



**San Diego County**  
**Local Agency Formation Commission**  
 Regional Service Planning | Subdivision of the State of California

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**AGENDA REPORT**  
 Business | Discussion

December 7, 2020

**TO:** Commissioners

**FROM:** Keene Simonds, Executive Officer  
 Priscilla Allen, Analyst I

**SUBJECT: Legislative Report and Related Direction**

**SUMMARY**

The San Diego County Local Agency Formation Commission (LAFCO) will receive a report on legislative items of interest to the Commission and its regulatory and planning responsibilities. This includes reviewing items associated with the end of the second year of the 2019-2020 session as well as previewing topics heading into the first year of the 2021-2022 session. The latter category includes an associated recommendation by the Executive Officer to take a lead role and sponsor a bill proposal to clarify LAFCOs’ exclusive authority to determine exception status in statute for out-of-agency service contracts. The report is being presented to the Commission for discussion and related direction.

**BACKGROUND**

**Legislative Resources**

San Diego LAFCO draws on its active participation with its lone member association – CALAFCO – in considering legislative matters impacting the Commission’s ability to effectively administer its regulatory and planning responsibilities. CALAFCO’s Legislative Committee comprises nearly two dozen appointed members across the state, including Commissioner MacKenzie, and is tasked with engaging the entire membership with respect

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to drafting and/or reviewing proposed legislation. San Diego LAFCO relies on the information and analysis generated from the CALAFCO Legislative Committee in making its own position recommendations and taking other associated actions as appropriate.

## DISCUSSION

This item is for San Diego LAFCO to review and discuss items of interest generated in the second year of the 2019-2020 legislative session as well as to preview topics going into the first year of 2021-2022. This includes discussing an associated recommendation from the Executive Officer to take a lead role to sponsor a bill proposal to clarify LAFCOs' exclusive authority to determine exemption status under statute involving out-of-agency service contracts. The report is being presented to the Commission for discussion as well as to provide related direction.

### Review | Second Year of 2019-2020 Session

All proposed legislation introduced during the second year of the 2019-2020 session directly impacting LAFCOs subsequently died in committees due to the Legislature prioritizing its resources due to the COVID-19 pandemic. Most notably, this included two water-themed bills – Assembly Bill 1751 (Chiu) and Senate Bill 414 (Caballero) – proposing streamlined provisions to remedy non-compliant community water systems with the latter circumventing LAFCOs in forming successor agencies, which earned an “oppose” position from CALAFCO. Separately, a moderate number of legislative proposals with indirect impacts on LAFCOs did make it out of committee and chaptered. Most of these bills with indirect impacts involved housing and marked by Assembly Bill 2345 (Gonzalez) and its provisions to increase the maximum density bonus in California from 35% to 50% when developers dedicate at least 16% of the total units for lower income households.<sup>1</sup>

### Preview | First Year of 2021-2022 Session

CALAFCO's Board met on November 13, 2020 to consider legislative priorities for 2021 and was preceded by soliciting proposal requests by individual LAFCOs. The Board proceeded to prioritize two legislative projects in 2021 and headlined by continuing work to update and streamline LAFCO protest proceedings. This item has been a priority project for CALAFCO for several years and includes ongoing discussions with stakeholders to revise the current protest threshold in statute for LAFCO initiated proposals from 10% to 25%. Protest revisions are currently under development by a CALAFCO work group that includes Commissioner Mackenzie and Counsel Whatley with the goal of introducing a bill as early as 2021. The second legislative priority approved by CALAFCO involves participating in an omnibus bill through the Assembly Committee on Local Government and address technical or non-controversial proposals submitted by individual LAFCOs.<sup>2</sup>

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<sup>1</sup> Existing law provides a maximum affordable housing bonus of 35% so long as 20% of units are dedicated for lower income households.

<sup>2</sup> One of the items accepted into the omnibus bill has been proposed by San Diego LAFCO to require cities provide LAFCOs written notice before rezoning territory that has been annexed within the last two years. The intent of this proposed revision is to apprise LAFCOs of any subsequent changes in land use policies immediately post annexation and the opportunity therein to provide comments as deemed appropriate.

Pertinently, the CALAFCO Board voted not to proceed in 2021 with a standing legislative proposal by San Diego LAFCO to clarify LAFCOs' exclusive authority to determine exception status in statute for out-of-agency service contracts. This proposal was initially submitted in 2018 and ties to legislation added in 2001 by former Commissioner and Assemblymember Mike Gotch to direct local agencies to receive approval from LAFCOs before providing services by contract outside their boundaries (Government Code 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 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 help abate future conflicts and associated costs.

## **ANALYSIS**

The second year of the 2019-2020 legislative session proved quiet with respect to making direct changes to LAFCO statutes. The lack of revisions to LAFCO statutes mirrored the Legislature's overall focus on COVID-19 responses and other public health and safety issues (housing, wildfire, etc.) and will presumably continue at some level going forward. Nonetheless, other work of the Legislature continues and as detailed above this will presumably include consideration of a CALAFCO proposal to rewrite protest proceedings. While staff agrees revising protest proceedings are a priority, so should be the revisions repeatedly proposed by San Diego LAFCO to make explicit LAFCOs determine exceptions with respect to local agencies providing out-of-agency contract services under Government Code Section 56133. With this in mind, and given local circumstances, staff believes it would be appropriate to take lead on this item and sponsor a legislative proposal going into the 2021-2022 session. This would involve dedication of existing staff resources in securing an author, performing stakeholder outreach, and responding to items arising as a bill hopefully proceeds through the Legislature. Staff also anticipates several other LAFCOs would support and participate in these efforts and this includes all of the southern region. No hard costs (i.e. consultants, travel, etc.) would be expected.

A copy of Government Code Section 56133 along with proposed amendments in track-change format is provided as Attachment One.

## **RECOMMENDATION**

This item is presented to San Diego LAFCO for discussion and related direction – including feedback on the Executive Officer proceeding with a legislative proposal to make explicit LAFCOs determine exception eligibility under Government Code Section 56133. Should the Commission affirm this direction, staff will return an amendment to the adopted workplan for consideration at the next regular meeting.

## ALTERNATIVES FOR ACTION

No action; discussion and feedback only.

## PROCEDURES

This item has been placed on San Diego LAFCO's agenda for discussion as part of the business calendar. The following procedures are suggested.

- 1) Receive verbal presentation from staff unless waived.
- 2) Invite comments from interested audience members (voluntary).
- 3) Discuss item and provide any feedback as appropriate.

Respectfully,



Keene Simonds  
Executive Officer

Attachment:

- 1) Government Code Section 56133 with proposed amendment (track-change)

**Government Code Section 56133  
Proposed Amendment Regarding Exception Determination**

56133.

(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:**

(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.