

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCO)
EXECUTIVE OFFICER'S REPORT

AGENDA ITEM No. 8

DATE: March 10, 2021
TO: Fresno Local Agency Formation Commission
FROM: David E. Fey, Executive Officer 
SUBJECT: Support for San Diego LAFCo's Amendment of Government Code Section 56133 (e).

RECOMMENDATION: Recommend support.

Summary

San Diego LAFCO is sponsoring an amendment of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) section 56133(e) to clarify LAFCOs' exclusive authority to determine exception status in statute for out-of-agency service contracts.

The Executive Officer recommends that the Commission express its support of San Diego LAFCo's proposed amendment and direct the Chair to sign letters of support as a bill is prepared and progresses through the Legislature.

Background

This proposal was initially submitted by in 2018 and ties to legislation added in 2001 by former San Diego LAFCo Commissioner and Assembly member Mike Gotch to direct local agencies to receive approval from LAFCOs before providing services by contract outside their boundaries (Government Code sec. 56133). Limited exceptions are provided in statute, such as contracts between public agencies when the subject services are equal substitutes for services already provided. In most instances, local agencies defer to LAFCOs in determining exception eligibility on a case-by-case basis and in doing so comply with statute's intent. However, and as experienced recently in San Diego County, some local agencies will proceed to self-exempt out-of-agency service arrangements that otherwise merit LAFCO review and lead to subsequent conflicts – including with other cities and special districts. Amending the statute to make explicit exceptions are determined by LAFCOs will reduce future conflicts and associated costs.

Recommendation

San Diego LAFCO unanimously decided in December 2020 to sponsor an amendment to Government Code Sec. 56133 and its provisions for cities and districts to request and receive

approval from LAFCOs before providing new or extended services outside their boundaries by contracts. The proposed amendment is attached and takes aim at clarifying subsection (e) to make clear that LAFCOs determine when exceptions apply and in doing so remedy a real and current problem where local agencies self-exempt themselves without checking with their LAFCo by adding nine purposeful words to subsection (e): “as determined by the commission or the executive officer.”

San Diego LAFCO’s decision to sponsor the referenced proposal and start the ground work did not come lightly. San Diego with other co-signers made consecutive requests to CALAFCO to take up the proposal in each of the last three years. These requests, however, have been punted and/or tabled given CALAFCO’s small bandwidth which was already employed with its own priorities and interests. San Diego LAFCO, nonetheless, continues to incur increasing costs in trying to stop and/or abate local agencies in self-exempting themselves and believes a legislative fix is overdue and merits an independent effort to achieve.

As of date, San Diego LAFCo has started to work with the California Special District Association and other stakeholders in explaining the problem and the mutual benefits in clarifying the statute. This includes – pertinently – making it clear in the amendment that LAFCOs could administratively respond to inquiries through the Executive Officer and in doing so expedite exception confirmations (or rejections) in subsection (e). The underlying goal after all is to help ensure check-ins and coordinate appropriate next steps.

With the preceding in mind, San Diego LAFCO wholeheartedly welcomes all LAFCOs to consider the proposal and if agreeable take action to support it in concept. Several other LAFCOs that have already gone on record with their support (Orange, Los Angeles, Santa Clara, El Dorado, and Riverside) with others scheduled in the next few weeks (Alameda and Ventura). Broadening the support among as many LAFCOs as possible is huge and it definitely gets the attention of potential authors as well as stakeholders.

Individuals and Agencies Receiving this Report

- Ken Price, LAFCo Counsel

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(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted policy, the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following **as determined by the commission or the executive officer:**

(1) 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 existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) The provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

(f) This section applies only to the commission of the county in which the extension of service is proposed.