

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: April 16, 2012
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #10 – PENDING LEGISLATION REPORT

RECOMMENDATION:

Staff recommends that the Commission:

1. Take the following positions on pending legislations:
 - a. Oppose AB 2238 (Perea) which proposes to mandate additional considerations within municipal service reviews related to disadvantaged unincorporated communities which represents a new unfunded mandate;
 - b. Support AB 2698 (Assembly Local Government Committee) CALAFCO sponsored Omnibus bill making non-substantive changes to Cortese-Knox-Hertzberg Local Government Reorganization Act;
 - c. Support SB 1498 (Emmerson) which proposes to amend Government Code Section 56133 to address service issues outside an agency's sphere of influence and removes the requirement for supplemental annexation submission for disadvantaged unincorporated communities when a 10-acre or larger annexation proposal is considered by the Commission;
 - d. Support SB 1566 (Negrete-McLeod and Emmerson) proposes to reinstate motor vehicle license fees (VLF) to recently incorporated cities and for inhabited annexations removed by approval of SB 89;
 - e. Watch SB 1519 (Fuller) related to the Bighorn-Desert View Water Agency
2. Direct the Executive Officer to prepare the legislative position letters outlining the Commission's positions taken at this hearing for signature by the Commission Chair and forward them to the appropriate legislative committee, CALAFCO, CCL and the Commission's local legislative delegation.

BACKGROUND:

The new legislative session is in full tilt with all bills needing to move out of their house of origin by the end of April to the next house for discussion. Attachment #1 to this report is the CALAFCO Daily Legislative Report as of April 11, 2012 which outline bills of interest to LAFCOs throughout the State and the position, if any, taken by the CALAFCO Board of Directors. Several bills are of importance to the operations of the Commission as well as some which, if approved, will impose new unfunded mandates. The information which follows outlines the staff's analysis and recommendation on these specific bills.

1. AB 2238 – As originally proposed, AB 2238 would require that all future service reviews include a detailed discussion of the potential for reorganization and/or consolidation for water and wastewater providers. CALAFCO took an oppose position based upon the unfunded mandate imposed upon LAFCOs and the lack of ability to effectuate the changes original envisioned by the bill (copy included as a part of Attachment #2). AB 2238 was amended on April 11, 2012 (copy included in Attachment #2) identifying a new Section 1, which appears to be an uncodified section that states *“It is the intent of the Legislature to encourage local agency (bill says area) formation commissions to focus on the consolidation, merger, or extension of public water systems, especially those located in disadvantaged communities, by seeking financial assistance in order to perform the necessary service reviews and other appropriate studies.”*

Staff's response to this section would be where is this funding supposed to come from? There is legislation (AB 2624) which will allow LAFCO's to participate in the process for financial assistance through the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. But as you look at where these funds are intended to go, the question of funding additional studies that cannot be mandated to occur does not appear to be the most prudent use of these limited funds.

In addition, the bill as written amends Section 56430 (b) to read as follows (changes are italicized):

“(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area. The commission ~~shall~~ *may* assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies. *The commission shall comprehensively assess various alternatives for improving efficiency and affordability of infrastructure and service delivery for drinking water and wastewater services.*

While the language changes the “shall” in the second sentence to “may”, it adds an entirely new directive in the last sentence that must be done. The language of the bill includes a new unfunded mandate which requires the Commission to conduct these additional studies with no resources or expertise in the analysis of these infrastructure systems in the detail contemplated. In the staff's view implementation of this provision will necessitate the hiring of consultants to perform this type of analysis, a cost which must then be borne by our apportioned entities. In addition,

while the Commission will be required to perform these studies it cannot require that the changes occur. As with SB 244 and AB 853 last year, it is the position of staff that these types of resources would be better directed at providing the service directly rather than providing a study which may very well languish without implementation. Therefore, staff is recommending that the Commission oppose this legislation.

2. AB 2698 – This is the CALAFCO sponsored Omnibus Bill to provide for clean-up, non-substantive changes to the Cortese-Knox-Hertzberg Local Government Reorganization Act (copy included as Attachment #3). The February 24, 2012 version of the bill identifies that it will correct some internal code citations; it will change the provisions that require annexation of disadvantaged unincorporated communities when a 10 acre city annexation is submitted to identify that such a change is not required if a majority of the registered voters, rather than existing language of residents, have shown their opposition. Staff is recommending support for this legislation.
3. SB 1498 – This is legislation sponsored by the League of California Cities to address some of its concerns with SB 244 (Wolk) related to disadvantaged unincorporated communities requiring concurrent annexation with changes to Government Code Section 56133 related to out-of-agency service agreements. The bill language (included as Attachment #4) would remove Government Code Section 56375(a)(8) entirely and would implement the changes to Government Code Section 56133 advocated by San Bernardino LAFCO staff, which was reviewed and approved by the CALAFCO Legislative Committee and was supported by the CALAFCO Board of Directors.

San Bernardino LAFCO staff has long advocated for this type of change to provide a mechanism to deal with the condemnation of the Southern California Water Company system by the City of Big Bear Lake creating its Department of Water and Power (DWP). As the Commission will recall during the Big Bear service review, issues were identified about the ability to allow for new connections within the DWP area outside the corporate limits of the City. Existing law does not allow for the connection if the area is not within the City's sphere of influence. The DWP's service area includes the bulk of the Sugarloaf community and the unincorporated Moonridge community which is within the Big Bear City CSD and the Fawnskin community on Big Bear Lake's North shore. The change proposed by SB 1498 adds Subsection (c) which expands the Commission's individual discretion in administering Section 56133 and provides the flexibility to address the unique situations which may arise in the 58 Counties in the state. Staff is recommending support for this legislation.

4. SB 1566 -- This legislation is proposed to change the actions of SB 89, adopted last June to remove the motor vehicle license fees (VLF) that was provided to newly incorporated cities and for those cities which annexed inhabited territory after 2004. As the Commission will recall, after the approval of SB 89, within a 48 hour period, the City of Fontana lost approximately 1.3 million dollars. This was after it had adopted its budget for Fiscal Year 2011-12. Staff is recommending that the Commission support this legislation.

5. SB 1519 – This bill was introduced by Senator Fuller at the request of the Bighorn-Desert View Water Agency. I have been in contact with Senator Fuller’s office who has indicated that the intent of the bill was to address the budgeting issue identified in the service review for the agency – the requirement to maintain separate budgets for the two former agencies. The language of the current bill will be considered a placeholder bill at this time with the Senator’s office working with the Agency and LAFCO staff to address the Agency’s concerns for its special legislation in a follow-up bill to be introduced in the next legislative session. LAFCO staff recommends that a watch position is included.

Staff is recommending that the Commission review the materials presented, take the positions of opposition or support as identified in this report or as modified at the hearing, and direct that position letters be drafted for the Chairman’s signature reflecting those positions. Staff will be happy to answer any questions prior to or at the hearing.

KRM:

ATTACHMENTS:

- 1 -- [CALAFCO Legislative Report Dated April 11, 2012](#)
- 2 -- [AB 2238: CALAFCO Oppose Letter, Bill Language as of April 10, 2012](#)
- 3 -- [AB 2698: Bill Language as of March 21, 2012](#)
- 4 -- [AB 1498: Bill Language as of February 24, 2012, CALAFCO position on Changes to Government Code Section 56133](#)
- 5 -- [SB 1566: CALAFCO Support Letter, Bill Language as of April 10, 2012](#)
- 6 -- [SB 1510: Bill Language as of February 24, 2012](#)