

Date of Hearing: June 23, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 13 (Dodd) – As Amended May 11, 2021

SENATE VOTE: 38-0

SUBJECT: Local agency services: contracts: Counties of Napa and San Bernardino.

SUMMARY: Reestablishes a pilot program for the Napa and San Bernardino Local Agency Formation Commissions (LAFCOs), and authorizes the Napa LAFCO to approve specified service extensions. Specifically, **this bill:**

- 1) Provides that a pilot program is hereby established for the Napa and San Bernardino LAFCOs.
- 2) Specifies that if consistent with adopted policy, the Napa and San Bernardino LAFCOs may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing in which the 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 prepared pursuant to existing law.
 - b) The LAFCO determines both of the following:
 - i) The extension of service will not result in adverse impacts on open space or lands.
 - ii) The extension of service will not result in growth-inducing impacts.
 - c) A sphere of influence change involving the affected territory and its affected agency is not feasible or desirable based on the adopted policies of the commission.
- 3) Defines, for the purposes of this bill, “planned use” as any project that is included in an approved specific plan as of July 1, 2015.
- 4) Requires the Napa and San Bernardino LAFCOs to submit a report before January 1, 2025, to the Legislature on their participation in the pilot program, including how many requests for extension of services were received on or after the effective date of this bill, and the action by the LAFCO to approve, disapprove, or approve with conditions.
- 5) Specifies that the Napa LAFCO shall also include in the report on the pilot program information on its decision to approve, deny, or approve with conditions any authorization for the City of St. Helena to provide new or extended services outside its jurisdictional boundary and sphere of influence. The report required to be submitted shall be submitted as specified.
- 6) Provides that as part of the pilot program established by this bill, the Napa LAFCO may authorize the City of St. Helena to provide new or extended services outside its jurisdictional

boundary and outside its sphere of influence to 341 Saint Helena Hwy S, St. Helena, Napa County, Assessor's Parcel numbers 027-130-006 and 027-130-005, and to 401 Saint Helena Hwy S, St. Helena, Napa County, Assessor's Parcel Numbers 027-120-052, 027-120-061, and 027-120-062, subject to approval at a noticed public hearing in which the Napa LAFCO makes all of the following determinations:

- a) The extension of service or services will result in specific environmental benefits, including transitioning septic systems to a treated sewer system, and either of the following:
 - i) The extension of services will serve an agricultural employee housing development, as specified, of no less than 6 units and no more than 12 units.
 - ii) The extension of services will serve a mobilehome park reuse or mobilehome park redevelopment of no more than 25 units.
 - b) The extension of service or service deficiency was identified and evaluated in a review of municipal services, as specified.
 - c) The LAFCO determines both of the following:
 - i) The extension of service will not result in adverse impacts on open space or agricultural lands.
 - ii) The extension of service will not result in growth-inducing impacts.
 - d) A sphere of influence change involving the affected territory and its affected agency is not feasible or desirable based upon the adopted policies of the LAFCO.
- 7) Contains a sunset date of January 1, 2026.
- 8) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances relating to implementing the pilot program in the Counties of Napa and San Bernardino.
- 9) Contains an urgency clause.

EXISTING LAW:

- 1) Delegates the Legislature's power to control the boundaries of cities, special districts, and local agency service areas to LAFCOs.
- 2) Establishes LAFCOs to discourage urban sprawl, preserve open space and prime agricultural lands, encourage the orderly formation and development of local agencies, and ensure the efficient delivery of government services.
- 3) Requires each county to have a LAFCO governed by a board of elected officials—including city council members and county supervisors—and at least one member of the public appointed by the other members.

- 4) Requires LAFCOs to review and approve or disapprove proposals for changes of organization or reorganization, and annexations, consistent with written policies, procedures, and guidelines adopted by the commission.
- 5) Requires a commission to develop and determine the sphere of influence of each city and each special district, which designates an agency's probable future physical boundary and service area and is territory that a city or special district is expected to annex, build facilities, and deliver services to sometime in the future.
- 6) Requires a commission to prepare a municipal service review (MSR) before it revises cities and special districts' spheres of influence, where it must review all of the agencies that provide the public services within the study area.
- 7) Authorizes LAFCOs to approve service extensions outside of an agency's territory when the territory is within its sphere of influence, in anticipation of a later change in organization; or, outside its sphere to address a major threat to public health or safety.
- 8) Established a pilot program, until January 1, 2021, for the Napa and San Bernardino commissions to permit those commissions to authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence for existing or planned uses as of 2015, if the LAFCO makes certain findings [AB 402 (Dodd), Chapter 431, Statutes of 2015].
- 9) Required the Napa and San Bernardino LAFCOs to report on the use of the pilot program by January 1, 2020.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill reestablishes the pilot program enacted by AB 402, until January 1, 2026. This bill additionally allows the Napa LAFCO to authorize the City of St. Helena to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to two street addresses, and their respective parcel numbers. The LAFCO must make specific determinations before approval of the extension of services. Lastly, this bill requires the Napa and San Bernardino LAFCOs to submit a report to the Legislature with specified information by January 1, 2025. This bill is sponsored by the author.

According to the author, "SB 13 will extend the provisions of AB 402 until January 1, 2026, continuing a pilot program in Napa and San Bernardino counties that allows Local Agency Formation Commissions (LAFCOs) to authorize city or district services to existing uses outside urban boundaries as long as open space or agriculture are not adversely affected, ultimately reducing sprawl from expanded municipal footprints.

"As the Napa and San Bernardino LAFCOs reports to the Legislature show, the pilot program was a success in both counties. Given the public benefits afforded by the pilot program in both Napa and San Bernardino counties and the likelihood that these counties will again require the flexibility afforded by the pilot program, it is appropriate to extend the provision of AB 402, originally set to expire Jan. 1, 2021, until January 1, 2026.

“Finally, SB 13 adds a limited authorization for Napa LAFCO to consider the application of a sewer extension authorization by the city of St. Helena, outside of the city’s jurisdictional boundary and outside of its sphere of influence, with the purpose of bringing important environmental and housing benefits, including serving farmworker housing.”

- 2) **LAFCO.** The Cortese-Knox-Hertzberg Act of 2000 controls the manner in which local officials change the boundaries of cities and special districts, and designates a LAFCO in each county to oversee boundary changes. Besides the more common annexations to cities and special districts, LAFCOs also control district formations, consolidations, and dissolutions, as well as city incorporations, consolidations, and disincorporations.

Controlling boundaries means LAFCOs control the timing and location of development, because they determine the type of services that are available to support development—and those that aren’t. 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 delivery of government services.

LAFCOs must adopt written policies to further these goals. LAFCOs implement these goals by determining a sphere of influence for each local agency in its county. A sphere of influence designates an agency’s probable future physical boundary and service area. It is territory that a city or special district is expected to annex, build facilities in, and deliver services to sometime in the future. Importantly, an agency’s sphere must be contiguous with its current boundaries, and LAFCOs may recommend boundary changes based on spheres of influence. LAFCOs must consider these factors when determining spheres of influence:

- a) Present and planned land uses.
- b) Present and probable need for public facilities and services.
- c) Present and probable future capacity of public facilities and services
- d) Existence of any social or economic communities of interest, if relevant.

- 3) **Extension of Service.** The Cortese-Knox-Hertzberg Act requires cities and special districts to obtain 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 circumvent 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 purposely established several exemptions from the approval requirements. For example, 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 provider.

- 4) **AB 402 Pilot Program.** In 2015, the Legislature enacted AB 402 to establish a pilot program that allowed Napa and San Bernardino LAFCOs to authorize local agencies to extend municipal services to areas outside their jurisdictions and spheres of influence, for reasons

other than public health or safety. AB 402 limited the extensions of services to support existing or planned uses, which was defined as any project that was included in an approved specific plan as of July 1, 2015. Both LAFCOs were required to submit a report to the Legislature before January 1, 2020 on their participation in the pilot program, including how many requests for extension of services were received, and the action by the LAFCO to approve, disapprove, or approve the request with conditions.

According to the Napa County LAFCO, it “received one request for extension of service pursuant to the pilot program. The City of Napa requested authorization to provide public water service outside its jurisdictional boundary and sphere of influence to the Carneros Inn Mutual Water Company. The Napa County LAFCO approved the request on October 7, 2019.”

Additionally, the San Bernardino LAFCO reported, “San Bernardino LAFCO received the following three (3) requests pursuant to § 56133.5:

- 1) *Inland Empire Utilities Agency (IEUA) (Authorized 11/20/2019)* The IEUA is a regional wastewater treatment service provider. San Bernardino LAFCO authorized IEUA to continue to provide wastewater treatment service to the portions of the City of Fontana (wastewater collector) that are outside IEUA’s boundary and sphere of influence.
- 2) *City of Big Bear Lake (Authorized 10/16/2019)* In 1989, the City of Big Bear Lake acquired (through condemnation) a water system of a private water company and assumed responsibility for all the water company’s certificated service area, which includes areas outside its boundary and sphere of influence. San Bernardino LAFCO authorized the City of Big Bear Lake to continue to provide water service to the said service areas, which include areas within Fawnskin, Big Bear City, Erwin Lake, Lake Williams and other areas outside the City of Big Bear Lake’s boundary and sphere of influence.
- 3) *City of Colton (Authorized 10/23/2017)* San Bernardino LAFCO authorized the City of Colton to provide water service to a parcel within the City of Grand Terrace, which is outside the City of Colton’s boundary and sphere of influence.

“San Bernardino LAFCO staff is aware of at least two more requests for approval (authorization) of service pursuant to § 56133.5. Based on the need to continue to process future requests, San Bernardino LAFCO respectfully asks that the Legislature consider repealing the January 1, 2021 sunset date for the pilot program. San Bernardino LAFCO also fully supports making the pilot program available for all LAFCOs throughout the State.”

- 5) **City of St. Helena and Vineland Vista.** According to a St. Helena Star article dated January 29, 2019, “The Vineland Vista Mobile Home Park dates back to 1961. Tenants were told to vacate the property in 2009 so that it could be renovated. Since then the owners have been planning to improve the park. They also propose to donate a 2-acre parcel behind Dean & DeLuca for farmworker housing.” The same article reported, “The controversy over whether a former mobile home park outside the St. Helena city limits should have access to city water has now landed in court. Hall Vineland LLC and Hall Vista LLC sued the city of St. Helena and Public Works Director Erica Ahmann Smithies in Napa Superior Court on Jan. 15. The lawsuit seeks at least \$7.1 million in damages and a court order compelling the

city to issue a 'will-serve' letter and supply water to the property, which is being renovated. The city has contended that it has no obligation to provide water for what it considers a new use. However, the lawsuit claims the owners have continued to pay city water bills for the property, and thus the city must continue to provide water as the project moves ahead."

This lawsuit was later withdrawn by the owners of the former mobile home park. Accordingly, there is still a dispute about the "will serve" letter, and whether the development of these sites could be considered as an existing or new use.

- 6) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Existing vs. New Uses.** The LAFCO pilot program that was established by AB 402 was limited to allow extension of services to existing or planned uses included in a general or specific plan as of July 1, 2015. LAFCOs are required to adopt spheres of influence and make determinations based upon present and planned uses to ensure orderly growth and preserve agricultural land. According to the California Association of Local Agency Formation Commissions (CALAFCO), the provisions of this bill allowing extension of service to specific parcels in St. Helena "...eliminates the requirement of existing or planned use, thereby potentially allowing approval of extension of service for new uses and new development. As we understand it, for the City of St. Helena, this includes farmworker housing and the redevelopment of a mobile home park that may include short-term rentals. This creates a dangerous precedent of approving extension of service that have growth-inducing effects and potentially aids in the development process of new uses outside the City's jurisdiction – certainly not aligned with the intent of 'existing or planned uses'. Further, it creates a conflict within the statute itself in terms of LAFCO mission of ensuring orderly growth and development. Allowing potential approval of such an extension of service to parcels for which specific use has yet to be identified or on which new development/new use will occur is not in the spirit for which the pilot program in AB 402 was established." In light of the concerns that have been raised, the Committee may wish to consider if this bill is inconsistent with the principles of LAFCO law and if it could set a precedent for similar extensions of service in the future.
 - b) **Annexations vs. Extensions of Service.** 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. However, in certain 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 if the unique local circumstances in Napa County warrant the increased authority to extend services as provided in this bill.

- 7) **Technical Amendment.** The most recent amendments to this bill mistakenly deleted the word “agricultural” from Section 1 and should instead say:

Government Code Section 56133.5.

(a) A pilot program is hereby established for the Napa and San Bernardino commissions. If consistent with adopted policy, the Napa and San Bernardino commissions may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing in which the commission makes all of the following determinations:

(1) The extension of service or services deficiency was identified and evaluated in a review of municipal services prepared pursuant to Section 56430.

(2) The commission determines both of the following:

(A) The extension of service will not result in adverse impacts on open space or agricultural lands.

(B) The extension of service will not result in growth-inducing impacts.

- 8) **Arguments in Support.** According to the Napa LAFCO, “The reestablishment of the pilot program would remove many of the barriers to a balanced approach for service delivery in the unique and unusual circumstances that exist in Napa County. Napa LAFCO has already utilized the pilot program once and anticipates additional uses in the future. We believe the reestablishment of this pilot program will provide a transparent process that solves unique issues that must be identified and evaluated in municipal service reviews approved by LAFCO prior to any approvals.

“In addition, amendments to this bill that were introduced on April 29, 2021 and May 11, 2021 would create a new pilot program codified as G.C. §56133.6 that is specific to Napa LAFCO and the City of St. Helena. Notably, G.C. §56133.6 would allow St. Helena to request LAFCO’s approval to extend public sewer service to any of five properties located outside the City’s jurisdictional boundary and sphere of influence that are specifically identified in the bill if LAFCO makes several determinations. This includes LAFCO determining the service extension will result in specific environmental benefits, will not result in growth-inducing impacts, and will serve either an agricultural employee housing development or a mobilehome park reuse or redevelopment. This pilot program can potentially contribute towards Napa County’s lower income housing needs without creating urban sprawl within the nation’s first Agriculture Preserve.

“G.C. §56133.5 and G.C. §56133.6 would both expire on January 1, 2026 and Napa LAFCO would be required to submit a report to the Legislature detailing its participation in each pilot program by January 1, 2025. This will ensure accountability and transparency in the establishment and potential application of these pilot programs in Napa County.”

- 9) **Arguments in Opposition.** CALAFCO is opposed unless amended and argues that, “The bill originally sought to extend the sunset of the existing pilot program created in 2015 in AB 402. However, we find that Section 56133.6 does not align with the original intent of the

pilot program and oppose the addition of Section 56133.6.

“AB 402 was carefully and narrowly crafted to create a pilot program for both Napa and San Bernardino local agency formation commissions (LAFCo) to allow service extensions outside spheres of influence and jurisdictional boundaries, beyond health and safety issues. (Something done with the intent for later annexation, the pilot program did not require that later annexation.) Under this pilot program, Napa and San Bernardino LAFCos were allowed to authorize, if consistent with their adopted policies, a city or district to extend services to support *existing or planned uses*. The bill explicitly defined planned use as ‘*any project that is included in an approved specific plan as of July 1, 2015*’.

“Local circumstances and conditions were carefully considered, and language carefully crafted to ensure that should either LAFCo even consider approval of such an extension, they would have to determine there are no adverse impacts on open space and agricultural lands, *and* there are no growth-inducing impacts. These align with part of LAFCos purpose to preserve agricultural and open space lands and to promote orderly growth and development....

“We believe that if any of the parcels specifically called out in Section 56133.6 are in fact included in an approved specific plan as of July 1, 2015, then Napa LAFCo can address applications for extension of service for those parcels within the existing language in Section 56133.5. We support the extension of the pilot program in its original form and intent, and respectfully request the removal of Section 56133.6 to preserve that intent and avoid setting a precedent for extending services without annexation that have growth-inducing effects and potentially aid in the development process of new uses outside a City’s jurisdiction.”

10) **Urgency Clause.** This bill contains an urgency clause and requires a 2/3 vote of each house.

REGISTERED SUPPORT / OPPOSITION:

Support

City of St. Helena
Napa County
Napa County LAFCO

Opposition

California Association of Local Agency Formation Commissions (unless amended)

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