

Date of Hearing: September 14, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 1361 (Eduardo Garcia and Waldron) – As Amended September 8, 2017

SUBJECT: Municipal water districts: water service: Indian tribes.

SUMMARY: Authorizes a municipal water district, until January 1, 2023, to apply to a local agency formation commission (LAFCO) to extend water service to Indian lands and prohibits the LAFCO from denying the application.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Authorize a municipal water district, upon request of an Indian tribe that has satisfied conditions in existing law, to apply to LAFCO to extend water service to Indian lands that are outside the district at substantially the same terms applicable to the customers of the district as if the lands had been fully annexed within the district, and any other special districts required for the provision of water service, until January 1, 2023.
- 2) Require the LAFCO to approve the application. Authorize the LAFCO to impose terms and conditions with regard to the extension of service in accordance with existing law, as long as the terms and conditions do not impair the provision of water service to Indian lands and similar to those imposed on all agency service recipients without discrimination.
- 3) Require a district to provide the water extension agreement to the LAFCO.
- 4) Prohibit a LAFCO from approving an application on or after January 1, 2023, but allow a previously approved extension of service to continue beyond that date if the district continues to comply with the conditions imposed by LAFCO.
- 5) Define "Indian lands" as lands that were part of a reservation or held in trust as of January 1, 2017, under federal law.
- 6) Make technical changes.
- 7) State that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or other assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Defines "district" to mean a municipal water district formed pursuant to the Municipal Water District Act of 1911.
- 2) Authorizes a district to sell water under its control, without preference, to cities, other public corporations and agencies, and persons within the district for use within the district. Defines "water" to include potable and nonpotable water.
- 3) Authorizes a district to supply and deliver water to property not subject to district taxes at special rates, terms, and conditions as determined by the Board.

- 4) Establishes the Cortese-Knox-Hertzberg Act, which defines the procedures for the organization and reorganization of cities, counties, and special districts.
- 5) Authorizes a district to provide new or extended services by contract or agreement outside its jurisdictional boundaries if it requests and receives written approval from LAFCO, as specified.
- 6) Requires, notwithstanding any other provision of law, a district, upon request of an Indian tribe and the satisfaction of the conditions stated in 7), below, to provide water service to the tribe's lands that are not within a district, subject to the following:
 - a) The lands were owned by the tribe on January 1, 2016;
 - b) The lands are contiguous with at least two districts;
 - c) The lands lie within the special study area of at least one district; and,
 - d) At least 70% of the Indian tribe's total Indian lands are currently within the boundaries of one or more districts.
- 7) Requires the Indian tribe, before a district provides water service, to satisfy both of the following conditions:
 - a) The Indian tribe complies with all federal and tribal laws; and,
 - b) The Indian tribe acquires all federal and tribal approvals necessary for the applicable district to provide water service to the tribal lands on substantially the same terms applicable to customers of the district.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Background.** The Cortese-Knox-Hertzberg Act delegates the Legislature's power to control the boundaries of cities and special districts to LAFCOs, and prohibits the districts from providing water service to the lands outside their boundaries, unless the area is annexed within their boundaries or they obtain written approval to serve territory outside their boundaries.

In 2016, the Legislature exempted the Sycuan Band of the Kumeyaay Nation in San Diego County, from the annexation process under existing law to receive water on the tribe's lands outside a municipal water district [AB 2470 (Gonzalez), Chapter 301]. AB 2470 only applies if the tribe's lands meet specified requirements, and if the Indian tribe meets specified conditions prior to receiving water service. The Sycuan's original reservation is contiguous with two municipal water districts, Otay Water District and Padre Dam Municipal Water District, and is within a special study area in Padre Dam Municipal Water District.

- 2) **Bill Summary.** This bill builds upon the exemption established by AB 2470 and authorizes a municipal water district, until January 1, 2023, to apply to a LAFCO to extend water service to a tribe's land, upon request of an Indian tribe if the tribe meets the conditions

established by AB 2470. This bill requires LAFCO to approve the application without requiring the usual annexation process. This bill is sponsored by the Rincon Band of Luiseno Indians.

- 3) **Author's Statement.** According to the author, "Federally recognized tribes are sovereign governments, and are not subject to state and local laws and regulations, except for those required under their compacts. Yet most tribes are unable to access services from nearby water districts without annexing territory to those districts, a process which would subject sovereign tribal governments to state and local regulations and thus violate tribal sovereignty. Furthermore, some tribes may not have the resources to endure the lengthy processes required to ensure access to water service. AB 1361 cuts through the red tape of these processes by allowing tribes and water districts to enter into voluntary agreements for water service, subject to the same terms and conditions with which any other water user would have to comply. It provides Indian tribes with the independence that is warranted by their sovereign nation status, instead of subjecting them to time-consuming and expensive local processes that other similarly situated entities, such as the California and United States governments, do not have to follow."
- 4) **Policy Consideration.** The Legislature has delegated the power to control local boundaries to the 58 LAFCOs, directing the LAFCOs to discourage urban sprawl, preserve open space and agricultural lands, and provide efficient government services, while considering local conditions and circumstances. This bill bypasses LAFCO, and does not require the usual annexation process to occur. Proponents of this bill argue that it is appropriate for the Legislature to make this determination, instead of LAFCO, to reflect the unique relationship between the state and tribes. Opponents of this bill argue that LAFCO has authority over the boundaries of municipal water districts providing water service and that the LAFCO process allows for an examination of water supply and provision for all utilizing those services.
- 5) **Support Arguments.** The Rincon Band of Luiseno Indians states, "Because there is no process for water districts to work with neighboring tribes in a manner that does not violate tribal sovereignty, very few tribes have sought relationships with local water districts. Those tribes who have sought water relationships with neighboring districts have faced decades-long lawsuits or negotiations that most tribes do not have the resources to endure. And, lack of collaboration between tribes and neighboring water districts means that local communities are not prepared to triage resources in the event of natural or man-made disasters. Consistent with their status as sovereign nations, tribes that reach an agreement with a local water district are not required to be annexed by the water district or the chain of agencies supplying water to the district, and are thus exempt from LAFCO."
- 6) **Opposition Arguments.** The California Association of Local Agency Formation Commissions (CALAFCO) states, "The existing, long standing annexation process allows for a thorough, publicly transparent evaluation of both service needs and capability before allowing such a service extension to occur. In the end, it is imperative that all Californian's be treated equally under the law and especially when creating policy that involves the provision of water service. Giving any special interest an 'automatic' approval to limited water supplies without thorough local review authority is bad policy." Additionally, CALAFCO argues that this bill leaves high potential for sprawl, contains vagueness and terminology on terms and conditions that will create potential disasters, and opens the door for detachments from existing districts.

REGISTERED SUPPORT / OPPOSITION:

Support

Rincon Band of Luiseño Indians [SPONSOR]
City of Escondido
San Diego County Water Authority
San Luis Rey Indian Water Authority
Sycuan Band of the Kumeyaay Nation
United Auburn Indian Community
Vista Irrigation District

Concern

San Diego Local Agency Formation Commission

Opposition

California Association of Local Agency Formation Commissions
Local Agency Formation Commissions of: Alameda, Butte, Calaveras, Contra Costa, El Dorado,
Imperial, Mendocino, Merced, Placer, Plumas, San Benito, San Bernardino, San Mateo,
Santa Cruz, Sonoma, Yolo, and Yuba

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