

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MARCH 22, 2006

REGULAR MEETING

TO: Ted Long, Chairman, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #9: CONSIDER PROPOSED AMENDMENTS TO GOVERNMENT
CODE SECTION 56133

RECOMMENDATION

That the Commission:

1. Receive information from the CALAFCO Legislative Committee's considered changes to Government Code §56133, which delineates the requirements for Out-of-Agency Service Agreements;
2. Provide direction to your Executive Officer on what the El Dorado Commission's position is regarding these changes; and,
3. Direct staff to work with CALAFCO and other LAFCOs to resolve the issues with Government Code §56133 consistent with the Commission's position on this matter.

REASON FOR RECOMMENDED ACTION

Several LAFCOs throughout the State have expressed an interest in amending Government Code §56133. After discussing the proposed changes, the Commission may direct staff to express this Commission's opinion on the matter should CALAFCO or any other entity request it.

BACKGROUND

LAFCOs were given the authority to approve and deny annexations to public agencies in 1963. State Law also prohibits an agency from providing services outside of its service area. In the late 1960s and early 1970s, local agencies and developers found a way to bypass the LAFCO process through Out-of-Agency Service Agreements (OOAs). OOAs allowed the agency to extend municipal services outside of its boundaries without LAFCO review and/or despite a LAFCO denial of an annexation application. Through this loophole, OOAs undermined both a LAFCO's mission of promoting orderly growth of local agencies and a LAFCO's discretionary authority to deny or approve annexations. Government Code §56133 closed the loophole by making OOAs subject to LAFCO approval.

Existing law delineates some of the requirements for OOAs, among which is Government Code §56133(b). It states that, in the absence of a threat to public health and safety, the extension of services through an OOA may be allowed only in areas within the agency's sphere of influence (SOI) and in anticipation of a later annexation (refer to Attachment A for the full language in §56133). In other parts of existing Law, it also states that LAFCOs may only annex lands that are within the agency's SOI (as noted in Agenda Item #5, updating spheres requires LAFCO to determine how fast and how much an agency should grow based upon current and projected capabilities). The linkage between OOAs and SOIs makes State Law consistent because the same issues are raised whenever a LAFCO evaluates either an extension of service or a change of organization.

The CALAFCO Legislative Committee is considering language that removes any reference to an agency's SOI and replace it with language that an OOA be consistent with "written policies, procedures, or guidelines adopted by the Commission" (refer to Attachment B for the CALAFCO analysis of the changes and the proposed language). This proposed change would apply to all out-of-agency service applications, not just those related to health and safety. The stated intent for these changes is to increase flexibility on individual LAFCOs to accept OOAs where annexation is either not feasible or desirable or where the lands in question are outside of a sphere of influence.

From a technical standpoint, your Executive Officer has serious concerns on the proposed change in language and has expressed those concerns to the LAFCO professional community. The proposed language appears to make a relatively straightforward OOA process more convoluted and, if approved by the Legislature, marginalize the value of SOIs by removing the linkage between service extension, service capability and changes in boundary. Further, the proposed changes weaken the provisions of Government Code §56133 by introducing a couple of pressures:

- Pressure to allow the development of lands outside of an agency's sphere of influence because the OOA process would be a viable alternative to agency annexation.
- Pressure LAFCOs statewide to change their procedures to conform to the weaker language.

It is the opinion of your Executive Officer that greater flexibility can be achieved in the OOA process without removing the linkage between OOAs and SOIs. But because the Commission has not discussed the proposed changes before, it is unknown to staff what the will of the Commission is on this matter. When asked, your Executive Officer offered his opinion as his own and expressed the caveat that they were not necessarily representative of this Commission's official position on the matter. The intent is to remove the ambiguity, allow staff to represent the Commission's position accurately and work with other LAFCOs to amend State Law in an adequate manner that preserve the existing protections but allow for greater flexibility.

Attachments:

Attachment A: Existing Government Code §56133
Attachment B: CALAFCO Legislative Committee Proposed Changes to §56133