
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2021 - 2022 Regular

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Tax Levy: No
Fiscal: Yes

IMPERIAL IRRIGATION DISTRICT

Adds a non-voting member to the Imperial Irrigation District board of directors.

Background

Local government boundaries. The Cortese-Knox-Hertzberg Act creates a local agency formation commission (LAFCO) in each county to control the boundaries of cities, county service areas, and most special districts. The courts often refer to LAFCOs as the Legislature's watchdog over boundary changes. To plan for the future boundaries and service areas of the cities and special districts, a LAFCO must adopt a policy document for each city and district called a sphere of influence. The LAFCO's boundary decisions must be consistent with the spheres of influence of the affected cities or districts. LAFCOs must update spheres at least every five years.

Local governments can only exercise their powers and provide services where LAFCO allows them to: within their boundaries (which LAFCO sets), within their spheres of influence but outside their boundaries (with authorization by LAFCO), and outside their spheres to address a major threat to public health if the extension is consistent with LAFCO's policies. A local government that wants to expand its territory must ask LAFCO to annex new territory into the local government's boundaries.

Irrigation districts. California's 93 irrigation districts function under a collection of statutes known as the Irrigation District Law that describe their governance structure and authority. In general, these districts are governed by a five-member board of directors, with each member representing a division within the district.

In most cases, registered voters are eligible to vote in district elections, but directors (also referred to as board members) must be voters, landowners, and residents in the division of the district they represent. This landowner requirement reflects the historical role of irrigation districts to exclusively provide irrigation water to agricultural land. However, as California's population has grown, more and more residential and commercial development is encroaching on agricultural land. In response to this growth, many irrigation districts began providing retail water service to residential customers that live within their jurisdictions in the absence of traditional retail water suppliers in the area, or providing electricity services.

Recognizing this trend, the Legislature has taken steps in the past few decades to allow registered voters who do not own land to be directors in some districts. Specifically, the Legislature deleted the landowner qualification for board members of irrigation districts that provide

electricity (SB 1939, Alarcón, 2000) and removed the landowner requirement for irrigation districts that provide 3,000 or more acre-feet of water to residential customers or that have more than 3,000 customers (AB 159, Salinas, 2006).

Imperial Irrigation District. Established by a vote of the people in 1911, Imperial Irrigation District (IID) is one of the nation's largest irrigation districts, providing water to 520,000 acres of land through over 3,000 miles of canals. IID possesses rights to 2.6 million acre-feet of water from the Colorado River, which is 60 percent of the 4.4 million acre feet allocated to California. 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.

IID's energy sales dwarf their water sales by an order of magnitude: in 2019, energy sales revenues totaled \$421 million, compared to \$50 million in water sales. As of 2018, about 239,000, or 55%, of IID's energy customers resided in Riverside County, outside the boundaries of IID, and the Riverside County share of electric customers is expected to grow in the future.

Energy Consumers Advisory Committee. Created in 1994, the Energy Consumers Advisory Committee (ECAC) provides feedback and recommendations to the IID board regarding all aspects of the energy department and its operations. Since the time of its inception, the ECAC has acted in an advisory capacity to the board recommending actions of a variety of topics, including budget needs, capital expenditures and pilot program needs.

The ECAC is comprised of 20 representatives. In the Imperial Valley, each IID director is responsible for the selection of two appointees, totaling 10 representatives. The Coachella Valley is also represented by 10 members; however, they are nominated by the cities and the county of Riverside. Indio, Coachella and La Quinta are allowed two nominations each, while Palm Desert and Rancho Mirage share a delegate. The unincorporated areas are served by three representatives nominated by the county. After nomination, each representative is then ratified by the IID board.

Coachella Valley Energy Commission. On June 1st, 2021, the IID board adopted resolution 25-2021 to "protect Imperial Valley's water rights from legislative attempts to alter the governance of the IID board by establishing the Coachella Valley Energy Commission as a mutually beneficial and more effective alternative to AB 1021..." The resolution directs IID to produce for the board's consideration a draft memorandum of understanding and a set of bylaws for the creation of a Coachella Valley Energy Commission to deliberate and advise on issues,

services, projects, and policies of interest and benefit to IID's Coachella Valley energy ratepayers. The Commission will be formed for one year initially, and may be extended by the IID board. The resolution establishes the Commission's membership as including the five current IID directors and members appointed from: the Cities of Coachella, Indio, and La Quinta; Cove Communities Services Commission; Salton Community Services District; a Coachella Valley tribal reservation; unincorporated Riverside County, and two at-large members selected by the IID board.

Because the majority of IID's electric customers reside in Riverside County outside the district boundaries, they are unable to vote for or serve on the district's board of directors. The author wants to provide representation on IID's board for residents of Riverside County.

Proposed Law

Assembly Bill 1021 requires the Imperial and Riverside LAFCOs to conduct a joint study and, by July 1, 2022, publish on their websites:

- Options for providing electricity in the Imperial Irrigation District's jurisdiction and other affected service areas, in the circumstance that the district desires to no longer provide electrical service in its jurisdiction; and
- Options for alternative governance structures that provide for proportional representation for the IID board.

AB 1021 also increases the membership of the IID board of directors to six members by including a non-voting director appointed to a four-year term by the county supervisor who represents the largest amount of population in IID's electrical service area, defined to mean the area where the district provides retail electrical service outside of its boundaries. This director represents the electrical service area and must live in the service area while serving on the board. If the director relocates outside of the electrical service area, a new director must be appointed. AB 1021 also explicitly requires this board member to comply with the state's incompatible office law.

If IID no longer serves electricity to the electrical service area, the nonvoting director's membership on the board ends, and the board returns to having five members.

AB 1021 includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. 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 1021 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 AB 1021 majority of its revenue yet have no seat at the table when it comes to how their municipal utility is managed.”

2. Local problems, local solutions? The Public Utilities Code authorizes the formation of municipal utility districts that can provide electricity as a service. LAFCO law provides a local process by which local communities can petition the LAFCO to begin the formation process for such a district. 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. Using these procedures, local communities are able to engage and decide if the formation of a utility district makes sense. AB 1021 instead legislatively adjusts the membership of IID’s board. If local voters haven’t decided that they want their own district, should the Legislature intervene?

3. Water wars. In the Imperial Valley, water is life. IID’s board controls the distribution of the district’s Colorado River water allocation: approximately 3.1 million acre-feet of water. IID and others in the water community see any changes to the board’s composition as a potential threat to IID’s continued ability to manage its water rights, particularly if board members were to be added to represent individuals that don’t receive water from IID. They argue that IID’s longstanding ECAC provides the best way to ensure that the perspective of electric customers is fairly taken into account.

3. Whose Commission? IID is in the process of creating the Coachella Valley Energy Commission to advise the IID board on policy related to IID’s extraterritorial energy customers. IID states that this process is intended to provide a mutually beneficial alternative to AB 1021. Although at the time of this writing, bylaws had not yet been adopted for the Commission, the draft bylaws added a representative of Imperial County to the list of other members identified in the resolution directing IID staff to develop a proposal for the formation of the Commission. This means that of 14 total members, seven would be IID board members or directly appointed by the board, and an eighth would represent Imperial County, giving customers in the Coachella Valley area less representation than Imperial County on the Coachella Valley Energy Commission. The IID board would retain other control over the Commission as well: the chairperson of the Commission must also be one of the IID directors, and the Commission is created at the discretion of the board, which can also move to dissolve the Commission. Finally, despite the makeup of the Commission including representatives from areas outside of the Coachella Valley, the draft bylaws fund the Commission through a charge exclusively levied on Coachella Valley customers. It is unclear that the Commission provides a meaningful voice for IID’s electricity customers in the Coachella Valley.

4. Sure, but will it work? 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. 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.

However, the Committee may wish to consider if adding nonvoting members to the IID Board provides sufficient representation or if a larger conversation on local governance is needed.

5. Hurry up and wait. As an urgency statute, AB 1021 must be approved by a two-thirds vote of each house of the Legislature. Regular legislation takes effect on the January 1 following its passage, but urgency bills take effect as soon as they are passed, signed, and chaptered. However, the California Constitution prohibits urgency statutes from creating or abolishing any office, among other things (Article IV, §8). Because AB 1021 adds a director to the IID board, it may run afoul of this provision. Where such issues have arisen in the past, courts have delayed implementation of those parts of legislation until January 1 of the following year. Accordingly, while AB 1021's LAFCO study provisions may become law immediately, it is unclear whether the new director seat on IID's board could be created prior to January 1, 2022.

6. Special legislation. The California Constitution prohibits special legislation when a general law can apply (Article IV, §16). AB 1021 contains findings and declarations explaining the need for legislation that applies only to the Counties of Imperial and Riverside, and IID.

7. Mandate. The California Constitution requires the state to reimburse local agencies for the costs of new or expanded state mandated local programs. Because AB 1021 imposes new duties on local government relating to appointment of the nonvoting director, Legislative Counsel says that it imposes a new state mandate. The measure states that if the Commission on State Mandates determines that the bill imposes a reimbursable mandate, then reimbursement must be made pursuant to existing statutory provisions.

8. Prior legislation. AB 2629 (Mayes, 2020) would have required the State Energy Resources Conservation and Development Commission to study options to extend representation on the board of directors of IID to residents within the energy service area of IID but outside its jurisdictional boundaries. The report would have been due to the Legislature by June 30, 2022. AB 2629 was never heard in the Assembly.

AB 854 (Mayes, 2019) would have increased the IID Board membership from five to 11 board members and required the six additional Board members to be eligible voters and residents of Riverside County. AB 854 died in the Assembly Appropriations Committee.

AB 2564 (Garcia, 2008) would have prohibited IID from discriminating against electrical ratepayers residing outside its boundaries and required an election to determine whether a separate electric utility should be formed. AB 2564 was never heard in the Assembly.

AB 1456 (Benoit, 2003) declared the intent of the Legislature to address the use of revenues received by IID from sales of electrical power to customers outside that district and to address governance issues relating to the electric power operations of that district. AB 1456 was never heard in the Assembly.

Assembly Actions

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| Assembly Local Government Committee: | 8-0 |
| Assembly Appropriations Committee: | 12-0 |
| Assembly Floor: | 73-1 |

Support and Opposition (7/5/21)

Support: California State Association of Electrical Workers; California State Pipe Trades Council; City of Indian Wells; City of La Quinta; Western States Council Sheet Metal, Air, Rail and Transportation.

Opposition: Association of California Water Agencies (ACWA); California Municipal Utilities Association; California Special Districts Association; City of Brawley; City of El Centro; City of Imperial; County of Imperial; Imperial County Farm Bureau; Imperial Irrigation District; Imperial Local Agency Formation Commission; Imperial Valley Water; Local Agency Formation Commission of Imperial County; San Diego County Water Authority; Southern California Public Power Authority (SCPPA).

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