

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

SB 239 (Hertzberg) – As Amended June 1, 2015

SENATE VOTE: 26-12

SUBJECT: Local services: contracts: fire protection services.

SUMMARY: Requires a public agency to receive approval from a local agency formation commission (LAFCO) to provide new or extended fire protections services outside its service area, pursuant to a fire protection contract. Specifically, **this bill:**

- 1) Requires a public agency to request and receive written approval from the LAFCO in the affected county before providing new or extended services, pursuant to a fire protection contract.
- 2) Defines a "fire protection contract" to mean a contract or agreement for the exercise of new or extended fire protection services outside a public agency's current service area, and is executed pursuant to existing law which authorizes public agencies (which includes a city, county, city and county, special district, joint powers authority, and state agency) and the California Department of Forestry and Fire Protection (CAL FIRE) to enter into fire protection service contracts and agreements, that does either of the following:
 - a) Transfers responsibility for providing services in more than 25% of the service area of any public agency affected by the contract or agreement; or,
 - b) Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.
- 3) Requires that a contract or agreement for the exercise of new or extended fire protection services outside a public agency's current services area, in combination with other contracts or agreement that would produce the results in 2), above, be deemed a fire protection contract, as defined by this bill.
- 4) Requires a public agency to initiate a request for LAFCO's approval of new or extended services provided by a fire protection contract to be made by the adoption of a resolution of application, as follows:
 - a) The legislative body of a public agency must initiate the application by the adoption of a resolution of application proposing to provide new or extended services outside the public agency's current service area; and,
 - b) The director of a state agency must initiate the application proposing to provide new or extended services outside their current service area, which must be approved by the Director of Finance.

- 5) Prohibits the legislative body of a public agency or the director of a state agency from submitting a resolution of application, unless the public agency or state agency do both of the following:
 - a) Conducts an open and public hearing on the resolution, pursuant to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable; and,
 - b) Does either of the following:
 - i) Obtains and submits with the resolution 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; or,
 - ii) Provides, at least 30 days prior to the hearing, held pursuant to a), above, written notice to each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers of the proposed fire protection contract and submits a copy of each written notice with the resolution of application. Requires the notice, at minimum, to include a full copy of the proposed contract.
- 6) Requires a resolution of application to be submitted with a plan for services, which must include the following:
 - a) A total estimated cost to provide the new or extended fire protection services in the affected territory;
 - b) The estimated cost of the new or extended fire protection services to customers in the affected territory;
 - c) An identification of existing service providers, if any, and the potential fiscal impact to the customers in the affected territory;
 - d) A plan for financing the exercise of new or extended fire protection services;
 - e) Alternatives for the exercise of new or extended services in the affected territory;
 - f) An enumeration and description of the new or extended fire protection services proposed to be extended in the affected territory;
 - g) The level and range of new or extended fire protection services;
 - h) An indication of when the new or extended fire protection services can feasibly be extended to the affected territory; and,
 - i) An indication of any improvement or upgrades to structures, roads, sewer or water facilities, or other conditions that the public agency would impose or require within the affected territory if the contract is completed.

- 7) Requires the applicant to cause to be prepared by contract an independent comprehensive fiscal analysis to be submitted with the application. Requires the independent comprehensive fiscal analysis to review and document all of the following:
 - a) The costs to the public agency that has proposed to provide new or extended fire protection services during the three fiscal years following a public agency entering into a contract to provide new or extended services outside its current service area by contract or agreement, in accordance with the following requirements:
 - i) Requires the analysis to include all direct and indirect cost impacts to the existing service provider in the affected territory; and,
 - ii) Requires the analysis to review how the costs of the existing service provider compare to the costs to services provided in service areas with similar populations and geographic size that provide a similar level and range of services, and to make a reasonable determination of the costs expected to be borne by a public agency providing new or extended fire protection services;
 - b) The revenues of the public agency that has proposed a new or extended service outside its current service area during the three fiscal years following the effective date of a contract or agreement with another public agency to provide a new or extended service;
 - c) The effects on the costs and revenues of any affected public agency, including the public agency proposing to provide the new or extended service, during the three fiscal years that the new or extended service will be provided; and,
 - d) Any other information and analysis needed to support the findings that a LAFCO must make to approve services under a fire protection contract.
- 8) Requires the clerk of the legislative body of a public agency or the director of a state agency adopting a resolution of application to file a certified copy of the resolution with the LAFCO's executive officer.
- 9) Requires an executive officer, within 30 days of receipt, to determine whether the request is complete and acceptable for filing. Establishes specified requirements for an executive officer if the request is incomplete.
- 10) Requires the LAFCO to approve, disapprove, or approve with conditions the contract for new or extended fire protection services following the LAFCO hearing.
- 11) Allows the applicant to request reconsideration, as specified, if the contract is disapproved or approved with conditions.
- 12) Prohibits LAFCO from approving an application for approval of a fire protection contract, unless it determines that the public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area, except as specified in 13), below.

- 13) Authorizes LAFCO to approve an application for approval of a fire protection contract where the LAFCO has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions or loss of services, if LAFCO conditions its approval on the concurrent approval of sufficient revenue sources. Requires LAFCO to provide that if the revenue sources are not approved, the authority of the public agency to provide new or extended fire protection services shall not be exercised.
- 14) Prohibits LAFCO from approving an application for the approval of a fire protection contract, unless the LAFCO finds, based on the entire record, all of the following:
 - a) The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with requirements established by this bill and with the policies and legislative intent established in the Act;
 - b) The LAFCO has reviewed the comprehensive fiscal analysis;
 - c) The LAFCO has reviewed any testimony presented at the public hearing; and,
 - d) 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.
- 15) Requires an executive officer, at least 21 days prior to the date of the hearing, to give mailed notice of the hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer.
- 16) Establishes additional Internet and newspaper posting requirements, as specified.
- 17) Allows LAFCOs to continue from time to time any hearing called pursuant to this bill and requires LAFCOs to hear and consider oral or written testimony presented by an affected local agency, county, or any interested person who appears at any hearing called pursuant to the process contained in this bill.
- 18) Prohibits this bill from being construed to abrogate a public agency's obligations under the Meyers-Millias Brown Act.
- 19) Exempts a fire protection contract, as defined by this bill, from the provisions in existing law which govern the process for outside service extension contracts contained in LAFCO law.
- 20) Makes other technical and conforming changes.
- 21) Makes findings and declarations.

EXISTING LAW:

- 1) Establishes the Cortese-Knox-Hertzberg Act (Act), which defines the procedures for the organization and reorganization of cities, counties, and special districts.

- 2) Authorizes a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundaries, if it requests and receives written approval from the LAFCO in the affected county.
- 3) Allows a LAFCO to authorize a city or district to provide new or extended services outside its boundaries, but within its sphere of influence in anticipation of a later change of organization.
- 4) Allows a LAFCO to authorize a city or district to provide new or extended services outside its boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, if both of the following requirements are met:
 - a) The entity applying for the contract has provided LAFCO with documentation of a threat to the health and safety of the public or the affected residents; and,
 - b) The LAFCO has notified any alternate service providers, including any water corporation or sewer system corporation that has filed a map and statement of service capabilities with the LAFCO.
- 5) Provides exemptions to the requirement in existing law for the following contracts or agreements:
 - a) Contracts or agreements solely involving two or more public agencies where the public service is an alternative or substitute for public services already being provided by an existing public services provided, and there the level of service will be consistent with the level of service by the existing provider;
 - b) Contracts for the transfer of nonpotable or nontreated water;
 - c) Contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, as specified;
 - d) Extended service that a city or district was providing on or before January 1, 2001; and,
 - e) Local publicly owned electric utility, as defined, providing electric services that do not involve the acquisition, construction or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.
- 6) Establishes requirements and a timeframe for an executive officer upon receipt of a request for approval by a city or district of a contract to extend services outside boundaries. Requires, upon receipt of a complete request, the request to be placed on the agenda of a LAFCO meeting, unless the LAFCO has delegated the approval of requests to the executive commissioner.
- 7) Requires the LAFCO or executive officer to approve, disapprove, or approve with conditions the contract for extended services. Allows an applicant, if a contract is disapproved or approved with conditions, to request reconsideration and cite the reasons why.
- 8) Defines public agency, pursuant to the Act, to mean 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.

- 9) Authorizes cities and fire protection districts to contract with a county to provide fire protection services within the local agency's jurisdiction.
- 10) Requires every contract between a county and a city for the furnishing of fire protection services by the county to the city, to be for a term of at least one year.
- 11) Authorizes counties to contract with CAL FIRE to provide fire protection services.
- 12) Authorizes a legislative body of any local agency, city, county fire protection district, joint powers authority that provides fire protection services, to contract with any other local agency for the furnishing of fire protection to such other local agency.

FISCAL EFFECT: According to the Senate Appropriations Committee, unknown increased General Fund costs to CAL FIRE, likely in the low hundreds of thousands annually, to comply with specified administrative requirements prior to contracting with local agencies for fire protection services. CAL FIRE currently has 115 contracts with local agencies for full fire protection services, and the contracts typically have a duration of three years. It is likely that all of those contracts would meet the criteria in the bill requiring LAFCO approval. For illustrative purposes, if CAL FIRE incurred additional costs of \$10,000 to extend 38 fire protection contracts in a year through the LAFCO process, annual administrative costs would be \$380,000. It is likely that CAL FIRE would incur higher costs to assess the impacts of contracts for larger service areas. Unknown, potentially significant impact on CAL FIRE fire protection costs (General Fund). Currently, CAL FIRE provides over \$50 million in contracted reimbursements to counties for fire protection services in "state responsibility areas," and the state is provided with over \$300 million in contracted reimbursements from local agencies for CAL FIRE to provide a variety of fire protection services to cities, counties, and fire protection districts. These contracts must be mutually beneficial and cost-effective. To the extent this bill discourages or prevents contracting for fire services, both CAL FIRE and local agencies could experience increased costs to provide fire protection.

COMMENTS:

- 1) **Background.** The Act delegates the Legislature's power to control the boundaries of cities and special districts to LAFCOs. The Legislature created LAFCOs to discourage urban sprawl, preserve open space and prime agricultural lands, encourage the orderly formation and development of local agencies, and to ensure the efficient provision of government services.

The Act requires that cities and districts must get a LAFCO's written approval before they can serve territory outside their boundaries, pursuant to AB 1335 (Gotch), Chapter 1307, Statutes of 1993. This requirement was established because of a concern that some cities and districts might be circumventing LAFCO review by signing contracts to provide services outside their boundaries without annexing the territory. AB 1335, however, recognized the need to accommodate unexpected local conditions and purposely established several exemptions. For example, LAFCO approval is not required for contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public

service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting service provider.

Due to this exemption in the Act, contracts and cooperative agreements, permitted under existing law, which allow cities and fire protection districts to contract with a county or local government to contract with CAL FIRE to provide fire protection services are not under LAFCO's purview. While in practice many LAFCOs are involved in the service provision, reorganization, and coordination between entities under their purview that provide fire protection services, they are not required to get LAFCO's approval before contracting with one another to provide service outside of their jurisdictional boundaries. Some contracts are for full responsibility, shifting entire services to the county or CAL FIRE, and others are used to supplement existing services. For CAL FIRE contracts alone, there are 149 reimbursable cooperative fire protection agreements in 35 of the state's 58 counties, 25 cities, 31 fire districts, and 34 other special districts and service areas.

- 2) **Bill Summary.** This bill requires a public agency to receive approval from LAFCO before providing fire protection services, pursuant to a fire protection contract. Under this bill, a fire protection contract is defined as a contract or agreement that is for the exercise of new or extended fire protection services outside a public agency's (city, city and county, county, state agency, joint powers authority) current service area and is executed pursuant to existing law which authorizes local governments and CALFIRE to enter into fire protection services contracts and agreements. The fire protection contract must *either* transfer the responsibility for providing services in more than 25% of the service area of any public agency affected by the contract or agreement *or* change the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

This bill establishes a separate approval process within LAFCO law for these fire protection service contracts and determines the application requirements, notice requirements, hearing requirements, independent financial review requirements, and findings that LAFCO must make in order to approve the fire protection service contracts between public agencies. The application, hearing, and notice requirements contained in this bill are substantially similar to the requirements for changes of organization contained in the Act. For example, this bill requires a public agency that is the applicant to submit a plan for services which requires information regarding the cost of services and a plan for financing services similar to a change of organization which includes annexation, formation, detachment, and consolidation or if a special district wants to provide new or different function or class or services within its jurisdictional boundaries under LAFCO law. However, in addition to the plan for services, the public agency must also obtain an independent fiscal analysis that must contain specified information.

This bill does not mirror all its requirements from the Act. For example, the inclusion of CAL FIRE under LAFCO's purview for the extension of services and the requirement of an applicant, before submitting an application to LAFCO, to either provide notification to each affected public agency and recognized employee organization that represents firefighters or obtain sign off from each affected public agency and recognized employee organization, are not contained in the Act.

This bill is sponsored by the California Professional Firefighters.

- 3) **Author's Statement.** According to the author, "Current law establishes specific LAFCO proceedings to consider new or different functions or services, or for the divestiture of power, by special districts. However, LAFCO's do not review and approve contracts or agreements for services between two public agencies. Moreover, such contracts do not require any specific information to be submitted or reviewed regarding the fiscal conditions of the public agency or potential impacts to service delivery. So when such a contract or agreement is made exclusively between two public agencies, there is no process to provide oversight and ensure efficient and economical delivery for the agencies and all residents in the existing and affected territory.

"SB 239 extends LAFCO's jurisdiction to include contracts for services between public agencies for fire protection. Specifically, this bill requires that the public agency that has proposed a contract for new or extended fire protection to go through a specified LAFCO process. As part of this process, the agency will submit specified information to LAFCO regarding the contract and provide notification."

- 4) **Policy Considerations:** The Committee may wish to consider the following:
- a) **Outside Service Extension.** The notification, hearing, application, independent financial analysis, and required LAFCO findings contained in this bill are different than the process in place to have LAFCO review other outside service extensions. This bill is not simply removing the exemption in current law to require the existing LAFCO review for outside service extensions; it is instead applying the requirements for changes of organization to a contract between two public agencies to provide fire protection services. The Committee may wish to consider if these types of contracts warrant the creation of a new process under LAFCO law.
 - b) **CAL FIRE.** According to the California Association of Local Agency Formation Commissions, this bill would, for the first time, require a California state agency to apply for and request LAFCO approval prior to undertaking an action that involves the provision of services by means of a contract with a local agency, which is a great shift in the Act's applicability.
 - c) **Independent Fiscal Analysis.** To ensure the financial viability of the services proposed to be extended outside a public agency's service area, this bill establishes several requirements for financial analysis in the LAFCO process it creates. The public agency applicant must produce a plan for services, contract for an independent fiscal analysis and rely on a number of findings the LAFCO must be able to make in order to approve the service extension. In light of these extensive requirements, the Committee may wish to consider: 1) why the independent fiscal analysis is necessary; and, 2) why the independent fiscal analysis should not be completed by LAFCO, similar to the fiscal analysis undertaken by LAFCO in incorporations.

Opposition to this bill notes that the comprehensive fiscal analysis required by this bill is far beyond any other requirements in LAFCO law associated with extension of services, and that the requirements would add substantially to the cost of providing services.

- d) **Technical Issues.** The Committee may wish to consider the following technical issues:

- i) **Threshold Determinations.** This bill only applies to fire protection contracts that meet a 25% threshold for either service area or employee status. The Committee may wish to note that the bill is silent on who determines this threshold.
- ii) **Definitions and Applicability.** The term "service area" is not defined in the Act, therefore, the Committee may wish to ask the author why "service area" is used instead of "jurisdictional boundary" which is used throughout the Act, including the provisions that govern the extension of services.

The Committee may wish to encourage the author to continue to work on the definition used in this bill for fire protection contracts because it is still unclear which fire protection contracts must be approved by LAFCO.

- 2) **Conflicting Legislation.** Provisions of this bill conflict with AB 402 (Dodd), which is currently pending on the Senate Floor, and may need amendments to address the conflict, should the bills continue to move through the legislative process.
- 5) **Arguments in Support.** Supporters argue that this bill provides transparency and oversight when a public agency considers extending fire protection services outside of their current service area. Supporters of this bill point to communities that have entered into contracts to shift responsibility to provide fire protection services from one public agency to another, which have generated controversy while failing to produce anticipated cost savings and administrative efficiencies.

The California Professional Firefighters argue, "Current law establishes specific LAFCO proceeding to consider new or different functions or services, or for the divestiture of power, by special districts. However, a LAFCO's current ability to review and approve contracts or agreements for services is much more restricted and lacks the authority to conduct a comprehensive review of the contracts, particularly when the contract or agreement is between two public agencies. While a LAFCO has the ability to approve contracts that include a local agency providing new or extended services outside its jurisdictional boundaries, that ability only applies very narrowly to cities and special districts and does not require any specific information to be submitted or reviewed by the LAFCO regarding the fiscal conditions of the public agency or potential impacts to service delivery.

"In addition, under current law, when such a contract or agreement is made exclusively between two public agencies, there is no process to provide oversight and ensure that the public services proposed to be provided via contract will be efficient and economical for the public agencies involved and meet the service demands for all residents in the existing and affected territory. By requiring a public agency to submit their plan for extended services for fire protection to LAFCO for review and approval, this bill would ensure that the details regarding service delivery and costs are appropriately examined which benefits the residents, the public agency, and the firefighters in all of the affected areas."

- 6) **Arguments in Opposition.** Opposition argues that this bill creates severe budget implications, hampers the ability of public agencies to achieve cost-savings, and potentially disrupts emergency services. Opposition to this bill points out that in many of the communities that have entered into contracts to shift responsibility to provide fire protection services from one public agency to another, which have generated controversy, have been worked out at the local level due to accountability to the voters and the election process.

The California Special Districts Association, League of California Cities, California State Association of Counties, the California Building Industry Association and the California Business Properties Association, in a joint letter, argue, "At a time when many agencies are facing increased financial pressures, this bill restricts the ability of fire protection providers to govern in the best interests of the affected residents and could potentially disrupt service entirely. Fire protection providers that negotiate service agreements are directly accountable to the communities they serve. LAFCOs are not, and should not be, tasked with making the day-to-day financial decisions for local agencies.

"This bill presents a significant unfunded mandate on the public agencies that must pay thousands of taxpayer dollars to fund each independent fiscal analysis. Similar to any significant budget decision, and before a public agency contracts with another public agency, it first conducts a thorough internal fiscal review in order to determine feasibility and any needs for increasing staff and equipment. This bill requires a second independent fiscal analysis that is duplicative and extremely costly. Estimates for an independent analysis start at \$5,000 and can often cost in the tens of thousands of dollars based upon complexity. This ultimately reduces the amount of funds available for fire protection services."

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters [SPONSOR]
CAL FIRE, Local 2881
California Labor Federation

Opposition

California Building Industry Association
California Business Properties Association
California Special Districts Association
California State Association of Counties
Cities of Calimesa, Coalinga, Colton, Fortuna, Fremont, Hesperia, Highland, Indio, Lakewood, Montclair, and Rancho Mirage
Contra Costa County Fire Protection District
League of California Cities
Los Angeles County Board of Supervisors
Los Angeles County Division, League of California Cities
Madera County Board of Supervisors
North Tahoe Fire Protection District
Rural County Representatives of California
San Bernardino County Local Agency Formation Commission (unless amended)
San Diego Local Agency Formation Commission
San Luis Obispo Local Agency Formation Commission
Santa Cruz Local Agency Formation Commission
Sonoma Local Agency Formation Commission

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