

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: MARCH 12, 2015
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION



SUBJECT: AGENDA ITEM #9– LEGISLATIVE UPDATE REPORT

RECOMMENDATION:

Staff recommends that the Commission:

1. Note receipt of the report and file;
2. Indicate its support for AB 851 (Mayes) related to amendment to disincorporation statutes;
3. Indicate its support if amended for AB 402 (Dodd) related to changes in Government Code Section 56133 Out-of-Agency Services Agreements;
4. Indicate its continuing support for SB 25 (Roth) and AB 448 (Brown) related to the return of the VLF payment to newly incorporated Cities and to Cities which had annexed inhabited land; and,
5. Authorize the Chairman to sign letters identifying these positions and direct staff to forward to the authors, CALAFCO, Committees assigned (if any), and San Bernardino County Legislative delegations.

BACKGROUND:

A new two year legislative cycle has begun and to the surprise of those watching the activities there are fewer bills introduced at this time than from the previous session. Attachment #1 to this report is the Daily Legislative Report for Wednesday, March 11, 2015 outlining the current status of all bills considered to be of importance to LAFCOs.

On this listing are two bills of significant importance to San Bernardino LAFCO: AB 851 (Mayes) on disincorporation and AB 402 (Dodd) related to out-of-agency service contracts

as well as the bills related to ongoing effort to return VLF funding to newly incorporated cities and those which annexed islands of inhabited territory. The following outlines the bills and the requested actions to be taken by the Commission:

- AB 851 (Mayes) -- Local Government: Organization: disincorporations

As the commission has been aware, for the past year, I have been participating with a subcommittee of the CALAFCO Legislative Committee to rewrite the statutes related to disincorporation within the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. This subcommittee, of which I am Chair, has worked to develop a consensus on the statutory changes needed to bring the 1963 statutes into compliance with 2015 statutory and constitutional requirements. In addition, the revisions propose to provide for defining what the Plan for Service needs to include and what information is required to be submitted so that all those concerned with the process will have the information needed to make a decision. In January the CALAFCO Board of Directors approved the proposed language changes and indicated its position to sponsor the bill and seek an author to move it forward.

Assemblyman Chad Mayes agreed to sponsor the bill which was introduced on February 26 as AB 851 (copy attached along with press release and Fact Sheet prepared by CALAFCO included as Attachment #2). CALAFCO (including myself), members of the Assemblyman's staff and representatives from CSAC, League of Cities, Urban Counties Caucus, CSDA and RCRC (Rural Counties Representatives of California) have been meeting as a stakeholders group to work through questions on the bill, address amendments, and to better understand the process which has not been used since 1972. While questions still remain about final language for the bill, support for updating the process has been received from all the participants. It is anticipated that the bill will be heard in the Assembly Local Government Committee in early April after the Legislature returns from its spring recess.

Recommendation: While I continue to participate in meetings and discussion on this bill, staff recommends that the Commission adopt a support position for AB 851 and direct staff to forward a letter outlining this position to CALAFCO, the Assemblyman and to our San Bernardino County Legislative Delegation.

- There are two bills in the Legislature related to revisions to Government Code Section 56133 -- AB 402 (Dodd) and SB 239 (Hertzberg).
 - SB 239 (copy included as Attachment #3) is currently considered a spot bill referring to this section of LAFCO law, but it is understood that the sponsorship of this change is from the Professional Firefighters Association seeking union representation during these contract negotiations. Staff is recommending that the Commission take a watch position on this bill. Staff will keep the Commission apprised of any changes to the language during the processing.
 - AB 402 (Dodd) – Local Agency Services: contracts
(Copy included as Attachment #4 to this report)

AB 402 proposes to make changes in the out-of-agency service contract provisions contained within Government Code Section 56133 to provide for a mechanism to authorize service outside the sphere of influence of an agency when deemed appropriate. This question has been one which San Bernardino LAFCO has sought clarification for more than 9 years due to the condemnation of private utilities by public agencies. As the Commission will recall there was an 18 month process undertaken related to the City of Big Bear Lake's Department of Water and Power which provides for continuing water service following the condemnation of the former SoCal Water System in Big Bear. The territory contains roughly 40 percent of the customers outside the City's boundary and sphere of influence. The problem has never been existing service, which was grandfathered in by statute. It was the undeveloped parcels in the area outside the City sphere of influence in the Moonridge and Fawnskin areas that would be denied connection due to the statute.

Development of amendments to this provision made it to the approval of the CALAFCO Board of Directors on two occasions 2011 and 2013, only to be terminated due to opposition from the CALAFCO membership. I have been involved in these drafting efforts in order to provide a mechanism to address our local issues. Also involved was staff from Napa LAFCO seeking a mechanism to address extension of service to worker facilities in the wine industry.

Assemblyman Dodd, from Napa, has introduced a bill taking its direction from the last set of revisions from 2013 for Government Code Section 56133, but excluding some of the language which was included to provide safeguards in the process in keeping with the Commission's directives. If the bill were to include the sections previously vetted related to this type of service issue, staff could support the bill.

The specific provision would be to add:

(2) To serve territory, developed and/or undeveloped, that has been in the established service area of an existing provider, public or private, that has historically provided such service to at least part of the territory and the Commission makes the determinations outlined in subsection (3).

(23) Support existing or planned uses involving public or private ...

The renumbered Section 3 provides for a noticed public hearing in which the Commission would be required to make three distinctive determinations: (1) that the extension was discussed in a service review; (2) the extension would not result in adverse impacts to agriculture or open space; and (3) a later change of organization is not feasible or desirable. Staff believes that this gives the Commission the information necessary to make a learned determination and it provides for the safeguards necessary to protect the process for providing for efficient, effective and sustainable systems for delivery of services.

Recommendation: Staff recommends that the Commission take the position to support AB 402 if amended to include the specific discussion of language addressing the condemnation of private utilities, such as private or mutual water companies or electric utilities.

- AB 448 (Brown) and SB 25 (Roth) – Local Government Finance: Vehicle License Fee (VLF) Adjustments:

Another year and another attempt to secure legislation to address the issue of the loss of funding through passage of SB 89 in 2011. In years past Senator Roth (along with former Senator Emmerson) attempted to address the loss of funding through a comprehensive approach, each time failing passage. SB 25 again attempts to restore the VLF funding for newly incorporated cities post 2004 which addresses only those four cities in Riverside County which incorporated between 2004 and July 1, 2011 leaving unresolved the loss of funding for a future incorporation. AB 448 is intended to address the loss of funding for those inhabited annexations which occurred between 2004 and the future. This directly affects the City of Fontana (32 islands) as well as the Cities of Upland, Montclair, San Bernardino, Loma Linda and Victorville and is the same language as last year's AB 1521 (Fox). Copies of this legislation has not been included in the package as it is voluminous but both bills mirror the language from the prior legislative session which received unanimous support in both houses but was vetoed by the Governor.

Recommendation: As we have done in the past, staff recommends that the Commission adopt a support position for both AB 448 and SB 25 and direct staff to forward a letter outlining this position.

The CALAFCO sponsored omnibus bill has not yet been published as it is being prepared and presented to the Assembly Local Government Committee. Staff will provide information on that bill as soon as it is received.

Staff will be happy to answer any questions prior to or at the hearing.

KRM:

ATTACHMENTS:

1. [CALAFCO Daily Legislative Report as of Wednesday, March 11, 2015](#)
2. [AB 852 \(Mayes\) on Disincorporation, Press Release and Fact Sheet](#)
3. [SB 239 \(Hertzberg\) Local Government Extended Services](#)
4. [AB 402 \(Dodd\) Local Agency Services, Contracts out of agency agreements](#)