

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

AB 1217 (Daly) – As Introduced February 27, 2015

SUBJECT: Orange County Fire Authority.

SUMMARY: Restructures the governing board of the Orange County Fire Authority. Specifically, **this bill:**

- 1) Requires, notwithstanding any other law and notwithstanding the provisions of the joint powers agreement governing the Orange County Fire Authority (OCFA), on and after January 1, 2018, the Board of Directors (Board) of the OCFA to be composed of 13 members, as follows:
 - a) Three members of the Board of Supervisors (BOS) of the County of Orange (County), selected by the BOS, to serve a term of two years;
 - b) One member from each of the five supervisorial districts of the County, elected by the OCFA City Selection Committee (as described by this bill) on a population weighted voting basis; and,
 - c) One member from each of the five supervisorial districts of the County, elected by the OCFA City Selection Committee on a “one city, one vote” basis.
- 2) Requires a city that is within more than one supervisorial district to be considered part of the district where the highest percentage of the city’s population resides. Under this circumstance, the entire city’s population shall be used for population-weighted voting purposes.
- 3) Provides that OCFA Board members elected by the OCFA City Selection Committee shall be a mayor or a city council member of a city within the County, and shall serve for a term of two years. An OCFA Board member elected in this manner whose term on the city council or as mayor ends shall also cease to serve as a member of the OCFA Board.
- 4) Requires the OCFA City Selection Committee to consist of either the mayor or a member of the city council of each city that contracts with the OCFA for fire protection services.
- 5) Requires any member of the OCFA Board serving as of the effective date of this bill to continue to serve until January 1, 2018, or until the expiration of his or her term, whichever is sooner.
- 6) Finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the challenges faced as a result of the current governance structure of the OCFA.

EXISTING LAW:

- 1) Authorizes two or more public agencies, by agreement, to form a joint powers authority (JPA) to exercise any power common to the contracting parties, as specified.
- 2) Authorizes the joint powers agreement to set forth the manner by which the JPA will be governed.
- 3) Authorizes the BOS of any county to contract with any local agency within the county or with the state for services relating to the prevention and suppression of fires.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill restructures the composition of the OCFA Board by reducing the current, 25-member Board to 13 members, most of whom would be selected by an as-yet-to-be-created OCFA City Selection Committee. The existing OCFA Board – comprised of two members from the County BOS and one member from each of the cities that are a party to the JPA that created the OCFA – would be eliminated. Instead, the OCFA Board would be comprised of the following:
 - a) Three members of the County BOS, selected by the BOS;
 - b) One member from each of the five supervisorial districts of the County, elected by the OCFA City Selection Committee on a population weighted voting basis; and,
 - c) One member from each of the five supervisorial districts of the County, elected by the OCFA City Selection Committee on a “one city, one vote” basis.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "The Orange County Fire Authority was created through a Joint Powers Agreement enacted in 1995. Since then, the OCFA has enlarged its membership, with a current board of directors consisting of 25 members, representing the 23 municipal agency (city) partners plus the County of Orange. This is the largest JPA board of directors providing fire services in the State of California.

"After 20 years, it is appropriate for the current OCFA governing board structure be reviewed and updated. In fact, last year the OCFA board performed a self-survey as part of a larger review of the agency. That survey found a general consensus of the board that its current size “increases bureaucracy, redundancy from work already done in committees, and makes decision making more difficult.” Furthermore, there is a more than a 30% turnover every two years on the board, leading to an average of only two-four years of experience per board member. This outdated structure makes consensus and governing difficult for a dynamic agency serving over 1.7 million residents."

- 3) **Background.** The OCFA is a regional fire service agency that serves 23 cities in Orange County and all unincorporated areas. The OCFA protects over 1,680,000 residents from its 71 fire stations located throughout the County. OCFA Reserve Firefighters work 10 stations throughout the County.

The OCFA was formed in 1995 to provide regional fire protection and related services to the County of Orange and 18 member cities. Subsequent to formation, five additional cities have become members of the OCFA. The original JPA agreement was amended in 1999 and renewed in 2010. The term of the JPA runs through 2030, though member cities currently have the option to withdraw in 2020.

The OCFA Board has twenty-five members and sets policy according to its adopted Rules of Procedure. Twenty-three of the members represent partner cities, and two members represent the County's unincorporated area. The OCFA Board meets bimonthly, usually on the fourth Thursday of the month. The Board established an Executive Committee and a Budget and Finance Committee, both of which meet monthly. The Board also has a Claims Settlement Committee. The Chair of the Board makes appointments to the Committees on an annual or as-needed basis.

The OCFA provides fire services for the following cities: Aliso Viejo, Buena Park, Cypress, Dana Point, Irvine, Laguna Hills, Laguna Woods, Laguna Niguel, Laguna Woods, Lake Forest, La Palma, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda.

- 4) **Joint Exercise of Powers Act.** JPAs have existed in California for nearly 100 years, and were originally created to allow multiple local governments in a region to pool resources to meet common needs. The Act authorizes federal, state and local agencies to create and use a joint powers agreement, which is a legal document that allows the contracting parties to exercise powers that are common to all of the contracting parties.

A joint powers agreement can be administered by one of the contracting agencies, or it can be carried out by a new, separate public entity called a joint powers authority (JPA). Joint powers agreements are an attractive tool for local governments because they facilitate more efficient service provision through collaboration, and they allow local entities to issue bonds without voter ratification. Public officials have created about 700 JPAs statewide.

The OCFA is not a special district, but was formed as a JPA and is, therefore, governed by California's JPA laws. Its agreement allows OCFA's member agencies to change the OCFA Board by a two-thirds vote.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Changes to OCFA's Board.** Supporters of this bill contend that reducing the size of the Board will make it more efficient. They also contend that it will stabilize the composition of the Board by creating more certainty among Board members. Currently, there are 25 members and 24 alternates, which means any combination of those 49 people could be present for any Board meeting. Supporters note that this is especially critical when issues are debated over several meetings.

Opponents, however, raise a number of concerns with this bill. First, they point out that the bill eliminates direct representation among all member cities in contravention of the JPA that created the OCFA. According to the OCFA website, a JPA model was selected as the governance structure for the OCFA specifically because there was a need for "more direct oversight by all participating agencies." Prior to the formation of the JPA, fire services for the County were provided by the Orange County Fire Department under the oversight of the County BOS. The website notes, "Its initial service area included the unincorporated portions of the County and nine cities. However, over time with the incorporation of five new cities and four other cities joining the Department, the percentage of the total service population that resided in the Department's member cities grew from 48% in 1980 to 83% in 1995." OCFA's member agencies joined the JPA with the agreement that each contracting city has a seat on the Board, and the County has two. **The Committee may wish to consider whether it is appropriate for the Legislature to dictate the terms of an already-existing JPA.**

This bill also creates a disadvantage for some cities currently represented on the Board, while favoring others. Five cities will have virtually guaranteed seats (Buena Park, Irvine, Placentia, Santa Ana, and Westminster). The other 18 cities would have to jockey for the remaining five seats. The 10 OCFA cities in south Orange County would only have two seats, losing a combined eight seats. Thirteen OCFA cities in the central and north parts of the County would have eight seats, losing a combined five seats. **The Committee may wish to consider whether it wishes to pick winners and losers on the re-configured Board.**

- b) **Survey Recommendations.** The Author's office has cited a survey conducted by the OCFA as justification for changing the Board's composition. However, while the survey contained a number of recommendations for improving management generally at OCFA and specifically for expanding training for Board members, it contained no recommendations to alter the structure of the Board.
- c) **OCTA as a Model.** Supporters also cite the successful operation of the Orange County Transportation Authority (OCTA), which has 17 directors on its Board and features population-based weighted voting as well as representation by the County's City Selection Committee. However, the OCTA is not a JPA. It is a special district, which garners its authority directly from the Legislature. As such, it is appropriate for the Legislature to exercise this authority over OCTA's governance structure.
- 6) **Prior legislation.** AB 1104 (Maddox) of 2001 took several forms, the last of which provided that, when the proceeds of taxes levied by a county pursuant to the Shade Tree Law of 1909 are allocated to an agency formed pursuant to JPA law for the purpose of providing fire protection services, those proceeds may not be appropriated by that agency in a manner that provides a financial advantage to any city that participates in the agency over the other participating cities. AB 1104 was generally panned in local press articles as an effort by the author to gain favor with OCFA's firefighters' union, which favored a smaller Board for the ease of lobbying it would have provided. AB 1104 was referred to the Assembly Local Government Committee, but was never heard.

- 7) **Arguments in Support.** The City of Santa Ana, in support, writes, "Assembly Bill 1217 proposes a smaller, streamlined board of 13 members. Modeled after the Orange County Transportation Authority, this structure will ensure that the City of Santa Ana has a stronger voice on policy matters considered by the OCFA Board of Directors. A smaller board also facilitates consensus and governing for a crucially important agency serving over 1.7 million residents.

"In 2012, the Santa Ana City Council joined the Orange County Fire Authority. This decision has saved Santa Ana millions of dollars annually while maintaining all ten of our city's fire stations. The Orange County Fire Authority has provided great service to the city – in fact, one out of residents served by OCFA lives in Santa Ana."

- 8) **Arguments in Opposition.** The Orange County Fire Authority, in opposition, states, "We oppose any legislation that preempts local authority and this bill seeks to impose a State solution to a perceived problem that the proponents have grossly exaggerated...The Orange County Professional Firefighters Association has stated in public meetings that the genesis of this bill is to address long since resolved issues with oversight and governance. (We) have worked collaboratively over the past year to put in place new management and processes to ensure a more engaged Board. In contrast, this bill would remove many Directors who have been active in transforming the OCFA.

"Sacramento should not dictate the form, size, and structure of local governance especially when it impacts the delivery of fire and emergency medical service...One should ask if this bill does become law what is to prevent other efforts to remake local legislative bodies?"

REGISTERED SUPPORT / OPPOSITION:

Support

City of Santa Ana

Opposition

Association of California Cities – Orange County
 Cities of Aliso Viejo, Buena Park, Cypress, Dana Point, La Palma, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda
 Orange County Fire Authority

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958