

# LAFCO

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**Santa Barbara Local Agency Formation Commission**

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March 7, 2013 (Agenda)

Local Agency Formation Commission

105 East Anapamu Street

Santa Barbara CA 93101

## **Legislative Report - Proposed Amendments to Government Code Section 56133**

Dear Members of the Commission:

### RECOMMENDATION

It is recommended the Commission receive this report and provide policy direction to staff.

### DISCUSSION

#### Introduction

This matter is presented on the agenda at the request of Commissioner Geyer. Possible changes to Section 56133 as proposed by CALAFCO were considered on November 3, 2011. Following a public hearing the Commission decided not to support these legislative changes.

A staff letter dated November 8 expressed appreciation to Keene Simonds for attending the Commission meeting and acknowledged the Commission determined not to support CALAFCO-proposed amendments to Section 56133.

#### Background

State law allows a city or special district to provide services outside its boundaries only if it first requests and receives authorization from LAFCO. Government Code Section 56133 states:

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

There are exceptions to this rule, which are listed in Section 56133, attached as Exhibit A.

Government Code Section 56133 also restricts LAFCO regarding the circumstances when it can authorize a city or special district to provide out-of-agency services:

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**Commissioners:** Roger Aceves, Chair ♦ Doreen Farr ♦ Craig Geyer ♦ Jeff Moorhouse ♦ Bob Orach ♦ Bob Short  
Janet Wolf ♦ John Fox ♦ Steve Lavagnino ♦ Jim Richardson ♦ Roger Welt      **Executive Officer:** Bob Braitman

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

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met: (Emphasis added)

(1) The entity applying for the contract 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, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

When a city or special district submits a request to extend services outside its boundary, the LAFCO staff provides notice and places the request on the next Commission agenda, unless the Commission has delegated approval of requests to the Executive Officer. The Commission or Executive Officer shall then approve, disapprove, or conditionally approve the request to provide the extended services.

In 2011 the CALAFCO Board of Directors proposed widening the circumstances where LAFCO can authorize a city or special district to provide services outside its sphere of influence. These would be in addition to the current exception related to a threat to public health. The additional exceptions would be to support existing or planned uses for public or private property when:

- The extension of service or service deficiency was identified and evaluated in a municipal service review prepared by the Commission pursuant to section 56430.
- The extension of service would not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts.
- A later annexation involving the property and affected agency is not feasible or desirable based on adopted LAFCO policies.

Napa LAFCO Executive Officer Keene Simonds, who chaired the Legislative Subcommittee that considered changes in Section 56133, attended the November 3, 2011 Commission meeting to explain these proposed amendment and CALAFCO's support of the changes.

At the end of that meeting, after hearing from Mr. Simonds and receiving testimony and letters from local agencies, the Commission determined not to support the proposed legislative changes. The Commission's position was communicated to the CALAFCO Board of Directors.

Since the Commission considered this matter, no changes in Section 56133 have been enacted nor are any such changes included within any pending legislation known to the staff.

#### Current Status

On February 8, 2013 the CALAFCO Board of Directors considered the Legislative Committee's referral to move forward with proposed changes in Section 56133. The Board considered pages of material and letters in support and opposition.

What came out of that dialogue was a sense that perhaps those on both sides could agree through compromise on certain language. The Board of Directors decided to form an ad hoc committee to propose language LAFCOs can support. It directed that this committee, to be appointed by the Chair of the Board, report back to the Board of Directors on May 3 with proposed language.

Although I am a member of the Legislative Committee I have not expressed interest in serving on the ad hoc committee and the deadline for nominations was February 20.

Note: Commissioner Geyer has requested all letters, emails and correspondence the Commission has received, since year 2009, concerning Section 56133. We are providing these materials to all members of the Commission along with the packet for the March 7 meeting.

Please contact the LAFCO office if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Braitman", with a long horizontal flourish extending to the right.

BOB BRAITMAN  
Executive Officer

**Government Code Section 56133** (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

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

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

(1) The entity applying for the contract 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, or sewer system corporation as defined in Section 230.6 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 of a contract 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 those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving 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.

This section does not apply to contracts for the transfer of nonpotable or nontreated water.

This section does not apply to contracts or agreements solely involving 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.

This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.

This section does not apply to 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 boundaries.