

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF JUNE 26, 2013

REGULAR MEETING

TO: Don Mette, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

**AGENDA ITEM #7: CONSIDER AND APPROVE INDEMNITY AGREEMENT WITH
THE COUNTY OF EL DORADO**

RECOMMENDATION

This is a continuation from the informational hearing in May. Staff recommends that the Commission receive an update from staff on the draft indemnity agreement and, if the negotiations are complete, approve said agreement.

REASON FOR RECOMMENDED ACTION

As the Commission is aware, the implementation of the LAFCO CalPERS contract requires that the County of El Dorado approve a Reallocation Agreement since the effective date of the CalPERS contract is retroactive. The County of El Dorado required that it be held harmless should any charges or penalties arise from the implementation of the LAFCO CalPERS contract. The Commission authorized staff to begin negotiations on an indemnity agreement at the March meeting.

BACKGROUND

Disparate Elements

As the Commission is aware, LAFCO is in the process of negotiating a new retirement contract with CalPERS. In addition, because CalPERS insists on making the contract retroactive, two additional elements not otherwise found in such contracts were introduced: A Reallocation Agreement that must be approved by the County, LAFCO and CalPERS and the effective date of the contract. County staff has objected to certain language in the Reallocation Agreement that LAFCO staff has requested CalPERS to revisit. The matter of the effective date has also not been resolved since the effective date determines how much liability each agency assumes under its respective contract.

County staff has also expressed its concerns about being exposed to additional potential liabilities as a result of a retroactive contract. In March, the Commission authorized staff to negotiate an "indemnity agreement" to hold the County harmless in case it is subjected to fees or penalty charges associated with the implementation of the LAFCO CalPERS contract. This agreement would be between LAFCO and the County exclusively and separate from the Reallocation Agreement.

A breakthrough was achieved when LAFCO Counsel was successful in negotiating with CalPERS an exception that allows the reporting of LAFCO employees under the County's retirement contract on a temporary basis. In May, the County consented to the exception and is in the process of implementing it. While LAFCO is not out of the metaphoric woods, the exception provides some relief in that it restores retirement benefits to LAFCO employees.

Indemnity Agreement

The draft agreement attached here is not the final version of the agreement. As Counsel indicated at the May meeting, County Counsel will not have an opportunity to discuss the draft indemnity agreement with the County Board of Supervisors until June 18, 2013. The Board will give County Counsel direction on the adequacy of the attached agreement towards meeting the County's concerns.

County Counsel and LAFCO Counsel will then confer to iron out the final details during the week the Commission's packet is mailed. Consequently, if the negotiations are complete, staff will present a final version of the agreement electronically, if there is sufficient time, and a hard copy at the meeting. The Commission can decide whether the agreement is satisfactory, whether more negotiations are needed or whether it is ready to be approved.

For its part, LAFCO staff will work towards a balanced agreement that would alleviate the potential concerns raised by County staff without forcing the Commission to adopt an overly broad agreement that could jeopardize this agency's finances.

Attachments

Attachment A: Draft Indemnity Agreement Between the County of El Dorado and LAFCO