

# LAFCO

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**Santa Barbara Local Agency Formation Commission**  
105 East Anapamu Street ♦ Santa Barbara CA 93101  
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August 3, 2023 (Agenda)

Local Agency Formation Commission  
105 East Anapamu Street  
Santa Barbara CA 93101

## Consider Position on AB 399

Dear Members of the Commission

### RECOMMENDATION

It is recommended that the Commission adopt an OPPOSE position on AB 399 and reaches out to local legislators expressing our concerns.

### DISCUSSION

Assembly Bill 399 has been introduced by Assemblymember Tasha Boerner. CALAFCO has requested LAFCOs take a position on the bill since it affects our collective efforts to discourage end runs around the LAFCo procedures — in this case the Legislature would require a county-wide election for the detachment of a small water authority, an election CALAFCO deems doomed to defeat and inconsistent with CKH principles.

AB 399 is seeking to amend the County Water Authority Act (CWAA) of 1943 to change the procedure for member agencies to detach from a county water authority. (The CWAA is an arcane uncodified statute which was implemented during World War II to address federal concerns regarding the security of Colorado River water to the rapidly growing San Diego naval base.)

The current procedure outlined in the CWAA requires a vote from among the population of the detaching district, which is essentially consistent with LAFCo laws and their legislative focus on individual rights. However, AB 399 (which has been spun as the "Water Ratepayers Protections Act of 2023") is seeking to add a second vote among the entire population of the county water authority, making it inconsistent with the legislative intent of LAFCo laws.

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**Commissioners:** Cynthia Allen ♦ Jay Freeman, Vice-Chair ♦ Craig Geyer ♦ Joan Hartmann, Chair ♦ James Kyriaco ♦ Bob Nelson  
♦ Jenelle Osborne ♦ Alice Patino ♦ Jim Richardson ♦ Shane Stark ♦ Das Williams **Executive Officer:** Mike Prater

Attachments

Attachment A – AB 399 Fact Sheet

Attachment B –CALAFCO Opposition Letter dated June 28, 2023

Please contact the LAFCO office if you have any questions. Sincerely,

A handwritten signature in blue ink that reads "M. Prater". The signature is stylized and includes a horizontal line at the end.

Mike Prater  
Executive Officer



**Assemblymember Tasha Boerner, 77<sup>th</sup> District**  
**AB 399 WATER RATEPAYERS PROTECTIONS ACT OF 2023**  
*(AS AMENDED JUNE 14, 2023)*

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## SUMMARY

AB 399 would require, as an additional condition to the Local Agency Formation Commission (LAFCO) process for allowing the detachment of a public agency from their relevant county water authority, that the majority of the voters within the jurisdiction of the county water authority vote to approve the detachment at a scheduled election.

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## BACKGROUND

Two local water agencies in San Diego County have submitted proposals to be excluded (also known as detachment) from the San Diego County Water Authority and connect to a wholesale water supplier in Riverside County. The San Diego Local Area Formation Committee (San Diego LAFCO) staff are interpreting the statutory requirements to recommend only a vote of the service areas that seek to detach would be required for the detachment to occur, rather than also requiring a second vote of the entire affected service area. The requirement to limit the electoral approval to just those water authority members who wish to detach fails to give voice to the remaining electors who may be significantly affected by the detachment.

The San Diego County Water Authority has identified the following implications for detachment that deserve consideration by all of those affected:

- Detachment will cause water rate hikes across San Diego County, as remaining members would be required to cover the revenue losses from the departing entities.
- Detachment affects the San Diego region's voting rights at Metropolitan Water District of Southern California, directly diluting the San Diego region's influence at MWD.

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## EXISTING LAW

The County Water Authority Act provides for the formation of county water authorities and grants to those authorities specified powers with regards to providing water service. While the Act provides for statutory application, the only known water authority to which this act is understood to apply is the San Diego County Water Authority. The act provides processes for excluding territory from any county water authority through a process administered through LAFCO. The Act stipulates that a public agency whose corporate area is part of a county water authority may obtain exclusion from the authority by submitting to the electors within the public agency, at any general or special election, the proposition of excluding the public agency's corporate area from the county water authority. Existing law requires that a majority of the electors is required to approve the exclusion.

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## THIS BILL

AB 399, the Water Ratepayers Protections Act of 2023 would:

1. Additionally authorize any public agency to submit to all the electors within the territory of the water authority the proposition of excluding from the county water authority the corporate area of the public agency.
2. Requires the election provision of current law and the election provision authorized by this bill to be separate elections; however they may run concurrently.
3. Requires that a majority vote in both elections is necessary to withdraw from the territory of the water authority.

AB 399 would provide transparency for any current or future detachment proceeding for a county water authority and promotes democracy by involving all those impacted by the action a voice.



**Assemblymember Tasha Boerner, 77<sup>th</sup> District**  
**AB 399 WATER RATEPAYERS PROTECTIONS ACT OF 2023**  
*(AS AMENDED JUNE 14, 2023)*

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**SUPPORT**

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- City of San Diego (Sponsor)
- San Diego County Water Authority
- San Diego Chamber of Commerce

**OPPOSITION**

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- San Diego Local Agency Formation Commission (LAFCO)

**FOR MORE INFORMATION**

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[Rob.Charles@asm.ca.gov](mailto:Rob.Charles@asm.ca.gov)

June 28, 2023

Senator Anna Caballero, Chair  
Senate Governance and Finance Committee  
California State Senate  
1021 O Street, Ste. 7620  
Sacramento, CA 95814

RE: **AB 399, AS AMENDED JUNE 14, 2023 – OPPOSE**

Dear Chair Caballero and Committee Members:

The California Association of Local Agency Formation Commissions (CALAFCO), which represents Local Agency Formation Commissions (LAFCo) throughout California, respectfully opposes **Assembly Bill 399** which seeks to change the way detachment elections are conducted under provisions contained within the uncodified statutes of the County Water Authority Act of 1943 (the CWAA). While **AB 399** appears at first glance to be defining an existing procedure, its effect will be to change the procedure in a way that will conflict with LAFCo law, while effectively minimizing local control and self-determination by disenfranchising those most affected by a potential detachment.

Currently, the CWAA provides that the territory of a public agency that is contained within the boundary of a larger county water authority can be detached by a vote of those living within the boundary of the detaching public agency. This existing process is essentially consistent with the Cortese – Knox – Hertzberg Local Government Reorganization Act of 2000 (CKH) under which LAFCos operate.

**AB 399** deviates by requiring a second election to be held in addition to the above election. However, this second election will be held among all of the voters within the territory of the larger county water authority, which is not consistent with existing CKH law.

Requiring an additional election from among the entire voting base within the larger county water authority boundary skews the LAFCo process by diminishing the voices of those within the area proposed for detachment who will feel the most effects. By doing so, it will, in effect, remove local control and self-determination as the voices of the residents within the detaching territory get diluted among those of the entire water authority.

On its face, **AB 399** also appears to cast aside the “one person, one vote” doctrine by requiring the residents of the detaching districts to vote in two separate elections on the same issue. (Once as a resident within the boundary of the detaching public agency, and a

second time as a resident within the boundary of the larger water authority.) These dual elections can only result in confusion.

Finally, **AB 399** is also being requested as an urgency statute to take effect immediately should it be passed. However, the urgency provision also poses a problem as its timing would affect ongoing LAFCo applications that were filed in good faith and which have been proceeding for some time under existing laws.

Through the years, California has earned the laudable reputation of being a forward-looking state by implementing innovative, yet well-considered and thoroughly-vetted laws. Hastily amending little known and hard-to-find uncodified statutes, such as the CWAA, in ways that not only disenfranchise people but conflict with existing generally applied laws is not only problematic on many fronts, but is also poor policy. Thus, while CALAFCO appreciates and sympathizes with the gravity of the underlying issues driving **AB 399**, we must respectfully oppose it for all of the above reasons.

I am available to answer any questions you may have about our position.

Yours sincerely,

A handwritten signature in blue ink that reads "René LaRoche". The signature is written in a cursive style with a light blue background behind it.

René LaRoche  
CALAFCO Executive Director