



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

TO: MEMBERS, FORMATION COMMISSION
FROM: DAVID CHURCH, AICP, EXECUTIVE OFFICER
DATE: July 21, 2011
SUBJECT: AMENDMENTS TO GC 56133 (OUA'S)

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DAVID CHURCH
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RAYMOND A. BIERING
Legal Counsel

MIKE PRATER
Analyst

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Commission Clerk

RECOMMENDATION. It is respectfully recommended that the Commission direct the Executive Officer to draft a letter supporting this change.

DISCUSSION. The CALAFCO Board has approved amendments to Government Code 56133 regarding Outside User Agreements. Over the last year the Legislative Committee has worked with a number of Executive Officers to craft language which would allow a LAFCO (subject to making certain findings) to approve outside service extensions based on other factors.

In March 2011, the Legislative Committee unanimously recommended proposed changes to 56133 to the CALAFCO Board of Directors. In April the CALAFCO Board unanimously adopted the proposed language.

SUMMARY. The intent is to seek legislation in 2012 to make the changes law. Prior to CALAFCO working with the Legislature and stakeholders, the Board wants member LAFCO's to review the approved proposal.

Three key changes underlie the Board-approved amendments. The first and most significant change expands LAFCO's existing authority in approving new and extended services beyond agencies' spheres of influence so long as LAFCO make three findings at noticed public hearings. These findings involve determining the extension 1) was contemplated in a municipal service review and 2) will not result in adverse impacts on open-space and agricultural lands or result in growth inducing impacts 3) a later change of organization is not expected or desired based on local policies. The second change clarifies LAFCO's sole authority in determining the application of the statute. The third change deemphasizes the approval of contracts and emphasizes the approval of service extensions.

Attachments

1. FAQ Cover Letter
2. Proposed Amendments (Exact language)
3. Legislative History of GC 56133

The CALAFCO Board and Legislative Committee believes the three changes proposed for G.C. Section 56133 will provide LAFCO's more flexibility in accommodating service extensions lying beyond spheres of influence that are otherwise sensible given local conditions.

The Commission should discuss whether the San Luis Obispo LAFCO supports the proposed amendments or has question and concerns that needs to be further addressed by the CALAFCO Board and Legislative Committee before legislation is sought in 2012.

It is important to note that the public health and safety criteria remains an option for approving an outside user agreement. The new language allows LAFCO to approve an outside user agreement based on the following criteria:

- A. Extension of service was evaluated in a Municipal Service Review approved by the Commission. This means that services outside a jurisdictions boundary must be analyzed in an MSR. This also means greater forethought will be needed since MSR are updated every five years or as needed.
- B. No adverse impacts on open space and agricultural land will occur and the service agreement will not be growth inducing. This means the service agreement is not intended to provide urban services that would create growth or affect open space and agricultural lands but rather utilize better planning for providing services to areas that would otherwise be built-out under County land use designations.
- C. Annexation is not feasible or desirable based on LAFCO policies or a jurisdictions policies. This allows for the decision of the Commission to consider an area for services to be provided by the best provider without that jurisdiction having to annex the area.

The above criteria provide adequate assurances that an outside user agreement would be approved with discretion and after careful consideration. In the past, San Luis Obispo LAFCO has jurisdictionally evaluated outside service agreements on a case-by-case basis. This change would not affect that process. The decision to approve an outside user agreement would be supported by making the above findings.



June 21, 2011

2011
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TO: LAFCo Executive Officers
FROM: CALAFCO Legislative Committee
REPORT BY: Keene Simonds, Napa LAFCo
SUBJECT: Board-Approved Amendments to Government Code Section 56133

On April 29, 2011, the CALAFCO Board unanimously approved a proposal from the Legislative Committee to amend Government Code (G.C.) Section 56133 and its provisions governing the LAFCo approval process for cities and special districts to provide new and extended outside services. Three substantive changes underlie the Board-approved amendments. The first change expands LAFCos' existing authority in approving new and extended services beyond agencies' spheres of influence irrespective of public health and safety threats. The second change clarifies LAFCos' sole authority in determining the application of the statute. The third change deemphasizes the approval of contracts or agreements in favor of emphasizing the approval of service extensions.

The Board-approved amendments would – if passed into law – significantly expand LAFCos' individual discretion in administering G.C. Section 56133. Markedly, enhancing discretion highlights the Legislative Committee's principal motive in proposing the amendments given the current statute limits LAFCos' ability to accommodate new and extended services beyond spheres of influence that are otherwise logical given local conditions unless addressing public health or safety threats. The Legislative Committee, nevertheless, recognizes the importance of establishing specific safeguards to help uniformly guide LAFCos in exercising their expanded discretion consistent with our collective responsibilities to facilitate orderly and efficient municipal growth and development. Most notably, this includes explicitly tying the expanded discretion with the municipal service review process.

Additional materials are attached to this communication further detailing the Board-approved amendments to G.C. Section 56133. This includes a one-page informational flyer summarizing the key changes with implementing examples as well as addressing frequently asked questions that have been raised in the two plus years the Legislative Committee has expended on this important rewrite. The Legislative Committee welcomes your questions and comments. Towards this end, to help expedite follow up, these regional coordinators are available to discuss the Board-approved amendments as well as make presentations to individual LAFCos if interested:

Northern: Scott Browne, Nevada
Steve Lucas, Butte

Coastal: Neelima Palacherla, Santa Clara
Keene Simonds, Napa

Central: Marjorie Blum, Stanislaus
Ted Novelli, Amador

Southern: Kathy McDonald, San Bernardino
George Spiliotis, Riverside

Thank you again for your attention to this matter and the Legislative Committee looks forward to working with you on any questions or comments.

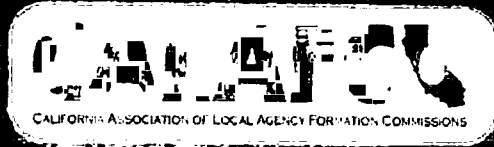
1215 K Street, Suite 1650
Sacramento, CA 95814

Voice 916-442-6536
Fax 916-442-6535

www.calafco.org

Attachments: 1) Informational Flyer on the Board-Approved Amendments to G.C. Section 56133
2) Board Approved Amendments to G.C. Section 56133 (Track-Changes)
3) Legislative History of G.C. Section 56133

CALAFCO Board Approves Changes to Government Code Section 56133



June 2011

The Proposal: Three Changes ...

The CALAFCO Board has unanimously approved a proposal from the Legislative Committee to amend Government Code (G.C.) Section 56133 and its provisions governing the LAFCo approval process for cities and districts to provide new and extended outside services. Three key changes underlie the Board-approved amendments. The **first** and most significant change expands LAFCo's existing authority in approving new and extended services beyond agencies' spheres of influence irrespective of public health and safety threats so long as LAFCo make three findings at noticed public hearings. These findings involve determining the extension 1) was contemplated in a municipal service review and 2) will not result in adverse impacts on open-space and agricultural lands or growth nor is a 3) later change of organization expected or desired based on local policies. The **second** change clarifies LAFCo's sole authority in determining the application of the statute. The **third** change deemphasizes the approval of contracts and emphasizes the approval of service extensions.

Why the Changes ...

The CALAFCO Board and Legislative Committee believes the three changes proposed for G.C. Section 56133 will measurably strengthen a LAFCo's ability to effectively regulate outside service extensions in concert with our evolving role in regional growth management. Specifically, if passed into law, the changes will provide LAFCo more flexibility in accommodating service extensions lying beyond spheres of influence that are otherwise sensible given local conditions while clarifying the determination of when the statute and its exemptions apply rests solely with LAFCo. The changes would also strike unnecessary references to "contract or agreement approval" given these documents are generally prepared only after the proposed service extensions have been considered and approved by LAFCo. Examples showing how these changes could be implemented follow.

- LAFCo would have the authority, subject to making certain findings, to approve new or extended outside services beyond spheres of influence for public facilities, such as fire stations and schools, where the connection to the affected agency's infrastructure is a potential option.
- LAFCo would have the authority, subject to making certain findings, to approve new or extended outside services beyond spheres of influence for private uses supporting permitted intensity increases, such as residential construction or commercial additions.
- LAFCo would avoid delays and other transaction costs tied to disagreements with agencies regarding the constitution of "new" and "extended" services as well as determining when exemptions apply. Notably, this includes determining when a contract service proposed between two public agencies qualifies for exemption if it is "consistent with the level of service contemplated by the existing provider."

FAQs

Does providing LAFCo with more flexibility to approve services beyond spheres of influence undermine LAFCo's ability to curb sprawl?

No. The proposed changes include measured safeguards to protect against inappropriate urban development by requiring LAFCo to make three specific findings (consistency with a municipal service review, no adverse agricultural or growth inducing impacts, and no expectation of future annexation) at noticed hearings before approving new or extended services beyond spheres.

Will these changes create new pressures on LAFCo to accommodate development beyond agencies' spheres they would otherwise reject?

The proposed changes do not effect LAFCo's existing right and duty to deny outside service requests deemed illogical and inconsistent with their policies.

How long has CALAFCO been discussing the proposal?

The Legislative Committee has spent two plus years working on the proposal before Board approval in April 2011.

Questions or Comments

The following regional coordinators are available for questions or comments on the proposed changes to G.C. Section 56133. The regional coordinators are also available to make presentations to interested LAFCos.

- Scott Browne, Nevada
- Steve Lucas, Butte
- Marjorie Blom, Stanislaus
- Ted Novelli, Amador
- Neelima Palacherla, Santa Clara
- Keene Simonds, Napa
- Kathy McDonald, San Bernardino
- George Spiliotis, Riverside

Contact: William Chiat, Exec. Dir.
(916) 442-6536
wchiat@calafco.org

Proposed Amendments to G.C. Section 56133
(Approved by the CALAFCO Board on April 29, 2011)

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional ~~boundaries~~boundary only if it first requests and receives written approval from the commission ~~in the affected county. The commission may delegate approval of requests made pursuant to subdivisions (b) and (c) below to the Executive Officer.~~

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional ~~boundaries~~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 ~~boundaries~~boundary and outside its sphere of influence under any of the following circumstances:

~~(1) 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:~~

~~(1A) 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.~~

~~(1B) 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.~~

~~(2) To support existing or planned uses involving public or private properties subject to approval at a noticed public hearing that includes all of the following determinations:~~

~~(A) The extension of service or service deficiency was identified and evaluated in a municipal service review prepared by the commission pursuant to section 56430.~~

~~(B) The effect of the extension of service would not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts.~~

~~(C) A later change of organization involving the subject property and the affected agency is not feasible or desirable based on the adopted policies of 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 made under this section~~ to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the ~~contract for~~ extended services. If the ~~extended services are~~ ~~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 commission determines 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.

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

(g) 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.

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

~~(i) 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.~~

~~(j) The application of this section rests solely within the jurisdiction of the commission in the county in which the extension of service is proposed.~~

Government Code Section 56133
Outside agency service/Extraterritorial service

Legislative History (new language underlined, deleted language ~~crossed-out~~)

Introduced on March 3, 1993 in AB 1335 (Gotch). "The Gotch Bill" as drafted by CALAFCO.

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. This section does not apply to contracts or agreements solely involving two or more public agencies.

Added, Statutes of 1993, chapter 1307, section 2, AB 1335 (Gotch). "The Gotch Bill" as adopted by Legislature. Effective January 1, 1994.

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. 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. This section does not apply to contracts or agreements solely involving two or more public agencies. 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 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 shall not apply to an extended service that a city or district was providing on January 1, 1993.

Amended, Statutes of 1994, chapter 654, section 2, AB 3350 (Gotch). One-year clean up of the Gotch Bill. Changing effective date of grandfathering clause to effective date of original Gotch Bill. Effective September 20, 1994.

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. 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. This section does not apply to contracts or agreements solely involving two or more public agencies. 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 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 shall not apply to an extended service that a city or district was providing on January 1, ~~1993~~ 1994.

Amended, Statutes of 1997, chapter 175, section 1, AB 637 (Alby)
Exempts local publicly owned power utility where no acquisition or construction of electrical facilities outside agency boundaries. Effective January 1, 1998.

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. 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. This section does not apply to contracts or agreements solely involving two or more public agencies. 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 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 shall not apply to an extended service that a city or district was providing on January 1, 1994. 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, which 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.

Amended, Statutes of 1999, chapter 779, section 1, SB 807 (Committee on Agriculture and Water Resources). Health or safety threats outside spheres.

New formant with sub-sections.

(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) This section does not apply to contracts or agreements solely involving two or more public agencies. 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 January 1, 1994. 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.

Amended, Statutes of 2000, chapter 761, section 47 AB 2838 (Hertzberg). The Local Governmental Reorganization Act of 2000. Effective January 1, 2001.

(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 ~~for projects that serve conservation purposes 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 January 1, 1994. 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.

Amended, Statutes of 2002, chapter 548, section 6, AB 2227. Harman. Change of grandfathering date. Effective January 1, 2003.

(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, ~~1994~~ 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.