

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
AB 402 (Dodd) – As Amended May 5, 2015

SUBJECT: Local agency services: contracts.

SUMMARY: Expands existing law to allow local agency formation commissions (LAFCOs) to authorize a city or district to extend services outside of boundaries for additional purposes beyond responding to a threat to public health or safety. Specifically, **this bill:**

- 1) Allows LAFCOs to authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence, if consistent with adopted policy, to support *existing or planned uses* involving public or private properties, subject to approval at a noticed public hearing where LAFCO makes all of the following determinations:
 - a) The extension of service or services deficiency was identified and evaluated in a review of municipal services (MSR) prepared, pursuant to existing law;
 - b) The extension of service will not result in adverse impacts on open space or agricultural lands, or have growth inducing impacts; and,
 - c) A later change of organization involving the subject territory and its affected agency is not feasible under existing law or desirable based on the adopted policies of LAFCO.
- 2) Provides that existing law, which allows LAFCO to authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat of public health and safety, must be consistent with adopted policy.
- 3) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Establishes the Cortese-Knox-Hertzberg Act (Act), which defines the procedures for the organization and reorganization of cities, counties, and special districts.
- 2) Authorizes a city or district to provide new or extended services by contract or agreement *outside its jurisdictional boundaries*, if it requests and receives written approval from the LAFCO in the affected county.
- 3) Allows a LAFCO to authorize a city or district to provide new or extended services *outside its boundaries, but within its sphere of influence* in anticipation of a later change of organization.
- 4) Allows a LAFCO to authorize a city or district to provide new or extended services *outside its boundaries and outside its sphere of influence* to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, if both of the following requirements are met:

- a) The entity applying for the contract has provided LAFCO with documentation of a threat to the health and safety of the public or the affected residents; and,
 - b) The LAFCO has notified any alternate service providers, including any water corporation or sewer system corporation that has filed a map and statement of service capabilities with the LAFCO.
- 5) Establishes requirements and a timeframe for an executive officer upon receipt of a request for approval by a city or district of a contract to extend services outside boundaries. Requires, upon receipt of a complete request, the request to be placed on the agenda or a LAFCO meeting, unless the LAFCO has delegated the approval of requests to the executive commissioner.
- 6) Requires the LAFCO or executive officer to approve, disapprove, or approve with conditions the contract for extended services. Allows an applicant, if a contract is disapproved or approved with conditions, to request reconsideration and cite the reasons why.
- 7) Provides exemptions to the requirement in existing law for the following contracts or agreements:
- a) Contracts or agreements solely involving two or more public agencies where the public service is an alternative or substitute for public services already being provided by an existing public services provided, and there the level of service will be consistent with the level of service by the existing provider;
 - b) Contracts for the transfer of nonpotable or nontreated water;
 - c) Contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, as specified;
 - d) Extended service that a city or district was providing on or before January 1, 2001; and,
 - e) Local publicly owned electric utility, as defined, providing electric services that do not involve the acquisition, construction or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

FISCAL EFFECT: None

COMMENTS:

- 1) **Current Law.** The Cortese-Knox-Hertzberg Local Government Reorganization Act (Act) delegates the Legislature's power to control the boundaries of cities and special districts to local agency formation commissions (LAFCOs). The Legislature created LAFCOs to discourage urban sprawl, preserve open space and prime agricultural lands, encourage the orderly formation and development of local agencies, and to ensure the efficient provision of government services.

The Act requires that cities and districts must get a LAFCO's written approval before they can serve territory outside their boundaries pursuant to AB 1335 (Gotch), Chapter 1307, Statutes of 1993. This requirement was established because of a concern that some cities and

districts might be circumventing LAFCO review by signing contracts to provide services outside their boundaries without annexing the territory. AB 1335, however, recognized the need to accommodate unexpected local conditions and several exemptions were established. LAFCO approval is not required for contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting service provider. In 1999, the Legislature expanded these provisions to allow services outside spheres of influence to correct public health and safety problems, pointing to failing septic tanks and water wells to exemplify the necessity for the change.

- 2) **Bill Summary.** This bill further expands the provisions of law which allow service extensions outside sphere of influences and jurisdictional boundaries, beyond health and safety issues. Under this bill, LAFCOs may authorize, if consistent with their adopted policies, a city or district to extend services to support *existing or planned uses* involving public or private properties, if the approval is done at a noticed public hearing where LAFCO makes specified determinations. The determinations must include: 1) The extension of service or service deficiency was identified and evaluated in an MSR; 2) The extension of service will not result in adverse impacts on open space or agricultural lands, or have growth inducing impacts; and, 3) A later change of organization involving the subject territory and its affected agency is not feasible, or desirable based on the adopted policies of the LAFCO.

This bill is author-sponsored.

- 3) **Author's Statement.** According to the author, "There are instances when existing or approved developments lie outside a sphere of influence of a municipal service provider, and that are in need of those municipal services. For example, the ABAG Regional Housing Needs Allocation (RHNA) process may require the location of affordable housing outside the City of Napa's sphere of influence. Unfortunately, current law will not permit municipal services to be extended outside the service provider's sphere of influence unless a city or district receives written approval from the LAFCO in the affected county pursuant to a very limited set of special circumstances.

"An additional example would be Whetstone winery in Napa. This existing development lies adjacent to a city water line and is outside of the city's sphere of influence in an unincorporated area surrounded by agricultural lands. When the property owner submitted the application for water service to be extended to this property to allow for a fire hydrant to be serviced, the extension was denied because this was not a residential property and the health and safety exemption in [current law] could not be applied. The only means to extend water to this property would be to annex it into the city's sphere of influence. With a city water line running adjacent to the property, allowing Whetstone an exemption to access this city water rather than annexing the property into the city's sphere of influence would be a greater protection to the surrounding agricultural lands than extending the sphere of influence into the unincorporated area."

- 4) **Policy Considerations.** Proposed changes to the laws governing outside service extensions have been debated among LAFCOs for many years and have largely divided practitioners. On one hand, some LAFCOs can provide examples where outside service extensions seem to

be the only option because of local geography, politics, and other circumstances, so more flexibility is appealing. On the other hand, some LAFCOs feel that an expansion to this provision of law is fundamentally against the core purpose and mission of LAFCOs and could impact agricultural lands or have growth inducing effects.

- a) **Identified Solution Doesn't Match Identified Problem.** In support of the bill, Napa County argues that extending services outside spheres of influence may prevent unnecessary annexation of territory that might lead to unintentional sprawl. The examples raised in Napa County are unique in the sense that wineries on commercially zoned parcels have service needs for commercial purposes and are largely surrounded by agricultural land. In these instances annexation of territory has implications not only on the efficiency of services, potential growth and development, but also has financial impacts, due to sales taxes or transient occupancy taxes that may be collected in these territories. The Committee may wish to consider, given these factors, if it is appropriate to use the issues identified in Napa County to craft statewide policy that may have very different impacts in other counties. Additionally, the Committee may wish to consider asking the author to narrow the scope of the bill to more specifically address some of the examples raised.
- b) **Growth Inducing?** In opposition to this bill, the California Farm Bureau Federation argues that this bill will have a severely negative impact on farmland conservation efforts by encouraging leap-frog commercial and residential development.
- c) **Terminology.** The Committee may wish to ask the author to strike out the term "*existing or planned use*" to be consistent with the author's intent to address service extensions to existing developments.

The Committee may wish to consider whether it would be possible for LAFCO to approve an extension of services for a *planned use* that would not inherently have growth inducing impacts. The Committee may wish to consider if this bill may lead to costly litigation for LAFCOs if this bill requires substantive changes in LAFCO policies which will influence growth patterns and affect land use, thus leading to potential impacts to the environment that may be subject to CEQA.

- d) **Impact on Voters.** The Committee may wish to consider if this bill will result in more cities and districts extending services outside their boundaries instead of annexing territory into their boundaries. If more services are extended outside of boundaries, instead of annexing territory into a district, then voters within that territory cannot vote in the elections that directly impact the service they are receiving.
- 5) **Related Legislation.** This bill is substantially similar to SB 1498 (Emmerson) of 2012, which was never heard in the Senate Governance and Finance Committee.
- 6) **Arguments in Support.** Napa County argues that this bill seeks to provide LAFCOs with more flexibility to approve service extensions outside of a sphere of influence without requiring annexation of territories that might lead to unintended sprawl.
- 7) **Arguments in Opposition.** The California Farm Bureau Federation argues, "Unfortunately, extending urban services outside of cities' spheres of influence would have a severe negative

impact on farmland conservation efforts by encouraging leap-frog commercial and residential development."

REGISTERED SUPPORT / OPPOSITION:

Support

Napa County Board of Supervisors
San Bernardino Local Agency Formation Commission (if amended)

Opposition

California Farm Bureau Federation (unless amended)

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