



Solano Local Agency Formation Commission

675 Texas St. Ste. 6700 • Fairfield, California 94533
(707) 439-3897 • FAX: (707) 438-1788

Staff Report

DATE: April 11, 2016

TO: Local Agency Formation Commission

FROM: Elliot Mulberg, Executive Officer
Michelle McIntyre

SUBJECT: **Legislative Report**

Recommendation: That the Commission send a letter opposing SB 1318.

At its March 21st meeting, the Commission received an oral report on legislative updates. Below is a follow up on some of the items discussed.

At its March meeting, the Commission was informed by legal counsel of the 5th District Court of Appeal's recent case of City of Patterson v. Turlock Irrigation District, related to annexations following extensions of services. The Commission subsequently directed staff to send a letter to the CALAFCO Board requesting the Board consider any and all paths forward to amending §56653 to overcome the ruling in the City of Patterson case as described in the attached letter of March 29, 2016. Several other LAFCOs have sent similar letters to CALAFCO and the CALAFCO Board is expected to consider this issue at its regularly scheduled May 6, 2016 meeting.

One of the bills CALAFCO is closely monitoring is SB 1318 (Wolk). The bill has to do with providing safe drinking water and wastewater services to disadvantaged communities. While CALAFCO supports the ongoing efforts to provide safe drinking water and wastewater facilities, the bill as written, is problematic for LAFCOs. CALAFCO is concerned with the unfunded mandates that would be placed on LAFCOs as a result of having to conduct studies outside of SOIs and studies of private utility companies that serve Disadvantaged Unincorporated Communities (DUCs). While Solano LAFCO has not had to address providing services to DUCs, other LAFCOs are facing these challenges and it may be an issue Solano LAFCO will have to consider in the future.

The bill was amended and approved by Senate Government & Finance Committee on April 6th and sent to Senate Environmental Quality.

Consistent with Solano LAFCO's legislative platform and legislative policy, staff requests the Commission approve sending an oppose letter similar in format to CALAFCO's letter opposing the bill.

SB 1266 (McGuire) – Joint Power Authorities (CALAFCO Sponsored)

As introduced, the intent of the bill is all stand-alone JPAs shall file a copy of their agreement (and a copy of any amendments to that agreement) with the LAFCO in each county within which all or any part a local agency member's territory is located. The LAFCO may then use this information in their service reviews and other studies. This bill opens up a direct line of communication between the LAFCO and the JPA providing municipal service. This bill is not intended to give LAFCO any authority of JPAs. The bill was amended and passed by the Government and Finance Committee and sent to Appropriations.

SB 1262 (Pavley) Land Use Planning and Water - (CALAFCO WATCH WITH CONCERNS)

As introduced, this bill makes a number of changes to GC§66473.7 and section 10910 of the Water Code. In 66473.7, in the definitions section, the bill adds definitions pertaining to the use of groundwater by a proposed subdivision as the source of water. It amends Water Code section 10910 to require the city or county to submit a report that shows that water can be supplied to the project. If the LAFCO denies the annexation or extension of service then the city or county shall develop a water supply assessment as outlined in 10910.

CALAFCO's primary concerns are the late timing of the water supply assessment, the size of a "project" (500 units), and addressing phased development.

CALAFCO recommends changing the sequence of timing so that the water supply assessment is done prior to LAFCO reviewing the application and considering how much of the demand associated with new development they want to capture in the water supply assessments and written verifications and then determining a dwelling unit threshold that would likely yield the desired result.

Other Legislation of Interest
(4/7/16)

Finance

SB 817 (Roth D) Local government finance: property tax revenue allocations: vehicle license fee adjustments.

Status: Set for hearing Appropriations Committee 4/11/16

Summary: As amended, this bill is identical to SB 25 (Roth, 2015) and SB 69 (Roth, 2014). The bill calls for reinstatement of the VLF through ERAF for cities that incorporated between January 1, 2004 and January 1, 2012. There are no provisions for back payments for lost revenue, but the bill does reinstate future payments beginning in the 2016/17 year for cities that incorporated between January 1, 2004 and January 1, 2012.

CALAFCO Position: Support

AB 2277 (Melendez R) Local government finance: property tax revenue allocation: vehicle license fee adjustments.

Status: 4/6/16 passed Local Government Committee to Appropriations

Summary: As introduced, this bill is identical to AB 448 (Brown) from 2015 and AB 1521 (Fox) from 2014. This bill reinstates the VLF payment (through ERAF) and changes the way that the growth in the VLF adjustment amount (property tax in lieu of VLF) is calculated starting in FY 2016-17 to include the growth of assessed valuation, including in an annexed area, from FY 2004-05 to FY 2015-16. Beginning in FY 2017-18, the VLF adjustment amount would be the jurisdiction's annual change in the assessed valuation.

CALAFCO Position: Watch

Water

SB 1263 (Wieckowski D) Public water system: permits.

Status: Appropriations Committee

Summary: As introduced, this bill would prohibit an application for a permit for a new public water system from being deemed complete unless the applicant has submitted a preliminary technical report to the state board, as specified, and would allow the state board to impose technical, financial, or managerial requirements on the permit. The bill would prohibit a public water system not in existence on January 1, 1998, from being granted a permit unless the public water system demonstrates that the water supplier also possesses adequate water rights to ensure the delivery safe drinking water, and would specify that the prohibition applies to any change in ownership of the public water system, including the consolidation of a public water system. The bill would allow the state board to deny the permit if the state board determines that the service area of the public water system can be served by one or more currently permitted public water systems. Finally, the bill would prohibit a local primacy agency from issuing a permit without the concurrence of the state board.

CALAFCO Position: Watch

Special Districts

AB 1362 (Gordon D) Mosquito abatement and vector control districts: board of trustees: appointment of members.

Status: 2/4/2016-Referred to Com. on GOV. & F.

Summary:

Would authorize a city council, located in an existing or newly formed district as specified, to adopt a resolution requesting that appointments of persons to the board of trustees instead be made by a city selection committee, established pursuant to specified provisions of law, and conditioned upon a majority of authorized city councils adopting their respective resolutions. This bill would authorize the city selection committee to decrease the total number of appointments to be made by the committee if a majority of city councils within the district make this request in their respective resolutions.

CALAFCO Position: Watch

AB 2389 (Ridley-Thomas D) Special districts: district-based elections: reapportionment.

Status: 4/6/16 Re-referred to Com on Local Government

Summary:

Would authorize a governing body of a special district, as defined, to require, by resolution, that the election of the members of its governing body be elected using district-based elections without being required to submit the resolution to the voters for approval.

CALAFCO Position: Watch

Administration

AB 1707 (Linder R) Public records: response to request.

Status: First hearing set for 3/31/16 but canceled at the request of the author.

Summary:

As introduced, this bill would require LAFcos, when responding to a Public Records Request for which a determination has been made to deny the request, to include in the written response the title (or other identification) of each record that was requested and not provided, and the specific exemption that applies to that record.

CALAFCO Position: Oppose

AB 2257 (Maienschein R) Local agency meetings: agenda: online posting.

Subject: LAFCo Administration

Status: First hearing set for 3/29/16 but canceled at the request of the author.

Summary:

As introduced, this bill amends GC Section 54954.2 pertaining to the online posting of a local agency's meeting agenda. The bill requires that online posting to have a prominent and direct link to the current agenda itself from the local agency's homepage. This means that LAFcos will have to post a prominent link on their website's homepage, directly taking the user to the meeting agenda.

CALAFCO Position: Watch

AB 2801 (Gallagher) Local Government: fees and charges: written protest.

Status: 4/5/2016-Re-referred to Com. on JUD.

Summary: This bill will would remove the 60 day statute of limitations on bringing a validation action to court for any public agency, including LAFCo.

CALAFCO Position: Oppose

SB 971 SB 972 SB 973 (Committee on Governance and Finance) Validations.

Status: On the floor of the Senate on the consent calendar.

Summary:

Would enact the First Validating Act of 2016, which would validate the organization, boundaries, acts, proceedings, and bonds of the state and counties, cities, and specified districts, agencies, and entities. This bill would declare that it is to take effect immediately as an urgency statute.

CALAFCO Position: Support

SB 974 (Committee on Governance and Finance) Local government: omnibus.

Status: Appropriations Committee

Summary:

The Planning and Zoning Law requires that the safety element be reviewed and updated, in the case of flooding and fire hazards, upon the next revision of the housing element after specified dates or, in the case of climate adaptation and resilience strategies, upon either the next revision of a local hazard mitigation plan after a specified date or on or before January 1, 2022, as applicable. This bill would instead require a planning agency to review and revise the safety element to identify new information, as described above, only after to address flooding and fires. This bill is the Senate Governance & Finance Committee's annual Omnibus bill.

CALAFCO Position: Watch

SB 1292 (Stone R) Grand juries: reports.

Status: Hearing Senate Public Safety April 12.

Summary:

Sponsored by CSDA, there are amendments pending to this bill. Those amendments would require the Grand Jury to conduct an exit interview with report subjects to discuss and share findings. They may also provide a copy of the subject's report. The subject will have no less than 5 working days to provide written comments back to the Grand Jury for their consideration before the report is public. One the Grand Jury report is approved by a judge, the Grand Jury is required to provide a copy of the section pertaining to the subject to that entity no later than 6 working days prior to the reports public release. The subject entity can submit a preliminary response to the report to the Grand Jury, who is then required to make those prelim comments public at the time the report is made public.

This will allow LAFCos, when they are the subject of a Grand Jury report, to meet with the Grand Jury and hear their findings, and for the LAFCo to respond to those findings and offer additional information

or corrections. Further, it allows the LAFCo to provide preliminary comments that are required to be posted with the report when it is made public.

CALAFCO Position: Watch

SB 1436 (Bates R) Local agency meetings: local agency executive compensation: discussion of final action taken.

Status: Hearing set for Senate Governance and Finance Committee on 4/13/16.

Subject: LAFCo Administration

Summary:

As introduced, this bill requires LAFCOs, when taking final action on salary for the LAFCO's executive, to be made as a separate discussion agenda item rather than a content calendar item on the agenda.

CALAFCO Position: Watch

Attachments:

A - Letter to CALAFCO Board Re City of Patterson v. Turlock Irrigation District

B - SB1318 (Wolk) Oppose Letter



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March 29, 2016

Ms. Pamela Miller
Executive Director
California Association of Local Agency Formation Commissions
1215 K Street, Suite 1650
Sacramento, CA 95814

Dear Pamela,

Solano LAFCo requests that the CALAFCo Board consider any and all paths forward to amending §56653 to overcome the ruling in the City of Patterson case that presents significant risks for LAFCo's throughout the state. The potential downside to not acting proactively to correct this situation is additional litigation that an individual LAFCo may face and that CALAFCo may ultimately need to apply significant resources to address.

The 5th District Court of Appeal in the recent case of City of Patterson v. Turlock Irrigation District ((2014) 227 Cal.App.4th 484), held that the language of Section 56653 only permits applications for annexation or other reorganizations which include a plan to extend services to the area. If no extension of services is proposed than an application for the change of organization cannot be made. Based on this, the Court invalidated the City of Patterson's request for annexation to the Turlock Irrigation District because the area was already being served under contract by TID and no new extension of services was being proposed. The Court itself noted that the language could be easily modified to allow such extensions for areas already being served, but that, as written, the plain meaning of the existing language compelled invalidation of the annexation application. The court's interpretation of §56653 is a published court of appeal decision, making it applicable law throughout California. Consequently, if the holding is followed, no annexation to a special district or city of areas already being served is permitted unless the application includes a plan to extend additional services to the area beyond what is already being provided. This will complicate, if not preclude annexations particularly to single-purpose special districts of areas they are already serving under contract.

We know of no LAFCo in the state that is complying with the Patterson decision as it runs directly contrary to normal practice and policy. Consequently, it is only a matter of time before some smart attorney notices the Patterson ruling and successfully challenges such non-complying LAFCo actions. We should not wait until one of our member agencies face such a consequence. A legislative fix is needed as soon as possible as the clock is ticking on the legal time bomb. We therefore ask that the Board revisit this issue and determine it is worthy of more immediate attention. .

Sincerely,

Elliot Mulberg,
Executive Officer

Cc: Commissioners
Scott Browne, Solano LAFCo Counsel

Commissioners

John Saunderson, Chair • John Vasquez, Vice-Chair
Harry Price • Jim Spering • Jack Batchelor

Alternate Commissioners

Skip Thomson • Nancy Shopay • Pete Sanchez

Staff

Elliot Mulberg, Executive Officer • Michelle McIntyre, Analyst • P. Scott Browne, Legal Counsel

18 March 2016

Senator Lois Wolk
California State Senate
State Capitol Room 5114
Sacramento, CA 95814

RE: OPPOSITION TO SB 1318

Dear Senator Wolk:

The California Association of Local Agency Formation Commissions (CALAFCO) regretfully must oppose your bill SB 1318. Local Agency Formation Commissions (LAFCo) are aware of and concerned about the disparity of local public services, especially for residents and properties located within disadvantaged unincorporated communities (DUCs). All Californians deserve adequate and safe drinking water and wastewater facilities. CALAFCO supports your ongoing efforts to address these problems, which persist in many counties, and would like to partner with you to find the appropriate solutions.

Our primary concern is that the outcome of this legislation does not result in any changes to community services or facilities, or address the root causes of the lack of acceptable drinking water and wastewater facilities to these communities. We've shared our concerns with your staff and the bill's sponsor, and offer our comments below. While these comments address only the primary concerns, additional concerns exist.

Specific primary concerns include:

1. **Creates a Significant Unfunded Mandate to LAFCo and Local Agencies.** The studies, analysis and preparation of recommendations regarding underserved disadvantaged communities that would be required imposes an unfunded mandate on all LAFCos. By law LAFCo is forced to pass those costs on to cities, counties – and in 30 counties – special districts which fund the commissions. In these challenging economic times for local agencies this is a difficult proposition. LAFCos have no other revenue source to fund the required studies. With limited staff, many of these studies will require outside consultants at an added cost.
2. **Studies Outside of a Sphere.** The legislation would require LAFCos, for the first time, to study territory outside of an agency's sphere of influence (sphere). This is a significant new requirement and costly study process. The term "adjacent" is undefined and since these communities have no boundary it is impossible to know what constitutes "adjacent."
3. **Studies of Non-Public Agencies.** The legislation would also require LAFCos, for the first time, to identify the level of water and wastewater services provided by public or private utilities and mutual water companies that serve disadvantaged communities and DUCs. LAFCo has no authority over these entities, and would be prohibited from allowing an extension of service from a city or public agency within or adjacent to a sphere for influence if a private company, public or private utility or mutual water company provided unsafe drinking water or inadequate wastewater infrastructure or services within or adjacent to the same sphere of influence. While LAFCos support efficient delivery of public services to all residents, the Legislature has not granted LAFCo the authority to regulate or approve service extensions of the non-public service providers included in this legislation. This will surely lead to confusion, potential conflict and likely litigation.

4. **Precedent-setting Change in Final Authority of Spheres.** The bill changes existing law by removing from LAFCo authority the final sphere approval and instead puts that authority in the hands of the voters. This is in direct conflict with the existing definition of a sphere. The legislature has established a framework that gives voters and landowners the final say in changes of jurisdiction. Spheres are not jurisdictional changes; they are planning tools. Planning functions are not typically delegated to voters. In addition, the bill proposes an inconsistent use of the term “voters” and “residents”, thereby creating confusion as to the intent.
5. **Removes LAFCo Discretion.** When considering a change of organization pursuant to Government Code Section 56133, LAFCo has the discretion to consider the unique local circumstances and conditions that exist. This is an important and basic construct within the legislatively stated purpose of LAFCos. This bill removes that discretion and authority.
6. **One size does not fit all.** We are concerned that the bill has unintended consequences in the ability to provide necessary services to an existing DUC. For example, if it is reasonable to extend services to a particular DUC but not to others, this bill prevents the extension of services to the area that can reasonably be serviced. The same is true for those areas currently contained within a city’s sphere, where it may make better sense to have another service provider providing the service. In the latter case, the bill proposes an election, and we are concerned not only with the precedent-setting nature of a voter-approved sphere, but also the cost of the election. These changes are complicated by the fact the bill interchangeably uses the term “disadvantaged community” and “disadvantaged unincorporated community”.
7. **Changes Governmental Reorganization Recommendations from May to Shall.** The amended language requires LAFCo to assess governmental reorganizations and non- governmental service provisions in all sphere determinations, rather than allowing commission discretion. This will add costly, time consuming and often wasted studies to every sphere review and can create unintended litigation issues. Current law allows LAFCo to determine those cases where a reorganization study may be appropriate to further the goals of orderly development as well as efficient and affordable service delivery. To require it in all cases creates costly, unnecessary studies.

CALAFCO remains committed to help find solutions to the disparities in service delivery to disadvantaged communities. We recognize, however, that simply changing the boundaries or spheres of local agencies does little to ensure adequate services are actually delivered. A major obstacle remains the infrastructure and operational funding for these services. We believe that addressing the needs of disadvantaged communities through the planning process and finding tools to support the infrastructure deficiencies remain a very important part of the solution.

To that end, we are happy to work with you and your staff on finding appropriate solutions to these challenges. Please contact us if we can answer any questions or be of assistance.

Yours sincerely,



Pamela Miller
Executive Director

Cc: Members, Senate Governance & Finance Committee
Anton Favorini-Csorba, Consultant, Senate Local Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus