



Chairman

Bill Horn
County Board of
Supervisors

Vice Chairman

Sam Abed
Mayor
City of Escondido

Members

Dianne Jacob
County Board of
Supervisors

Andrew Vanderlaan
Public Member

Lorie Zapf
Councilmember
City of San Diego

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

AGENDA
SPECIAL DISTRICTS ADVISORY COMMITTEE
FRIDAY, May 20, 2016, 9:30 A.M.
Note: Location at
County Administration Center
1600 Pacific Highway, Room 402a (4th Floor)
San Diego, CA 92101

Agenda Item:

Recommended Action:

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 1. | Pledge of Allegiance; Welcome New Advisory Committee Members and Roll Call | |
| 2. | Approval of Minutes of Meeting held December 18, 2015 | Approve |
| 3. | Consultant's Recommended Agenda Revisions | Receive |
| 4. | Public Comment
Opportunity for persons to speak to the Committee on any subject within the Committee's jurisdiction, but not an item on today's agenda. Each speaker's presentation may not exceed 3 minutes. | |
| 5. | Selection of Chairperson and Vice Chairperson for 2016 | Discussion/ Comment |
| 6. | Draft Fire Protection Policy*
Discussion of SB 239 Procedures for fire protection contracts.* | Information/ Discussion |
| 7. | Discussion on Records Management and Policy | Information/ Discussion |
| 8. | Legislative Report Update* | Information |
| 9. | Committee Member Announcements and Agency Activity Updates | Information |
| 10. | Adjournment to the June 17, 2016 Meeting Date (if necessary) | Adjourn |

***See Staff Report/Attachment**

DRAFT
LOCAL AGENCY FORMATION COMMISSION
SPECIAL DISTRICTS ADVISORY COMMITTEE
DECEMBER 18, 2015 MEETING

There being a quorum present, the meeting was convened at 9:30 a.m., by Chairwoman Kimberly Thorner (Olivenhain MWD). Attending were: **Committee Members** – Gary Arant (Valley Center MWD), Gary Croucher (Otay WD), Judy Hanson (Leucadia WWD), Bill Haynor (Whispering Palms CSD) (arrived at 9:34 a.m.), Julie Nygaard (Tri-City HCD), John Pastore (Rancho Santa Fe CSD), Dennis Shepard (North County Cemetery District), Greg Thomas (Rincon Del Diablo MWD), and Terry Thomas (South Bay ID) (arrived at 9:36 a.m.). Absent were: **Committee Members** – Margarett Morgan (Vista FPD), Tom Pocklington (Bonita-Sunnyside FPD), Augie Scalzitti (Padre Dam MWD) and Joel Scalzitti (Helix WD). **LAFCO Staff** – LAFCO Consultant, Harry Ehrlich; Executive Officer, Michael Ott and Local Governmental Analyst, Joe Serrano.

Item 1

Pledge of Allegiance

Greg Thomas led the Pledge of Allegiance at the meeting.

Item 2

Roll Call

The Advisory Committee Secretary performed the roll call for the December 18, 2015, Special Districts Advisory Committee meeting. With the exception of committee members Margarett Morgan, Tom Pocklington, Augie Scalzitti and Joel Scalzitti, all other committee members were present.

Item 3

Approval of Minutes of February 20, 2015

With Julie Nygaard abstaining, ON MOTION OF Judy Hanson, seconded by John Pastore, and carried unanimously by the remaining committee members present; the Advisory Committee dispensed with reading the minutes of February 20, 2015 and approved said minutes.

Item 4

Consultant's Recommended Agenda Revisions

Harry Ehrlich indicated that there were no revisions to the agenda.

Item 5

Public Comment

Chairwoman Thorner indicated there were no speaker slips received from members of the public for comments.

Item 6

SB 239 Overview

Harry Ehrlich provided a brief summary of Senate Bill 239 (SB 239) to the Advisory Committee. Mr. Ehrlich stated that the primary focus of this overview is to discuss issues and to receive input from the Advisory Committee. He indicated that LAFCO's objective would be to provide guidelines and polices related to this bill. Mr. Ehrlich said that Joe Serrano will provide a PowerPoint presentation.

Executive Officer Michael Ott introduced two new LAFCO staff members: Local Government Analyst, Joe Serrano and Administrative Aide, Erica Blom.

Joe Serrano, Local Government Analyst, provided a PowerPoint presentation to the Advisory Committee regarding Senate Bill 239 (SB 239) Overview and Implementation. Mr. Serrano indicated that the new law will be effective on January 1, 2016 that requires a fire protection contract between two or more public agencies under LAFCO's purview and that other public-to-public agreements are exempt.

Mr. Serrano said that the fire contract, or contract agreement, would be based on Government Code Section 56134(a) for new or extended services. He said that LAFCO purview is triggered when a contract involves more than 25% of a service area of any affected agency, or 25% changes the employment status of more than 25% of the employees of affected public agencies.

Mr. Serrano discussed the responsibilities of the applicant and LAFCO. He said that LAFCO staff has identified the issues related to SB 239. Mr. Serrano stated that the Advisory Committee's input is needed on some preliminary questions. Chairwoman Thorner asked if each LAFCO was required to implement their own guidelines. In response to the question, Joe Serrano said yes and San Diego LAFCO will be among the first of the LAFCO's to approve guidelines.

John Pastore asked if the fire community was involved with SB 239. In response to the question, Harry Ehrlich said the fire community had knowledge of the legislation.

Chairwoman Thorner indicated that the Advisory Committee must take action on the following questions related to SB 239:

1. What type of documentation should be required to determine whether the 25% threshold has been reached? (e.g. official service area maps maintained by the affected public agency, LAFCO, or other sources).

The Advisory Committee agreed that the applicant is required to show proof (i.e. map/GIS Shape file) if it meets the 25% threshold.

2. Should the 25% threshold be reached using a cumulative approach or by single contract considerations?

The members of the Advisory Committee agreed that the 25% threshold be reached using a single contract.

3. Should "new" service mean a service extended on or after the January 1, 2016?

The Advisory Committee agreed that "new" service will be begin on January 1, 2016.

4. Should "extended" services mean a service extended via a contract or agreement in existence on or before December 31, 2015?

The Advisory Committee agreed that "extended" services should not mean a service extended via a contract or agreement in existence on or before December 31, 2015.

5. Are there any minimum standards for what constitutes a contract or agreement (e.g. written versus unwritten documents)?

The Advisory Committee agreed that a contract or agreement should include written documents.

6. Should a resolution of approval/disapproval and/or minute item be adopted by LAFCO?

The Advisory Committee agreed that a resolution should be adopted by LAFCO.

7. Should fire contracts require LAFCO review if all public agencies agree to the proposed change in services?

The Advisory Committee believed "Ratification" should be the approach, as opposed to approval.

8. Does the term "affected agency" include the service provider and service recipient with respect to fire protection contracts?

The Advisory Committee agreed that the term "affected agency" should include the service provider and service recipient with respect to fire protection contracts.

9. Should the term "employment status" include factors such as terminations, layoffs, position reclassifications, benefit changes, etc.?

The Advisory Committee agreed that the term "employment status" should not include factors such as terminations, layoffs, position reclassifications, benefit changes, etc. Employment status should be departmental level, not employee level.

10. Should the term "employment status" be defined as a change in service providers only per the intent of the bill sponsors?

The Advisory Committee agreed that the term "employment status" should be defined as a change in service providers only per the intent of the bill sponsors.

11. What defines a change in service providers (e.g. certain specified impacts to annual budgets)?

The Advisory Committee agreed that a change in service providers would be a change in agency (one agency to another).

12. Should a 30-day request for reconsideration apply to fire protection contract applications, if approved by the Commission?

The Advisory Committee agreed that a 30-day request for reconsideration should be applied.

13. Should a termination proceeding be applied to disapproved fire protection contracts?

The Advisory Committee agreed that a termination proceeding should be applied.

14. Should a new fee schedule category be established for fire protection contracts or update the contractual service agreement fee classification to include fire protection contracts?

The Advisory Committee agreed that there should be a new fee schedule category.

Speaker slips were received from the following: Tim Isabell, Bonita Fire Department and Michael Davis, City of Carlsbad Fire Department.

Chairwoman Thorner and Michael Ott asked the public if they wished to provide any comments or questions.

Steve Abbott, CALFIRE, asked about third party public agencies as "affected agencies" in regards to question 8. In response to the question, Mr. Ott said that only the official signatories or the parties to the contract should be involved in the agreement.

Herman Reddick, San Diego County Fire Authority, asked if the County is required to have approval from LAFCO because their contracts cover more than 25% of the threshold. In response to the question, Mr. Ott said that it is not necessary to go through LAFCO because the contracts do not involve the provision of new services.

Tony Michel, Rancho Santa Fe Fire Department, asked if all contracts have to go through LAFCO. In response to the question, Mr. Ott said that putting in an early check-in process to determine applicability would be ideal.

Item 7

Legislative Report Update

Harry Ehrlich provided a legislative update to the Advisory Committee. He indicated that SB 88 was approved by the legislature and that this bill allows small water agencies to consolidate and gives the State Water Resources Control Board the authority to take action to order consolidations if the small water agencies have been placed on notice, are in violations of water quality or similar actions. Gary Arant commented that there are two water agencies in Tulare County that have consolidation orders.

Harry Ehrlich indicated that there are bills that have not been acted on by the legislature.

Item 8

Meeting Calendar for 2016

No action was required. This item was for informational purposes.

Item 9

Committee Member Announcements and Agency Activity Updates

The Advisory Committee provided updated information on their district's activities.

Mr. Ott indicated that the ballots for the special district elections are due at the end of February.

Gary Arant and Chairwoman Thorner thanked LAFCO staff for their hard work regarding the Fallbrook PUD and Rainbow MWD Reorganization.

Item 10

Adjournment

There being no further business to come before the Special Districts Advisory Committee, the meeting was adjourned at 10:50 a.m. to the scheduled meeting on January 15, 2016, if it is to be held.

**ERICA BLOM
ADMINISTRATIVE AIDE
SAN DIEGO LOCAL AGENCY FORMATION COMMISSION**

Chairman

Bill Horn
County Board of
Supervisors

May 20, 2016

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Special Districts Advisory Committee

FROM: Harry Ehrlich; LAFCO Special Districts Consultant

Members

Dianne Jacob
County Board of
Supervisors

RE: Selection of Committee Officers for the Special Districts
Advisory Committee for 2016

Andrew Vanderlaan
Public Member

The Special Districts Advisory Committee Rules (Rules) provide for selection of the Committee Officer positions of Chair and Vice-Chair at the December meeting, if held, or as soon as possible thereafter. In prior years, the Committee has selected Officers after a member election but now those elections are held every other year.

Lorie Zapf
Councilmember
City of San Diego

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District


The Officers for 2015 were Chairwoman Kimberly Thorner and the Vice-Chair was Judy Hanson. Ms. Hanson is no longer a committee member. At the May 2016 meeting, nominations will be accepted from the Committee for the Officer positions and all members are qualified to be nominated.

Vacant
Special District

Respectfully Submitted,

Alternate Members

Greg Cox
County Board of
Supervisors



HARRY EHRLICH, SDA
Local Government Consultant

Chris Cate
Councilmember
City of San Diego

HE:ra

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

Chairman

Bill Horn
County Board of
Supervisors

May 20, 2016

6

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Special Districts Advisory Committee

FROM: Local Governmental Consultant
Local Government Analyst

Members

Dianne Jacob
County Board of
Supervisors

SUBJECT: Draft Fire Protection Contract Policy

Andrew Vanderlaan
Public Member

Lorie Zapf
Councilmember
City of San Diego

As you are aware, the enactment of Senate Bill No. 239 (Hertzberg) changed the way certain fire contracts are executed and further placed additional responsibilities on local and state agencies, including LAFCOs, when considering new or extended fire protection services outside a public agency's boundary. Over the past several months, LAFCO staff collaborated with the Special Districts Advisory Committee, the San Diego County's Fire Chief's Association and other governmental entities to develop guidelines for implementation of the new law. The guidelines were reviewed by the Advisory Committee and approved by the Commission earlier this year. The adopted guidelines: (1) summarized the new statutory requirements, (2) comprehensively identified and resolved the ambiguous provisions in SB 239, and (3) established concurrence between LAFCO and the fire community regarding implementation. A copy of the February 2016 staff report and adopted guidelines are attached to this report.

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

Vacant
Special District

While the guidelines address the potential conflicts associated with the review and approval of fire protection contracts, there is a need for policy guidance to further define LAFCO's role with the new law. The draft policy will be accordingly considered by the Commission during the June 6th LAFCO Meeting. A copy of the draft policy is attached for committee review and comment. Comments regarding the proposed policy would be greatly appreciated and will be transmitted to the Commission.

Alternate Members

Greg Cox
County Board of
Supervisors

RECOMMENDATION:

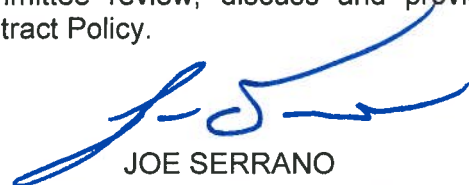
Chris Cate
Councilmember
City of San Diego

That the Special Districts Advisory Committee review, discuss and provide comments on the Draft Fire Protection Contract Policy.

Racquel Vasquez
Councilmember
City of Lemon Grove



HARRY EHRLICH
Local Governmental Consultant



JOE SERRANO
Local Government Analyst

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

HE:JS:ra

Michael D. Ott

Legal Counsel

- Attachments
- 1) February 1, 2016 Staff Report
 - 2) Fire Protection Contract Guidelines – Final Version
 - 3) Fire Protection Contract Policy – Draft Version

Michael G. Colantuono

Chairman

Bill Horn
County Board of
Supervisors

February 1, 2016

6

Attachment 1

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Local Agency Formation Commission

FROM: Executive Officer
Local Governmental Analyst

Members

Dianne Jacob
County Board of
Supervisors

SUBJECT: Draft Guidelines Addressing the Review and Approval of Fire
Protection Contracts

Andrew Vanderlaan
Public Member

EXECUTIVE SUMMARY

Lorie Zapf
Councilmember
City of San Diego

Enactment of Senate Bill No. 239 (SB 239) amended state law and now requires public agencies, under specified circumstances, to receive written approval from the Local Agency Formation Commission (LAFCO) before exercising new or extended fire protection services outside the agencies' jurisdictional boundaries. The new law went into effect on January 1, 2016 and places added responsibilities on both local and state agencies prior to the submittal of fire protection contract applications to LAFCO.

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

A copy of the signed bill by Governor Brown is included in this report as **Attachment 1**. There are many uncertainties with respect to implementation of SB 239. This report identifies outstanding issues requiring further Commission discussion and direction prior to development of a consistent approach for review of fire protection contract applications.

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

In addition to the notification of today's hearing, LAFCO staff has taken a proactive role to increase awareness of the new law by presenting SB 239 to the Commission's Special Districts Advisory Committee and the San Diego County Fire Chief's Association. Not only did these meetings provide a forum to address the new law's legislative intent but they also assisted in the development of a proposed process for the review of future fire protection contracts. As a result, local agency representatives provided substantial input that was included in staff's final draft documents attached to this report.

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 directs each LAFCO to review and take action on city or district contract or agreements which extend services outside jurisdictional boundaries. For example, the Commission may authorize a city or district to provide new or extended services outside jurisdictional boundaries to respond to an existing or impending threat to the public health or safety of the residents of the affected territory. Prior to 2016, state law exempted many contracts from LAFCO purview. For example, contracts between two or more public agencies were generally exempt from LAFCO review. This exemption has since been repealed with respect to fire protection contracts.

Following the enactment of SB 239 and establishment of Government Code Section 56134, state law now defines a fire protection contract as: an agreement for the exercise of new or extended fire protection services outside a public agency's boundary that either (1) affects services in more than twenty-five percent of the area within the jurisdictional boundaries of any public agency, or (2) if the employment status of more than twenty-five percent of any public agency is affected by the contract. The San Diego LAFCO opposed this and other provisions in SB 239 because such provisions could potentially have a dampening impact on cost-effective methods of service delivery. SB 239 was nonetheless enacted, and it is now necessary for the San Diego LAFCO to adopt guidelines to ensure that this new law is implemented in a rational manner.

DISCUSSION

The new law requires applicants and LAFCOs to consider various determinations when considering the transfer of fire protection responsibilities including in-depth costs analyses, plans for service, enhanced public notification and additional hearing dates. To illustrate the required steps outlined in SB 239, staff has developed a flowchart similar to other change of organization diagrams available on the San Diego LAFCO's website (see ***Attachment 2***).

While these requirements allow for additional transparency regarding specific fire protection agreements, certain steps outlined in the new law require further clarification before they can be implemented. This led to a meeting between representatives of the California Association of Local Agency Formation Commissions (CALAFCO), the California Fire Chief's Association (bill sponsor), and union representatives from CalFIRE Local 2881 to discuss the legislative intent and address any concerns with respect to how SB 239 should be interpreted. The following is a summary of the SB 239's intent according to the bill's sponsor. Also included in this summary are specific recommendations from LAFCO staff regarding clarification and concurrence needed from the Commission.

Threshold Requirement: Public agencies that provide fire protection must now comply with new requirements when extending services by contract or agreement outside of their jurisdictional boundaries whenever the SB 239 service area or employment status thresholds are reached. SB 239 does not contain verification standards for these thresholds.

- **LAFCO Staff Recommendation:** The bill sponsor indicated that each LAFCO in California may determine what the required proof would be in verifying whether a fire protection contract demands LAFCO review. For example, service maps demonstrating the change of twenty-five percent of the service area or employment statistics that would provide proof of the twenty-five percent of change in employment status could be sufficient documentation for verification. Staff is recommending that several documents be provided as part of the application, including: (1) a copy of the proposed contract, (2) a map and/or Geographic Information System shapefiles recognized by the San Diego LAFCO to determine if the contract affects twenty-five percent of the service area, and (3) budgetary documents which include current employment statistics to determine if the contract affects twenty-five percent of the area's employment status.

Employment Status Undefined: SB 239 applies to an extension of a fire protection contract if either the service area or employment status threshold conditions are triggered. The term "employment status" found in Section 56134(a)(1)(B) is not defined and may lead to different interpretations from affected public agencies, fire unions, and LAFCOs.

- **LAFCO Staff Recommendation:** The bill sponsor indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of the employment status determination, but rather the change in service providers as it applies to an entire department. Staff has proposed a definition for employment status which is provided on page 5 of this report. This definition focuses on departmental level and service provider changes rather than individual employee level changes.

Single vs. Cumulative Contracts: Currently, Section 56134(a)(2) states in part, if a contract or agreement that, in combination with other contracts or agreements, triggers the twenty-five percent change in service area or employment status, it shall be subject to the definition of a fire protection contract pursuant to this section, and as such will not be exempt from the SB 239 process.

- **LAFCO Staff Recommendation:** The sponsor indicated that it was their intent to review single contracts rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the twenty-five percent threshold. It was not the intent by the sponsor to trigger each twenty-five threshold by a cumulative approach. Staff is proposing to review and consider proposed fire protection contracts on a case-by-case basis as encouraged by the bill sponsor to clarify this situation.

Contract Exemptions: SB 239 excludes from its requirements mutual aid agreements, including those entered into under the California Emergency Services Act (Gov. Code § 8550 et seq.), or Fire Protection District Law of 1987 (Health & Safety Code § 13800 et seq.). SB 239 is also not intended to change or affect existing LAFCO jurisdiction over proceedings that involve the provision of pre-hospital emergency medical services. No other agreements are exempt from the SB 239 process.

- **LAFCO Staff Recommendation:** The bill sponsor made it clear that several types of fire contracts should not be subject to the new law. These include: renewal of existing contracts (unless renewal includes amendments that trigger the twenty-five percent threshold), ambulance service agreements, and mutual or automatic aid agreements. Additionally, if a current contract expires and an agency no longer wants to contract and assumes providing the service, the bill does not apply, as there is no contract to review and approve. Staff recommends excluding these fire agreements from LAFCO purview as intended by the bill sponsor. In addition, the amendment or renewal of contracts generally does not represent the exercise of “new or extended” service per the meaning of these terms in SB 239. Therefore, contract amendments or renewals will not generally be subject to LAFCO purview.

Collaborative Effort

The meeting with the bill sponsor provided much needed clarification on several areas of the bill. In addition to the newly introduced information, LAFCO staff crafted a preliminary analysis (see **Attachment 3**) of the bill and distributed the document to all fire agencies in order to inform the public agencies at the local and state level of the new law as well as highlight all the outstanding issues within SB 239. To address these issues and develop some type of comprehensive policy, staff also held meetings with LAFCO’s Special Districts Advisory Committee (Committee) and the San Diego County Fire Chief’s Association to discuss SB 239 and provide an opportunity for public agencies to evaluate the new law in an open forum.

The first meeting was held on December 18, 2015 with the Special Districts Advisory Committee. The Committee reviewed the preliminary report and provided direction on several uncertainties within the new statute including term definitions, required documentation, and application procedures. The second meeting was held on January 7, 2016 with the San Diego County Fire Chief’s Association. The Association invited LAFCO to present an overview of the new law. Several members raised concerns on the lack of term definitions used throughout the statute as well as questioning whether agreements between local entities such as Joint Powers Authorities or Indian tribes were subject to LAFCO purview. Such inquiries were subsequently addressed in the draft guidelines. The benefits of both meetings were two-fold: (1) it allowed LAFCO staff to introduce SB 239 to public agencies unfamiliar with the new law and (2) the public agencies were instrumental in identifying several gaps in the law which ultimately assisted in the development of the proposed policy guidelines.

Proposed Fire Protection Contract Policy Guidelines

Based on staff's review and the input from our outreach with affected agencies, staff believes the following areas require clarification and are addressed in the proposed guidelines.

Definition of Various Terms

During our meetings with local agencies, a reoccurring concern was the lack of clear definitions. The primary terms in question and in need of clarification were "new and extended services," "employment status," and "fire protection." Staff is proposing these terms be defined as follows:

New and Extended Services

"New service" should be defined independently from extended services and address the governmental functions that were not previously provided by a public agency on or after January 1, 2016. "Extended service" should be defined as a governmental function that goes above and beyond what a public agency currently provides.

Employment Status

The term "employment status" found in Section 56134(a)(1)(B) was not defined; it was the intent of the sponsor that this term means a change in service provider. Furthermore, the bill sponsor indicated that the intent was also not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department. While their explanation added supplemental information, the term "employment status" needs a clearer definition before moving forward. The term should, therefore, be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees.

Fire Protection

The term "fire protection" is not defined in the statute. The Merriam-Webster dictionary defines fire protection as the "measures and practices for preventing or reducing injury and loss of life or property by fire." However, there are several divisions and administrative services that fall under the fire protection umbrella. For example, the Fire Protection District Law of 1987 defines the general powers and duties of a fire district to include fire protection, rescue, emergency medical, hazardous material emergency response, ambulance and any other services relating to the protection of lives and property. To clarify the definition, staff is proposing that fire protection be defined the same as in the Fire Protection District Law of 1987. All other subordinate services related to this definition (e.g. administration, management, operations, etc.) should be included within the primary function/definition of fire protection and should be exempt from SB 239 unless otherwise directed by the Commission.

Application Procedure

The new law outlines explicit obligations and tasks for both public agencies and LAFCOs when the transfer of fire services is considered. The complete process is outlined in the draft guidelines. In addition, it should be recommended that local and state agencies interested in providing new or extended fire services contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. The draft guidelines identify the benefits of a pre-application discussion between applicants and LAFCO and outline the necessary steps when proposed contracts require LAFCO review or are deemed exempt. Currently, SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. In the event that all affected agencies consent to the proposed change in services, it is recommended that the Commission delegate the approval process to the Executive Officer as a streamlined approach. Also recommended is the filing of a Certificate of Exemption (see ***Attachment 4***) if a proposed contract is determined to be exempt from LAFCO purview by the Executive Officer. Any administratively-approved or exempted fire contract would still be scheduled as an informational item at the next available LAFCO hearing be subject to ratification, as necessary.

Commission Hearing Proceedings

The Commission has the discretion to approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. While the new law covers in detail how the Commission cannot approve a proposed fire protection contract unless specific actions are taken, there is a lack of direction in the event if a contract is disapproved or approved with conditions. The draft guidelines provide additional information on the request for reconsideration and termination proceedings if applicable.

Legislative Intent

Following Governor Brown's approval of SB 239 in October 2015, representatives of the CALAFCO met with stakeholders and Sponsors of the bill to discuss the legislative intent. The draft guidelines provide a summary of the meeting between CALAFCO and stakeholders which may be adopted by the Commission as part of the implementation process.

CONCLUSION

Prior to the enactment of SB 239, the Cortese-Knox-Hertzberg Act did not require LAFCO review for most fire protection contracts between two or more public agencies. While the Act recognizes that interagency contracting is often an efficient and cost-saving manner in which to provide local public services, the enactment of SB 239 makes this harder to achieve. SB 239 has accordingly imposed new requirements for Commission approval of fire service contract extensions. To clarify some definitions and procedural aspects of the new law, staff is recommending the adoption of the attached policy guidelines.

RECOMMENDED: That your Commission,

1. Review and approve the attached Policy Guidelines for Fire Protection Contracts (Attachment 5); and
2. Direct the Executive Officer to implement the Guidelines as part of future consideration of fire protection contracts.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



JOE A. SERRANO
Local Governmental Analyst

MDO:JS:trl

Attachments

1. SB 239 Legislative Language
2. SB 239 Flowchart
3. SB 239 Preliminary Analysis Report
4. Certificate of Exemption
5. Fire Protection Contract Policy Guidelines

**SD ADVISORY
COMMITTEE MEETING**

May 20, 2016

ITEM 6

**DRAFT FIRE
PROTECTION POLICY**

ATTACHMENT 1

SB 239 Attachments 1-5

**(The attachments are available on SD
LAFCO's website: www.sdlafco.org)**

SAN DIEGO LAFCO FIRE PROTECTION CONTRACT GUIDELINES

I. PURPOSE

To provide guidance to the San Diego Local Agency Formation Commission (LAFCO) in conducting fire protection contract reviews.

II. BACKGROUND

Senate Bill No. 239 (SB 239) was signed into law requiring public agencies, under specified circumstances, to receive written approval from the LAFCO in the affected counties before providing new or extended fire protection services outside the agencies' jurisdictional boundaries. The law does not apply to mutual aid agreements, pre-hospital emergency medical services, or existing agreements executed prior to January 1, 2016, unless contractual amendments in 2016 causing either of the 25% thresholds referenced below are reached. SB 239 amended Government Code Sections 56017.2, 56133, and added 56134.

III. OBJECTIVE

Government Code Section 56134 requires LAFCO review and approval for each new fire protection contract. Section 56134 defines a "fire protection contract" as a contract or agreement for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries that does either of the following:

- Transfer responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or
- Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

An extension of a fire protection contract entered into on or before December 31, 2015 that would produce either of the 25% thresholds above is deemed to be a fire protection contract per SB 239. A proposed contract or agreement for fire protection services in combination with other contracts or agreements, which results in either of the two threshold criteria, is deemed a fire protection contract and is subject to LAFCO purview. However, the sponsor of SB 239 has indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the 25% thresholds. As a result, San Diego LAFCO will review and consider proposed fire contracts on a case-by-case basis.

In addition, the amendment or renewal of contracts does not necessarily represent the exercise of “new or extended” services per the meaning of these terms in SB 239. Most contract amendments or renewals represent transfer of existing service responsibilities from one agency to another and not the exercise of “new or extended” services. Therefore, contract amendments and renewals will generally be exempt from LAFCO purview.

IV. DEFINITIONS

The definition of the following terms will assist in the implementation of Government Code Section 56134:

- **Affected public agency** – shall mean any public agency that contains, or would contain, or whose sphere of influence contains or would contain any territory for which an extension of fire service is to be reviewed by the commission. SB 239 contains no sphere consistency requirements with respect to fire protection contracts.
- **Contract or agreement** – shall mean a written contract, agreement or other legal instrument, specifying how service will be extended, provided, or delivered to an affected public agency.
- **Employment status** – shall be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees. Note: the bill sponsors indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department.
- **Extended services** – services that go above and beyond a class of or special governmental activity established within and as a part of a single public agency general function currently provided.
- **Fire protection** – shall be defined as the governmental activities related to fire protection and may include rescue, emergency medical, hazardous material emergency response, ambulance and any other service(s) consistent with the Fire Protection District Law of 1987 related to the protection of lives and property. Some fire protection activities (e.g. administration, management, operations, etc.) are considered subordinate or subsidiary subcomponents to fire protection and include, but are not limited to the following:
 - Ambulance services
 - Prehospital emergency medical services
 - Mutual or automatic aid agreements
 - Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)

- Plan review/Ministerial Permit review (usually building permits)
 - New construction fire inspections
 - Fire investigations
 - Fire sprinkler system plan review and inspections
 - Fire alarm system plan review and inspections
 - Defensible space inspections and enforcement
 - Business/occupancy inspections in existing structures
 - Vehicle maintenance and repair
 - Sharing of management or other personnel between or among multiple agencies
 - Sharing or loaning of equipment or property between or among multiple agencies
- **New services** – a class of or special governmental activity established within and as a part of a single public agency general function as provided on or after January 1, 2016. It should be pointed out that a special district would be precluded from providing a “new service” unless it has received LAFCO authorization for activation of latent powers.
 - **Public Agency** – shall be defined in compliance with Government Code Section 56070. The statutory definition of public agency means “the state or any state agency, board, or commission, any city, county, city and county, special district, or any agency, board, or commission of the city, county, city and county, special district, joint powers authority, or other political subdivision.” The definition of public agency does not include Indian tribes, private or mutual water companies.
 - **Written approval of the Commission** – shall mean the adoption of a resolution or other similar document of the Commission and signed by the Executive Officer approving the service agreement/contract at a noticed public hearing.

V. PRE-APPLICATION PROCESS

Public agencies interested in providing new or extended fire services should contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. A pre-application discussion is recommended to address any possible issues associated with the expansion of fire protection services.

If the proposed contract is determined to be exempt from LAFCO purview, a Certificate of Exemption will be filed. The Executive Officer's determination of exemption is appealable to the Commission within 30 days of the issuance of the determination. Such appeal must be filed in writing with the Executive Officer and must include specific substantiation for the appeal, directly related to fire protection and SB 239 requirements. The appeal shall be heard at the next available Commission meeting that permits adequate public notification.

SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. Therefore, in the event that all affected agencies are in agreement to the proposed change in services, the surcharge for the consideration of a fire protection contract will be waived for the applicant and a streamlined administrative approval process will be followed. For more information on the processing fee regarding fire protection contracts, please review the ***“Processing Fee Schedule”*** section of this policy.

VI. EXEMPTIONS

The bill sponsor, the California Professional Firefighters, indicated that some fire protection agreements were not intended to be subject to the new law. The San Diego LAFCO accordingly considers the following contracts and agreements exempt from LAFCO purview per these guidelines and/or requirements of SB 239:

- Renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the 25% change in service area or employment status
- Ambulance service agreements
- Prehospital emergency medical services
- Mutual or automatic aid agreements
- Subordinate or subsidiary fire protection activities including, but not limited to the following:
 - Ambulance services
 - Prehospital emergency medical services
 - Mutual or automatic aid agreements
 - Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)
 - Plan review/Ministerial Permit review (usually building permits)
 - New construction fire inspections
 - Fire investigations
 - Fire sprinkler system plan review and inspections
 - Fire alarm system plan review and inspections
 - Defensible space inspections and enforcement
 - Business/occupancy inspections in existing structures
 - Vehicle maintenance and repair
 - Sharing of management or other personnel between or among multiple agencies
 - Sharing or loaning of equipment or property between or among multiple agencies

VII. INITIATION CRITERIA

Public agencies interested in providing new or extended fire services must complete the following steps prior to adopting an initiating resolution:

- Obtain and submit a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed fire protection contract with their adopted resolution; or
- Provide, at least 30 days prior to the hearing in regards to the initiating resolution, a written notice to each affected public agency and recognized employee organization that represents firefighters of the existing proposed service providers of the proposed fire protection contract and submit a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract; and
- In addition to completing one of the above steps, public agencies must also conduct an open and public hearing on the resolution pursuant to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable.

If a resolution is adopted, the clerk of the public agency or the director of the state agency adopting the resolution of application shall file a certified copy with the LAFCO Executive Officer. A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

- **Non-State Agency:** In the case of a public agency that is not a state agency; the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current service area.
- **State Agency:** In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current service area and be approved by the Director of Finance.
- **Local Agency Under Contract:** In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local agency and be approved by the Director of Finance.

VIII. PLAN FOR SERVICE

An application cannot be submitted to LAFCO unless the legislative body of a public agency or the director of a state agency completes a plan for service and independent comprehensive fiscal analysis as part of the application. The plan for service must address the following items:

1. The total estimated cost to provide the new or extended fire protection services in the affected territory;
2. The total estimated cost of the new or extended fire protection services to customers in the affected territory;
3. An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers;
4. A plan for financing the exercise of the new or extended fire protection services in the affected territory;
5. Alternatives for the exercise of the new or extended fire protection services in the affected territory;
6. An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory;
7. The level and range of new or extended fire protection services;
8. An indication of when the new or extended fire protection services can feasibly be extended to the affected territory;
9. An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed; and
10. A determination supported by documentation, that the proposed fire protection contract meets either 25% threshold. The documentation must include a copy of the proposed contract. In addition, if the contract affects 25% of the service area, a map and/or Geographic Information System (GIS) shapefiles recognized by the San Diego LAFCO must be provided in order for data verification by LAFCO. If the contract affects 25% of the employment status, budgetary documents disclosing employment statistics must be provided to LAFCO.

IX. INDEPENDENT COMPREHENSIVE FISCAL ANALYSIS

The applicant is required to prepare by contract an independent comprehensive fiscal analysis, in conjunction with the plan for service, to be submitted with the application. The analysis shall review and document all of the following:

1. A thorough review of the plan for services submitted by the public agency;
2. How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services; and
3. Any other information and analysis needed to support the findings required by the Commission's determinations.

X. LAFCO REVIEW

Once a public agency submits an application with an adopted initiating resolution, completed plan for service and finalized independent comprehensive fiscal analysis, the Executive Officer has within 30 days of receipt to determine whether the request is complete and acceptable for filing. The Executive Officer will notify the applicant if the application is incomplete and the manner in which the application can be rectified to move forward. When the applicant fulfills all requirements, the Executive Officer shall place the request on the agenda of the next commission meeting but not more than 90 days from the date that the application is deemed complete.

XI. COMMISSION HEARING

Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date.

The Commission may approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. If the contract is denied or approved with conditions, the applicant may request reconsideration by citing the reasons for reevaluation. The new law also states that the Commission cannot approve a proposed fire protection contract unless the Commission determines, based on the entire record, all of the following:

- A. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area. The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to

provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

- B. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- C. The Commission has reviewed the comprehensive fiscal analysis.
- D. The Commission has reviewed any testimony presented at the public hearing.
- E. The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

Contract Approved

If the Commission determines all the requirements under Government Code Section 56134 have been met, the Commission will adopt a resolution of approval or other associated document. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Approved with Conditions

If the Commission approves the contract with conditions, the Commission will adopt a resolution of approval or other document with the conditions listed. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Disapproval

If the Commission or Executive Officer disapproves the contract, the applicant may request for reconsideration by citing the reasons for reevaluation. If the reconsideration does not change the initial decision, the Commission will adopt a resolution of disapproval.

XII. REQUEST FOR RECONSIDERATION

SB 239 specifies that an applicant may submit a request for reconsideration if the commission denies the contract or approves with conditions. Under LAFCO statute, any person or affected agency may file a written request with the Executive Officer requesting amendments to or reconsideration of a resolution adopted by the commission within 30 days of the adoption date pursuant to Government Code

Section 56895. The new law discusses the opportunity to request for reconsideration but there is no reference of any deadline to submit a request. For continuity, the Commission will establish a 30-day request for reconsideration period tolled from when fire protection contract(s) are considered by the Commission.

XIII. TERMINATION PROCEEDINGS

Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. The new law discusses the requirements to execute a fire protection contract but there is no reference of any termination proceedings. For continuity, the Commission will establish termination proceedings mirroring the procedures outlined in GCS 57090.

XIV. PROCESSING FEE SCHEDULE

The Commission currently has in place a fee schedule for contractual service agreements based on acreage. Fire protection contracts will be included as part of the established fee schedule structure. In addition to the standard processing fee, there will be a 30% non-refundable surcharge for consideration of fire protection contracts. The surcharge will not apply to fire protection contract when all affected public agencies agree to the proposed change in service.

XV. CLARIFYING INFORMATION FROM BILL SPONSORS

Following Governor Brown's approval of SB 239 in October 2015, representatives of the California Association of Local Agency Formation Commissions (CALAFCO) met with stakeholders and Sponsors of the bill to discuss the legislative intent. The following is a summary of the meeting between CALAFCO and stakeholders. The Commission will accordingly consider the following when implementing SB 239.

What the bill is intended to do according to the sponsor:

- Require the applicant to provide LAFCO, as part of the application, whether the 25% service area or employment status trigger is occurring.
- It is up to each LAFCO in California may determine what the required proof would be (for example, service maps demonstrating the change of +25% of the service area, or employment statistics that would provide proof of the +25% of change in employment status). Each LAFCO is encouraged to create local policies on what they would require as the proper documentation.
- While the term "employment status" found in 56134(a)(1)(B) is not defined, it is the intent of the sponsor that this means a change in service providers (department as employer). While a change in wages/benefits/hours worked/working conditions may be viewed by some

as a change in "employment status, but, it was, according to the sponsor, not the original intent of the sponsors.

- The change in employment status of the employees of any public agency affected by the contract or agreement is intended to apply to the entire department.
- Section 56134(a)(2) states in part, that if a contract or agreement that, in combination with other contracts or agreements, triggers the +25% change in service area or employment status, it shall be subject to the definition of a fire protection contract pursuant to this section, and as such will not be exempt from this process. The sponsor indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the +25%. Each LAFCO is encouraged to consider a local policy to clarify the situation.

What the bill is not intended to do according to the sponsor:

- The bill is not intended to apply to the renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the +25% change in service area or employment status.
- The bill is not intended to apply to mutual or automatic aid agreements.
- The bill is not included to apply to ambulance service agreements.
- If a current contract expires and an agency no longer wants to contract for services and will take over providing the services themselves, the bill does not apply, as there is no contract to review and approve.

Adopted: February 1, 2016

Subject:

REVIEW AND APPROVAL OF FIRE PROTECTION CONTRACTS AND AGREEMENTS

Purpose

To provide guidance to the San Diego Local Agency Formation Commission (LAFCO) in reviewing fire protection contracts or agreements for the exercise of new or extended fire protection services outside a public agency's boundaries per Government Code Section 56134.

Background

Senate Bill No. 239 (Hertzberg) was approved in 2015 and became effective on January 1, 2016. SB 239 amended Government Code Sections 56017.2 and 56133, and added Section 56134. Per SB 239, public agencies, under specified circumstances, must receive written approval from the LAFCO in an affected county before providing new or extended fire protection services outside the agencies' jurisdictional boundaries, if the contract results in either of the following conditions: (1) transfers responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or (2) changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

The new law places added responsibilities on local and state agencies, plus LAFCO. Since there are many uncertainties with respect to implementation of SB 239, the San Diego LAFCO adopted implementation guidelines on February 1, 2016. The adopted guidelines have been incorporated by reference into Legislative Policy L-110 and together, these two documents (guidelines and policy), will assist the Commission in following a consistent approach for the review and approval of fire protection contract applications.

Policy

It is the policy of the San Diego LAFCO to use a multi-step process for the review of fire protection contracts and agreements. The process begins with pre-application consultation; application review; commission consideration; and commission action. This process will be guided by the following provisions:

1. *Pre-Application Review and Discussion:* Prior to submission of a proposal requesting LAFCO consideration, the Commission encourages public agencies and service recipients to participate in a pre-application discussion with LAFCO staff. As part of the pre-application discussion, the Executive Officer shall determine whether the proposed fire protection contract or agreement is subject to or exempt from LAFCO purview. A Certificate of Exemption shall be issued by the Executive Officer, if the contract or agreement is exempt from LAFCO purview. The San Diego LAFCO and/or Executive Officer will consider the following contracts and agreements exempt from LAFCO purview per its adopted guidelines:

- a. Renewal of existing contracts, unless the renewal included amendments

or the inclusion of new territory that triggered the 25% change in service area or employment status.

b. Ambulance service agreements.

c. Pre-hospital emergency medical services.

d. Mutual or automatic aid agreements.

e. Subordinate or subsidiary fire protection activities including, but not limited to the following: ambulance services; pre-hospital emergency medical services; mutual or automatic aid agreements; major/minor subdivision review, major Use Permit review, administrative permit review (all of which are discretionary permits); plan review/ministerial permit review (usually building permits); new construction fire inspections; fire investigations; fire sprinkler system plan review and inspections; fire alarm system plan review and inspections; defensible space inspections and enforcement; business/occupancy inspections in existing structures; vehicle maintenance and repair; sharing of management or other personnel between or among multiple agencies; sharing or loaning of equipment or property between or among multiple agencies.

2. *Application Review:* The Executive Officer shall within 30 days of receipt of a fire contract or agreement determine whether the associated contract application is complete and acceptable for filing. The Executive Officer shall notify the applicant if the application is incomplete and the manner in which the application can be rectified if determined to be incomplete.

a. Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice.

b. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date.

3. *Commission Consideration:* The Commission shall not approve a proposed fire protection contract unless it determines, based on the entire record, all of the following:

a. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area. The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

- b. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- c. The Commission has reviewed the plan for service.
- d. The Commission has reviewed the comprehensive fiscal analysis.
- e. The Commission has reviewed any testimony presented at the public hearing.
- f. The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

4. *Commission Action:* The Commission may approve, approve with condition(s), or disapprove, the contract for new or extended services upon closure of the associated LAFCO hearing and/or administrative proceeding.

a. *Approval* - If the Commission determines all the requirements under Government Code Section 56134 have been met, the Commission shall adopt a resolution of approval or other associated document. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract shall be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

b. *Approval with Conditions* - If the Commission or Executive Officer approves the contract or agreement with conditions, the Commission shall adopt a resolution of approval or other document with the conditions listed. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and will be subject to ratification, as necessary.

c. *Disapproval* - If the Commission or Executive Officer disapproves the contract or agreement, termination proceedings mirroring the procedures outlined in Government Code Section 57090 shall be followed. Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. This waiting period may be waived by the Commission if public health, safety, or welfare issues are present.

d. *Reconsideration:* The Commission establishes a 30-day request for reconsideration period tolled from when a fire protection contract is

considered by the Commission or Executive Officer. The request for Attachment reconsideration must be in writing and shall be subject to LAFCO's reconsideration rules and payment of associated processing fees.

Adopted: XXXXX, 2016

Chairman

Bill Horn
County Board of
Supervisors

May 20, 2016

7

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Special Districts Advisory Committee

Members

Dianne Jacob
County Board of
Supervisors

FROM: Local Governmental Analyst III
Local Government Consultant

Andrew Vanderlaan
Public Member

SUBJECT: San Diego LAFCO Administrative Policy A-104 (California Public Records Act Requests) and Enterprise Systems Catalog (SB 272)

Lorie Zapf
Councilmember
City of San Diego

Lorraine Wood
Councilmember
City of Carlsbad

The California Public Records Act (Government Code Section 6250, et seq.) requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. The California Public Records Act provides statutory direction regarding the types of public records available for inspection and subject to disclosure; the timelines for compliance with records requests; and the types of public records that are exempt from disclosure by express provisions of law.

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

Vacant
Special District

On May 2, 2016, the San Diego Local Agency Formation Commission (LAFCO) received and approved Administrative Policy A-104 (California Public Records Act Requests), which has been developed to provide clarity and direction for procedural compliance with public records requests per provisions in State Law. A LAFCO *Public Records Request Form* has been developed and is available for public download from the LAFCO internet website. A copy of the form is attached for the Committee's reference.

Alternate Members

Greg Cox
County Board of
Supervisors

In addition, Senate Bill 272 (SB 272) added a section to the California Public Records Act requiring local agencies to create a catalog of *Enterprise Systems* and to post the catalog to the agency's internet website by July 1, 2016, with annual updates (Government Code Section 6270.5). At the May 2, 2016 meeting, the Commission reviewed and accepted the Enterprise Systems catalog.

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

The Commission's adoption of Administrative Policy A-104 establishes guidelines to help to ensure public access to all LAFCO records subject to disclosure per the California Public Records Act. Policy A-104 will also provide direction for LAFCO compliance with all requirements regarding public records requests. The Commission's acceptance of the Enterprise Systems catalog will enable LAFCO compliance with the statute's mandated

Legal Counsel

Michael G. Colantuono

deadline. Therefore it is **RECOMMENDED**: That the Special Districts Advisory Committee:

1. Review and discuss the Administrative Policy A-104; and,
2. Review and discuss SB 272 and the Enterprise Systems Catalog.

Respectfully submitted,



HARRY EHRLICH
Local Government Consultant



ROBERT BARRY, AICP
Local Governmental Analyst III

MDO:RB:ra

- Attachments
- 1) May 2, 2016 staff report (Public Records Act)
 - 2) Administrative Policy A-104
 - 3) LAFCO Public Records Request Form
 - 4) May 2, 2016 staff report (SB 272)
 - 5) SDLAFCO.org Enterprise Systems Catalog webpage
 - 6) SDLAFCO.org Enterprise Systems Catalog (2016)



Chairman

Bill Horn
County Board of
Supervisors

May 2, 2016

7

Vice Chairman

Sam Abed
Mayor
City of Escondido

Attachments 1 - 3

Members

Dianne Jacob
County Board of
Supervisors

TO: Local Agency Formation Commission

FROM: Executive Officer
Local Governmental Analyst III

Andrew Vanderlaan
Public Member

SUBJECT: Administrative Policy A-104 (California Public Records Act Requests)

Lorie Zapf
Councilmember
City of San Diego

The San Diego Local Agency Formation Commission (LAFCO) has adopted Administrative and Legislative Policies to implement the Cortese-Knox-Hertzberg Act of 2000 consistent with State legislative findings and declarations regarding orderly growth and development. The policies assist the Commission in making balanced decisions while providing government officials and the public with an enhanced understanding of the factors considered in LAFCO deliberations.

Lorraine Wood
Councilmember
City of Carlsbad

San Diego LAFCO has responsively complied with requests by members of the public for LAFCO public records on a case-by-case basis in accordance with the requirements of the California Public Records Act (Government Code Section 6250, et seq.). The California Public Records Act provides statutory direction regarding the types of public records available for inspection and subject to disclosure; the timelines for compliance with records requests; and the types of public records that are exempt from disclosure by express provisions of law.

Jo MacKenzie
Vista Irrigation District

Administrative Policy A-104 (California Public Records Act Requests) has been developed to provide clarity and direction for procedural compliance with public records requests per provisions in State Law. Administrative Policy A-104 states that non-exempt LAFCO records are available for public inspection during regular LAFCO office hours (Monday-Friday, 8 a.m. to 5 p.m., except holidays).

Ed Sprague
Olivenhain Municipal
Water District

When copies of LAFCO records are requested, Policy A-104 provides that records not exempt from disclosure will be made promptly available upon payment of fees covering direct LAFCO costs of duplication, including the cost of programming and computer services if produced in an electronic format.

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

Within 10 days of receiving a request for records, the LAFCO Executive Officer will determine whether the request, in whole or in part, seeks copies of non-exempt LAFCO records, and will promptly notify the requestor of a determination and the reasons thereof.

In *unusual circumstances*, it may be necessary to request a 14-day extension to provide a determination; however, the Public Records Act states that *unusual circumstances* means the following, but only to the extent reasonably necessary to the proper processing of the particular request [*Government Code Section 6253(c)*]:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

If a requested non-exempt LAFCO public record is in an electronic format, LAFCO will make that information available in an electronic format upon payment of the direct cost of producing a copy of the record in an electronic format, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies [*Government Code Section 6253.9*]:

- (1) The electronic record is produced only at otherwise regularly scheduled intervals.
- (2) The request would require data compilation, extraction, or programming to produce the record.

Administrative Policy A-104 also provides direction for assisting members of the public in making a focused and effective public records request that reasonably describes an identifiable record or records [*Government Code Section 6253.1*]. Accordingly, LAFCO staff will:

- (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (2) Describe the information technology and physical location in which the records exist.
- (3) Provide suggestions for overcoming any practical basis for denying access to non-exempt records or the information sought.

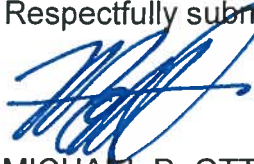
A LAFCO *Public Records Request Form* has been developed and will be available for public download from the LAFCO internet website. A copy of the form is attached for the Commission's reference.

In conclusion, adoption of Administrative Policy A-104 will establish guidelines to help to ensure public access to all LAFCO records subject to disclosure per the California

Public Records Act. Policy A-104 will also provide direction for LAFCO compliance with all requirements regarding public records requests. Therefore it is **RECOMMENDED:** That your Commission:

1. Review and discuss the Administrative Policy A-104; and,
2. Approve Administrative Policy A-104, or provide additional direction.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



ROBERT BARRY, AICP
Local Governmental Analyst III

MDO:RB:ra

Attachments: 1) Administrative Policy A-104 (draft)
2) LAFCO Public Records Request Form (draft)

Subject

CALIFORNIA PUBLIC RECORDS ACT REQUESTS

Purpose

To establish a procedure for requests of LAFCO public records subject to disclosure per the California Public Records Act (Government Code Section 6250, et seq.).

Background

The California State Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. [Government Code Section 6250]

The California Public Records Act (Government Code Section 6250, et seq.) provides statutory direction regarding the types of public records available for inspection and subject to disclosure; the timelines for compliance with records requests; and the types of public records that are exempt from disclosure by express provisions of law.

San Diego LAFCO has responsively complied with requests by members of the public for LAFCO public records on a case-by-case basis in accordance with the requirements of the California Public Records Act. Administrative Policy A-104 (California Public Records Act Requests) has been developed to provide clarity and direction for procedural compliance with public records requests per provisions in State Law.

Administrative Policy A-104 states that LAFCO records subject to disclosure are available for public inspection during regular LAFCO office hours (Monday-Friday, 8 a.m. to 5 p.m., except holidays). When copies of LAFCO records are requested, Policy A-104 provides that records not exempt from disclosure will be made promptly available upon payment of fees covering direct LAFCO costs of duplication, including the cost of programming and computer services if produced in an electronic format.

Policy

It is the policy of the San Diego Local Agency Formation Commission to comply

with all requests for copies of information by members of the public in accordance with the California Public Records Act [Government Code Section 6250, et seq.].

1. San Diego LAFCO public records subject to disclosure are open to inspection at all times during the regular LAFCO office hours (8 a.m. – 5 p.m., Monday – Friday, except holidays). Every person has a right to inspect any public record and any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. [Government Code Section 6253(a)]
2. Except with respect to public records exempt from disclosure by express provisions of law, San Diego LAFCO, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication. Upon request, an exact copy shall be provided unless impracticable to do so. For producing non-exempt public records in an electronic format, refer to Policy 6 of Administrative Policy A-104 [Government Code Section 6253(b)]
3. San Diego LAFCO, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of LAFCO and shall promptly notify the person making the request of the determination and the reasons therefor. [Government Code Section 6253(c)]
4. In *unusual circumstances*, the 10 day time limit may be extended by written notice by the LAFCO Executive Officer to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When LAFCO dispatches the determination, and if LAFCO determines that the request seeks disclosable public records, LAFCO shall state the estimated date and time when the records will be made available. [Government Code Section 6253(c)]
5. The Public Records Act states that “*unusual circumstances*” means the following,

but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

[Government Code Section 6253(c)]

6. If a requested non-exempt LAFCO public record is in an electronic format, LAFCO will make that information available in an electronic format upon payment of the direct cost of producing a copy of a record in an electronic format, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(a) The electronic record is produced only at otherwise regularly scheduled intervals.

(b) The request would require data compilation, extraction, or programming to produce the record.

[Government Code Section 6253.9]

7. LAFCO staff will assist members of the public in making a focused and effective public records request that reasonably describes an identifiable record or records. Accordingly, LAFCO staff will:

(a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(b) Describe the information technology and physical location in which the records exist.

(c) Provide suggestions for overcoming any practical basis for denying access to non-exempt records or the information sought.

[Government Code Section 6253.1]

A-104 ADMINISTRATIVE POLICY

8. A LAFCO Public Records Request Form is available for public download from the LAFCO internet website.

Adopted: May 2, 2016 (Proposed)

11

Attachment 2

PUBLIC RECORDS REQUEST

*The Public Records Request form may be saved and submitted to the San Diego LAFCO office via email as an attachment.
The form may also be printed and mailed or faxed to the San Diego LAFCO office.*

Date of Request: _____ Name of Requestor: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Telephone: _____

Description of Requested Record	Date/Range

San Diego LAFCO will respond to your request within 10 days from receipt of this form. The 10 day time limit may be extended for up to 14 days by written notice of the LAFCO Executive Officer to the person making the request, setting forth the reasons for the extension and the date for which a determination is expected.

LAFCO records subject to disclosure are available for public inspection during regular LAFCO office hours (Monday-Friday, 8 a.m. to 5 p.m., except holidays). When copies of LAFCO records are requested, records not exempt from disclosure will be made promptly available upon payment of fees covering direct LAFCO costs of duplication, including the cost of programming and computer services if produced in an electronic format.

For Office Use Only

Date received: _____ Total # of pages: _____ Copying Costs: _____

Completed by: _____ Date Completed: _____

Date Mailed/Delivered/Picked up: _____

Chairman

Bill Horn
County Board of
Supervisors

May 2, 2016

7

Attachments 4 - 6

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Local Agency Formation Commission

Members

Dianne Jacob
County Board of
Supervisors

FROM: Executive Officer

Local Governmental Analyst III

Andrew Vanderlaan
Public Member

SUBJECT: Senate Bill 272 (SB 272) - LAFCO Enterprise System Catalog

Lorie Zapf
Councilmember
City of San Diego

The California Public Records Act (Government Code Section 6250, et seq.) requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. The Public Records Act declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Lorraine Wood
Councilmember
City of Carlsbad

Approved on October 11, 2015, Senate Bill 272 (SB 272) adds a section to the California Public Records Act requiring local agencies to create a catalog of Enterprise Systems by July 1, 2016 with annual updates (Government Code Section 6270.5). Refer to Attachment 1.

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

An Enterprise System is defined as a software application or computer system that collects, stores, exchanges and analyzes information that the agency uses that is both of the following:

Vacant
Special District

- A multi-departmental system or a system that contains information collected about the public.
- A system of record that serves as an original source of data within an agency.

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Per SB 272, an Enterprise System does not include any of the following:

- Information Technology security systems, including firewalls and other cybersecurity systems.
- Physical access control systems, employee identification management systems, video monitoring and other physical control systems.

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

- Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas or water or sewer functions.
- Systems related to 911 dispatch and operation or emergency services.
- Systems that would be restricted from disclosure by Government Code Section 6254.19.
- The specific records that the information technology system collects, stores, exchanges or analyzes.

Accordingly, San Diego LAFCO has complied with the requirements of SB 272 by:

1. Creating a catalog of Enterprise Systems, containing the following information:
 - Current system vendor
 - Current system product
 - System's purpose
 - A description of categories or types of data
 - The department that is the prime custodian of the data
 - The frequency that system data is collected
 - The frequency that system data is updated
2. Making the Enterprise System catalog publicly available upon request;
3. Posting the Enterprise System catalog in a prominent location on the agency's website: http://www.sdlafco.org/Webpages/about_lafco.htm
4. Updating the Enterprise System catalog on an annual basis, or as needed.

In conclusion, San Diego LAFCO has complied with the requirements of SB 272 in advance of the legislative deadline of July 1, 2016. Therefore it is **RECOMMENDED**:

1. Review and accept the San Diego LAFCO Enterprise System catalog (Attachment 2); or,
2. Provide additional direction, if necessary.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



ROBERT BARRY, AICP
Local Governmental Analyst III

MDO:RB:ra

Attachments 1) Senate Bill 272 (chaptered)
2) San Diego LAFCO Enterprise System Catalog



Senate Bill No. 272

CHAPTER 795

An act to add Section 6270.5 to the Government Code, relating to public records.

[Approved by Governor October 11, 2015. Filed with Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 272, Hertzberg. The California Public Records Act: local agencies: inventory.

Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. The act declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

This bill would require each local agency, except a local educational agency, in implementing the California Public Records Act, to create a catalog of enterprise systems, as defined, to make the catalog publicly available upon request in the office of the person or officer designated by the agency's legislative body, and to post the catalog on the local agency's Internet Web site. The bill would require the catalog to disclose a list of the enterprise systems utilized by the agency, and, among other things, the current system vendor and product, unless, on the facts of the particular case, the public interest served by not disclosing that information clearly outweighs the public interest served by disclosure, in which case the local agency may instead provide a system name, brief title, or identifier of the system. Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers this purpose.

This bill would make legislative findings to that effect.

Existing constitutional provisions require a statute that limits the right of public access to meetings or writings of public officials to be adopted with findings demonstrating the interest to be protected by that limitation and the need to protect that interest.

This bill would declare that it includes limitations on access, that the interest to be protected is the security of enterprise systems in public agencies, and that the need to protect that interest is that enterprise systems

can contain information that, if released to the public, could result in negative consequences.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) New information technology has dramatically changed the way people search for and expect to find information in California.

(b) This technology has unlocked great potential for government to better serve the people it represents. A recent study estimated that digitizing government data could generate one trillion dollars in economic value worldwide through cost savings and improved operational performance.

(c) California plays a vitally important role in moving our nation forward in the world of technology. Just as the state's thriving tech industry surges ahead in setting new standards for society, so too must California.

(d) As several nations, states, and cities have begun to embrace policies of online access to public sector data, they have enjoyed the benefits of increased operational efficiency and better collaboration. Here in California, cities across the state are turning internally gathered and maintained data into usable information for the public to access and leverage for the benefit of their communities.

(e) In moving government to a more effective digital future, standards should be adopted to ensure that data collection and publication are standardized, including uniform definitions for machine-readable data. Online portals should also be developed to assist with public access to collected data.

(f) With a public sector committed to success in the digital age, the residents and businesses of California will stand to benefit from the greater collaboration and integration, improved accountability, and increased productivity that will result.

(g) In making California government more accessible to the people of the state, paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution requires local governments to comply with the California Public Records Act and with any subsequent statutory enactment amending that act and furthering that purpose.

SEC. 2. Section 6270.5 is added to the Government Code, to read:

6270.5. (a) In implementing this chapter, each local agency, except a local educational agency, shall create a catalog of enterprise systems. The catalog shall be made publicly available upon request in the office of the person or officer designated by the agency's legislative body. The catalog shall be posted in a prominent location on the local agency's Internet Web

site, if the agency has an Internet Web site. The catalog shall disclose a list of the enterprise systems utilized by the agency and, for each system, shall also disclose all of the following:

- (1) Current system vendor.
- (2) Current system product.
- (3) A brief statement of the system's purpose.
- (4) A general description of categories or types of data.
- (5) The department that serves as the system's primary custodian.
- (6) How frequently system data is collected.
- (7) How frequently system data is updated.

(b) This section shall not be interpreted to limit a person's right to inspect public records pursuant to this chapter.

(c) For purposes of this section:

(1) "Enterprise system" means a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both of the following:

(A) A multidepartmental system or a system that contains information collected about the public.

(B) A system of record.

(2) "System of record" means a system that serves as an original source of data within an agency.

(3) An enterprise system shall not include any of the following:

(A) Information technology security systems, including firewalls and other cybersecurity systems.

(B) Physical access control systems, employee identification management systems, video monitoring, and other physical control systems.

(C) Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas, or water or sewer functions.

(D) Systems related to 911 dispatch and operation or emergency services.

(E) Systems that would be restricted from disclosure pursuant to Section 6254.19.

(F) The specific records that the information technology system collects, stores, exchanges, or analyzes.

(d) Nothing in this section shall be construed to permit public access to records held by an agency to which access is otherwise restricted by statute or to alter the process for requesting public records, as set forth in this chapter.

(e) If, on the facts of the particular case, the public interest served by not disclosing the information described in paragraph (1) or (2) of subdivision (a) clearly outweighs the public interest served by disclosure of the record, the local agency may instead provide a system name, brief title, or identifier of the system.

(f) The local agency shall complete and post the catalog required by this section by July 1, 2016, and thereafter shall update the catalog annually.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 6270.5 to the Government Code, furthers, within the

meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Because increased information about what data is collected by local agencies could be leveraged by the public to more efficiently access and better use that information, the act furthers the purpose of Section 3 of Article I of the California Constitution.

SEC. 4. The Legislature finds and declares that Section 2 of this act limits the public's right of access to public documents within the meaning of paragraph (2) of subdivision (b) of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest and the need for protecting that interest:

(a) The interest protected by this limitation is the security of enterprise systems in public agencies.

(b) The need for protecting that interest is that enterprise systems can contain information that, if released to the public, could result in negative consequences.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

Senate Bill 272

Approved on October 11, 2015, [Senate Bill 272](#) adds a section to the California Public Records Act requiring local agencies to create a [catalog of Enterprise Systems](#) by July 1, 2016 with annual updates.

Enterprise System

An *Enterprise System* is defined as a software application or computer system that collects, stores, exchanges and analyzes information that the agency uses that is both of the following:

- A multi-departmental system or a system that contains information collected about the public.
- A *system of record* that serves as an original source of data within an agency.

An Enterprise System does not include any of the following:

- Information Technology security systems, including firewalls and other cybersecurity systems.
- Physical access control systems, employee identification management systems, video monitoring and other physical control systems.
- Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas or water or sewer functions.
- Systems related to 911 dispatch and operation or emergency services.
- Systems that would be restricted from disclosure by Government Code Section 6254.19.
- The specific records that the information technology system collects, stores, exchanges or analyzes.

Compliance Requirements

1. Create a [catalog of enterprise systems](#), containing:
 - Current system vendor
 - Current system product
 - System's purpose
 - A description of categories or types of data
 - The department that is the prime custodian of the data
 - The frequency that system data is collected
 - The frequency that system data is updated
2. To make the enterprise systems catalog publicly available upon request
3. To post the enterprise systems catalog in a prominent location on the San Diego LAFCO website

Exception

If the public interest served by not disclosing the information described clearly outweighs the public interest served by disclosure, San Diego LAFCO may instead provide a system name, brief title or identifier of the system.

[Enterprise System Catalog \(Click Here\)](#)

12

Attachment 2

San Diego LAFCO Enterprise System Catalog

Enterprise System	LAFCO AX
Public Info Collected	Yes
System of Record	Yes
Last Reviewed Date	1/28/2016
(1) Vendor Company Name	HPES and Wave TSG
(2) System Product Name	Documentum ApplicationXtender
(3) Brief System Purpose (Application Description)	Immutable image file repository for San Diego Local Agency Formation Commission (LAFCO) that houses scanned image records from 1964 through 2010 including public documents related to various project proposals as well as internal departmental records related to payroll, personnel, budgets, etc.
(4) Data Classification (Types of Data)	Both Public and Confidential
(5) Primary Custodian	LAFCO
(6) Frequency of Data Collected	Quarterly
(7) Frequency of Data Updates	Quarterly

Chairman

Bill Horn
County Board of
Supervisors

May 2, 2016

8

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: San Diego Local Agency Formation Commission

Members

Dianne Jacob
County Board of
Supervisors

FROM: Executive Officer
Director, Legislative Research

Andrew Vanderlaan
Public Member

SUBJECT: Legislative Report

Lorie Zapf
Councilmember
City of San Diego

This is the monthly status report on LAFCO related legislation for 2016. Several documents are attached to the legislative report. Attachment A is a legislative summary of selected bills that staff has identified for tracking. This summary is current through April 14th. Another document is a copy of AB 2470 (Gonzalez) and a vicinity map (Attachments B and C). AB 2470 is a bill recently amended and sponsored by The Sycuan Band of the Kumeyaay Nation that proposes to add requirements to the Water Code for provision of water service to areas outside of a water district. Another document is a copy of SB 1318 (Wolk) pertaining to special districts and Disadvantaged Unincorporated Communities (DUC's). Refer to Attachment D for SB 1318. A third bill we are tracking is AB 2910 (Assembly Local Government Committee Omnibus Bill) that proposes changes to the Cortese-Knox-Hertzberg Act that are deemed non-substantive to clarify sections of the Act (Attachment E). Legislative activity has increased this month on new or amended bills as pending bills must move out of their home committee by the end of April. A discussion is provided below on each bill, including possible positions for the Commission to take.

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

AB 2470 (Gonzalez) – Municipal Water Districts: Provision of Water Service to Indian Tribal Lands

AB 2470 is sponsored by the Sycuan Band of the Kumeyaay Nation (Sycuan). This bill has undergone a number of substantial amendments. Refer to Attachment B. On March 29, 2016, AB 2470 was amended to require a municipal water district, under certain conditions, to supply water to a contiguous Indian tribe's lands that may be outside the district's

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

boundary, upon request of the tribe. Early versions of the bill exempted the provision of water service from the California Environmental Quality Act (CEQA), and other California Laws, including LAFCO. The bill has been amended two additional times since the end of March; the latest amendments being on April 12, 2016 (Attachment B). As currently amended, the bill would require that upon a request being made, that water service be provided “as if the lands had been fully annexed” and that the (subject) district and tribe would enter into a service agreement to provide for payment of all costs of service charges and capacity. The bill language also provides language that “Notwithstanding any other law” which generally is interpreted to mean that all other sections of California law would not apply, including Government Code Section 56000 et seq. (Cortese-Knox-Hertzberg Act - CKH).

Background of San Diego LAFCO with Sycuan territory areas: The original Sycuan tribe reservation was not included in the established service territories of two nearby and adjacent water districts in eastern San Diego County: Otay Municipal Water District (WD) or Padre Dam Municipal Water District (MWD), since the 1950s. Sycuan has acquired various properties in the area of Southeast County over the past 15 years that are within portions of both water districts. A 640-acre portion of Sycuan is not within any local water district. Refer to Attachment C. During the first round of Municipal Service Reviews in 2003-06, issues addressing possible future service needs to Indian tribe lands were identified and designated by LAFCO as “Special Study Areas”. In 2007, Sycuan and Otay representatives met with LAFCO staff to discuss issues and the process for obtaining approval for annexation and/or temporary or permanent water service to the approximately 640 acre reservation property. Discussion primarily focused on the expressed concern for reliable water supply and groundwater quality issues. LAFCO staff provided guidance on the requirements for processing a proposal for sphere and annexation and various other approvals, including the San Diego County Water Authority (CWA) and Metropolitan Water District (MWD). It was also stated that environmental review would need to be conducted per CEQA. In 2008, Otay WD prepared and distributed a proposed Negative Declaration document. Substantive comments were provided by the San Diego CWA, and Metropolitan Water District, County of San Diego, and LAFCO. After receiving comments, the Otay WD instead decided to prepare an Environmental Impact Report. In 2009, the Otay WD prepared and distributed for review a Draft EIR. The most substantive comments were provided by the Metropolitan Water District and County. To our knowledge, the EIR was never adopted. Since that time, there has been sporadic contact between Sycuan and LAFCO staff.

On March 29, 2016, it came to the attention of LAFCO staff that AB 2470 had been legislatively “gutted and amended”. The amended version of AB 2470 would amend the Water Code to authorize an Indian tribe under specific circumstances to require an

adjacent water district to provide water services without LAFCO or water district discretionary authority. The district(s) would then be required to provide water service at rates and charges generally similar to other district customers. AB 2470 was subsequently amended another two times after comments were received by the author and sponsor. AB 2470 is currently pending consideration by the Assembly Local Government Committee (ALGC) on April 20th.

Actions to date by MWD, CWA or Padre Dam: The Metropolitan Water District Board of Directors considered action on the proposed bill on April 12, 2016. Metropolitan staff had originally recommended a position of “opposition unless amended” to address concerns for annexation and payment of all fees and charges. The Metropolitan board considered this matter and subsequently approved an alternative position of “support if amended” position contingent on an agreement being reached to address the service and fee payment requirements. The San Diego CWA Board has not considered a position as of the date of this report but the CWA representatives on the Metropolitan Board voted in favor of the “support if amended” position.

Rather than receiving water service from the Otay WD, Sycuan is now proposing that service be provided by the Padre Dam MWD. Padre Dam currently supplies water to several Sycuan parcels that are within the district. Average water use on those sites is sixty (60) acre feet per year. Estimated future demand on the future area is between 200 – 400 acre feet per year. Contact with Padre Dam staff reflects general support of the approach if all concerns can be addressed but the issue has not been considered by the Padre Dam Board as of this time. Supervisor Horn and Mayor Faulconer have both written letters of support to the State Legislature on AB 2470.

CALAFCO Review: The California Association of LAFCOs (CALAFCO) is concerned with the statewide impact of the legislation setting a precedent for enacting individual legislation bypassing the ordinary review and approval process. It is anticipated that CALAFCO will take a position on the bill ahead of the ALGC hearing on April 20, 2016. LAFCO staff will update the commission on what if any position CALAFCO adopts.

Staff Analysis: As outlined above, staff has had some contact with Sycuan, Otay WD and Padre Dam MWD on the issues discussed by the sponsor of AB 2470, Sycuan. However, the contact has been sporadic and Sycuan representatives canceled several scheduled meetings with LAFCO staff in 2015-16. LAFCO review and consideration of extension of water service is currently required by various State Laws governing annexation and contractual service agreements. With respect to contractual services, Government Code Section 56133 states that a Commission may authorize a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change

of organization. The 640-acre portion of the Sycuan Indian Tribe is not within the adopted sphere of influence of any of the local water providers. In addition, LAFCO may authorize a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to public health or safety of the residents of the affected territory, based on certain requirements. While it possible that a public health and safety issue may exist within the Sycuan tribal property (groundwater contamination), contractual service may not be an effective method of extending service because of certain prohibitions on extra-territorial service by the wholesale water agencies (Metropolitan and CWA). To date no such consideration has been requested of LAFCO. Based on the contractual service provisions and limitations, the annexation process is the most preferable method of extending service to Sycuan, under current law.

LAFCO staff inquired of Sycuan and Padre Dam of the purpose of the proposed legislation and it was stated that Sycuan does not want to undergo LAFCO review and approval due to the sovereign status of the Sycuan Nation and the probable costs of CEQA and jurisdictional boundary processing. While the concerns may have some bearing, LAFCO staff has suggested for many years that if proper documentation has been prepared and followed via the ordinary process that the overall process would have been completed legally by now without the need to circumvent a long-standing law. Consideration by staff and the Commission of Padre Dam, San Diego CWA and Metropolitan Water District of Southern California, plus conditions of approval would also be formulated and included in the review process.

Commission Options: The commission should consider one of options for a position on AB 2470 and provide direction accordingly:

Option 1 – Adopt a **Watch** position that would instruct LAFCO staff to monitor the bill to see if all issues of concern to Padre Dam, CWA and Metropolitan are addressed in future amendments. This would send a message to legislators that the San Diego LAFCO does not currently oppose the legislative proposal.

Option 2 – Adopt a **Watch with Concerns** position that would instruct LAFCO staff to monitor the bill and express concerns to the legislative author and sponsor, and affected agencies. This position would enable staff to work with the parties and attempt to work out issues and a possible resolution to the extension of water service.

Option 3 – Adopt an **Oppose unless amended** position and request that LAFCO review and approval be added into the bill language. This approach would encourage

the legislature to consider the purpose of the CKH Act and consideration of any potential future service needs in similar circumstances.

SB 1318 (Wolk) – Local government: drinking water infrastructure or services; wastewater infrastructure or services

This bill would extend the prohibition of annexation of areas greater than 10 acres where there exists areas designated as disadvantaged unincorporated communities (DUC) to a “qualified special district”, defined as serving 500 or more service connections by amending Government Code Section 56375. Additionally, Sections 56425 and 56430 are proposed to be amended to add restrictions on amendments of sphere of influences for cities and special districts to require consideration of DUC areas adjacent to the sphere and restrict removal of a DUC from a sphere unless the commission makes a finding that the action will result in improved service delivery to the community. Additionally, on or after January 1, 2022, and every five years thereafter, the commission shall conduct reviews sufficient to have reviewed the entire area of the county. Among other proposed new requirements for a commission, a map of the county identifying DUC’s that lack safe drinking water or adequate wastewater shall be filed with the State Office of Planning and Research; and within two years of identification of a DUC that lacks safe water or adequate wastewater, the commission shall recommend a plan and adopt any actions necessary to implement the plan. If not completed by January 1, 2022, a commission shall not change the sphere of a qualified city or special district except in limited circumstances as defined. The bill as amended adds significant new requirements to the sphere and annexation process for cities and special districts and will require additional funding and studies, if enacted. Since San Diego County has limited DUC’s in unincorporated areas not served by a qualified city or special district, this proposed requirement would add another layer of study for a very limited service benefit.

Proposed San Diego LAFCO staff position – Oppose and Send Letter

AB 2910 (Committee on Local Government) – Local Government: organization; Omnibus Bill

This is the annual ALGC Omnibus Bill sponsored by CALAFCO that proposes non-controversial updates and changes to the Cortese-Knox-Hertzberg Act. The bill proposed this year includes minor technical changes, corrects incorrect code references and typographical errors, in sections 56301, 56331, 56700.4, 56816, 56881, 57310 and 56314.

Proposed San Diego LAFCO position – Support and Send Letter

There are a number of other bills that staff continues to monitor for possible amendments and action by legislature committees. A summary is provided in Attachment A which is the CALAFCO Tracking Report.

San Diego LAFCO staff will provide the Commission with a verbal update at the meeting on any actions on these bills. Therefore, it is:

RECOMMENDED: That your Commission,

Receive this Legislative Update Report and provide direction to staff on the identified legislative bills as appropriate.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



HARRY EHRLICH
Director, Legislative Research

MDO:HE:ra

Attachments: Attachment A) CALAFCO Tracking Report
Attachment B) AB 2470 (Gonzalez)
Attachment C) Sycuan Map
Attachment D) SB 1318 Wolk)
Attachment E) AB 2910 (ALGC)

**SD ADVISORY
COMMITTEE MEETING
May 20, 2016**

ITEM 8

**LEGISLATIVE REPORT UPDATE
ATTACHMENTS A - E**

**(The attachments are available on SD
LAFCO's website: www.sdlafco.org)**