



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

7b

AGENDA REPORT
 Business | Discussion

December 18, 2020

TO: Special Districts Advisory Committee

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

**SUBJECT: Proposed Amendment to Statute |
 Clarifying Exception Determination for Out-of-Agency Services by Contract**

SUMMARY

The Special Districts Advisory Committee (“Committee”) will review an amendment proposed by the Commission to clarify LAFCOs’ sole authority to determine exception eligibility under statute where local agencies do not need formal approval to provide out-of-agency services. The Commission approved sponsoring the proposed amendment at it last meeting with direction to staff to proceed with stakeholder outreach and secure a legislative author. The item is for the Committee to discuss and provide feedback as part of the stakeholder process.

BACKGROUND

Existing Statute

Government Code Section 56133 requires cities and special districts to first request and receive written approval from LAFCOs before entering into contracts to provide new or extended services outside their boundaries. The statute was originally authored by former Executive Officer and Assemblymember Mike Gotch (San Diego) to reinforce LAFCOs’ role to regulate and plan orderly municipal growth and eliminate circumvention of the annexation

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process. The statute includes certain exceptions under subsection (e) and headlined by contracts entered before January 1, 2001 and those between public agencies where the contract services are an alternative and equal substitute for services already provided.

Amendment Proposal

At its December 7, 2020 meeting, the Commission approved a staff recommendation to sponsor an amendment to Government Code Section 56133 to make explicit LAFCOs determine exception eligibility under subsection (e). The amendment responds to an increase of known and suspected instances in San Diego County where local agencies are self-determining exceptions and extending outside services by contract without consultation that otherwise require LAFCO review and approval. Discussions with other LAFCOs indicate similar experiences occurring throughout California.

DISCUSSION

This item is for the Committee to review and discuss the proposed amendment by the Commission to clarify LAFCOs' sole responsibility to determine statutory exceptions when local agencies' out-of-agency service arrangements do not require formal approval under Government Code Section 56133. Feedback from the Committee will inform additional stakeholder outreach and consideration of potential amendment revisions. It may also inform related actions involving local policies and procedures.

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

ANALYSIS

The proposed amendment represents a clarifying revision to existing statute and addresses a specific problem that undermines LAFCOs' ability to coordinate orderly municipal growth and development. The problem involves local agencies self-determining exception eligibility under Government Code Section 56133 and proceeding with out-of-agency services that otherwise merit LAFCO review and approval. Markedly, and as experienced recently in San Diego County, these self-determinations 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.

RECOMMENDATION

This item is presented to the Committee for discussion and feedback only.

ALTERNATIVES FOR ACTION

None.

PROCEDURES

This item has been placed on the Committee's agenda as part of the business calendar. It will include a verbal presentation from staff followed by discussion from the Committee.

Respectfully,

Priscilla Allen
Analyst I

Attachment:

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

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**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.