

LAFCO

Santa Barbara Local Agency Formation Commission

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Local Agency Formation Commission

105 East Anapamu Street, Room 403

Santa Barbara CA 93101

Report on Approved, Pending and Voted Bills - Assembly Bills 18, 528, 711, 853, 1109, 1172, 1232 and 1582 and Senate Bills, 113, 211 and 215

Dear Members of the Commission:

RECOMMENDATION

It is recommended the Commission receive the following report on legislation.

DISCUSSION

The following information regarding the status of legislative decisions during the past year is taken almost entirely from a legislative briefing that was presented at the CALAFCO Conference by Peter Detwiler, Consultant to the Senate Committee on Local Government.

Sincere appreciation is extended to Mr. Detwiler for his efforts each year to work closely with the CALAFCO Legislative Committee and inform LAFCOs of legislative matters.

Approved Bills, Signed into Law

- Senate Bill 215 (Wiggins) - LAFCOs & Sustainable Communities Strategies
Chapter 570, Statutes of 2009

Summary - Requires LAFCOs to consider regional transportation plans that include “sustainable community strategies” before making boundary decisions.

Background - LAFCOs’ statutory purposes include “discouraging urban sprawl.” To guide it boundary decisions, LAFCO adopts “spheres of influence” that designate future boundaries and service areas of cities and districts. Individual boundary changes must be consistent with the adopted spheres of influence.

There is increasing legislative and public support for using land use decisions to help reduce greenhouse gas emissions. Metropolitan planning organizations (MPOs) must adopt

“sustainable communities strategies” or “alternative planning strategies” as part of their regional transportation plans. These strategies align regional planning for transportation and housing. In preparing a sustainable communities strategy, MPOs must consider city and special district spheres of influence as adopted by the local LAFCO.

While MPOs are required to consider LAFCO adopted Spheres of Influence there is no reciprocal requirement for LAFCOs to consider the MPOs’ regional transportation plans that contain sustainable communities strategies and alternative planning strategies.

The bill adds regional transportation plans to the list of factors that LAFCOs must consider when acting on city and special district boundary changes.

- AB 1582 (Assembly Local Government Committee) - Local Agency Formation Commissions
Chapter 155, Statutes of 2009

This annual CALAFCO “clean up” bill makes six changes affecting LAFCOs and local boundaries:

- Sphere of influence deadline for new districts. LAFCOs adopt spheres of influence for all cities and special districts. When LAFCO approves a city incorporation, it must determine the sphere within a year of incorporation. The law is silent on deadlines for determining the sphere of influence of a new special district.

The bill requires LAFCO to determine the new special district sphere of influence within a year of the formation.

- Spheres of influence and Williamson Act land - The Williamson Act (Land Conservation Act) allows landowners to sign contracts that enforceably restrict their land to agriculture, open space, and compatible uses. LAFCO cannot include Williamson Act contracted land within a city or special district sphere if that agency provides nonagricultural water, sewers or streets unless those facilities or services benefit the land uses allowed under the Williamson Act contract and the landowner consents.

This bill corrects a duplication of section numbers.

- Landowner consent of railroad property - If all landowners within affected territory apply to LAFCO for a boundary change, or a government application for boundary change has the written consent of all landowners, LAFCO can approve or deny the proposal without notice, hearing, or election.

For uninhabited territory (fewer than 12 registered voters), LAFCO can waive the protest proceedings following its approval if all affected landowners have given written consent.

Since LAFCOs have had a difficult time getting railroad companies to respond to requests for written consent for annexation. The bill allows LAFCO to waive protest proceedings for uninhabited boundary changes if a private railroad company, after being notified of the change, does not submit written opposition to waiving the protest proceedings.

- Protest petitions - If LAFCO approves a city or special district boundary change, absent consent by all affected landowners, LAFCO must hold a public hearing to count protests from registered voters or landowners. Depending on the protests received, the proposed change can be recorded without an election, go forward subject to voter approval or be terminated.

Valid written protests must state whether the protest comes from a landowner or registered voter and contain identifying information. The Court of Appeals in *Citizens for Responsible Open Space v. San Mateo LAFCO* (2008) concluded that while there may be ambiguity, the Legislature's intent was clear.

To resolve the statutory ambiguity the bill requires protest petitions to contain the same information the law already requires for petitions that initiate boundary changes, which effectively codifies the Court's 2008 decision.

- Incorporation elections – In general law cities voters can elect the city council at-large (citywide), by district (only voters in the district vote for candidates), or from districts (candidates must live in the district but run citywide).

When LAFCO approves incorporation of a new city, its resolution must allow the voters to decide whether future city councils will be elected by district or at large. The bill adds city council elections “from district” to the list of choices that voters have when voting on city incorporations.

- Reorganization election costs - If the voters approve a proposed reorganization (i.e., two or more boundary changes in a single proposal), state law says “affected local agencies” must pay for the election costs. “Affected local agency” means every city, county, or special district that contains or would contain the affected territory.

For fairness the bill shifts the responsibility to pay for a successful reorganization from “affected local agencies” to “subject local agencies,” meaning those agencies whose boundaries are the subject of the reorganization.

- Senate Bill 113 (Senate Local Government Committee)
Local Government Omnibus Act of 2009 - Chapter 332, Statutes of 2009

Background - Each year local officials discover problems with statutes affecting counties, cities, special districts, and redevelopment agencies, as well as the laws on land use planning and development. These minor problems do not necessarily warrant separate bills.

SB 113 makes 39 relatively minor, non-controversial changes to the laws affecting local agencies' powers and duties. Those related to LAFCOs include the following:

- Appropriations limits for new local governments - Public agencies must adopt annual appropriations limits; voters must establish the initial appropriations limit for new local agencies. State law explains how to set appropriations limits for new local governments with specific procedures for new cities, counties and special districts.

Senate Bill 113 repeals obsolete provisions relating to cities that incorporated in the late 1980s and corrects statutory cross-references that explain how new local governments set their appropriations limits.

- County boundary change cross-reference - State law spells out the procedures for counties to follow when making minor boundary changes. Such changes are not subject to review by LAFCO. The bill corrects the citation to the LAFCO statute in state law that spells out the procedures for minor county boundary changes.
- Latent power cross-reference - The County Service Area Law and Community Services District Law explain how LAFCOs govern these districts' "latent powers." LAFCOs rely on inventories of district services and functions prepared in conjunction with their spheres of influence. The bill corrects an incorrect reference to spheres of influence in these laws.
- CSD name change - The Community Services District Law allows such districts to change their names, provided they keep "Community Services District" in the new name. When a CSD changes its name, it must notify the Secretary of State, County Clerk, Board of Supervisors and LAFCO. The bill requires the CSD to also notify the State Board of Equalization and the County Auditor where the CSD is located.
- Property tax exchanges for city annexations - Before a city can annex territory, it must reach a property tax exchange agreement with the county. The agreement specifies the future allocation of property taxes generated in the annexation area.

Cities and counties can adopt master property tax exchange agreements but otherwise state law gives 60-days to negotiate a property tax exchange. Without agreement the annexation cannot proceed.

The Legislature created a three-step alternative dispute resolution process involving a consultant, a mediator and an arbitrator, but it will automatically terminate on January 1, 2010. The bill extends the sunset date for the consultation-mediation-arbitration process to January 1, 2015.

- Assembly Bill 528 (Silva) - LAFCOs and Disclosure
Chapter 113, Statutes of 2009

Summary – The bill meshes contribution and expenditure disclosure requirements in the Political Reform Act and Cortese-Knox-Hertzberg Local Government Reorganization Act.

Background - The Political Reform Act requires ballot measure committees to disclose and report their contributions and expenditures. The Fair Political Practices Commission (FPPC) enforces these requirements.

Contributions and expenditures for political purposes related to LAFCO approved boundary changes and those to support or oppose LAFCO proposals must be disclosed and reported subject similar to Political Reform Act requirements for local initiatives.

The Political Reform Act and the Cortese-Knox-Hertzberg Act each had their own particular vocabulary. Bills in 2007 and 2008 expanded disclosure and reporting requirements; this bill completes that process by imposing correct technical language.

- Assembly Bill 1172 (Galgiani) - Eastern San Joaquin County Water District
Chapter 514, Statutes of 2009

Summary – Grants LAFCO greater authority to sort out the governance structure when water conservation districts consolidate.

Background - The Stockton-East Water District and Central San Joaquin Water Conservation District are two of the 13 special districts that operate under the Water Conservation District Law of 1931. Water conservation district boards of directors can have three, five, or seven members. With majority-voter approval, a district can change the size of its board. Both of the San Joaquin County districts have seven-member boards. Prompted by local fiscal problems and lawsuits, the districts are discussing consolidation.

Where state law provides alternative methods of selecting a district's governing body or for varying the size of a district's governing body, LAFCO can designate how to select the

members of the consolidated district's board. However, the Water Conservation District Law doesn't allow consolidated districts to have temporarily expanded boards of directors nor does it LAFCO to sort out the board's subsequent contraction.

The bill allows LAFCO to increase the number of directors of a consolidated water conservation district to seven, nine or eleven and provide a schedule for reducing the size of the consolidated district board. If the LAFCO doesn't provide a schedule, the bill reduces the size of district board of directors as board member terms expire, until the number of members equals five, seven, or nine, as determined by LAFCO.

- Assembly Bill 1232 (Huffman) - Special Districts in Marin County
Chapter 518, Statutes of 2009

Summary - Allows Marin LAFCO to expedite the consolidation of specific sewer agencies.

Background - The Sewerage Agency of Southern Marin (SASM) runs one of five wastewater treatment plants in that area of Marin County. Serving fewer than 30,000 residents, SASM is a joint powers agency composed of six member agencies:

City of Mill Valley	Homestead Valley Sanitary District
Almonte Sanitary District	Richardson Bay Sanitary District
Alto Sanitary District	Tamalpais Community Services District

Each member agency has its own collection system and transports sewage to SASM's wastewater treatment plant in Mill Valley. In April 2009, the San Francisco Bay Regional Water Quality Control Board imposed a \$1.6 million fine against SASM for discharging untreated and partially treated wastewater into Richardson Bay.

The Marin LAFCO's municipal service review and sphere of influence update sketched possible consolidation of the Almonte, Alto, Homestead Valley, and Richardson Bay districts into one sanitary district to collect sewage. The consolidated district, City of Mill Valley and Tamalpais Community Services District could reorganize as a sanitary district responsible for collecting, treating and disposing of sewage.

Because SASM's member agencies are unlikely to propose institutional changes, the bill authorizes the Marin LAFCO to initiate and approve reorganization or consolidation of the SASM and member agencies without protest hearings or an election.

Pending Bills

- Senate Bill 211 (Simitian) - Santa Cruz County Regional Open Space District

Summary - Expedites formation of a regional open space district in Santa Cruz County.

Background - To form a regional open space district, proponents must first get LAFCO approval and then collect petitions signed by at least 5,000 registered voters. A successful petition results in a public hearing by the board of supervisors that can approve or disapprove the request to form the new district. If the supervisors approve, then the formation goes to the ballot and requires majority voter approval.

In Santa Cruz County, four independent recreation and park districts and one county service area provide park services outside the County's four cities. The Midpeninsula Regional Open Space District overlaps a small corner of Santa Cruz County. Open space advocates in Santa Cruz County want to form a countywide regional open space district and to expedite the formation of the proposed district.

The bill allows the Santa Cruz County Board of Supervisors to initiate formation of a countywide regional park and open space district, except for land within the Midpeninsula Regional Open Space District. Supervisors can hold a public hearing, adopt a resolution and call the election in lieu of the usual LAFCO review and registered voter petitions.

Status – The bill passed the Senate (31 to 4) and the Assembly Local Government Committee (5 to 2). It is currently in the Assembly inactive file and has become a two-year bill.

- Assembly Bill 711 (Calderon) - East Los Angeles Incorporation Loan

Summary - Loans state funds to the East Los Angeles Residents Association to pay for an incorporation feasibility study.

Background - If there are sufficient signatures on a petition to initiate a city incorporation, but proponents cannot raise enough funds to pay LAFCO processing fees including the cost of the Comprehensive Fiscal Analysis (CFA), state law allows LAFCO to ask for a loan from the State General Fund. If the city incorporation is successful, the new city must repay the state within two years. If the incorporation fails, state law forgives the loan.

The East Los Angeles Residents Association had trouble raising the money needed to pay for the CFA and other costs. It wants the state to lend the money to pay those costs.

The bill appropriates \$112,000 from the State General Fund to the Los Angeles LAFCO as a loan to the East Los Angeles Residents Association. It is in the Senate Appropriations Committee and has become a two-year bill.

- Assembly Bill 853 (Arambula) - City Annexations

Summary – Facilitates annexing unincorporated islands and fringe communities to cities.

Background - Current law details procedures for annexing unincorporated territory to cities. It requires city and county agreement to reallocate property tax revenues prior to LAFCO being able to consider the annexation.

PolicyLink, a research and action institute advancing economic and social equity, worked with California Rural Legal Assistance, Inc., on a Community Equity Initiative that looks at “disadvantaged communities” in the San Joaquin Valley. The bill was introduced to make it easier to annex these disadvantaged areas to cities. As some cities expanded, they bypassed communities, leaving entire working neighborhoods without some basic amenities.

The bill establishes a process to annex unincorporated fringe or island communities to cities. As amended May 18, 2009, the bill defines “unincorporated fringe community” to mean any inhabited unincorporated territory within a city's sphere of influence and an “unincorporated island community” as any inhabited unincorporated territory is surrounded or substantially surrounded by cities or cities and a county boundary or the Pacific Ocean.

The bill requires a board of supervisors to petition LAFCO to approve annexing to a city any island or fringe community after notice and hearing if all the following conditions exist:

- 25% of the registered voters or landowners in the unincorporated island or fringe community file a petition with the board to initiate an annexation to a city;
- The territory is an island or an unincorporated fringe community that lacks wastewater, drinking water services, storm drainage, paved streets, sidewalks, or streetlights, or there exists a serious infrastructure-related health hazard; and,
- The territory is a disadvantaged community, meaning a community with an annual median-household income that is less than 80% of the statewide annual median-household income.

The bill requires that a separate property tax transfer agreement must be agreed to between the annexing city and the county under Revenue and Taxation Code Section 99. If such an agreement is not reached within 180 days, the agreement be determined by an alternative method and it shall not affect any existing master tax sharing agreement between the city and county.

The bill requires LAFCO to approve the annexation, after notice and hearing, unless it finds, based on the preponderance of evidence, that the annexation will not result in a net benefit to

the public health of the affected communities, but that financial impact of the annexation shall not be a factor in the determination of the net benefit.

Furthermore, no affected special district can terminate the annexation if approved by LAFCO and the city must amend its general plan to ensure the annexation conforms to its general plan.

The bill requires LAFCO to determine a revenue neutrality agreement, including the amount of property tax revenue to be exchanged by affected local agencies and to notify the county auditor of the proposal and services the annexing city will assume within the territory being annexed and to identify the existing service providers with the subject area.

The bill sets a statute of limitations for lawsuits brought by a city or district to contest the determinations of the county auditor or LAFCO regarding the amount of property tax revenue to be exchanged by the affected local agency.

Status - The Assembly passed the bill (47 to 30); it is now in the Senate Local Government Committee; it has become a two year bill.

- Assembly Bill 1109 (Blakeslee) - Nonperforming Special Districts

Summary - Allows LAFCOs to name administrators for “nonperforming” special districts.

Background – The provisions in state law that allow dissolution of special districts that have stopped functioning is rarely used since three statutory conditions can be difficult to meet.

This bill apparently results from the situation in which the Los Osos Community Services District declared bankruptcy after terminating a project to bring public sewers to this most populous unsewered community in the state.

The bill allows LAFCO to approve “a request for administration of a district” and place the special district under the temporary control of an appointed administrator. Subsequent LAFCO studies may lead to placing the district under the administration of another agency.

The bill defines a nonperforming district as one which provides services that can’t be stopped without harming the public health or safety, and where at least one of the following occurs:

- The district is not providing services at minimally acceptable levels.
- The district has insufficient revenue to maintain minimally acceptable service levels.
- The district can’t function because of vacancies on its governing board.
- The district lacks adequately trained staff or hasn’t contracted for those services.

Status – The bill is in the Assembly Local Government Committee; it has become a two-year bill.

Vetoed Bills

- Assembly Bill 18 (Knight) - City Council Terms in New Cities
Vetoed

Summary - Clarifies statutory confusion over the length of city councilmember terms in newly incorporated cities and gives cities more time to fill vacancies or call elections.

The bill has two parts:

- Councilmember terms. State law spells out terms of office for the first council members of newly incorporated cities. If voters decide that future city council members are elected at-large, the three members who receive the lowest number of votes at the incorporation election hold office until the first general municipal election after incorporation. The other two members hold office until the second general municipal election. After those elections, city council members serve staggered four-year terms.

The new cities of Menifee and Wildomar in Riverside County reported confusion over these terms of office. The bill would have reduced, from three to two, the number of city councilmembers that hold office until the first general municipal election after incorporation and would have increased, from two to three the number of council members that hold office until the second general municipal election after incorporation.

- Filling vacancies - When a vacancy occurs in an elective city office, the city council has 30 days to either appoint someone to fill the vacated position or call a special election. If the council calls a special election, the election must be held on the next regularly established election date not less than 114 days after the call.

Cities say that 30 days is not enough time to find a replacement for the vacated position and the abbreviated time limit can force cities into holding costly special elections. Some cities want more time to fill a vacancy by appointment. The bill would have extended from 30 to 60 days the time limit for city councils to fill a vacancy either by appointment or by calling a special election.

Status - The Governor vetoed saying: “I believe 30 days is a sufficient amount of time for a city council to fill a vacant seat by appointment or to call a special election.”

Please contact the LAFCO office if you have any questions.

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Very truly yours,

BOB BRAITMAN
Executive Officer