

Date of Hearing: May 6, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

AB 1119 (Rendon) – As Introduced February 27, 2015

SUBJECT: Public utilities: municipal corporations: rights of way.

SUMMARY: Grants counties the same right to construct, operate, and maintain utilities that is granted to municipal corporations under current law. Specifically, **this bill:**

- 1) Provides, for the purposes of existing law that grants municipal corporations the right to construct, operate, and maintain utilities, that the terms “municipal corporation” and “municipality” include a county.
- 2) Requires, before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation for the purposes outlined above, that the municipal corporation request of the municipal corporation that has control over the street, alley, avenue, or highway to agree with it upon the location of the use and the terms and conditions to which the use shall be subject.
- 3) Repeals a section of law providing that a grant of authority from or agreement with another municipality is not necessary in any case where the street, alley, avenue, or highway, or portion thereof, proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory.

EXISTING LAW:

- 1) Grants to every municipal corporation of the state the right to construct, operate, and maintain water and gas pipes, mains and conduits, electric light and power lines, telephone and telegraph lines, sewers and sewer mains, all with the necessary appurtenances, across, along, in, under, over, or upon any road, street, alley, avenue, or highway, and across, under, or over any railway, canal, ditch, or flume which the route of such works intersects, crosses, or runs along, in such manner as to afford security for life and property. (PUC 10101)
- 2) Requires a municipal corporation exercising its rights under the provision outlined above to restore the road, street, alley, avenue, highway, canal, ditch, or flume so used to its former state of usefulness as nearly as may be, and to locate its use so as to interfere as little as possible with other existing uses of a road, street, alley, avenue, highway, canal, ditch, or flume. (PUC 10102)
- 3) Requires, before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation for the purposes outlined above, the municipal corporation to request the municipal corporation in which the street, alley, avenue, or highway is situated to agree with it upon the location of the use and the terms and conditions to which the use shall be subject. (PUC 10103)
- 4) Provides, if the two municipal corporations are unable to agree on the terms and conditions and location of a use within three months after a proposal to do so, the municipal corporation

proposing to use a street, alley, avenue, or highway may bring an action in the superior court of the county in which the street, alley, avenue, or highway is situated against the other municipal corporation to have the terms and conditions and location determined. The superior court may determine and adjudicate the terms and conditions to which the use of the street, avenue, alley, or highway shall be subject, and the location thereof, and upon the making of the final judgment the municipal corporation desiring to do so may enter and use the street, alley, avenue, or highway upon the terms and conditions and at the location specified in the judgment. (PUC 10104)

- 5) Provides that a grant of authority from or agreement with another municipality is not necessary in any case where the street, alley, avenue, or highway, or portion thereof, proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory. (PUC 10105)

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill grants to counties the same right to construct, operate, and maintain utilities that is granted to municipal corporations under current law. This bill is sponsored by the Los Angeles County Board of Supervisors.
- 2) **Author's Statement.** According to the author, "The purpose of the bill is to clarify the Public Utilities Code to define that the term 'municipal corporation' includes counties. This would provide counties with the same rights as cities when it comes to their ability to challenge a utility project by another public entity in or over a street or highway located in unincorporated county territory."
- 3) **Background.** In 2010, the County of Los Angeles (County) filed a suit against the City of Los Angeles (City) over the City's plans to install a sewer pipe through an unincorporated area of the County. The decision of the Court held that a county does not qualify as a "municipal corporation" and is therefore not entitled to the same protections that a city would be entitled to under existing law, specifically the protections contained in PUC 10103, which states:

"Before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation (for the purposes of installing utility infrastructure), it shall request the municipal corporation in which the street, alley, avenue, or highway is situated to agree with it upon the location of the use and the terms and conditions to which the use shall be subject."

The County argues that the court decision "misinterprets the legislative purpose of existing statutes by depriving the County of an adequate right to challenge projects by cities that encroach into its unincorporated territory."

- 4) **Municipal Corporations and Utilities.** PUC sections 10101-10105 govern the rights of a "municipal corporation" to build a utility project in a street or highway, including a street or highway within another jurisdiction. Section 10101 grants to municipal corporations the authority to construct, operate and maintain utilities such as sewers, water and electric lines, within any road. Section 10103 provides, however, that when a municipal corporation proposes to use a road located within another municipal corporation, the municipal corporation proposing the project must obtain an agreement from the other municipal corporation.

Section 10104 provides that if the two municipal corporations don't agree, the municipal corporation proposing the project can obtain an adjudication in superior court regarding the location, terms and conditions of the use of the road. Section 10105 qualifies sections 10103 and 10104 in cases "where the [road] . . . proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory."

These statutes balance the interests of municipal corporations in being able to build utility projects using streets and highways, including those located within other jurisdictions, with the interests of residents who may be impacted by a project that is initiated by officials in another jurisdiction who do not represent them. They do this by requiring the municipal corporation initiating the project to obtain the consent of the officials representing the residents of the jurisdiction in which they want to build the project, or to obtain an independent judicial determination that weighs the rights and interests of both jurisdictions.

- 5) **The Case in Question.** In its opinion, the Court held that the County is not a "municipal corporation" for purposes of PUC sections 10101-10105. Therefore, the County is not entitled to the same protections that a city would be entitled to under sections 10103 and 10104 (to require a city proposing to construct a utility project within its street or highway to obtain either an agreement from County officials or an independent judicial determination of its right to do so). Instead, the Court determined that the only restriction on a city's use of a county highway is that the city, in its own discretion, must find that the use of that road is a "necessary or convenient part of the route" of the proposed project (under section 10105). The city's decision can only be overturned if it is "arbitrary or capricious."

According to the sponsor, "the purposes of sections 10103 and 10104 apply with equal force in the unincorporated territory as they do in a city – i.e, protecting the residents from decisions by officials of foreign jurisdictions who are not elected by and are not accountable to the residents who will be impacted. Treating counties differently from incorporated cities deprives unincorporated area residents of the protections afforded by sections 10103 and 10104.

"The bill would amend the statute to define the terms 'municipal corporation' and 'municipality' to include the County for purposes of sections 10101-10105. This will provide counties with the same rights as cities when it comes to the ability of a public entity to install a utility project in or over a street or highway, including a street or highway located in another jurisdiction.

"The bill would also clarify that the County has the same rights as cities to construct its own utility projects within streets and highways, including those streets and highways that are within city boundaries. Having the same rights to construct a utility in a City highway is a matter of equity just as important as the ability of a governing body (or having an adjudication occur) in order to grant approval to another municipal corporation."

- 6) **Policy Consideration.** Given the stated intent of the bill to remedy the Court's decision by giving counties the same rights as cities when a dispute arises, the Committee may wish to consider whether it is necessary or appropriate to also grant counties the same rights as cities *to construct, operate, and maintain utilities*.
- 7) **Arguments in Support.** The Los Angeles County Board of Supervisors, sponsor of this bill, writes, "The County's Department of Public Works and County Counsel indicate that AB 1119 would balance the interests of local public entities to build utility projects using streets and highways, including those located within other jurisdictions, with the interests of residents and businesses that may be impacted by projects initiated by officials in other jurisdictions who do not represent them. AB 1119 would require the local entity to either obtain the consent of the officials representing the residents of the jurisdiction in which they want to build the project, or to obtain an independent judicial determination that weighs the rights and interests of both jurisdictions."
- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill was heard by the Utilities and Commerce Committee on April 13, 2015, where it passed with a 14-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Board of Supervisors [SPONSOR]
California State Association of Counties
Urban Counties Caucus

Opposition

None on file

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