

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: MAY 18, 2015

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer



TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #13- LEGISLATIVE UPDATE REPORT

RECOMMENDATION:

Staff recommends that the Commission:

1. Note receipt of the report and file;
2. Indicate its opposition unless amended to SB 239 (Hertzberg) related to creation of a hybrid process for consideration of out-of-agency contracts for fire protection services; and,
3. Authorize the Chairman to sign letter identifying the Commission's position and direct staff to forward to the author, CALAFCO, Committees assigned (if any), and San Bernardino County Legislative delegations.

BACKGROUND:

The month of May signals the end of the legislative review process for bills in their respective house of origin as they must move to the next house by June 5. Attachment #1 to this report is the Daily Legislative Report for Monday, May 18, 2015, outlining the current status of all bills considered to be of importance to LAFCOs through CALAFCO.

On this listing are three bills of significant importance to San Bernardino LAFCO: AB 851 (Mayes) on disincorporation, AB 402 (Dodd) related to out-of-agency service contracts and SB 239 (Hertzberg) which proposes to create a new hybrid process for considering fire protection and EMS contracts outside an agency's boundary. In addition, the bills related to ongoing effort to return VLF funding to newly incorporated cities (SB 25) and those which annexed islands of inhabited territory (AB 448) continue in their review process and the CALAFCO sponsored Omnibus Bill through the Assembly Local Government Committee (AB 1532) are currently in process. The

following outlines the bills of specific interest to San Bernardino LAFCO and any new requested actions to be taken by the Commission:

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

The first committee hearing on the bill in the Assembly Local Government Committee was held on April 22, at which time it was passed 9-0 and sent to the Appropriations Committee. On May 13 it was approved by the Appropriations committee on the consent calendar on a 19-0 vote. It will now go the Assembly Floor, on possibly May 21. Attachment #2 to this report is a copy of the Appropriations Committee Analysis for AB 851, the amended bill dated May 7, 2015 with a co-author of Assembly Member Ken Cooley, and a copy of the Assembly Local Government Committee Analysis of the bill.

I continue to participate in meetings and discussion on this bill as it makes its way through the Legislature. Letters of support have been received from the LAFCOs of Orange and Riverside Counties along with our own letter. Concern has been expressed by Los Angeles County based upon its questions regarding the ability to address the conditions when revenues will be insufficient to provide for maintenance of existing service levels and whether or not the affected LAFCO will have sufficient conditioning authority to address those concerns. CALAFCO has spoken with the Los Angeles County representatives and we continue to work with CSAC and the LA County representatives to resolve these concerns. A new set of amendments is being worked on to address questions on the continuation of special and general taxes and will be provided during the Senate hearings. No action is requested from the Commission at this hearing.

- As noted in last month's report, there are two bills in the Legislature related to revisions to Government Code Section 56133 -- AB 402 (Dodd) and SB 239 (Hertzberg).
 - At the April 15, 2015 Commission hearing the position of opposition to SB 239 was approved. However, on April 23, 2015 SB 239 was gutted and amended moving the provisions for review of contracts for fire protection to a new section 56134 of CKH (see language of new bill in Attachment #3 to this report) so the letter of opposition was not prepared. The new language provides for direction on the receipt of a plan for service to address questions of financing and service levels, requires a State level provider, aka CALFire, to come to the local LAFCO for review of a contract for providing service and again requires that the local labor representatives approve of the contract before it can be submitted to the local LAFCO for review. The sponsorship of this bill remains with the Professional Firefighters Association seeking union representation during these contract negotiations.

In reviewing the new language of the bill staff has serious concerns about only one aspect, the requirement that union representation sign off on the

contract before LAFCO can receive the application. In the staff's opinion this is the "poison pill" on the bill. The balance of the amendments to the process for considering the transfer of authority for fire protection and emergency medical response provide for a means to scrutinize the implications of the contract through an unbiased third party, LAFCOs. This was what was envisioned when Government Code Section 56133 was implemented since it was viewed that contracts were being used to circumvent the analysis necessary for a change of organization. As this Commission is well aware, when contracts for the provision of a health and safety issue are considered the impacts can be profound on the community, on the agency, and on its employees.

CALAFCO and many of the other LAFCOs throughout the State have come out in total opposition to SB 239. Staff however believes that there is value in the amended language if the requirement outlined in the amended version under proposed Section 56134(d)(1) is omitted. That language reads as follows:

(d) The legislative body of a public agency or the director of a state agency shall not submit a resolution of application pursuant to this section unless both of the following occur:

(1) The public agency obtains and submits with the resolution a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed change of organization.

(2) The public agency conducts an open and public hearing on the resolution, conducted pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) Part 1 Division 2 Title 5) or the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) Chapter 1 Part 1 Division 3 Title 2), as applicable.

RECOMMENDATION: LAFCO staff's position is if Section 56134(d)(1) were omitted from SB 239 that the Commission support the bill. However, if this provision remains that SB 239 be opposed on the basis that the inclusion of this provision removes the discretion of elected officials to consider and seek approval for the most effective and efficient service delivery pattern for fire protection and emergency medical response. Staff recommends that the Commission take the position of oppose unless amended for SB 239.

- AB 402 (Dodd) – Local Agency Services: contracts

The Commission's position of support if amended was forwarded to Assembly Member Dodd and to the Assembly Local Government Committee. 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. 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. The letter was forwarded to the Assembly Member and a meeting with the Assembly Member, his staff, and CALAFCO was held on April 22, with a follow-up conference call on April 29 along with representatives of the Farm Bureau, statewide and from Napa County. This bill remains as contentious as when it was considered from 2011 through 2013 by CALAFCO.

Staff understands that Assembly Member Dodd has agreed to the request of the Vice-Chair of the Assembly Local Government Committee to make the bill a pilot program for Napa, Sonoma, and San Bernardino Counties with a sunset in 2021. The language of this amendment has not been released so staff will continue to monitor the progress of this bill. But it should be noted that it appears that the opposition to these changes from various areas, some from the LAFCOs throughout the State and others through agricultural interests, may still doom this process even with the anticipated amendments.

Based upon our experience with service issues for the City of Big Bear Lake Department of Water and Power and the City of Needles electric utility we remain in support of the proposed language to allow for a means to address their unique circumstances.

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

KRM:

ATTACHMENTS:

1. CALAFCO Daily Legislative Report as of Wednesday, May 18, 2015
2. AB 851 (Mayes) – Appropriations Committee Analysis, Amended Bill dated May 7, 2015 and Assembly Local Government Committee Analysis
3. SB 239 (Hertzberg) Local Government Extended Services – Senate Local Government Committee Bill Analysis, Copy of Bill as amended April 23, 2015; CALAFCO Opposition Letter Dated April 2, 2015;
4. AB 402 (Dodd) – Local Agency Services: contracts