



San Luis Obispo Local Agency Formation Commission

TO: MEMBERS OF THE COMMISSION

FROM: ROB FITZROY, EXECUTIVE OFFICER

DATE: AUGUST 15, 2024

SUBJECT: CALAFCO LEGISLATIVE UPDATE

RECOMMENDATION

It is recommended that the Commission consider taking the following action:

Action: Review the proposed legislation and by motion provide direction to the Executive Officer if warranted.

SUMMARY

At the April 18, 2024 Commission Meeting the Executive Officer was directed to submit letters of support to CALAFCO for Senate Bill 1209 (SB 1209), which was a bill that would have allowed all LAFCOs to indemnify themselves for any action taken. SB 1209 has since gone through the legislative process and been amended from the draft originally shared with the Commission. The Executive Officer is now seeking direction from the Commission on whether to remain neutral, support, or oppose the bill in its new form. A brief summary and analysis of the bill in its current form is below, and the draft legislation is included in Attachment A.

By way of background, as a part of the declaratory relief action entitled *City of Pismo Beach v. Pacific Harbor Homes, Inc., et al.*, San Luis Obispo County Superior Court Case No. CV130383, to which SLO LAFCO was a party to, it was determined that LAFCOs do not have the authority to require indemnification because it is not expressly allowed within the Government Code. Though any city, county, or other agency may require indemnification, LAFCOs would not be allowed to do so under this court ruling, that is, unless a legislative solution was proposed, hence SB 1209. It is important to note that LAFCO's under this ruling can still require indemnification as a condition of approval, but they cannot do so if they deny a project, nor require indemnification by virtue of processing an application.

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Senate Bill (SB) 1209 – Introduced by Senator Cortese

ORIGINAL LEGISLATIVE TEXT

The legislative text shared with the Commission on April 18, 2024 was as follows:

56393.5 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.

LEGISLATIVE TEXT AS AMENDED

The legislative text as amended on June 11, 2024 is as follows. The red text strikes the original language and the blue text is new language.

56383.5 (a) 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.~~ *to attack, set aside, void, or annul an approval by the commission.*

(b) (1) An agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall require the commission to promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the commission and shall require the commission to cooperate fully in the defense.

(2) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be responsible to defend, indemnify, or hold harmless if the commission fails to notify the applicant or cooperate fully in the defense pursuant to paragraph (1).

(c) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be required to pay or perform any settlement relating to the agreement, unless the applicant approves the settlement.

(d) Nothing in this section shall be construed to prohibit the commission from participating in the defense of any claim, action, or proceeding to attack, set aside, void or annul an approval by the commission if both of the following conditions are met:

- (1) The commission bears its own attorney's fees and costs of the claim, action, or proceeding.*
- (2) The commission defends the claim, action, or proceeding in good faith.*

Analysis

The original text of SB 1209 would have allowed all LAFCOs to require indemnification as a part of application processing. This would allow all LAFCOs to process applications objectively and ensure that Commissioners can make discretionary decisions based on the merits of the project without concern of litigation if certain decisions are made, that is, whether the Commission approves or denies a proposal. Staff and legal counsel reviewed the original language and had no concerns.

However, the text as amended on June 11, 2024 only extends indemnification protection to LAFCOs if they approve a proposal. The indemnification project does not extend to circumstances when the Commission may deny a proposal. These amendments do not offer any indemnification protections than what is already allowed under the law today. As noted, LAFCO's can already add a condition of approval to require indemnification. However, since LAFCO's cannot add a condition of approval to a project they are denying, there was a need for a legislative remedy to ensure indemnification if a project is denied by allowing LAFCOs to require indemnification by virtue of processing a proposal application.

The language as proposed does the opposite of what was originally intended. The amended language codifies that LAFCO's will not be able to indemnify themselves if they deny a proposal. This new language creates a significant legal concern and risk for any proposal the Commission may wish to deny in the future. Staff does not recommend further support of SB 1209.

Direction

SB 1209 has now passed through the Assembly and next would be heard in the Senate. The next potential opportunity to provide a position letter will be once the bill goes to the Governor's Office. Commission may wish to take no further action, remain neutral, or they may wish to direct the Executive Officer to send a letter of support or opposition.

Attachment A

SB 1209



Bill Text: CA SB1209 | 2023-2024 | Regular Session | Amended California Senate Bill 1209

Bill Title: Local agency formation commission: indemnification.

Spectrum: Partisan Bill (Democrat 1-0)

Status: (Engrossed) 2024-06-24 - Read second time. Ordered to third reading. [SB1209 Detail]

Download: California-2023-SB1209-Amended.html

AMENDED IN ASSEMBLY JUNE 11, 2024

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 amended, 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 to attack, set aside, void, or annul an approval by the LAFCO.~~ *The bill would require the LAFCO to promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the LAFCO and require the LAFCO to fully cooperate in the defense. The bill would specify that an applicant who is a party to the agreement is not responsible to defend, indemnify, or hold harmless the LAFCO if the LAFCO fails to notify the applicant or cooperate fully in the defense, and is not required to pay or perform any settlement relating to the agreement, unless the applicant approves the settlement. The bill would specify that nothing in its provisions are to be construed to prohibit the LAFCO from participating in the defense of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the commission if specified conditions are met, including that the LAFCO bears its own attorney's fees and costs of the claim, action, or proceeding.*

Digest Key

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

Bill Text

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. (a) 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 to attack, set aside, void, or annul an approval by the commission.~~

(b) (1) An agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall require the commission to promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the commission and shall require the commission to cooperate fully in the defense.

(2) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be responsible to defend, indemnify, or hold harmless if the commission fails to notify the applicant or cooperate fully in the defense pursuant to paragraph (1).

(c) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be required to pay or perform any settlement relating to the agreement, unless the applicant approves the settlement.

(d) Nothing in this section shall be construed to prohibit the commission from participating in the defense of any claim, action, or proceeding to attack, set aside, void or annul an approval by the commission if both of the following conditions are met:

(1) The commission bears its own attorney's fees and costs of the claim, action, or proceeding.

(2) The commission defends the claim, action, or proceeding in good faith.