

Date of Hearing: May 3, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 464 (Gallagher) – As Amended March 14, 2017

**SUBJECT:** Local government reorganization.

**SUMMARY:** Makes changes to local agency formation commission (LAFCO) statutes which govern changes of organization and reorganization, including annexation proceedings.

Specifically, **this bill:**

- 1) Makes changes to existing law which require an applicant seeking a change of organization or reorganization to submit a plan for providing services within an affected territory to recognize that services may already be provided in that territory.
- 2) Adds, to the reasons that a resolution requesting the termination of annexation proceedings may be justified, to include that a territory is already receiving electrical service under a service area agreement approved by the Public Utilities Commission (PUC), pursuant to existing law.
- 3) Defines the phrase "territory already receiving electrical service under a service area agreement approved by the Public Utilities Commission pursuant to Section 9608 of the Public Utilities Code" to mean "territory that is outside the boundaries of an irrigation district, but is currently receiving electrical services from the irrigation district, pursuant to a service area agreement between the district and a public utility approved by the PUC as authorized by Sections 8101 to 8108, inclusive, and Section 9608 of the Public Utilities Code."
- 4) Requires findings that a district may provide to LAFCO that are related to the existing provision of electrical service provided by an irrigation district, pursuant to a service area agreement, as specified, to be based on the records of the district and the PUC evidencing approval of such a service area agreement by the PUC.
- 5) Makes technical and conforming changes.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **LAFCO Law.** LAFCOs are responsible for coordinating logical and timely changes in local governmental boundaries, conducting special studies that review ways to reorganize, simplify, and streamline governmental structures, and preparing a sphere of influence for each city and special district within each county. The courts refer to LAFCOs as the Legislature's "watchdog" over local boundary changes. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Act) establishes procedures for local government changes of organization, including city incorporations, disincorporations, city and special district consolidations, and annexations to a city or special district. LAFCOs regulate boundary changes through the approval or denial of proposals by other public agencies or individuals for these procedures.

The Act prescribes a process for the inclusion or addition of territory to a district (district annexation), which is similar to most boundary changes that requires numerous steps: a) application to LAFCO, by petition or resolution; b) noticed public hearing, testimony, and approval or disapproval by LAFCO in which they can impose terms and conditions; c) additional public hearing for protests (if more than 25% of voters file protest, the LAFCO must order an election on the proposed annexation, and if more than 50% of voters protest, then the LAFCO must terminate the proceedings); d) an election, if there were significant protests; and, e) LAFCO staff files documents to complete the annexation.

Under the Act, if there is a proposal to annex territory into a district and that proposal is not filed by that district, existing law provides a process by which the district can terminate the proceedings. In order to terminate district annexation proceedings, the special district would adopt a resolution based on written findings that the request is justified by a financial or service related concern. The Act defines what constitutes a financial or service concern.

- 2) **Bill Summary.** This bill makes two changes to the statutes in LAFCO law which govern proposed changes of organization. First, this bill makes changes to existing law which requires an application proposing a boundary change to include a description of services to recognize that services may already be provided to the area that would be affected by the boundary change. Second, this bill provides an additional reason that a special district may use to terminate annexation proceedings. Under this bill, in addition to justifying a termination request by financial or service concerns, an irrigation district that is providing electrical services outside their boundaries, pursuant to a service area agreement approved by the PUC may also adopt a resolution to terminate proceedings because the territory is already receiving electrical services. This bill will not change any public hearing, notice, protest, or election requirements in current law, and is sponsored by the California Association of Local Agency Formation Commissions.
- 3) **Author's Statement.** According to the author, "LAFCOs frequently approve the extension of services prior to annexing an area in anticipation of the annexation of that territory at a later date. This helps provide vital services in a timely manner to areas that may not be part of an existing district. For example, in 2005 the Santa Cruz Mosquito Abatement County Service Area annexed three cities to the district as part of West Nile virus preparations. The district started serving the area prior to annexation, since mosquitoes do not respect service area boundaries, and since timely delivery of services was critical to preventing the spread of the West Nile Virus. However, a recent appellate court decision jeopardizes LAFCOs' ability to later annex these areas into the district. AB 464 is a common-sense solution for a statewide problem. Not only does it ensure that LAFCOs can continue to evaluate applications which include the annexation of territory where services are already being provided, it also ensures that service emergencies can be rapidly addressed locally and people receiving and paying for services can participate in district elections."
- 4) **Annexations.** Current law requires an applicant proposing a boundary change, like district annexation, to submit a plan for providing services within the affected territory. That plan must include a description of the services, an indication of when services can be extended to the affected territory, the level and range of those services, any necessary infrastructure improvements, and information on how services will be financed.

Common understanding and practice of this provision in current law is that this proposal may include the annexation of a territory where services are already provided. In other words, the proposal may be for the inclusion of territory into a district's boundaries where the district is already providing services to that territory. This common understanding is supported by several laws enacted by the Legislature to encourage annexations which is consistent with the statutory mission of LAFCOs to ensure the proficiency of services and coordinate logical and timely changes in local governmental boundaries. For example, current law allows LAFCOs to authorize a city or district to provide services outside its jurisdictional boundaries, but within its sphere of influence in anticipation of the annexation of that territory at a later date.

A recent court ruling (*City of Patterson v. Turlock Irrigation District* (2014)) has turned current practice and the widespread understanding of current law onto its head. Because of this court ruling, it is possible that any future application for the annexation of territory already provided with services could be deemed invalid, if challenged in the courts.

Various LAFCOs in California have illustrated the widespread practice of annexations of territory where services are already being provided:

- a) Los Angeles LAFCO: In 2011, LA LAFCO became aware of four geographic areas, all of which are outside the boundaries of Los Angeles County Waterworks District, and in which the District was currently serving customers (over 1,100-single-family dwellings). The District filed applications to annex these territories where they were already providing services, all of which have since been approved by LAFCO.
  - b) Nevada LAFCO: Glenbrook Annexation, a developing unincorporated area of approximately 300 acres adjacent to the City of Grass Valley, was provided with public sewer service by the City under a contract (between the County and the City). In 2001, the city and LAFCO developed a strategy for annexing the entire area in a series of annexations. One of LAFCO's policy considerations in this process was to ensure the residents, who were receiving services, would have an opportunity to vote for the officials who would be determining service delivery and rates. The entire area that was receiving service was annexed in a series of approximately six annexations that took place from 2001 to 2007.
  - c) Amador LAFCO: LAFCO is currently working with Pine Grove CSD on a mass annexation which will extend water and/or sewer service to small groups of lots in dispersed areas around their boundaries (but outside the district). All of the properties proposed to be annexed into the district are already receiving services.
- 5) **Arguments in Support.** The California Association of Local Agency Formation Commissions argues, "By allowing the annexation of these areas AB 464 also ensures the people paying for and receiving the services, can participate in elections and potentially serve on the governing board of the service provider. As there are many pending annexations throughout the state that are associated with previously approved out of area service extensions, this legislation is critical to the successful annexation of these areas."
- 6) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Association of Local Agency Formation Commissions [SPONSOR]

Association of California Healthcare Districts

California State Association of Counties

Local Agency Formation Commissions: Butte, Contra Costa, Colusa, Fresno, Imperial, Lake,  
Los Angeles, Marin, Merced, Nevada, Riverside, San Bernardino, San Diego, Santa Clara,  
Santa Cruz, Solano, Sonoma, Yolo and Yuba

**Opposition**

None on file

**Analysis Prepared by:** Misa Lennox / L. GOV. / (916) 319-3958