the other stakeholders). Based upon our understanding of that effort we support the pending amendments agreed to by CALAFCO.

Please feel free to contact me with any questions you may have about the removal of our opposition.

Sincerely,

KATHLEEN ROLLINGS-McDONALD
Executive Officer

Cc: Members, Assembly Local Government Committee
Misa Lennox, Associate Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus
Pamela Miller, Executive Director, CALAFCO
Matt Siverling, Legislative Advocate, State Association of County Auditors
San Bernardino County Legislative Delegation
Southern California Region of CALAFCO

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REBECCA LOWERY
Clerk to the Commission

LEGAL COUNSEL

CLARK H. ALSOP

March 29, 2016

Assembly Member Eric Linder
California State Assembly
State Capitol, Room 2016
Sacramento, CA 95814

RE: OPPOSITION TO AB 2032 AS AMENDED MARCH 17, 2016

Dear Assembly Member Linder:

The Local Agency Formation Commission for San Bernardino County (LAFCO) is aware of and has been following your bill, AB 2032, which now makes substantive changes to the disincorporation statutes. Regrettably, we must Oppose AB 2032 as amended March 17, 2016.

We are aware that the California Association of Local Agency Formation Commissions (CALAFCO) has shared concerns regarding the proposed amendments with your staff as well as with a representative of the bill's sponsor.

It is our position that most of the proposed amendments are unnecessary, as the authority or actions to which they pertain are already found in existing statutes. These include: items pertaining to the comprehensive fiscal analysis (proposed amendments 56816(2), (3), (5) and (6)); information that LAFCO can obtain through the application process and the comprehensive fiscal analysis (proposed amendments 56804 and 56816(2), (3), (5) and (6); and terms and conditions that LAFCO can place on the application when making a determination, (proposed amendment 57412). Moreover, Section 56804(g), as amended, duplicates the requirements currently outlined in Section 56816 also proposed for amendment and the proposed amendment to Section 56084(h). This change requires the disincorporating city to provide even more financial information that, while attainable in the comprehensive fiscal analysis process, will place additional burdens on an agency already in crisis. Adding additional burdens on them will likely have an unfavorable outcome.

The amendment proposed to 56670(g) divests LAFCO of its authority and transfers that authority to the successor agency. LAFCO has this authority pursuant to existing Code Section 56886(l).

In addition, the amendment adding 57407(b) raises concern, as you cannot legally limit the liability of investors (pursuant to Government Code Section 56122). Further, the proposed amendment in 56816 (8) is already covered in the preceding paragraph in 56816(7).

The proposed change in 56670(e) assumes a continuing level of service which will not likely be the case – if that were the case there would be no substantive reason for the city to disincorporate. The tax rate referenced therein would be subject to an election requiring 2/3 voter approval.

Finally, we are confused by the proposed amendments moving 56813(c)(1) (A)(B)(C) to Code Section 56804 and the complete removal of subsection (c) and do not fully understand the reasoning behind these changes. This is a fundamental shift in placement of the responsibility on the determination of property tax transfer process.

While we oppose the bill as currently written, we support the position of CALAFCO and its stakeholder group, to be willing to discuss several amendments with your office. As we understand those amendments, they are:

1. 56804
   (g) All debt obligations and current and long-term liabilities of the city proposed for disincorporation, including the balance of restricted and unrestricted funds available to extinguish the obligations and liabilities.
   (h) The ~~required~~ potential financing mechanism(s) to address any shortfalls and obligations, for those responsibilities identified in this section, including but not limited to taxes or assessments.

   We support the suggestion of removing the word "required" and replacing with "potential".

2. 56816 (a) (3) The amount of any tax levy, *~~direct~~ assessment*, or other obligation due the city that is unpaid or has not been collected.

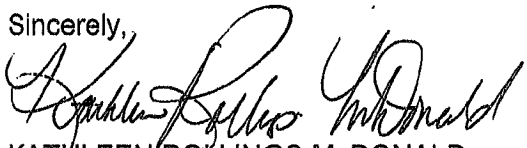
   "Direct assessment" is a confusing term and we support the recommendation to just insert the word "assessment", which is consistent with the suggested amendment in your bill below.

3. 57405
   If a tax *or assessment* has been levied by the disincorporated city and remains uncollected, the county tax collector shall collect it when due and pay it into the county treasury on behalf of the designated successor agency or county to wind up the affairs of the disincorporated city.

4. 57412
   The ~~board of supervisors~~ *governing body* of the successor shall provide for collection of debts due the city and wind up its affairs. Upon an order by the *commission* ~~board of supervisors~~, the appropriate ~~county~~ officer *of the successor* shall perform any act necessary for winding up the city affairs, with the same effect as if it had been performed by the proper city officer.

Please feel free to contact me with any questions you may have about our opposition to AB 2032.

Sincerely,



KATHLEEN ROLLINGS-McDONALD
Executive Officer

Cc: Members, Assembly Local Government Committee

Pamela Miller, Executive Director, CALAFCO
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AMENDED IN ASSEMBLY APRIL 11, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 2032

Introduced by Assembly Member Linder

February 16, 2016

An act to amend Sections 56804, 56816, 57405, and 57412 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2032, as amended, Linder. Change of organization: cities: disincorporation.

(1) Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, requires the executive officer of a local agency formation commission to prepare a comprehensive fiscal analysis for any proposal that includes a disincorporation, as specified. Existing law requires the comprehensive fiscal analysis to include, among other things, a review and documentation of specified costs associated with the proposed disincorporation.

This bill would additionally require the comprehensive fiscal analysis to include a review and documentation of all current and long-term liabilities of the city proposed for ~~disincorporation.~~ *disincorporation and the potential financing mechanism or mechanisms to address any identified shortfalls and obligations, as specified.*

(2) The act states the intent of the Legislature that a proposal that includes a disincorporation of a city result in a determination that the debt or contractual obligations and responsibilities of the city being

disincorporated be the responsibility of the same territory for repayment. To ascertain this information, the act requires the city being disincorporated to provide a written statement that includes specified information relating to its debts and contractual obligations.

This bill would additionally require that statement to include the amount of any assessment due the city that is unpaid or uncollected.

(3) The act requires the county tax collector to collect a tax that has been levied by the disincorporated city that remains uncollected.

This bill would additionally require the county tax collector to collect an assessment that has been levied by the disincorporated city that remains uncollected. By imposing new duties on local officials, this bill would impose a state-mandated local program.

(4) The act requires the board of supervisors to provide for the collection of debts due to a city being disincorporated and to wind up its affairs, as specified.

This bill would instead require the governing board of the successor to provide for the collection of debts due to the city and to wind up its affairs, as specified.

(5) 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.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56804 of the Government Code is
2 amended to read:
3 56804. For any proposal that includes a disincorporation, the
4 executive officer shall prepare, or cause to be prepared by contract,
5 a comprehensive fiscal analysis. This analysis shall become part
6 of the report required pursuant to Section 56665. Data used for the
7 analysis shall be from the most recent fiscal year for which data
8 is available, preceding the issuances of the certificate of filing.
9 When data requested by the executive officer in the notice to
10 affected agencies, pursuant to paragraph (2) of subdivision (b) of

Section 56658, is unavailable, the analysis shall document the source and methodology of the data used. The analysis shall review and document each of the following:

(a) The direct and indirect costs incurred by the city proposed for disincorporation for providing public services during the three fiscal years immediately preceding the submittal of the proposal for disincorporation.

(b) The direct and indirect costs incurred by the city proposed for disincorporation for current and proposed capital improvements, facilities, assets, and infrastructure.

(c) The sources of funding, if any, available to the entities proposed to assume the obligations of the city proposed for disincorporation.

(d) The anticipated costs, including all direct and indirect costs, to the entities proposed to assume the obligations of the city proposed for disincorporation in the provision of services to the area proposed for disincorporation.

(e) When determining costs, the executive officer shall also include all direct and indirect costs of any public services that are proposed to be transferred to state agencies for delivery.

(f) The revenues of the city proposed for disincorporation during the three fiscal years immediately preceding the initiation of the disincorporation proposal.

~~(g) Any other information and analysis needed to make the findings required by Section 56770.~~

~~(h)~~

(g) All current and long-term liabilities, including, but not limited to, debt obligations, of the city proposed for disincorporation, including the balance of the restricted and unrestricted funds available to extinguish the obligations and liabilities.

(h) The potential financing mechanism or mechanisms to address any shortfalls and obligations for those responsibilities identified in this section, including, but not limited to, taxes or assessments.

(i) Any other information and analysis needed to make the findings required by Section 56770.

SEC. 2. Section 56816 of the Government Code is amended to read:

56816. (a) It is the intent of the Legislature that any proposal that includes the disincorporation of a city result in a determination

that the debt or contractual obligations and responsibilities of the city being disincorporated shall be the responsibility of that same territory for repayment. To ascertain this information, the city shall provide a written statement that determines and certifies all of the following to the commission prior to the issuance of a certificate of filing for a disincorporation proposal, pursuant to Sections 56651 and 56658:

(1) The indebtedness of the city.

(2) The amount of money in the city's treasury.

(3) The amount of any tax levy, assessment, or other obligation due the city that is unpaid or has not been collected.

(4) The amount of current and future liabilities, both internal debt owed to other special or restricted funds or enterprise funds within the agency and external debt owed to other public agencies or outside lenders or that results from contractual obligations, which may include contracts for goods or services, retirement obligations, actuarially determined unfunded pension liability of all classes in a public retirement system, including any documentation related to the termination of public retirement contract provisions, and the liability for other postemployment benefits. The information required by this paragraph shall include any associated revenue stream for financing that may be or has been committed to that liability, including employee contributions.

(b) The city shall provide a written statement identifying the successor agency to the city's former redevelopment agency, if any, pursuant to Section 34173 of the Health and Safety Code.

SEC. 3. Section 57405 of the Government Code is amended to read:

57405. If a tax or assessment has been levied by the disincorporated city and remains uncollected, the county tax collector shall collect it when due and pay it into the county treasury on behalf of the designated successor agency or county to wind up the affairs of the disincorporated city.

SEC. 4. Section 57412 of the Government Code is amended to read:

57412. The governing body of the successor shall provide for collection of debts due the city and wind up its affairs. Upon an order by the commission, the appropriate officer of the successor shall perform any act necessary for winding up the city affairs,

1 with the same effect as if it had been performed by the proper city
2 officer.
3 SEC. 5. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O