

Date of Hearing: March 23, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 2081 (Eduardo Garcia) – As Introduced February 14, 2022

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

SUMMARY: Extends the sunset date on provisions related to delivery of water service to Indian lands. Specifically, **this bill:**

- 1) Extends the sunset date, until January 1, 2025, on the authorization for a municipal water district (MWD) to apply to a local agency formation commission (LAFCO) to extend water service to Indian lands, as specified.
- 2) Defines “Indian lands” to mean Indian lands that were part of a reservation or held in trust as of January 1, 2022.
- 3) Makes other technical and conforming changes.
- 4) Provides that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

EXISTING LAW:

- 1) Authorizes a MWD 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.
- 2) Establishes the Cortese-Knox-Hertzberg Act, which defines the procedures for the organization and reorganization of cities, counties, and special districts.
- 3) Authorizes a MWD 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.
- 4) Requires, notwithstanding any other provision of law, a district, upon request of an Indian tribe and the satisfaction of specific conditions, 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 district.
 - c) The lands lie within the special study area of at least one district.
 - d) At least 70% of the Indian tribe's total Indian lands are currently within the boundaries of one or more districts.

- 5) 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.
 - 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.
- 6) Specifies that upon request of specified Indian tribes, a MWD may, until January 1, 2023, apply to the applicable LAFCO to extend water service at substantially the same terms applicable to customers of the MWD to Indian lands that are not within a MWD as if the lands had been fully annexed into the MWD and into any other public agencies required for the provision of water service.
- 7) Requires the LAFCO to approve the application pursuant to 6) above and may impose conditions on the district with regard to the extension of service as long as those terms and conditions do not impair the provision of water service to Indian lands and are similar to those imposed on all agency service recipients without discrimination. The MWD shall provide the water extension agreement to the LAFCO.
- 8) Specifies that “Indian lands” are lands, as defined by federal law, that were part of the reservation or held in trust as of January 1, 2017.
- 9) Requires that before a MWD provides service of water to an Indian tribe, the Indian tribe shall satisfy specified conditions.

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

COMMENTS:

- 1) **Bill Summary and Author’s Statement.** This bill extends the sunset date, until January 1, 2025, on the authorization for a MWD to apply to a LAFCO to extend water service to Indian lands without LAFCO approval. This bill also defines “Indian lands” to mean Indian lands that were part of a reservation or held in trust as of January 1, 2022. The Barona Band of Mission Indians and the Rincon Band of Luiseno Indians are the sponsors of this bill.

According to the author, “AB 1361 has provided Indian tribes with the independence that is warranted by their sovereign nation status. Therefore, the sunset date for this statute should be extended to allow additional tribes to pursue water service when needed.”

- 2) **Municipal Water Districts.** The Municipal Water District Act of 1911 establishes the powers and organization of municipal water districts. Among other things, the act allows municipal water districts to sell water to entities within the district for use within the district and to levy taxes on the land within the district. When acquiring new customers, municipal water districts may require them to implement water conservation requirements. A district may also establish special rates for areas acquired by annexation and may charge special fees when it serves areas that do not pay district taxes, such as property taxes.

Municipal water districts often purchase water from water wholesalers, such as the Metropolitan Water District of Southern California. In general, water agencies, including wholesalers, may only serve water within their boundaries, so annexations to water retailers also require annexations to the water wholesalers, as well as compliance with terms and conditions.

- 3) **LAFCOs.** The Cortese-Knox-Hertzberg Act controls how local officials change the boundaries of cities and special districts, putting local agency formation commissions in charge of the proceedings. LAFCOs' boundary decisions must be consistent with spheres of influence (SOIs) that LAFCOs adopt to show the future boundaries and service areas of the cities and special districts. Before LAFCOs can adopt their SOIs, they must prepare municipal service reviews (MSRs) which analyze population growth, public facilities, and service demands. LAFCOs may also conduct special studies of local governments.

Most boundary changes begin when a city or special district applies to LAFCO, or when registered voters or landowners file petitions with a LAFCO. In limited circumstances, LAFCO can initiate some special district boundary changes: consolidations, dissolutions, mergers, subsidiary districts, or reorganizations (AB 1335, Gotch, Chapter 1307, Statutes of 1993). Boundary changes require four (sometimes five) steps:

- a) First, there must be a completed application to LAFCO, including a petition or resolution, an environmental review document, an agreement on how property taxes will be transferred, and a plan for services that describes what services will be provided at what level and how those services will be financed.
 - b) Second, LAFCO must hold a noticed public hearing, take testimony, and may approve the proposed reorganization. LAFCO may impose terms and conditions that spell out what happens to the assets and liabilities of affected local agencies. If LAFCO disapproves, the proposed reorganization stops.
 - c) Third, LAFCO must hold another public hearing to measure written protests in order to determine whether an election is needed. Although there are many exceptions, in most cases an election is required if 25 percent of the voters in a district, or voters representing 25 percent of the assessed value of land, submit written protests.
 - d) Fourth, if state law requires an election, it occurs among the affected voters, requiring majority voter approval.
 - e) Finally, LAFCO's staff files formal documents to complete the reorganization.
- 4) **Indian Tribes.** The United States has a unique legal and political relationship with Indian tribes, as provided by the Constitution of the United States, treaties, court decisions, and Federal statutes. The United States government recognizes 574 Indian tribes as sovereign governments. Due to this status, federally recognized tribes are not subject to state and local laws and regulations, except for those required under compacts negotiated with the State of California that provide for authority to conduct gaming activity on Indian lands. Federal law defines Indian lands to mean all lands within the limits of any Indian reservation, and any lands the title to which is either held in trust by the United States for the benefit of any Indian tribe, or individual, or held by any Indian tribe or individual subject to restriction by the

United States against alienation and over which an Indian tribe exercises governmental power.

- 5) **Previous Legislation.** 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, Statutes of 2016]. AB 2470 only applied if the tribe's lands met specified requirements, and if the Indian tribe met specified conditions prior to receiving water service. In 2018, a water service agreement was made between the Metropolitan Water District of Southern California, the Sycuan Band, San Diego County Water Authority and the Padre Dam Municipal Water District.

AB 1361 (Garcia), Chapter 449, Statutes of 2017, built upon the exemption established by AB 2470 and authorized a MWD, until January 1, 2023, to apply to a LAFCO to extend water service to a tribe's land, upon request of an Indian tribe and if the tribe meets the conditions established by AB 2470. This bill required LAFCO to approve the application without requiring the usual annexation process.

- 6) **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 extends the sunset date on provisions that effectively bypass LAFCO approval, and do not require the usual annexation process to occur. Proponents of this bill argue that it was appropriate for the Legislature to adopt AB 1361 to reflect the unique relationship between the state and tribes. Opponents of this bill argue that LAFCO has authority over the boundaries of MWDs providing water service and that the LAFCO process continues to allow for an examination of water supply and provision for all utilizing those services. In light of these differing opinions, the Committee may wish to consider if the sunset date should be extended until January 1, 2025.
- 7) **Arguments in Support.** According to the Barona Band of Mission Indians, “We appreciate your recognition of the fact that federally recognized tribes are sovereign governments and are not subject to state and local laws and regulations. As you know, historically, most tribes have been unable to access services from nearby water districts without annexing territory to those districts, a process that would subject sovereign tribal governments to state and local regulations and thus violate tribal sovereignty. AB 1361 provided Indian tribes with the independence that is warranted by their sovereign nation status. As such, the sunset date for this statute should be extended to allow additional tribes to pursue water service when needed.”
- 8) **Arguments in Opposition.** According to the California Association of LAFCOs, “To clarify, it is important to distinguish that LAFCo authority extends to the boundaries of the public agency service provider - not the service recipient (tribe). So, when an extension of service is normally sought by a service provider for an area outside the existing boundaries, the existing LAFCo process requires that a complete analysis is conducted to ensure that any public agency service extensions will not cause harm to either other local agencies or their constituents, and all considerations are fully vetted during local public hearings. This transparent process allows the public to have meaningful opportunities to comment and seek remedies at the local level. This regular, 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. This extensive process is especially important given that LAFCo decisions are quasi-legislative in nature and are not appealable except to the courts. By having a thorough and public process, all needs and concerns can be factored into the final outcome. This protects everyone affected by such a decision and has proven to be good public policy that is applied equally to all. Thus, the mandated approval of the LAFCo application required under AB 1361 introduced procedural inequities which are the antithesis to the logic and data driven analysis normally conducted by LAFCOs when considering district boundary questions. Extending the sunset date via AB 2081 allows those problematic provisions to remain in effect rather than sunset as originally codified.”

REGISTERED SUPPORT / OPPOSITION:**Support**

Barona Band of Mission Indians [SPONSOR]
Rincon Band of Luiseno Indians [SPONSOR]
Agua Caliente Band of Cahuilla Indians (If Amended)
Habematolel Pomo of Upper Lake
Sycuan Band of Kumeyaay Nation
Viejas Band of Kumeyaay Indians

Opposition

California Association of LAFCOs

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