

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1021 (Mayes) – As Amended March 18, 2021

SUBJECT: Imperial Irrigation District.

SUMMARY: Requires a joint study to be conducted by the Imperial and Riverside local agency formation commissions (LAFCOs) and adds nonvoting members to the Imperial Irrigation District (IID) Board of Directors. Specifically, **this bill:**

- 1) Requires the Imperial and Riverside LAFCOs to conduct and publish on their internet websites, by December 1, 2022, a study of both of the following:
 - a) Voting rights in IID. The joint study shall include a description of voting rights in the district and a determination of whether and how the district can extend voting rights to its residents; and,
 - b) Options for providing electricity in IID’s jurisdiction and other affected service areas, in the circumstance that IID desires to no longer provide electrical service in its jurisdiction.
- 2) Specifies that the membership of the IID board of directors shall increase from five to 8.
- 3) Requires the directors to be nonvoting directors with all of the other rights as existing directors.
- 4) Provides that the nonvoting directors shall be appointed by the county supervisor who represents the Fourth District on the Board of Supervisors of the County of Riverside and shall be appointed subject to the following conditions:
 - a) One director shall be a representative of local cities and be an elected member of city government;
 - b) One director shall be a representative of the County of Riverside; and,
 - c) One director shall be a representative of the environmental justice community.
- 5) Specifies that nonvoting members shall represent the electrical service area and shall live in the service area at the time of their appointment.
- 6) Defines “electrical service area” as the area where the district provides retail electrical service that is outside of the district’s boundaries.
- 7) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable because of the conditions unique to the Counties of Imperial and Riverside and the IID.
- 8) Provides that if the Commission on State Mandates determines that this act contains costs mandated by the State, reimbursement to local agencies and school district for those costs shall be made.

EXISTING LAW:

- 1) Authorizes an irrigation district to purchase or lease electric power from any agency or entity, public or private.
- 2) Authorizes an irrigation district to provide for the acquisition, operation, leasing, and control of plants for the generation, transmission, distribution, sale, and lease of electric power, including sale to municipalities, public utility districts, or persons.
- 3) States that an irrigation district may distribute power without regard to any assessments levied by it.
- 4) Authorizes an irrigation district to sell, dispose of, and distribute electric power for use outside of its boundaries.
- 5) States that any irrigation district providing electric power to areas outside its boundaries shall be subject to reasonable rules, regulations, and orders of the governing body of the city or county area being served, but, in no event, more restrictive than the rules, regulations, and orders of the Public Utilities Commission upon utilities providing electric power to cities or counties.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Imperial Irrigation District.** Established by a vote of the people in 1911, IID is one of the nation's largest irrigation districts. IID entered the electric power business in 1936 in conjunction with the construction of the All-American Canal. IID anticipated that hydroelectric power generated from five falling water drops on the All-American Canal would enable them to set power rates considerably lower than the competition at that time. Congress authorized construction of the All-American Canal to Coachella Valley. However, in negotiating repayment contracts with the United States, it was necessary that both the water and power rights of IID and the Coachella Valley Water District be determined.

According to the terms of a 1934 agreement between Imperial and Coachella, IID was given first rights to water delivered through the All-American Canal and a 99-year lease on any power rights Coachella had on the canal. As rental for power rights, IID agreed to pay Coachella Valley Water District a percentage of the net proceeds from its power system and Coachella in turn authorized IID to provide power service to the Coachella Valley. Currently, IID's district boundaries encompass all of Imperial County. IID also provides electrical service to parts of San Diego County, as well as the cities of Indio, Coachella, Desert Mirage and La Quinta in the Coachella Valley, located in Riverside County.

- 2) **Energy Consumers Advisory Committee (ECAC).** Created in 1994, the ECAC provides feedback and recommendations to the IID Board regarding all aspects of the energy department and its operations. Since the time of its inception, the ECAC has acted in an advisory capacity to the board recommending actions of a variety of topics, including budget needs, capital expenditures and pilot program needs.

The ECAC is comprised of 20 representatives. In the Imperial Valley, each IID director is responsible for the selection of two appointees, totaling 10 representatives. The Coachella Valley is also represented by 10 members; however, they are nominated by the cities and the county of Riverside. Indio, Coachella and La Quinta are allowed two nominations each, while Palm Desert and Rancho Mirage share a delegate. The unincorporated areas are served by three representatives nominated by the county. After nomination, each representative is then ratified by the IID board.

- 3) **Electricity Fees.** Proposition 218 was adopted by voters in 1996 and drastically changed the way fees can be charged for property-related services, including electricity, water, storm water, and more. Local agencies must comply with Proposition 218's restrictions on the use of property-related fees, including the measure's calculation requirements. Specifically, local governments must make sure that no property owner's fee is greater than the proportionate cost to provide the property-related service to a parcel. Essentially, this means a local agency cannot subsidize the fees of one ratepayer with the fees of another.

Electricity fees are also collected by investor owned utilities (IOUs) which are regulated by the California Public Utilities Commission (CPUC). The CPUC approves the amount that each electric utility can collect from its customers. This is a utility's "revenue requirement" and it is based on the cost of operating, maintaining, and financing the infrastructure used to run the utility; and on the cost of its procured fuel and power. The revenue requirement forms the basis for how electric rates get determined for each customer class. Rates are set in formal CPUC proceedings called ratemaking proceedings.

- 4) **LAFCO.** 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. LAFCO law establishes procedures for local government changes of organization, including special district consolidations. LAFCOs regulate boundary changes through the approval or denial of proposals by other public agencies or individuals for these procedures.

The process for most boundary changes and agency formations requires numerous steps:

- a) Application to LAFCO, by petition or resolution, for an environmental review, property tax exchange agreement, and a plan for services that describe what services will be provided and how the services will be financed;
- b) Noticed public hearing, testimony, and approval or disapproval by LAFCO in which LAFCO can impose terms and conditions;
- c) Additional public hearing for protests. If a majority of the city's voters file protest, the disincorporation stops, and if not, LAFCO must order an election on the proposed disincorporation;
- d) If existing law requires it, an election that requires a majority vote approval; and,

e) LAFCO staff files documents to complete the reorganization. LAFCOs are required to approve district consolidations where each merging district passes a resolution endorsing the consolidation, but provisions that govern protest and elections still apply.

- 5) **Bill Summary and Author's Statement.** This bill would require the Imperial and Riverside LAFCOs to conduct and publish a study on the voting rights in IID and options for providing electricity to residents outside of IID's jurisdiction. This bill would also add three nonvoting members to IID Board, appointed by the county supervisor of the Fourth District on the Board of Supervisors of Riverside County. This bill is sponsored by the author.

According to the author, "Like other government entities, IID's Board of Directors are elected into office by voters. In this instance, eligible voters are only those living within Imperial County. Stated differently, IID's Riverside County ratepayers - and voters - are denied the ability to vote for a representative to their publicly owned utility. I introduced AB 1021 because IID's Board of Directors, one of California's most powerful municipal utilities, operates without representation from Riverside County ratepayers who make up 60% of their service territory. Moreover, Riverside County ratepayers provide IID with the majority of its revenue yet have no seat at the table when it comes to how their municipal utility is managed."

- 6) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Local Process.** The Public Utilities Code authorizes the formation of municipal utility districts that can provide electricity as a service. Local agency formation commission (LAFCO) law provides the process in which local communities can petition the LAFCO to begin the formation process. The LAFCO then conducts a review of the formation's feasibility and conducts a public process to approve or deny the formation of the district. Utilizing these procedures, local communities are able to engage and decide if the formation of a utility district makes sense. As local options for governance already exist, the Committee may wish to consider if this bill is necessary and Legislative intervention is warranted.
- b) **Who Pays?** Traditionally, the agency that initiates dissolution, consolidation, annexation, or other change of organization pays for the costs associated with completing the process. Otherwise, LAFCOs are funded by the cities, counties, and, in 30 counties, special districts. Approximately one third of the 58 LAFCOs have an annual budget of less than \$100,000 and one-fifth have an annual budget of less than \$50,000. As LAFCOs budgets are already strained, the Committee may wish to consider if funding should be provided to the LAFCOs in order to conduct the study required by this bill.
- c) **Voter Representation.** Annexations and extensions of service are two distinct changes of organizations that create two distinct outcomes. An extension of service is when a local agency extends the provision of services to individuals who do not reside within the actual boundaries of that agency. An annexation is when the boundaries and jurisdiction are changed to include territory, giving the annexed residents full rights and privileges as voters. There are positives and negatives to simply extending services in place of a full annexation. With an extension of service, the residents outside of the local agency's boundaries are unable to vote in elections for board members. Some have likened this process to taxation without representation.

The Riverside County residents that receive electricity from IID have never been fully annexed into IID's boundaries, and as a result, do not have the ability to choose their representatives on the Board. The author has stated the intent of this bill is to ensure the residents in Riverside County have a voice in how their electricity provider is managed. However, the Committee may wish to consider if adding nonvoting members to the IID Board provides sufficient representation or if a larger conversation on local governance is needed.

- d) **Nexus.** In almost every instance, members of a local agency board must either be a resident or a landowner within that agency's jurisdiction. Residency or landownership creates a direct nexus between the elected or appointed official and the community they represent. While this bill requires that the nonvoting directors must represent the electrical service area at the time of their appointment, this bill is silent on what happens if that nonvoting member moves or otherwise is no longer a resident within the electrical service area.

Additionally, this bill requires the county supervisor who represents the Fourth District on the Board of Supervisors of Riverside County to appoint the nonvoting members. Supervisorial districts are not static and are redrawn every 10 years. In fact, the Riverside County Board of Supervisors is planning to adopt new supervisorial boundaries by December 15, 2021. Due to the redistricting, there is no guarantee that the Fourth Supervisorial District of Riverside County will represent all or any of the electrical service area. The Committee may wish to consider if this bill needs further clarification to account for these potential issues.

- e) **Potential Conflicts.** Incompatible office law generally prohibits a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body from simultaneously holding two public offices that are incompatible. A public office is incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
- i) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisor powers over the other office or body;
 - ii) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; or,
 - iii) Public policy considerations make it improper for one person to hold both offices.

California Attorney General Edmund G. Brown Jr. issued an opinion (10-506, 2010) on exemptions to the incompatible office requirements generally stating:

“As we have noted on many occasions, the incompatibility rule does not require an actual occurrence of divided loyalties, but looks to whether the circumstances may reasonably be said to present a substantial latent tension between the two offices. And a single possible clash suffices: Only one potential clash of duties or loyalties is necessary to make offices incompatible. Nor does the incumbent's record or reputation or integrity cure the problem. Regardless of the motives or integrity of the

office holder, he or she cannot hold two incompatible offices at once; for it is the nature of the offices, not the individuals, that determines the rule's application. When two offices are inherently incompatible, an incumbent holding both can only perform the duties of one office by neglecting to perform the duties of the other. It is not for him to say in particular instance which he will perform and which he will not. The public has a right to know with certainty.”

This bill allows an elected official of a city or county to serve as a nonvoting member of the IID Board. While a nonvoting member may not have the same decision making ability of a voting member, potential conflicts between two offices may arise nonetheless. The Committee may wish to consider if the bill sufficiently provides safeguards against potential incompatible office issues.

- 7) **Committee Amendments.** In order to address some of the policy considerations above, the Committee may wish to amend this bill in the following ways:
- a) Require the LAFCOs to study alternative governance structures;
 - b) Require the study to be contingent upon funding provided by the Legislature;
 - c) Require that the study be published no later than 18 months after receipt of funding from the Legislature;
 - d) Reduce the nonvoting members from 3 to 1 and remove the representation conditions;
 - e) Require the nonvoting member to reside within the electrical service area, and specify if the nonvoting director relocates outside of the electrical service area, the director's membership on the board shall terminate and a new member shall be appointed;
 - f) Specify that the nonvoting director shall be appointed by the county supervisor that represents the largest amount of population in the electrical service area;
 - g) Specify that the nonvoting director shall serve a term of four years; and,
 - h) Reduce the IID board membership from 6 to 5 if IID no longer serves electricity to the electrical service area.
- 8) **Related Legislation.** AB 854 (Mayes) of 2019 would have increased the IID Board membership from five to 11 board members and required the six additional Board members to be eligible voters and residents of Riverside County. This bill provides that if a public utility district is formed to provide electricity within the Riverside County service area, the number of IID Board members can be reduced from 11 to five members. This bill died in the Assembly Appropriations Committee.

AB 2629 (Mayes) of 2020 would have required the State Energy resources Conservation and Development Commission to study options to extend representation on the board of directors of IID to residents within the energy service area of IID but outside its jurisdictional boundaries. The report would have been due to the Legislature by June 30, 2022. This bill was not heard in Committee.

9) **Arguments in Support.** None on file.

10) **Arguments in Opposition.** The Imperial County Board of Supervisors argues that, “AB 1021 interjects in and circumvents local government decision-making authority. The Legislature enacted the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and established LAFCOs, which were formed to encourage orderly formation of local agencies and services. The issues raised by Assemblymember Mayes in AB 1021 and similar legislation previously introduced remain local issues for which the Legislature has provided an elaborate local process that should not be circumvented.

“Additionally, AB 1021 undermines the role of the IID Energy Consumers Advisor Committee (ECAC). The ECAC is comprised of 20 members, from both Imperial and Riverside counties, that provide critical advice to IID’s elected board of directors regarding all aspects of the energy department and its operations. The committee plays a vital role in shaping energy programs and policies. The ECAC is a program that has been established so that community concerns can be addressed and resolved. AB 1021 appears to be an unwarranted intrusion into local affairs that can be best managed through existing processes at the local level.

“For these reasons, the Board of Supervisors is opposed to AB 1021. We urge you to closely consider the far-reaching and negative impacts of this bill to all of the communities served by IID.”

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Municipal Utilities Association
California Special Districts Association
City of Brawley
City of El Centro
City of Imperial
Imperial County
Imperial County Farm Bureau
Imperial Irrigation District
Imperial LAFCO
Imperial Valley Water
Southern California Public Power Authority

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958