

LAFCO

*Yolo County Local Agency Formation Commission
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To: Olin Woods, Chair, and Members of the
Yolo Local Agency Formation Commission

From: Elisa Carvalho
Interim Executive Officer

Date: July 25, 2011

Subject: Review and Consider CALAFCO Proposed Legislative Changes, Recently
Approved Legislation that Impacts the Proposed Dunnigan Incorporation, and
Active CALAFCO Legislation

Recommended Action

1. Review proposed legislative changes as adopted by the CALAFCO Board concerning Government Code Section 56133 presented in the attached informational flyer (Attachment A) and amended code, shown with tracked changes (Attachment B); and
2. Consider impact of SB 89 on the proposed Dunnigan Incorporation.
3. Receive and review update on CALAFCO adopted positions on active legislation in the 2011-12 Session.

Fiscal Impact

These legislative considerations are policy related and do not directly impact finances at this time.

COMMISSIONERS

★ *Public Member* Olin Woods, Chair ★
★ *County Member* Matt Rexroad, Vice Chair ★
★ *City Members* Stephen Souza, Skip Davies ★ *County Member* Don Saylor ★

ALTERNATE COMMISSIONERS

★ *Public Member* Robert Ramming ★ *City Member* Bill Kristoff ★ *County Member* Jim Provenza ★

STAFF

★ *Interim Executive Officer* Elisa Carvalho ★
★ *Commission Clerk* Terri Tuck ★ *Commission Counsel* Robyn Truitt Drivon ★

Reason for Recommended Action

The CALAFCO Legislative Committee regularly proposes and monitors changes to LAFCO code and related law. These changes may impact Yolo LAFCO powers, processes, and/or proposals.

Background

Government Code Section 56133

The CALAFCO Legislative Committee is proposing changes to language in Government Code Section 56133, which governs the LAFCO approval process for cities and special districts to provide new and extended outside services. LAFCOs have struggled with the language in this code for a number of years. The CALAFCO Legislative Committee has worked with a number of executive officers over the last two years to craft language which would give LAFCO's broader authority in granting outside service extensions. The CALAFCO Board approved amendments for Government Code Section 56133 would result in three substantial changes.

1. Expand existing LAFCO authority in approving new and extended services beyond an agency's sphere of influence regardless of public health and safety threats.
2. Clarify LAFCOs' sole authority in determining the application of the statute.
3. Deemphasize the approval of contracts or agreements in favor of emphasizing the approval of service extensions.

Attachment A is a one-page informational flyer that further details and explains the Board approved amendments. The flyer summarizes the key changes with examples and addresses frequently asked questions that have been raised in the development of the amendments. Attachment B clearly outlines the specific language changes to the LAFCO law. CALAFCO intends to seek legislation to make the changes to Government Code Section 56133 in 2012.

SB 89 (Committee on the Budget) - City Vehicle License Fee (VLF)

SB 89 is a budget bill that was signed into law at the end of June. It will have a major impact on the proposed Dunnigan Incorporation, one of two incorporation efforts in the state. It shifts most of city vehicle license fee funding to statewide public safety programs. It will impact every city receiving VLF; however, because of a 2004-05 VLF/property tax flip it will have a major impact on cities incorporated after 2004 and inhabited annexations after 2004.

Special allocations compensate cities that have incorporated since 2004 for the lack of property tax share afforded other cities under the VLF-Property Tax Swap of 2004. In

May 2004, Governor Schwarzenegger proposed a swap of city and county VLF revenues for additional property tax share as part of a state-local budget agreement. The swap was included in the 2004 budget package. The legislation was enacted in 2006; however, it was retroactively applied to all incorporations and inhabited annexations going back to 2004.

SB 89 will eliminate a significant portion of the funding (in some cases as much as 40%) that cities rely on for a financially feasible incorporation or inhabited annexation, making most future incorporations and inhabited annexations financially impossible. It will also remove a major financial incentive for future inhabited annexations.

SB 89 was amended at the last minute and voted on before most legislators had read it. None of the stakeholder groups received an opportunity to see the language. CALAFCO is working with the League of California Cities on a potential legislative fix; however, the legislature adjourned for its summer recess and will not return until mid-August.

Active CALAFCO Legislation

An update on legislation that CALAFCO has been monitoring is below. Two bills, including SB 89, have been signed into law, the rest of the bills have been divided according to assigned CALAFCO positions: support, oppose, watch, and objections removed.

Any comments or questions the LAFCO Commission has for CALAFCO can be transmitted by letter prepared by staff and reviewed by the Chair for signature.

SIGNED INTO LAW

AB 1265 (Nielsen) - Williamson Act. Creates an interim solution to the loss of state subventions for Williamson Act lands by giving counties an alternative landowner-funding approach. This approach was developed by a broad consortium of local government, agricultural, and environmental interests. CALAFCO participated in the consortium.

SUPPORT

AB 54 (Solario) - Mutual Water Companies. Among other things, this bill would require mutual water companies to comply with LAFCO requests for Municipal Service Review (MSR) information, to provide LAFCO with a map of service area, and to allow LAFCO to include compliance with drinking water standards in MSRs.

AB 912 (Gordon) - Dissolution of Special Districts. Provides authority to LAFCO to dissolve a special district, under specific circumstances, without a vote unless there is a majority protest.

AB 1430 (Assembly Local Government Committee) - Cortese-Knox-Hertzberg Omnibus Bill. Sponsored by CALAFCO, this bill makes technical changes to Cortese-Knox-Hertzberg (CKH). In addition to a number of minor technical changes, the 2011 bill makes a major

update to CKH definitions. While not making any substantive changes to the definitions, the bill would greatly increase clarity to the definitions.

SB 436 (Kehoe) - Acquisition of Mitigation Lands. Would allow a local agency to provide funds to a non-profit to acquire land or easements to satisfy an agency's mitigation requirements. May be an important tool for LAFCO in agricultural and open space preservation.

OPPOSE

SB 46 (Correa) - Compensation Disclosure. Would require all local agency officials, including LAFCO, who file a Form 700 to also file an annual and extensive compensation and reimbursement disclosure report. Would require all local agencies to annually post the forms on their web site.

WATCH

AB 46 (Perez) - Disincorporation. Would provide that every city with a population of less than 150 people as of January 1, 2010, would be disincorporated into that city's respective county unless a county board of supervisors determines that continuing such a city within that county's boundaries would serve a public purpose. The bill would also require LAFCO to oversee the terms and conditions of the disincorporation.

AB 781 (Perez) - Creation of CSD. This bill would create a CSD in a community disincorporated by AB 46. It contains a number of imposed terms on the CSD for CSD-generated power, special assessments and taxes, and other aspects of the disincorporated city. Requires LAFCO to impose terms and conditions on the CSD. This bill was combined with AB 46 so both must pass to become law.

OBJECTIONS REMOVED

SB 244 (WOLK) - Disadvantaged Unincorporated Communities. Would require LAFCO review of disadvantaged unincorporated communities. It adds a definition, requires LAFCO to review water, sewer and fire services to the communities in the next SOI update, places more emphasis on LAFCO recommendations on reorganizations for efficient services, requires LAFCO to identify service deficiencies to these communities in MSRs, and allows LAFCO to assess alternatives for efficient and affordable infrastructure and services. Requires LAFCO to look at communities "in or contiguous to the sphere of influence." Also adds significant requirements to city and county General Plans. CALAFCO has been successful in adding a number of amendments which address our concerns. While there continues to be an unfunded mandate, the amended bill provides discretion and flexibility to LAFCO on much of the implementation.

Attachments:

- A.** CALAFCO informational flyer on GC Section 56133
- B.** Proposed Amendments to GC Section 56133, shown with track changes



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

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**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)(1) 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~~ 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:

(+A) 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.

(±B) 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.