LAFCo
of Merced County

Local Agency Formation Commission
2222 M Street
Merced, CA 95340
Phone (209) 385-7671 / Fax (209) 726-1710
www.lafcomerced.org

DATE: April 18, 2024

TO: LAFCO Commissioners

FROM: Bill Nicholson, Executive Officer

RE: Letters of Support for AB 3277 (Assembly Local Government Committee) and SB 1209 (Cortese) As Requested by CALAFCO
AGENDA ITEM IV.B.

There are two pieces of legislation being promoted by the California Association of Local Agency Formation Commissions (CALAFCO), our professional association, for which letters of support are being sought from individual LAFCOs for the current legislative session: AB 3277 in the State Assembly, and SB 1209 (Cortese) in the State Senate.

Regarding AB 3277, each year CALAFCO works with the Assembly Local Government Committee in sponsoring legislation that targets revisions or clarifications to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (The Act) contained in the California Government Code that governs LAFCO activities. This year's Bill, AB 3277, contains a proposal to remove a requirement for a financial analysis of the effect on ad valorem property taxes be performed during the formation of a new special district when the special district does not propose to share in any existing property tax. This is a logical proposal, but many LAFCOs are required to perform such analysis even when there will be no impact on existing cities or districts receiving property taxes. The draft letter of support of AB 3277 is presented in Attachment 1 and the full text of AB 3277 is presented in Attachment 2.

The second requested letter of support involves SB 1209 (Cortese) which is the result of efforts promoted by our professional association CALAFCO to add specific authority in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 for individual LAFCOs to require indemnification from applicants for processing changes of organization (such as annexations, detachments, formations, and adoption or amendment of spheres of influence). This has been a practice of many LAFCOs for many years but was challenged in San Luis Obispo County Superior Court several years ago over an annexation processed by San Luis Obispo LAFCO. Indemnification agreements are common practice for most cities and counties when processing land use and development applications, and this legislation would ensure that LAFCOs can benefit from this same type of protection. The draft letter of support of SB 1209 is presented in Attachment 3 and the full text of SB 1209 is presented in Attachment 4.

As drafted, the bill will specifically authorize LAFCO, as a condition for processing changes of organization or reorganization, to have the applicant agree to defend,

indemnify, and hold harmless the LAFCO, its agents, officers, and employees from and against any claim, action or proceeding relating from the action or determination by the LAFCO. This is consistent with past and current practice of Merced LAFCO.

Action Required

Vote to authorize the Chairman to sign the proposed letters in support of AB 3277 and SB 1209, as requested by CALAFCO.

Attachments:

1. Letter of Support on AB 3277
2. Copy of AB 3277
3. Letter of Support on SB 1209
4. Copy of SB 1209 (Cortese)

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April 18, 2024

Honorable Juan Carrillo, Chair
Assembly Local Government Committee
1020 N St.
Rm. 157
Sacramento, CA 95814

RE: **SUPPORT of AB 3277, Local agency formation commission: districts: property tax**

Dear Senator Carillo,

The Merced Local Agency Formation Commission (LAFCo) is pleased to **Support Assembly Bill 3277,** sponsored by the California Association of Local Agency Formation Commissions (CALAFCO), which makes a clarifying change to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the Act).

Under existing statute, a commission must perform a financial analysis of ad valorem property taxes when a proposal is received that includes the incorporation of a city and the formation of a district. The only purpose of the analysis is to determine how best to apportion the property taxes between the agencies. However, occasionally, an application is received in which the district waives any portion of the ad valorem taxes. In those situations, no analysis is needed for the process, yet it remains required by statute.

This bill will add language that clarifies that the performance of the financial analysis in that situation only needs to be performed in those instances where a portion of the ad valorem property taxes is being sought.

By making this minor change, **AB 3277** will apply this time-consuming process only to those applications that require it.

For the reasons noted above, Merced LAFCO **Supports AB 3277**.

Please do not hesitate to reach out with questions or concerns about our position.

Yours sincerely,

Scott Silveira
Merced LAFCO Chairman

cc: Members and Consultants, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus
René LaRoche, Executive Director, CALAFCO

ATTACMENT 1

AB-3277 Local agency formation commission: districts: property tax. (2023-2024)

Date Published: 02/27/2024 09:00 PM

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL NO. 3277

Introduced by Committee on Local Government

February 27, 2024

An act to amend Section 56810 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 3277, as introduced, Committee on Local Government. Local agency formation commission: districts: property tax.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, establishes the sole and exclusive authority and procedures for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. Existing law requires proceedings for the formation of a district to be conducted as authorized by the principal act of the proposed district, and authorizes the local agency formation commission in each county to serve as the conducting authority, as specified. Existing law requires a commission to determine the amount of property tax revenue to be exchanged by an affected local agency, as specified, if the proposal includes the formation of a district, as defined.

This bill would, instead, require a commission to determine the amount of property tax revenue to be exchanged by an affected local agency if the proposal includes the formation of a district and the applicant is seeking a share of the 1% ad valorem property taxes. By adding to the duties of a local agency formation commission, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

ATTACHEMNT 2

SECTION 1. Section 56810 of the Government Code is amended to read:

56810. (a) (1) If the proposal includes the incorporation of a city, as defined in Section 56043, the commission shall determine the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section and Section 56815.

(2) If the proposal includes the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, *and if the applicant is seeking a share of the 1 percent ad valorem property taxes,* the commission shall determine the amount of property tax to be exchanged by the affected local agency pursuant to this section.

(b) The commission shall notify the county auditor of the proposal and the services which the new jurisdiction proposes to assume within the area, and identify for the auditor the existing service providers within the area subject to the proposal.

(c) If the proposal would not transfer all of an affected agency's service responsibilities to the proposed city or district, the commission and the county auditor shall do all of the following:

(1) The county auditor shall determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 93 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by each affected local agency in the prior fiscal year. For purposes of making this determination and the determination required by paragraph (3), "total amount of revenue from all sources available for general purposes" means the total amount of revenue which an affected local agency may use on a discretionary basis for any purpose and does not include any of the following:

(A) Revenue which, by statute, is required to be used for a specific purpose.

(B) Revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services.

(C) Revenue received from the federal government which is required to be used for a specific purpose.

(2) The commission shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal. For purposes of this paragraph, "total net cost" means the total direct and indirect costs that were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost that was funded by any revenues of that agency that are specified in subparagraphs (A), (B), and (C) of paragraph (1).

(3) The commission shall multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal. The county auditor shall adjust the amount described in the previous sentence by the annual tax increment according to the procedures set forth in Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code, to the fiscal year in which the new city or district receives its initial allocation of property taxes.

(4) For purposes of this subdivision, in any county in which, prior to the adoption of Article XIII A of the California Constitution, and continuing thereafter, a separate fund or funds were established consisting of revenues derived from the unincorporated area of the county and from which fund or funds services rendered in the unincorporated area have been paid, the amount of property tax revenues derived pursuant to paragraph (3), may, at the discretion of the commission, be transferred to the proposed city over a period not to exceed 12 fiscal years following its incorporation. In determining whether the transfer of the amount of property tax revenues determined pursuant to paragraph (3) shall occur entirely within the fiscal year immediately following the incorporation of the proposed city or shall be phased in over a period not to exceed 12 full fiscal years following the incorporation, the commission shall consider each of the following:

(A) The total amount of revenue from all sources available to the proposed city.

(B) The fiscal impact of the proposed transfer on the transferring agency.

(C) Any other relevant facts which interested parties to the exchange may present to the commission in written form.

The decision of the commission shall be supported by written findings setting forth the basis for its decision.

(d) If the proposal would transfer all of an affected agency's service responsibilities to the proposed city or district, the commission shall request the auditor to determine the property tax revenue generated for the affected service providers by tax rate area, or portion thereof, and transmit that information to the commission.

(e) The executive officer shall notify the auditor of the amount determined pursuant to paragraph (3) of subdivision (c) or subdivision (d), as the case may be, and, where applicable, the period of time within which and the procedure by which the transfer of property tax revenues will be effected pursuant to paragraph (4) of subdivision (c), at the time the executive officer records a certificate of completion pursuant to Section 57203 for any proposal described in subdivision (a), and the auditor shall transfer that amount to the new jurisdiction.

(f) The amendments to this section enacted during the 1985–86 Regular Session of the Legislature shall apply to any proposal described in subdivision (a) for which a certificate of completion is recorded with the county recorder on or after January 1, 1987.

(g) For purposes of this section, "prior fiscal year" means the most recent fiscal year for which data on actual direct and indirect costs and revenues needed to perform the calculations required by this section are available preceding the issuance of the certificate of filing.

(h) An action brought by a city or district to contest any determinations of the county auditor or the commission with regard to the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section shall be commenced within three years of the effective date of the city's incorporation or the district's formation. These actions may be brought by any city that incorporated or by any district that formed on or after January 1, 1986.

(i) This section applies to any city that incorporated or district that formed on or after January 1, 1986.

(j) The calculations and procedures specified in this section shall be made prior to and shall be incorporated into the calculations specified in Section 56815.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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April 18, 2024

Honorable David Cortese
California State Senate
1021 O Street, Suite 6630
Sacramento, CA 95814

RE: ***SB 1209 (Cortese): Local agency formation commission: indemnification – SUPPORT***
Awaiting hearing – Senate Local Government Committee

Dear Senator Cortese:

The Merced Local Agency Formation Commission (LAFCO) is pleased to support Senate Bill 1209, sponsored by the California Association of Local Agency Formation Commissions (CALAFCO). SB 1209 would add a new section into Government Code authorizing LAFCOs to enter into an indemnification agreement with an applicant. Counties and cities are already empowered to require indemnification, and routinely do so with respect to discretionary land-use approvals. SB 1209 would merely provide LAFCOs with the same authority.

This bill addresses a 2022 decision of the Second District Court of Appeals, which found that existing State law does not provide explicit authority to require indemnification. Absent indemnification authority - and because LAFCO funding is statutorily required in a specified ratio from the county, cities, and special districts within a county - the costs to defend litigation must be absorbed by all of LAFCO's funding agencies.

Consequently, **SB 1209** will:

- Provide LAFCOs with the ability to use a tool already in use by counties and cities;
- Prevent costs to defend litigation from being shifted to a county, its cities, and its special districts; and
- Remove the possibility that an applicant threatens litigation to coerce a desirable LAFCO determination.

Thus, for the above reasons, Merced LAFCO is in strong ***support of SB 1209***.

Sincerely,

Scott Silveira
Merced LAFCO Chairman

cc: The Honorable Maria Elena Durazo, Chair, and Members, Senate Local Government Committee
Anton Favorini-Csorba, Chief Consultant, Senate Local Government Committee
Ryan Eisberg, Consultant, Senate Republican Caucus
Rene' LaRoche, Executive Director, California Association of Local Agency Formation Commissions

ATTACHMENT 3

SB-1209 Local agency formation commission: indemnification. (2023-2024)

Date Published: 02/15/2024 09:00 PM

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL **NO. 1209**

Introduced by Senator Cortese

February 15, 2024

An act to add Section 56383.5 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1209, as introduced, Cortese. Local agency formation commission: indemnification.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts, except as specified. The act continues in existence in each county a local agency formation commission (LAFCO) that consists of members appointed, as specified, and oversees those changes of organization and reorganization. The act authorizes a LAFCO to, among other things, review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, as specified.

This bill would authorize a LAFCO to require, as a condition for, among other things, processing a change of organization or reorganization, that the applicant agrees to defend, indemnify, and hold harmless the LAFCO, its agents, officers, and employees from and against any claim, action, or proceeding, as specified, arising from or relating to the action or determination by the LAFCO.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 56383.5 is added to the Government Code, to read:

56383.5. The commission may require, as a condition for processing a change of organization or reorganization, a sphere amendment or a sphere update, or any other action or determination requested from the commission, that the applicant agrees to defend, indemnify, and hold harmless the commission, its agents, officers, and employees from any claim, action, or proceeding against the commission, its agents, officers, or employees arising from or relating to the action or determination by the commission.

ATTACHMENT 4