

MEMORANDUM

DATE: April 26, 2017
TO: LAFCO Commissioners
FROM: Sara Lytle-Pinhey, Executive Officer *SLP*
SUBJECT: Legislative Update and Proposed Letters of Support

RECOMMENDATION

Staff recommends that the Commission:

1. Receive the Legislative Update.
2. Authorize the Executive Officer to submit position letters on behalf of Stanislaus LAFCO in support of Assembly Bills 464 and 1725.

DISCUSSION

CALAFCO is currently tracking 19 bills of interest and has been providing regular updates to member LAFCOs. Two of these bills, Assembly Bill 464 and Assembly Bill 1725, were recommended by CALAFCO for letters of support. The full text of each bill and proposed letters of support are attached for the Commission's information. The following describes each of the bills:

AB 464 (Gallagher) – Annexation Proceedings

Current law requires that an applicant seeking a change of organization or reorganization submit a plan for providing services within the affected territory that includes, among other requirements, a description of how and when services can be extended to the affected territory (Government Code §56653). This bill clarifies that for areas *already* receiving services from the subject agency, this requirement can be fulfilled by identifying and discussing those existing services.

The need for this clarification came as a result of the 2014 court decision regarding *City of Patterson v. Turlock Irrigation District*, where the City of Patterson had applied to annex much of the west side into the Turlock Irrigation District. The annexation application was ultimately terminated; however, the interpretation of Government Code §56653 within the court's decision has been a concern of many LAFCOs, as it implies no annexation could be processed unless new services are proposed.

This bill is tentatively set for hearing in the Assembly Local Governance Committee on May 3rd. CALAFCO has requested that any letters of support be submitted by April 27th.

AB 1725 (Committee on Local Government) – Omnibus Bill

Each year, CALAFCO sponsors an omnibus bill that is intended to make minor clarifications and corrections to the Cortese-Knox-Hertzberg (CKH). This year's omnibus bill, AB 1725, includes a technical change that clarifies the Commission's ability to establish a schedule of fees and service charges. For Stanislaus LAFCO, this would reinforce the Commission's ability to collect fees for municipal service review and sphere of influence updates that are associated with specific projects.

CONCLUSION

Staff recommends that the Commission authorize the Executive Officer to send letters in support of Assembly Bills 464 and 1725. Staff will continue to monitor potential changes to the bill and coordinate with CALAFCO to provide updated feedback as appropriate.

Attachments: Draft Letter of Support for AB 464
- Full Text of AB 464 (As Amended on March 14, 2017)
Draft Letter of Support for AB 1725
- Full Text of AB 1725 (As of March 20, 2017)

April 27, 2017

Assemblymember James Gallagher
California State Assembly
State Capital Room 2158
Sacramento, CA 95814

Subject: **SUPPORT OF AB 464 AS AMENDED**

Dear Assemblymember Gallagher:

The Stanislaus Local Agency Formation Commission (LAFCO) is pleased to support your bill **AB 464**, as amended on March 14, 2017. Sponsored by the California Association of Local Agency Formation Commissions (CALAFCO), the bill makes necessary technical changes to existing LAFCO law to clarify the current practice of LAFCOs approving annexations of areas already being served by a local agency through an out of boundary service agreement (Government Code section 56133).

As a result of a court decision in 2014 in the case of *City of Patterson v. Turlock Irrigation District*, LAFCOs across the state are concerned that the court's interpretation of application requirements, as currently found in Government Code section 56653, may prevent future annexations of territory already being provided services. This bill seeks to remedy that problem by ensuring that within certain conditions, LAFCOs can continue to evaluate applications which include the annexation of territory where services are already being provided via an out of agency service agreement.

Stanislaus County includes many areas currently receiving services outside a city or district, consistent with Government Code section 56133, in anticipation of a future annexation. This legislation is critical for the successful future annexation of these areas.

For these reasons, Stanislaus LAFCO is pleased to support **AB 464**. Thank you for carrying this important piece of legislation.

Sincerely,

Sara Lytle-Pinhey
Executive Officer
Stanislaus LAFCO

Cc: Members, Assembly Local Government Committee
Misa Lennox, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus
Pamela Miller, Executive Director, CALAFCO

AMENDED IN ASSEMBLY MARCH 14, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 464

Introduced by Assembly Member Gallagher
(Principal coauthor: Assembly Member Mayes)
(Coauthors: Assembly Members Mathis, Voepel, and Waldron)
(Coauthors: Senators Dodd and Nielsen)

February 13, 2017

An act to amend ~~Section~~ *Sections 56653 and 56857* of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 464, as amended, Gallagher. Local government reorganization.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, among other things, establishes procedures for consideration of a proposal for change of organization or reorganization, as defined. Existing law requires that an applicant seeking a change of organization or reorganization submit a plan for providing services within the affected territory that includes, among other requirements, an enumeration and description of the services to be extended to the affected territory and an indication of when those services can feasibly be extended.

This bill would specify that the plan is required to also include specific information regarding services currently provided to the affected territory, as applicable, and make related changes.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 authorizes any district to which annexation of territory is proposed to adopt and transmit to the local agency formation commission a resolution requesting termination of proceedings, as specified, and requires the resolution to be based upon written findings

supported by substantial evidence in the record that the request is justified by a financial or service-related concern.

This bill would require the resolution to be based upon written findings supported by substantial evidence in the record that the request is justified as described above or because the territory is already receiving electrical service under a service area agreement approved by the Public Utilities Commission, as specified. The bill would require findings related to existing provision of electrical service by an irrigation district pursuant to a service area agreement approved under a specified provision to be based on the records of the district and the Public Utilities Commission, as provided.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 56653 of the Government Code, as
- 2 amended by Section 2 of Chapter 784 of the Statutes of 2014, is
- 3 amended to read:
- 4 56653. (a) If a proposal for a change of organization or
- 5 reorganization is submitted pursuant to this part, the applicant shall
- 6 submit a plan for providing services within the affected territory.
- 7 (b) The plan for providing services shall include all of the
- 8 following information and any additional information required by
- 9 the commission or the executive officer:
- 10 (1) An enumeration and description of the services currently
- 11 provided or to be extended to the affected territory.
- 12 (2) The level and range of those services.
- 13 (3) An indication of when those services can feasibly be
- 14 extended to the affected territory, if new services are ~~provided.~~
- 15 *proposed.*
- 16 (4) An indication of any improvement or upgrading of structures,
- 17 roads, sewer or water facilities, or other conditions the local agency
- 18 would impose or require within the affected territory if the change
- 19 of organization or reorganization is completed.
- 20 (5) Information with respect to how those services will be
- 21 financed.
- 22 (c) (1) In the case of a change of organization or reorganization
- 23 initiated by a local agency that includes a disadvantaged,
- 24 unincorporated community as defined in Section 56033.5, a local

1 agency may include in its resolution of application for change of
2 organization or reorganization an annexation development plan
3 adopted pursuant to Section 99.3 of the Revenue and Taxation
4 Code to improve or upgrade structures, roads, sewer or water
5 facilities, or other infrastructure to serve the disadvantaged,
6 unincorporated community through the formation of a special
7 district or reorganization of one or more existing special districts
8 with the consent of each special district’s governing body.

9 (2) The annexation development plan submitted pursuant to this
10 subdivision shall include information that demonstrates that the
11 formation or reorganization of the special district will provide all
12 of the following:

13 (A) The necessary financial resources to improve or upgrade
14 structures, roads, sewer, or water facilities or other infrastructure.
15 The annexation development plan shall also clarify the local entity
16 that shall be responsible for the delivery and maintenance of the
17 services identified in the application.

18 (B) An estimated timeframe for constructing and delivering the
19 services identified in the application.

20 (C) The governance, oversight, and long-term maintenance of
21 the services identified in the application after the initial costs are
22 recouped and the tax increment financing terminates.

23 (3) If a local agency includes an annexation development plan
24 pursuant to this subdivision, a local agency formation commission
25 may approve the proposal for a change of organization or
26 reorganization to include the formation of a special district or
27 reorganization of a special district with the special district’s
28 consent, including, but not limited to, a community services district,
29 municipal water district, or sanitary district, to provide financing
30 to improve or upgrade structures, roads, sewer or water facilities,
31 or other infrastructure to serve the disadvantaged, unincorporated
32 community, in conformity with the requirements of the principal
33 act of the district proposed to be formed and all required formation
34 proceedings.

35 (4) Pursuant to Section 56881, the commission shall include in
36 its resolution making determinations a description of the annexation
37 development plan, including, but not limited to, an explanation of
38 the proposed financing mechanism adopted pursuant to Section
39 99.3 of the Revenue and Taxation Code, including, but not limited

1 to, any planned debt issuance associated with that annexation
2 development plan.

3 (d) This section shall not preclude a local agency formation
4 commission from considering any other options or exercising its
5 powers under Section 56375.

6 (e) This section shall remain in effect only until January 1, 2025,
7 and as of that date is repealed.

8 SEC. 2. Section 56653 of the Government Code, as added by
9 Section 3 of Chapter 784 of the Statutes of 2014, is amended to
10 read:

11 56653. (a) If a proposal for a change of organization or
12 reorganization is submitted pursuant to this part, the applicant shall
13 submit a plan for providing services within the affected territory.

14 (b) The plan for providing services shall include all of the
15 following information and any additional information required by
16 the commission or the executive officer:

17 (1) An enumeration and description of the services currently
18 provided or to be extended to the affected territory.

19 (2) The level and range of those services.

20 (3) An indication of when those services can feasibly be
21 extended to the affected territory, if new services are proposed.

22 (4) An indication of any improvement or upgrading of structures,
23 roads, sewer or water facilities, or other conditions the local agency
24 would impose or require within the affected territory if the change
25 of organization or reorganization is completed.

26 (5) Information with respect to how those services will be
27 financed.

28 (c) This section shall become operative on January 1, 2025.

29 SEC. 3. Section 56857 of the Government Code is amended to
30 read:

31 56857. (a) Upon receipt by the commission of a proposed
32 change of organization or reorganization that includes the
33 annexation of territory to any district, if the proposal is not filed
34 by the district to which annexation of territory is proposed, the
35 executive officer shall place the proposal on the agenda for the
36 next commission meeting for information purposes only and shall
37 transmit a copy of the proposal to any district to which an
38 annexation of territory is requested.

39 (b) No later than 60 days after the date that the proposal is on
40 the commission’s meeting agenda in accordance with subdivision

1 (a), any district to which annexation of territory is proposed may
2 adopt and transmit to the commission a resolution requesting
3 termination of the proceedings. The resolution requesting
4 termination of the proceedings shall be based upon written findings
5 supported by substantial evidence in the record that the request is
6 justified by a financial or service related ~~concern~~. *concern or*
7 *because the territory is already receiving electrical service under*
8 *a service area agreement approved by the Public Utilities*
9 *Commission pursuant to Section 9608 of the Public Utilities Code.*
10 Prior to the commission's termination of proceedings pursuant to
11 subdivision (c), the resolution is subject to judicial review.

12 (c) If any district to which annexation of territory is proposed
13 has adopted and transmitted to the commission a resolution
14 requesting termination of proceedings within the time period
15 prescribed by, and in accordance with, subdivision (b), and if the
16 commission has not been served with notice that judicial review
17 of that resolution is being sought pursuant to subdivision (b), then
18 the commission shall terminate the proceedings no sooner than 30
19 days from receipt of the resolution from the district.

20 (d) For purposes of an annexation to a district pursuant to this
21 section or Section 56668.3:

22 (1) "Financial concerns" means that the proposed uses within
23 the territory proposed to be annexed do not have the capacity to
24 provide sufficient taxes, fees, and charges, including connection
25 fees, if any, to pay for the full cost of providing services, including
26 capital costs. Cost allocation shall be based on generally accepted
27 accounting principles and shall be subject to all constitutional and
28 statutory limitations on the amount of the tax, fee, or charge.

29 (2) "Service concerns" means that a district will not have the
30 ability to provide the services that are the subject of the application
31 to the territory proposed to be annexed without imposing level of
32 service reductions on existing and planned future uses in the
33 district's current service area. "Service concerns" does not include
34 a situation when a district has the ability to provide the services
35 or the services will be available prior to the time that services will
36 be required.

37 (3) "*Territory already receiving electrical service under a*
38 *service area agreement approved by the Public Utilities*
39 *Commission pursuant to Section 9608 of the Public Utilities Code"*
40 *means territory that is outside the boundaries of an irrigation*

1 *district but is currently receiving electrical services from the*
2 *irrigation district pursuant to a service area agreement between*
3 *the district and a public utility approved by the Public Utilities*
4 *Commission as authorized by Sections 8101 to 8108, inclusive,*
5 *and 9608 of the Public Utilities Code.*

6 ~~(3)~~

7 (4) A district may make findings regarding financial or service
8 concerns based on information provided in the application and any
9 additional information provided to the district by the commission
10 or the applicant that is relevant to determining the adequacy of
11 existing and planned future services to meet the probable future
12 needs of the territory. Findings related to service or financial
13 concerns may be based on an urban water management plan, capital
14 improvement plan, financial statement, comprehensive annual
15 financial report, integrated resource management plan, or other
16 information related to the ability of a district to provide services.
17 *Findings related to existing provision of electrical service by an*
18 *irrigation district pursuant to a service area agreement approved*
19 *under Section 9608 of the Public Utilities Code shall be based on*
20 *the records of the district and the Public Utilities Commission*
21 *evidencing approval of such a service area agreement by the Public*
22 *Utilities Commission.*

23 ~~(4)~~

24 (5) Nothing in this section shall be construed to create a right
25 or entitlement to water service or any specific level of water
26 service.

27 ~~(5)~~

28 (6) Nothing in this section is intended to change existing law
29 concerning a district's obligation to provide water service to its
30 existing customers or to any potential future customers.

31 (e) This section shall not apply if all districts to which
32 annexation of territory is proposed have adopted and transmitted
33 to the commission a resolution supporting the proposed change of
34 organization or reorganization.

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April 27, 2017

Honorable Cecilia Aguiar-Curry, Chair
Assembly Local Government Committee
California State Assembly
State Capitol, Room 5144
Sacramento, CA 95814

Subject: **SUPPORT OF AB 1725 (LOCAL GOVERNMENT COMMITTEE OMNIBUS BILL)**

Dear Chair Aguiar-Curry:

The Stanislaus Local Agency Formation Commission (LAFCO) is pleased to support the Assembly Local Government Committee Bill **AB 1725** which makes technical, non-substantive changes to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the Act).

This annual bill includes technical changes to the Act which governs the work of local agency formation commissions. These changes are necessary as commissions implement the Act and small inconsistencies are found or clarifications are needed to make the law as unambiguous as possible. **AB 1725** currently makes minor technical corrections to language used in the Act. Stanislaus LAFCO and the California Association of Local Agency Formation Commissions (CALAFCO) are grateful to the members of our Legislative Committee and to your Committee and staff, all of whom worked diligently on this language to ensure there are no substantive changes while creating a significant increase in the clarity of the Act for all stakeholders.

This legislation helps insure the Cortese-Knox-Hertzberg Act remains a vital and practical law that is consistently applied around the state. Stanislaus LAFCO appreciates your Committee's authorship and support of this bill, and your support of the mission of LAFCOs. We are happy to provide any additional information needed.

Sincerely,

Sara Lytle-Pinhey
Executive Officer
Stanislaus LAFCO

cc: Members, Assembly Local Government Committee
Misa Lennox, Associate Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus
Pamela Miller, Executive Director, CALAFCO

ASSEMBLY BILL

No. 1725

Introduced by Committee on Local Government

March 20, 2017

An act to amend Section 56383 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1725, as introduced, Committee on Local Government. Local agency formation commission: fees.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, among other things, authorizes a local agency formation commission to establish a schedule of fees and a schedule of service charges for proceedings taken pursuant to the act, as specified.

This bill would revise that provision to authorize a local agency formation commission to establish a schedule of fees and a schedule of service charges pursuant to the act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 56383 of the Government Code is
2 amended to read:
3 56383. (a) The commission may establish a schedule of fees
4 and a schedule of service charges ~~for the proceedings taken~~
5 pursuant to this division, including, but not limited to, all of the
6 following:
7 (1) Filing and processing applications filed with the commission.

- 1 (2) Proceedings undertaken by the commission and any
2 reorganization committee.
- 3 (3) Amending or updating a sphere of influence.
- 4 (4) Reconsidering a resolution making determinations.
- 5 (b) The fees shall not exceed the estimated reasonable cost of
6 providing the service for which the fee is charged and shall be
7 imposed pursuant to Section 66016. The service charges shall not
8 exceed the cost of providing the service for which the service
9 charge is charged and shall be imposed pursuant to Section 66016.
- 10 (c) The commission may require that an applicant deposit some
11 or all of the required amount that will be owed with the executive
12 officer before any further action is taken. The deposit shall be
13 made within the time period specified by the commission. No
14 application shall be deemed filed until the applicant deposits the
15 required amount with the executive officer. The executive officer
16 shall provide the applicant with an accounting of all costs charged
17 against the deposited amount. If the costs are less than the deposited
18 amount, the executive officer shall refund the balance to the
19 applicant after the executive officer verifies the completion of all
20 proceedings. If the costs exceed the deposited amount, the applicant
21 shall pay the difference prior to the completion of all proceedings.
- 22 (d) The commission may reduce or waive a fee, service charge,
23 or deposit if it finds that payment would be detrimental to the
24 public interest. The reduction or waiver of any fee, service charge,
25 or deposit is limited to the costs incurred by the commission in
26 the proceedings of an application.
- 27 (e) Any mandatory time limits for commission action may be
28 deferred until the applicant pays the required fee, service charge,
29 or deposit.
- 30 (f) The signatures on a petition submitted to the commission by
31 registered voters shall be verified by the elections official of the
32 county and the costs of verification shall be provided for in the
33 same manner and by the same agencies which bear the costs of
34 verifying signatures for an initiative petition in the same county.
- 35 (g) For incorporation proceedings that have been initiated by
36 the filing of a sufficient number of voter signatures on petitions
37 that have been verified by the county registrar of voters, the
38 commission may, upon the receipt of a certification by the
39 proponents that they are unable to raise sufficient funds to
40 reimburse fees, service charges, or deposits for the proceedings,

1 take no action on the proposal and request a loan from the General
2 Fund of an amount sufficient to cover those expenses subject to
3 availability of an appropriation for those purposes and in
4 accordance with any provisions of the appropriation. Repayment
5 of the loan shall be made a condition of approval of the
6 incorporation, if successful, and shall become an obligation of the
7 newly formed city. Repayment shall be made within two years of
8 the effective date of incorporation. If the proposal is denied by the
9 commission or defeated at an election, the loan shall be forgiven.

O