

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 854 (Mayes) – As Introduced February 20, 2019

SUBJECT: Imperial Irrigation District: retail electric service.

SUMMARY: Adds board members to the Imperial Irrigation District (IID) Board. Specifically, **this bill:**

- 1) Increases the IID Board from five to 11 members.
- 2) Specifies that each of the six directors added to the board shall meet the following qualifications:
 - a) Reside in Riverside County;
 - b) Qualify as eligible to vote in Riverside County; and,
 - c) Reside in the division the director represents at the time of their nomination or appointment and through their entire term.
- 3) Requires the six directors to be elected at the 2020 general election.
- 4) Provides that if a public utility district is formed that provides electricity outside the territory of IID and consists of a board of directors with a majority of seats representing Riverside County, the board of directors of IID may adopt a resolution that decreases the number of directors and the divisions from which they are elected from 11 to five upon the expiration of terms of the members of the board.

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) **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.

- 3) **Bill Summary and Author's Statement.** This bill increases the IID Board membership from five to 11 board members and requires 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 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 854 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 voice on how their municipal utility is managed.”

- 4) **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. The Committee may wish to consider if this bill is necessary or if the decision of who provides electric service is best left to the local communities.
 - b) **Governance.** This bill will add six new board members on the IID Board, all from Riverside County. The residents of Riverside County do not receive any of the irrigation services provided by the district. This bill will effectively give control of the water service provision to a majority of board members that are not impacted by that service. Opponents argue that this bill could impair existing legal and contractual obligations by altering control over IID’s long-standing water rights. The ultimate effect on these water rights is unclear. The Committee may wish to consider if this bill shifts decision-making authority appropriately.
 - 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. IID is one of many examples throughout the state where services are provided in this manner. The Committee may wish to consider the adverse consequences of extending services without annexation and if a larger conversation on this issue should take place.

- 5) **Arguments in Support.** The City of Indian Wells argues that AB 854, “Aims to remedy a disagreement between the Energy Consumers Advisory Committee (ECAC) and the Imperial Irrigation District (IID) by opening up new options for a resolution. The City of Indian Wells is within IID's grid, but its residents cannot serve on or vote for the IID Board. The ECAC was created in 1994 to remedy this by providing recommendations to the IID Board that have historically been well received. However, an impasse between ECAC and IID created a need for legislative solutions.

“Local representation is a fundamental aspect of our democratic process and AB 854 ensures it exists for residents of Indian Wells. By providing options for both IID and ratepayers within the service grid, the goal of this legislation is to allow a resolution both sides agree on, IID formed in 1911, when the boundaries for representation on the Board were determined. Only including the Imperial Valley made sense since IID only served that jurisdiction. IID expanded to Riverside County in 1943, but the boundaries for representation were not changed. This legislation would add six board seats for Riverside County to ensure that individuals who get their power from IID have a say in how the utility is run. Alternatively, if stakeholders do not want to increase the IID board, AB 854 would allow a separate utility district to be formed in Riverside County.”

- 6) **Arguments in Opposition.** The Imperial County Board of Supervisors argues, “This legislation would bring far-reaching and negative impacts to ratepayers and local governments of north the Imperial and Coachella Valleys. Furthermore, this bill ignores the long-standing relationships and legal agreements that exist and have resulted in affordable and reliable energy service to the people of those Valleys over the past 85 years. Proponents of AB 854 have publicly state[d] they have no “representation” when referring to the IID. This statement is not an accurate reflection of IID’s customer service record or its ratepayer focused programs. IID has permanent offices in the City of La Quinta complete with a customer service center and full-time staff. The Board of Directors holds public meetings in the Imperial and Coachella Valleys and its Energy Consumers Advisory Committee is comprised of ratepayers from both valleys.

“Finally, it is our understanding the rights which allow IID to serve customers in the Coachella Valley are tied to complex water and energy legal agreements with the Coachella Valley Water District and Southern California Edison. The agreement with CVWD, for example, dates back to 1934 and requires IID to make annual royalty payments that it estimates have reached approximately \$45 million to date.”

REGISTERED SUPPORT / OPPOSITION:

Support

Alianza Coachella Valley
 California Institute for Rural Studies
 City of Indian Wells
 City of La Quinta
 City of Palm Desert
 City of Rancho Mirage
 Galilee Center
 Kounkuey

Support (continued)

La Union Hace La Fuerza
Leadership Counsel for Justice and Accountability
Lideres Campesinas
Pueblo Unido
Union De Polancos

Opposition

Association of California Water Agencies
Brawley Chamber of Commerce
Calexico Unified School District
California Grain and Feed Association
California Municipal Utilities Association
California Seed Association
California Special Districts Association
City of Brawley
City of Calexico
City of Calipatria
City of El Centro
City of Holtville
City of Imperial
Coalition of California Utility Employees
Coalition of Labor, Agriculture, and Business, Imperial County
Dahm Team Real Estate Company, Inc.
El Centro Chamber of Commerce
Heber Public Utility District
Imperial Chamber of Commerce
Imperial County
Imperial County Building and Construction Trades Council AFL-CIO
Imperial County Farm Bureau
Imperial County Transportation Commission
Imperial LAFCO
Imperial Valley Economic Development Corporation
Imperial Valley Vegetable Growers Association
Imperial Valley Water
International Brotherhood of Electrical Workers 465
International Brotherhood of Electrical Workers 569
League of California Cities, Imperial County Division
Pioneers Memorial Healthcare District
Southern California Public Power Authority
State Building and Construction Trades Council, AFL-CIO
Western Growers Association

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