



# San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

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# 7C

**AGENDA REPORT**  
Business | Action

November 1, 2021

**TO:** Commissioners

**FROM:** Keene Simonds, Executive Officer

**SUBJECT:** Legislative Update and Related Items

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## 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 under State law. This includes reviewing items associated with the end of the first year of the 2021-2022 session as well as previewing topics heading into the second year for discussion and feedback. The latter category includes an update on the Commission's activities to sponsor an amendment to clarify LAFCOs' sole authority to determine when outside service contracts require formal approval or qualify for an exemption. The Commission will also consider a new recommendation to sponsor a separate amendment to the municipal service review statute as detailed.

## BACKGROUND

### Legislative Powers and Oversight

LAFCOs' regulatory and planning powers are delegated by the California Legislature under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or CKH and codified in Government Code Sections 56000 through 57550. Direct oversight of LAFCOs is provided by the Assembly Committee on Local Government. The Honorable Celia Agular-Curry (Winters) is the current Committee Chair.

#### Administration

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## Legislative Resources

San Diego LAFCO works with the California Association of LAFCOs (CALAFCO) in proposing, sponsoring, and/or reviewing legislative matters of interest to the Commission. CALAFCO's Legislative Committee comprises 16 voting members consisting of four appointees from one of four regions (northern, coastal, central, and southern). Commissioner MacKenzie is one of the four appointees from the southern region. The Legislative Committee must achieve a majority vote with at least one affirmative vote from each region to take formal positions.

## DISCUSSION

This item is for San Diego LAFCO to review items of interest generated in the first year of the 2021-2022 legislative session as well as to preview topics going into the second year. This includes receiving an update on the Commission's earlier approval to sponsor an amendment to clarify LAFCOs' exclusive authority to determine exemption status under statute involving out-of-agency service contracts. The Commission will also consider a new recommendation from staff to sponsor a separate amendment to the municipal service review statute aimed at spotlighting the process within the affected communities. Additional discussion follows.

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

No substantive amendments were approved during the first year of the 2021-2022 session directly involving CKH. The only changes made to CKH were chaptered as part of Assembly Bill (AB) 1581 and represents the Assembly Committee on Local Government's annual omnibus proposal to address technical and/or minor amendments. While not substantive in terms of overall impacts, several improvements are included and highlighted by requiring cities to notify LAFCOs before hearings to consider zoning changes involving lands that were recently annexed to the affected cities within the prior two year period.<sup>1</sup> Substantive amendments approved during the first year with indirect substantive impacts to CKH are highlighted by AB 361 and Senate Bill 9 and their respective provisions to continue to allow for remote public meetings and separately establish new by-right housing development allowances irrespective of local zoning.

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

Three items of specific interest to San Diego LAFCO are in the planning stages for possible introduction in the second year of the 2021-2022 and summarized below.

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<sup>1</sup> This provision in AB 1581 was proposed by San Diego LAFCO.

- **New and Extended Outside Services |  
Clarifying LAFCOs' Authority to Determine Exemption Eligibility in Section 56133**

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Cities and special districts are tasked under Government Code Section 56133 to request and receive LAFCO approval before providing contract services outside their boundaries less certain exemptions outlined in subsection (e). The majority of local agencies appropriately consult and defer to LAFCOs in determining exemptions – but not all do. This latter dynamic has proven to be the case in San Diego County with some cities and special districts self-qualifying themselves for exemptions in situations that otherwise merited formal Commission review and approval, and among other outcomes creating conflicts with other local agencies. The Commission drew on these experiences in adopting an annual workplan beginning in 2020-2021 and continued thereafter to include sponsoring a legislative fix to amend the statute to make explicit all exemptions under (e) are determined by LAFCOs or, if delegated, their executive officers.

Initial sponsorship activities commenced in early 2021 and included performing outreach with stakeholders – including other LAFCOs and the California Special Districts Association – and potential authors before work was paused due to other workplan priorities and resource considerations. Staff has recently reinitiated work on the proposal with the added enlistment of CALAFCO as a co-sponsor and the shared goal of securing an author and introducing a bill by the February 18, 2022 deadline. A copy of the brochure developed by staff for outreach purposes is provided as Attachment One.

- **Municipal Service Reviews |  
Establishing a Communication Loop in Section 56430**

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LAFCOs are tasked under Government Code Section 56430 to regularly prepare municipal service reviews to independently evaluate the level, range, and adequacy of public services relative to community needs. LAFCOs prepare these studies and make related determinations with direct implications on agency operations and governance in conjunction with updating all cities and special districts' spheres as appropriate. Drawing from San Diego LAFCO's recent experiences and discussions on the dais, staff believes three related amendments to this statute are merited to establish a baseline level of communication between LAFCOs, public, and affected agencies where none presently exists. Most notably, this includes ensuring completed municipal service reviews are directly communicated to governing boards and their constituents by requiring placement on the affected agencies' agendas for informational purposes. The other two proposed amendments involve requiring LAFCOs to hold public hearings when taking up municipal service reviews and transmit formal notice to the affected agencies within 30 days of completing a municipal service review.

Consistent with practice, the Executive Officer submitted the above-described legislative proposal to CALAFCO to assess support among other LAFCOs. The Legislative Committee proceeded to unanimously endorse the proposal with the Board now scheduled to consider sponsoring the item on November 12, 2021. A copy of the proposal submission to CALAFCO is provided as Attachment Two.

- **Protest Proceedings |  
Revise and Streamline Proceedings in Sections 5700 et al.**

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CALAFCO continues work to advance a comprehensive update LAFCOs' protest proceedings beginning in Government Code Section 57000. This item has been a priority project for CALAFCO for several years and marked by membership interest to revise the current protest threshold in statute for LAFCO initiated proposals from 10% to 25% – or some reasonable alternative therein – and in doing so match the threshold for all other proposals. Other desired amendments focus on streamlining the protest proceedings for the benefit of simplifying and consolidating existing requirements. Negotiations with outside stakeholders – namely the California Special Districts Association and Assembly Committee on Local Government – continue and facilitated through a CALAFCO working group that includes Commissioner MacKenzie and Commission Counsel Whatley.

## ANALYSIS

The first year of the 2021-2022 legislative session proved quiet with respect to making direct changes to LAFCO statutes. The lack of revisions to LAFCO statutes mirrored the Legislature's continued focus on COVID responses and other public health and safety issues (housing, wildfire, etc.) and will presumably continue at some level going forward. However, and as detailed above, three substantive legislative items of direct interest to San Diego LAFCO are expected to proceed as part of the second year and headlined by co-sponsoring an amendment to Section 56133 to make explicit LAFCOs determine when local agencies require formal approval to provide outside services by contracts. Staff also believes it would be appropriate for the Commission to agree to sponsor another proposal in the second year to establish a new communication loop in the municipal review process that culminates with affected agencies' councils and boards directly receiving the final document as part of their own meeting agendas.<sup>2</sup> This latter recommendation – notably – parallels earlier comments made from the dais in improving dialogue with the affected communities through the municipal service reviews with their decision-makers, i.e., governing boards and voting electorate.

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<sup>2</sup> It is assumed the CALAFCO Board will take action to sponsor the proposed amendments to the municipal service review statute at its November 12, 2021 meeting. Should CALAFCO proceed affirmatively the Commission and CALAFCO would serve as co-sponsors.

## RECOMMENDATION

This item is presented to San Diego LAFCO for discussion as well as possible action with respect to the Executive Officer's recommendation to sponsor a legislative proposal to the municipal service review statute as described. This recommendation is consistent with Alternative Action One in the proceeding section.

## ALTERNATIVES FOR ACTION

The following alternatives are available to San Diego LAFCO:

### Alternative One (recommended):

- a) Approve a sponsorship role for the legislative proposal to the municipal service review statute as provided in Attachment Two.
- b) Direct staff to present a conforming amendment to the adopted workplan for Commission consideration at a future meeting.

### Alternative Two:

Continue consideration of the item to a future meeting and provide direction as needed.

### Alternative Three:

Take no action.

## PROCEDURES

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

- 1) Receive verbal report from staff unless waived.
- 2) Commission discussion.
- 3) Consider the staff recommendation.

Respectfully,



Keene Simonds  
Executive Officer

### Attachments:

- 1) Advocacy Brochure on San Diego LAFCO's Sponsorship to Amend Section 56133
- 2) San Diego LAFCO's Legislative Proposal to CALAFCO to Amend Section 56430

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# Proposed Amendment to GOVERNMENT CODE SECTION 56133 (e)



## SUMMARY

This bill would make explicit in statute that LAFCOs are authorized to oversee the approval process for agencies to provide new or extended services outside their boundaries. This includes – importantly – clarifying LAFCOs or their executive officers determine when allowable exemptions apply.

### BACKGROUND

LAFCOs are required under state law to oversee the approval process for cities and special districts intending to provide new or extended services outside their boundaries by contracts. These contracts are typically a result of when annexations are not feasible and/or desired given local conditions.

State law identifies certain contract scenarios as exempt from requiring LAFCOs approval, including contracts between two or more local agencies where the intended new or extended service is an equal alternative or substitute for service already provided. California Government Code Section 56133 outlines the requirement for LAFCO review and the exemptions are listed within subsection (e).

### THE PROBLEM

Some local agencies have entered into contracts to provide new or extended services outside their boundaries. Unfortunately this practice creates numerous problems including: (1) Unintentionally creating conflict between local agencies when encroaching into others' jurisdictions and competing for customers; (2) In some instances, failing to annex territory – including island areas – upon the extension of service, thereby creating unordered boundaries; (3) Conflicts with existing Government Code Section 56133(b) that states the extension may be authorized in anticipation of a later change of organization; and (4) Undermining LAFCOs ability to coordinate the orderly delivery of municipal services in concert with community needs and in step with regional growth management objectives. These problems create unnecessary costs and liabilities that are otherwise completely avoidable.

### SOLUTION

To make explicit in statute that LAFCOs – not local agencies – are authorized to oversee the approval process for agencies to provide new or extended services outside their boundaries, and in doing so closes a current loophole in state law. The addition of nine words to 56133(e) as a preface to its listing of exemptions is proposed to read “as determined by the commission or the executive officer.”

### [ Contacts ]

This legislative effort is co-sponsored by CALAFCO and San Diego LAFCO

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***CALAFCO will consider any proposals for improving or clarifying the Cortese-Knox-Hertzberg Act or related laws when it can be shown to provide benefit or assistance to the mission and policy principles of CALAFCO. Requesting agencies are expected to provide sufficient explanation for proposals in order for the CALAFCO Legislative Committee to consider the proposal. Please complete the following questions as thoroughly as possible. **PROPOSALS ARE DUE BY 12:00 P.M., THURSDAY, SEPTEMBER 30, 2021.*****

***REMEMBER THAT PROPOSALS FOR THE OMNIBUS BILL MUST BE NON-CONTROVERSIAL, HAVE NO OPPOSITION AND BE MINOR TECHNICAL CORRECTIONS. **WE CANNOT ACCEPT ANYTHING FOR THE OMNIBUS THAT DOES NOT MEET THIS CRITERIA AND PROPOSALS OF THIS NATURE FOR THE OMNIBUS WILL NOT BE FORWARDED TO THE LEGISLATIVE COMMITTEE.*****

***Along with this form, you must also provide a strike-through underlined version (tracked changes) of the code section in its entirety showing the changes (underlining the additional text and striking through the proposed deletions). This should begin on a new page of the form.***

**In summary, here's what we need to know – you will need to answer these questions on page 3 of the form.**

- **Legislative history:** *What bill created the current law? What problem did it solve?*
- **Problem:** *What's wrong with the current law? Who says there's a problem? Why is this the best fix for the problem?*
- **Politics:** *Who else cares about this topic? What did they tell you when you asked them?*
- **People:** *Which groups did you talk to before submitting this request? What did they say?*
  - **Specific language:** *What's your proposed amendment? How should the section really read?*

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***Is this an Omnibus suggestion or stand-alone CALAFCO sponsored bill proposal?***

\_\_\_\_\_ Omnibus       Stand-alone CALAFCO sponsored bill

***If Omnibus, does it meet the requirements that the change is minor technical in nature and non-controversial? (If no, do not submit the proposal as Omnibus)***

YES \_\_\_\_\_ NO \_\_\_\_\_

***If CALAFCO sponsored bill, have you identified and approached a potential legislative author(s)?***

YES \_\_\_\_\_ NO

***If Yes, who is the legislator(s)?***

**PROPOSAL SUMMARY:**

***What Code Section (s) and specific language are proposed for change?***

56430.

Add two new subsections – (f) and (g). See attachment.

***Which CALAFCO Board-adopted legislative policy or priority does this proposal address (you will find the current legislative policies on the CALAFCO website)?***

All apply.

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**1. PROBLEM. The problem(s) that the proposal would address are:**

Provide a detailed explanation of the problem(s) identified that would be solved with this proposal.

Twofer...

Problem No. 1:

There is no requirement for LAFCOs to take up MSR per 56430 in noticed hearings. This diminishes the community's ability to provide timely input to LAFCOs on local needs and priorities.

Problem No 2:

There is no requirement for local agencies to either take up the MSR and its determinations/recommendations in open session or otherwise provide responses to LAFCOs. This diminishes the effectiveness in MSR to proactively address/remedy relevant growth management issues of the Legislature via LAFCOs.

**2. SOLUTION. The proposal would address the problem in the following manner:**

Describe *how* the problem would be resolved through this proposal. Include previous proposals or solutions that did not work and why they were not successful as a way to strengthen this position.

Provides new and clear baselines that collectively benefit the State and its interest for accountable and transparent government as part of the MSR process.

- It ensures LAFCOs take up MSR in noticed hearings.
- It ensures LAFCOs communicate on the record to the affected agencies of the final disposition of the MSR.
- It ensures MSR get sun-lighted at public meetings of the affected agencies and they can choose to follow up with LAFCO as they see fit.

**3. ORGANIZATIONAL SUPPORT.**

Which LAFCOs support the proposal? What other stakeholders may support the proposal?

San Diego LAFCO via Executive Officer.

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**4. ARGUMENTS IN SUPPORT.**

What are the specific arguments in support of the proposal? Be as specific as possible, including data to support the argument.

Creates a valuable communicative loop in MSR statute between LAFCOs, public, and affected agencies where none presently exists.

**5. ORGANIZATIONAL OPPOSITION.**

What organizations, if any (LAFCOs or other stakeholders) have expressed or may express opposition to the proposal?

N/A

**6. ARGUMENTS IN OPPOSITION.**

What are the potential specific arguments in opposition of the proposal? Be as specific as possible, including data to support the argument.

N/A

**7. CONTACT.**

For information please contact:

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**56430.**

(a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

- (1) Growth and population projections for the affected area.
- (2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
- (3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
- (4) Financial ability of agencies to provide services.
- (5) Status of, and opportunities for, shared facilities.
- (6) Accountability for community service needs, including governmental structure and operational efficiencies.
- (7) Any other matter related to effective or efficient service delivery, as required by commission policy.

(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area. The commission may assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies.

(c) In conducting a service review, the commission may include a review of whether the agencies under review, including any public water system as defined in Section 116275, are in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code). A public water system may satisfy any request for information as to compliance with that act by submission of the consumer confidence or water quality report prepared by the public water system as provided by Section 116470 of the Health and Safety Code.

(d) The commission may request information, as part of a service review under this section, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, and private utilities, as defined in Section 1502 of the Public Utilities Code.

(e) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or 56426.5 or to update a sphere of influence pursuant to Section 56425.

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(f) The commission shall consider the municipal service review and written determinations prepared under subsection (a) at a public hearing consistent with the noticing provisions in Sections 56153 and 56154 unless specified otherwise in adopted policy. The public hearing notice shall also be provided to all affected agencies that provide one or more services evaluated in the municipal service review.

(g) The commission shall provide written notice to all affected agencies that provide one or more services evaluated in the municipal service review within 30 days following the commission's adoption, approval, and/or otherwise concluding action on the written determinations prepared under subsection (a). The notice shall include a listing of the written determinations made by the commission. All affected agencies shall include the notice and associated written determination made by the commission on their agenda for information and/or any related purposes at the next regular meeting in which publication can adequately be made.