

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE APRIL 23, 2015

AMENDED IN SENATE MARCH 23, 2015

SENATE BILL

No. 239

Introduced by Senator Hertzberg

February 17, 2015

An act to amend Sections 56017.2 and 56133 of, and to add Section 56134 to, the Government Code, relating to local services.

LEGISLATIVE COUNSEL'S DIGEST

SB 239, as amended, Hertzberg. Local services: contracts: fire protection services.

Existing law prescribes generally the powers and duties of the local agency formation commission in each county with respect to the review approval or disapproval of proposals for changes of organization or reorganization of cities and special districts within that county. Existing law permits a city or district to provide extended services, as defined, outside its jurisdictional boundaries only if it first requests and receives written approval from the local agency formation commission in the affected county. Under existing law, the commission may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under specified circumstances.

This bill would, with certain exceptions, permit a public agency to exercise new or extended services outside the public agency's ~~current service area~~ *jurisdictional boundaries* pursuant to a fire protection contract, as defined, only if the public agency receives written approval

from the local agency formation commission in the affected county. The bill would require that the legislative body of a public agency that is not a state agency adopt a resolution of application and submit the resolution along with a plan for services, as provided, ~~and that a proposal by a state agency be initiated by the director of the agency with the approval of the Director of Finance.~~ *Finance, and that a proposal by a local agency that is currently under contract for the provision of fire protection services be initiated by the local agency and approved by the Director of Finance.* The bill would require, prior to adopting the resolution or submitting the proposal, the public agency to enter into a written agreement for the performance of new or extended services pursuant to a fire protection contract with, or provide written notice of a proposed fire protection contract to, each affected public agency and recognized employee organization representing firefighters in the affected area, and to conduct a public hearing on the resolution.

The bill would require the commission to approve or disapprove the proposal as specified. The bill would require the commission to consider, among other things, a comprehensive fiscal analysis prepared by the executive officer in accordance with specified requirements.

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 the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 56017.2 of the Government Code is
- 2 amended to read:
- 3 56017.2. "Application" means any of the following:
- 4 (a) A resolution of application or petition initiating a change of
- 5 organization or reorganization with supporting documentation as
- 6 required by the commission or executive officer.
- 7 (b) A request for a sphere of influence amendment or update
- 8 pursuant to Section 56425.

1 (c) A request by a city or district for commission approval of
2 an extension of services outside the agency’s jurisdictional
3 boundaries pursuant to Section ~~56133 or 56134~~. 56133.

4 (d) *A request by a public agency for commission approval of*
5 *an extension of services outside the agency’s jurisdictional*
6 *boundaries pursuant to Section 56134.*

7 SEC. 2. Section 56133 of the Government Code is amended
8 to read:

9 56133. (a) A city or district may provide new or extended
10 services by contract or agreement outside its jurisdictional
11 boundaries only if it first requests and receives written approval
12 from the commission in the affected county.

13 (b) The commission may authorize a city or district to provide
14 new or extended services outside its jurisdictional boundaries but
15 within its sphere of influence in anticipation of a later change of
16 organization.

17 (c) The commission may authorize a city or district to provide
18 new or extended services outside its jurisdictional boundaries and
19 outside its sphere of influence to respond to an existing or
20 impending threat to the public health or safety of the residents of
21 the affected territory if both of the following requirements are met:

22 (1) The entity applying for the contract approval has provided
23 the commission with documentation of a threat to the health and
24 safety of the public or the affected residents.

25 (2) The commission has notified any alternate service provider,
26 including any water corporation as defined in Section 241 of the
27 Public Utilities Code, or sewer system corporation as defined in
28 Section 230.6 of the Public Utilities Code, that has filed a map and
29 a statement of its service capabilities with the commission.

30 (d) The executive officer, within 30 days of receipt of a request
31 for approval by a city or district of a contract to extend services
32 outside its jurisdictional boundary, shall determine whether the
33 request is complete and acceptable for filing or whether the request
34 is incomplete. If a request is determined not to be complete, the
35 executive officer shall immediately transmit that determination to
36 the requester, specifying those parts of the request that are
37 incomplete and the manner in which they can be made complete.
38 When the request is deemed complete, the executive officer shall
39 place the request on the agenda of the next commission meeting
40 for which adequate notice can be given but not more than 90 days

1 from the date that the request is deemed complete, unless the
2 commission has delegated approval of those requests to the
3 executive officer. The commission or executive officer shall
4 approve, disapprove, or approve with conditions the contract for
5 extended services. If the contract is disapproved or approved with
6 conditions, the applicant may request reconsideration, citing the
7 reasons for reconsideration.

8 (e) This section does not apply to any of the following:

9 (1) Contracts or agreements solely involving two or more public
10 agencies where the public service to be provided is an alternative
11 to, or substitute for, public services already being provided by an
12 existing public service provider and where the level of service to
13 be provided is consistent with the level of service contemplated
14 by the existing service provider.

15 (2) Contracts for the transfer of nonpotable or nontreated water.

16 (3) Contracts or agreements solely involving the provision of
17 surplus water to agricultural lands and facilities, including, but not
18 limited to, incidental residential structures, for projects that serve
19 conservation purposes or that directly support agricultural
20 industries. However, prior to extending surplus water service to
21 any project that will support or induce development, the city or
22 district shall first request and receive written approval from the
23 commission in the affected county.

24 (4) An extended service that a city or district was providing on
25 or before January 1, 2001.

26 (5) A local publicly owned electric utility, as defined by Section
27 9604 of the Public Utilities Code, providing electric services that
28 do not involve the acquisition, construction, or installation of
29 electric distribution facilities by the local publicly owned electric
30 utility, outside of the utility's jurisdictional boundaries.

31 (6) A fire protection contract, as defined in subdivision (a) of
32 Section 56134.

33 SEC. 3. Section 56134 is added to the Government Code, to
34 read:

35 56134. (a) (1) For the purposes of this section, "fire protection
36 contract" means a contract or agreement for the exercise of new
37 or extended fire protection services outside a public agency's
38 ~~current service area~~, *jurisdictional boundaries*, as authorized by
39 Chapter 4 (commencing with Section 55600) of Part 2 of Division
40 2 of Title 5 of this code or by Article 4 (commencing with Section

1 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources
2 Code, that does either of the following:

3 (A) Transfers responsibility for providing services in more than
4 25 percent of the ~~service~~ area *within the jurisdictional boundaries*
5 of any public agency affected by the contract or agreement.

6 (B) Changes the employment status of more than 25 percent of
7 the employees of any public agency affected by the contract or
8 agreement.

9 (2) A contract or agreement for the exercise of new or extended
10 fire protection services outside a public agency's ~~current service~~
11 ~~area~~, *jurisdictional boundaries*, as authorized by Chapter 4
12 (commencing with Section 55600) of Part 2 of Division 2 of Title
13 5 of this code or Article 4 (commencing with Section 4141) of
14 Chapter 1 of Part 2 of Division 4 of the Public Resources Code,
15 that, in combination with other contracts or agreements, would
16 produce the results described in subparagraph (A) or (B) of
17 paragraph ~~(1)~~; (1) shall be deemed a fire protection contract for
18 the purposes of this section.

19 (3) *For the purposes of this section, "jurisdictional boundaries"*
20 *shall include the territory or lands protected pursuant to a fire*
21 *protection contract entered into on or before December 31, 2015.*
22 *An extension of a fire protection contract entered into on or before*
23 *December 31, 2015, that would produce the results described in*
24 *subparagraph (A) or (B) of paragraph (1) shall be deemed a fire*
25 *protection contract for the purposes of this section.*

26 (b) Notwithstanding Section 56133, a public agency may provide
27 new or extended services pursuant to a fire protection contract
28 only if it first requests and receives written approval from the
29 commission in the affected county pursuant to the requirements
30 of this section.

31 (c) A request by a public agency for commission approval of
32 new or extended services provided pursuant to a fire protection
33 contract shall be made by the adoption of a resolution of application
34 as follows:

35 (1) In the case of a public agency that is not a state agency, the
36 application shall be initiated by the adoption of a resolution of
37 application by the legislative body of the public agency proposing
38 to provide new or extended services outside the public agency's
39 current service area.

1 (2) In the case of a public agency that is a state agency, the
2 application shall be initiated by the director of the state agency
3 proposing to provide new or extended services outside the agency's
4 current service area and be approved by the Director of Finance.

5 (3) *In the case of a public agency that is a local agency currently*
6 *under contract with a state agency for the provision of fire*
7 *protection services and proposing to provide new or extended*
8 *services by the expansion of the existing contract or agreement,*
9 *the application shall be initiated by the public agency that is a*
10 *local agency and be approved by the Director of Finance.*

11 (d) The legislative body of a public agency or the director of a
12 state agency shall not submit a resolution of application pursuant
13 to this section unless both of the following occur:

14 (1) The public agency does either of the following:

15 (A) Obtains and submits with the resolution a written agreement
16 validated and executed by each affected public agency and
17 recognized employee organization that represents firefighters of
18 the existing and proposed service providers consenting to the
19 proposed fire protection contract.

20 (B) Provides, at least 30 days prior to the hearing held pursuant
21 to paragraph (2), written notice to each affected public agency and
22 recognized employee organization that represents firefighters of
23 the existing and proposed service providers of the proposed fire
24 protection contract and submits a copy of each written notice with
25 the resolution of application. The notice shall, at minimum, include
26 a full copy of the proposed contract.

27 (2) The public agency conducts an open and public hearing on
28 the resolution, conducted pursuant to the Ralph M. Brown Act
29 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
30 2 of Title 5) or the Bagley-Keene Open Meeting Act (Article 9
31 (commencing with Section 11120) of Chapter 1 of Part 1 of
32 Division 3 of Title 2), as applicable.

33 (e) A resolution of application submitted pursuant to this section
34 shall be submitted with a plan which shall include all of the
35 following information:

36 (1) The total estimated cost to provide the new or extended fire
37 protection services in the affected territory.

38 (2) The estimated cost of the new or extended fire protection
39 services to customers in the affected territory.

- 1 (3) An identification of existing service providers, if any, of the
2 new or extended services proposed to be provided and the potential
3 fiscal impact to the customers of those existing providers.
- 4 (4) A plan for financing the exercise of the new or extended fire
5 protection services in the affected territory.
- 6 (5) Alternatives for the exercise of the new or extended fire
7 protection services in the affected territory.
- 8 (6) An enumeration and description of the new or extended fire
9 protection services proposed to be extended to the affected territory.
- 10 (7) The level and range of new or extended fire protection
11 services.
- 12 (8) An indication of when the new or extended fire protection
13 services can feasibly be extended to the affected territory.
- 14 (9) An indication of any improvements or upgrades to structures,
15 roads, sewer or water facilities, or other conditions the public
16 agency would impose or require within the affected territory if the
17 fire protection contract is completed.
- 18 *(10) A determination, supported by documentation, that the*
19 *proposed fire protection contract meets the criteria established*
20 *pursuant to subparagraph (A) or (B) of paragraph (1) or*
21 *paragraph (2), as applicable, of subdivision (a).*
- 22 (f) The applicant shall cause to be prepared by contract an
23 independent comprehensive fiscal analysis to be submitted with
24 the application pursuant to this section. The analysis shall review
25 and document all of the following:
 - 26 ~~(1) The costs to the public agency that has proposed to provide~~
27 ~~new or extended fire protection services during the three fiscal~~
28 ~~years following a public agency entering into a fire protection~~
29 ~~contract, in accordance with the following requirements:~~
 - 30 ~~(A) The analysis shall include all direct and indirect cost impacts~~
31 ~~to the existing service provider in the affected territory.~~
 - 32 ~~(B) The analysis shall review how~~
 - 33 *(1) A thorough review of the plan for services submitted by the*
34 *public agency pursuant to subdivision (e).*
 - 35 *(2) How the costs of the existing service provider compare to*
36 *the costs of services provided in service areas with similar*
37 *populations and of similar geographic size that provide a similar*
38 *level and range of services and make a reasonable determination*
39 *of the costs expected to be borne by the public agency providing*
40 *new or extended fire protection services.*

1 ~~(2) The revenues of the public agency that has proposed new~~
2 ~~or extended fire protection services outside its current service area~~
3 ~~during the three fiscal years following the effective date of a~~
4 ~~contract or agreement with another public agency to provide a new~~
5 ~~or extended service.~~

6 ~~(3) The effects on the costs and revenues of any affected public~~
7 ~~agency, including the public agency proposing to provide the new~~
8 ~~or extended fire protection services, during the three fiscal years~~
9 ~~that the new or extended fire protection services will be provided.~~

10 ~~(4)~~

11 (3) Any other information and analysis needed to support the
12 findings required by subdivision (j).

13 (g) The clerk of the legislative body of a public agency or the
14 director of a state agency adopting a resolution of application
15 pursuant to this section shall file a certified copy of the resolution
16 with the executive officer.

17 (h) (1) The executive officer, within 30 days of receipt of a
18 public agency's request for approval of a fire protection contract,
19 shall determine whether the request is complete and acceptable
20 for filing or whether the request is incomplete. If a request does
21 not comply with the requirements of subdivision (d), the executive
22 officer shall determine that the request is incomplete. If a request
23 is determined incomplete, the executive officer shall immediately
24 transmit that determination to the requester, specifying those parts
25 of the request that are incomplete and the manner in which they
26 can be made complete. When the request is deemed complete, the
27 executive officer shall place the request on the agenda of the next
28 commission meeting for which adequate notice can be given but
29 not more than 90 days from the date that the request is deemed
30 complete.

31 (2) The commission shall approve, disapprove, or approve with
32 conditions the contract for new or extended services following the
33 hearing at the commission meeting, as provided in paragraph (1).
34 If the contract is disapproved or approved with conditions, the
35 applicant may request reconsideration, citing the reasons for
36 reconsideration.

37 (i) (1) The commission shall not approve an application for
38 approval of a fire protection contract unless the commission
39 determines that the public agency will have sufficient revenues to
40 carry out the exercise of the new or extended fire protection

1 services outside its current area, except as specified in paragraph
2 (2).

3 (2) The commission may approve an application for approval
4 of a fire protection contract where the commission has determined
5 that the public agency will not have sufficient revenue to provide
6 the proposed new or different functions or class of services, if the
7 commission conditions its approval on the concurrent approval of
8 sufficient revenue sources pursuant to Section 56886. In approving
9 a proposal, the commission shall provide that, if the revenue
10 sources pursuant to Section 56886 are not approved, the authority
11 of the public agency to provide new or extended fire protection
12 services shall not be exercised.

13 (j) The commission shall not approve an application for approval
14 of a fire protection contract unless the commission ~~finds;~~
15 *determines*, based on the entire record, all of the following:

16 (1) The proposed exercise of new or extended fire protection
17 services outside a public agency's current service area is consistent
18 with the intent of this division, including, but not limited to, the
19 policies of Sections 56001 and 56300.

20 (2) The commission has reviewed the comprehensive fiscal
21 analysis prepared pursuant to subdivision (f).

22 (3) The commission has reviewed any testimony presented at
23 the public hearing.

24 (4) The proposed affected territory is expected to receive
25 revenues sufficient to provide public services and facilities and a
26 reasonable reserve during the three fiscal years following the
27 effective date of the contract or agreement between the public
28 agencies to provide the new or extended fire protection services.

29 (k) At least 21 days prior to the date of the hearing, the executive
30 officer shall give mailed notice of that hearing to each affected
31 local agency or affected county, and to any interested party who
32 has filed a written request for notice with the executive officer. In
33 addition, at least 21 days prior to the date of that hearing, the
34 executive officer shall cause notice of the hearing to be published
35 in accordance with Section 56153 in a newspaper of general
36 circulation that is circulated within the territory affected by the
37 proposal proposed to be adopted and shall post the notice of the
38 hearing on the commission's Internet Web site.

39 (l) The commission may continue from time to time any hearing
40 called pursuant to this section. The commission shall hear and

1 consider oral or written testimony presented by any affected local
2 agency, affected county, or any interested person who appears at
3 any hearing called and held pursuant to this section.

4 (m) This section shall not be construed to abrogate a public
5 agency’s obligations under the ~~Meyers-Millias-Brown~~
6 *Meyers-Milias-Brown* Act (Chapter 10 (commencing with Section
7 3500) of Division 4 of Title 1).

8 SEC. 4. The Legislature finds and declares that, with respect
9 to fire protection contracts subject to this act, the provisions of this
10 act are not intended to change, alter, or in any way affect ~~the~~ *either*
11 *of the following*:

12 (a) *The existing jurisdiction of a local agency formation*
13 *commission over proceedings that involve the provision of*
14 *prehospital emergency medical services.*

15 (b) *Mutual aid agreements, including mutual aid agreements*
16 *entered into pursuant to the California Emergency Services Act*
17 *(Chapter 7 (commencing with Section 8550) of Division 1 of Title*
18 *1) or the Fire Protection District Law of 1987 (Part 2.7*
19 *(commencing with Section 13800) of Division 12 of the Health*
20 *and Safety Code).*

21 SEC. 5. The Legislature finds and declares that Section 3 of
22 this act, which adds Section 56134 to the Government Code,
23 furthers, within the meaning of paragraph (7) of subdivision (b)
24 of Section 3 of Article I of the California Constitution, the purposes
25 of that constitutional section as it relates to the right of public
26 access to the meetings of local public bodies or the writings of
27 local public officials and local agencies. Pursuant to paragraph (7)
28 of subdivision (b) of Section 3 of Article I of the California
29 Constitution, the Legislature makes the following findings:

30 This act provides for notice to the public in accordance with
31 existing provisions of the Cortese-Knox-Hertzberg Local
32 Government Reorganization Act of 2000 and will ensure that the
33 right of public access to local agency meetings is protected.