

AMENDED IN ASSEMBLY SEPTEMBER 2, 2015

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

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, that a proposal by a state agency be initiated by the director of the agency with the approval of the Director of 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.

This bill would incorporate additional changes to Section 56133 of the Government Code proposed by AB 402 that would become operative if this bill and AB 402 are both enacted and this bill is enacted last.

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:

1 (a) A resolution of application or petition initiating a change of
2 organization or reorganization with supporting documentation as
3 required by the commission or executive officer.

4 (b) A request for a sphere of influence amendment or update
5 pursuant to Section 56425.

6 (c) A request by a city or district for commission approval of
7 an extension of services outside the agency's jurisdictional
8 boundaries pursuant to Section 56133.

9 (d) A request by a public agency for commission approval of
10 an extension of services outside the agency's jurisdictional
11 boundaries pursuant to Section 56134.

12 SEC. 2. Section 56133 of the Government Code is amended
13 to read:

14 56133. (a) A city or district may provide new or extended
15 services by contract or agreement outside its jurisdictional
16 boundaries only if it first requests and receives written approval
17 from the commission in the affected county.

18 (b) The commission may authorize a city or district to provide
19 new or extended services outside its jurisdictional boundaries but
20 within its sphere of influence in anticipation of a later change of
21 organization.

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

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

30 (2) The commission has notified any alternate service provider,
31 including any water corporation as defined in Section 241 of the
32 Public Utilities Code, or sewer system corporation as defined in
33 Section 230.6 of the Public Utilities Code, that has filed a map and
34 a statement of its service capabilities with the commission.

35 (d) The executive officer, within 30 days of receipt of a request
36 for approval by a city or district of a contract to extend services
37 outside its jurisdictional boundary, shall determine whether the
38 request is complete and acceptable for filing or whether the request
39 is incomplete. If a request is determined not to be complete, the
40 executive officer shall immediately transmit that determination to

1 the requester, specifying those parts of the request that are
2 incomplete and the manner in which they can be made complete.
3 When the request is deemed complete, the executive officer shall
4 place the request on the agenda of the next commission meeting
5 for which adequate notice can be given but not more than 90 days
6 from the date that the request is deemed complete, unless the
7 commission has delegated approval of those requests to the
8 executive officer. The commission or executive officer shall
9 approve, disapprove, or approve with conditions the contract for
10 extended services. If the contract is disapproved or approved with
11 conditions, the applicant may request reconsideration, citing the
12 reasons for reconsideration.

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

14 (1) Contracts or agreements solely involving two or more public
15 agencies where the public service to be provided is an alternative
16 to, or substitute for, public services already being provided by an
17 existing public service provider and where the level of service to
18 be provided is consistent with the level of service contemplated
19 by the existing service provider.

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

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

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

31 (5) A local publicly owned electric utility, as defined by Section
32 9604 of the Public Utilities Code, providing electric services that
33 do not involve the acquisition, construction, or installation of
34 electric distribution facilities by the local publicly owned electric
35 utility, outside of the utility's jurisdictional boundaries.

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

38 *SEC. 2.5. Section 56133 of the Government Code is amended*
39 *to read:*

1 56133. (a) A city or district may provide new or extended
2 services by contract or agreement outside its jurisdictional
3 ~~boundaries~~ *boundary* only if it first requests and receives written
4 approval from the ~~commission in the affected county.~~ *commission.*
5 (b) The commission may authorize a city or district to provide
6 new or extended services outside its jurisdictional ~~boundaries~~
7 *boundary* but within its sphere of influence in anticipation of a
8 later change of organization.
9 (c) ~~The~~ *If consistent with adopted policy, the* commission may
10 authorize a city or district to provide new or extended services
11 outside its jurisdictional ~~boundaries~~ *boundary* and outside its sphere
12 of influence to respond to an existing or impending threat to the
13 ~~public health or safety of the~~ *public or the* residents of the affected
14 ~~territory~~ *territory*, if both of the following requirements are met:
15 (1) The entity applying for ~~the contract~~ approval has provided
16 the commission with documentation of a threat to the health and
17 safety of the public or the affected residents.
18 (2) The commission has notified any alternate service provider,
19 including any water corporation as defined in Section 241 of the
20 Public Utilities Code, ~~or sewer system corporation as defined in~~
21 ~~Section 230.6 of the Public Utilities Code,~~ that has filed a map and
22 a statement of its service capabilities with the commission.
23 (d) The executive officer, within 30 days of receipt of a request
24 for approval by a city or district ~~of a contract~~ to extend services
25 outside its jurisdictional boundary, shall determine whether the
26 request is complete and acceptable for filing or whether the request
27 is incomplete. If a request is determined not to be complete, the
28 executive officer shall immediately transmit that determination to
29 the requester, specifying those parts of the request that are
30 incomplete and the manner in which they can be made complete.
31 When the request is deemed complete, the executive officer shall
32 place the request on the agenda of the next commission meeting
33 for which adequate notice can be given but not more than 90 days
34 from the date that the request is deemed complete, unless the
35 commission has delegated approval of ~~those requests to~~ *made*
36 *pursuant to this section* to the executive officer. The commission
37 or executive officer shall approve, disapprove, or approve with
38 conditions the ~~contract for~~ extended services. If the ~~contract is new~~
39 *or extended services are* disapproved or approved with conditions,

1 the applicant may request reconsideration, citing the reasons for
2 reconsideration.

3 ~~(e) This section does not apply to contracts or agreements solely
4 involving two or more public agencies where the public service
5 to be provided is an alternative to, or substitute for, public services
6 already being provided by an existing public service provider and
7 where the level of service to be provided is consistent with the
8 level of service contemplated by the existing service provider. This
9 section does not apply to contracts for the transfer of nonpotable
10 or nontreated water. This section does not apply to contracts or
11 agreements solely involving the~~

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

13 ~~(1) Two or more public agencies where the public service to be
14 provided is an alternative to, or substitute for, public services
15 already being provided by an existing public service provider and
16 where the level of service to be provided is consistent with the level
17 of service contemplated by the existing service provider.~~

18 ~~(2) The transfer of nonpotable or nontreated water.~~

19 ~~(3) The provision of surplus water to agricultural lands and
20 facilities, including, but not limited to, incidental residential
21 structures, for projects that serve conservation purposes or that
22 directly support agricultural industries. However, prior to extending
23 surplus water service to any project that will support or induce
24 development, the city or district shall first request and receive
25 written approval from the commission in the affected county. This
26 section does not apply to an extended service that a city or district
27 was providing on or before January 1, 2001. This section does not
28 apply to a local publicly owned electric utility, as defined by
29 Section 9604 of the Public Utilities Code, providing electric
30 services that do not involve the acquisition, construction, or
31 installation of electric distribution facilities by the local publicly
32 owned electric utility, outside of the utility's jurisdictional
33 boundaries.~~

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

36 ~~(5) A local publicly owned electric utility, as defined by Section
37 9604 of the Public Utilities Code, providing electric services that
38 do not involve the acquisition, construction, or installation of
39 electric distribution facilities by the local publicly owned electric
40 utility, outside of the utility's jurisdictional boundary.~~

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

3 (f) This section applies only to the commission of the county in
4 which the extension of service is proposed.

5 SEC. 3. Section 56134 is added to the Government Code, to
6 read:

7 56134. (a) (1) For the purposes of this section, “fire protection
8 contract” means a contract or agreement for the exercise of new
9 or extended fire protection services outside a public agency’s
10 jurisdictional boundaries, as authorized by Chapter 4 (commencing
11 with Section 55600) of Part 2 of Division 2 of Title 5 of this code
12 or by Article 4 (commencing with Section 4141) of Chapter 1 of
13 Part 2 of Division 4 of the Public Resources Code, *except those*
14 *contracts entered into pursuant to Sections 4143 and 4144 of the*
15 *Public Resources Code*, that does either of the following:

16 (A) Transfers responsibility for providing services in more than
17 25 percent of the area within the jurisdictional boundaries of any
18 public agency affected by the contract or agreement.

19 (B) Changes the employment status of more than 25 percent of
20 the employees of any public agency affected by the contract or
21 agreement.

22 (2) A contract or agreement for the exercise of new or extended
23 fire protection services outside a public agency’s jurisdictional
24 boundaries, as authorized by Chapter 4 (commencing with Section
25 55600) of Part 2 of Division 2 of Title 5 of this code or Article 4
26 (commencing with Section 4141) of Chapter 1 of Part 2 of Division
27 4 of the Public Resources Code, *except those contracts entered*
28 *into pursuant to Sections 4143 and 4144 of the Public Resources*
29 *Code*, that, in combination with other contracts or agreements,
30 would produce the results described in subparagraph (A) or (B)
31 of paragraph (1) shall be deemed a fire protection contract for the
32 purposes of this section.

33 (3) For the purposes of this section, “jurisdictional boundaries”
34 shall include the territory or lands protected pursuant to a fire
35 protection contract entered into on or before December 31, 2015.
36 An extension of a fire protection contract entered into on or before
37 December 31, 2015, that would produce the results described in
38 subparagraph (A) or (B) of paragraph (1) shall be deemed a fire
39 protection contract for the purposes of this section.

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

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

10 (1) In the case of a public agency that is not a state agency, the
11 application shall be initiated by the adoption of a resolution of
12 application by the legislative body of the public agency proposing
13 to provide new or extended services outside the public agency's
14 current service area.

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

19 (3) In the case of a public agency that is a local agency currently
20 under contract with a state agency for the provision of fire
21 protection services and proposing to provide new or extended
22 services by the expansion of the existing contract or agreement,
23 the application shall be initiated by the public agency that is a local
24 agency and be approved by the Director of Finance.

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

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

29 (A) Obtains and submits with the resolution a written agreement
30 validated and executed by each affected public agency and
31 recognized employee organization that represents firefighters of
32 the existing and proposed service providers consenting to the
33 proposed fire protection contract.

34 (B) Provides, at least 30 days prior to the hearing held pursuant
35 to paragraph (2), written notice to each affected public agency and
36 recognized employee organization that represents firefighters of
37 the existing and proposed service providers of the proposed fire
38 protection contract and submits a copy of each written notice with
39 the resolution of application. The notice shall, at minimum, include
40 a full copy of the proposed contract.

1 (2) The public agency conducts an open and public hearing on
2 the resolution, conducted pursuant to the Ralph M. Brown Act
3 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
4 2 of Title 5) or the Bagley-Keene Open Meeting Act (Article 9
5 (commencing with Section 11120) of Chapter 1 of Part 1 of
6 Division 3 of Title 2), as applicable.

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

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

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

14 (3) An identification of existing service providers, if any, of the
15 new or extended services proposed to be provided and the potential
16 fiscal impact to the customers of those existing providers.

17 (4) A plan for financing the exercise of the new or extended fire
18 protection services in the affected territory.

19 (5) Alternatives for the exercise of the new or extended fire
20 protection services in the affected territory.

21 (6) An enumeration and description of the new or extended fire
22 protection services proposed to be extended to the affected territory.

23 (7) The level and range of new or extended fire protection
24 services.

25 (8) An indication of when the new or extended fire protection
26 services can feasibly be extended to the affected territory.

27 (9) An indication of any improvements or upgrades to structures,
28 roads, sewer or water facilities, or other conditions the public
29 agency would impose or require within the affected territory if the
30 fire protection contract is completed.

31 (10) A determination, supported by documentation, that the
32 proposed fire protection contract meets the criteria established
33 pursuant to subparagraph (A) or (B) of paragraph (1) or paragraph
34 (2), as applicable, of subdivision (a).

35 (f) The applicant shall cause to be prepared by contract an
36 independent comprehensive fiscal analysis to be submitted with
37 the application pursuant to this section. The analysis shall review
38 and document all of the following:

39 (1) A thorough review of the plan for services submitted by the
40 public agency pursuant to subdivision (e).

1 (2) How the costs of the existing service provider compare to
2 the costs of services provided in service areas with similar
3 populations and of similar geographic size that provide a similar
4 level and range of services and make a reasonable determination
5 of the costs expected to be borne by the public agency providing
6 new or extended fire protection services.

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

9 (g) The clerk of the legislative body of a public agency or the
10 director of a state agency adopting a resolution of application
11 pursuant to this section shall file a certified copy of the resolution
12 with the executive officer.

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

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

33 (i) (1) The commission shall not approve an application for
34 approval of a fire protection contract unless the commission
35 determines that the public agency will have sufficient revenues to
36 carry out the exercise of the new or extended fire protection
37 services outside its current area, except as specified in paragraph
38 (2).

39 (2) The commission may approve an application for approval
40 of a fire protection contract where the commission has determined

1 that the public agency will not have sufficient revenue to provide
2 the proposed new or different functions or class of services, if the
3 commission conditions its approval on the concurrent approval of
4 sufficient revenue sources pursuant to Section 56886. In approving
5 a proposal, the commission shall provide that, if the revenue
6 sources pursuant to Section 56886 are not approved, the authority
7 of the public agency to provide new or extended fire protection
8 services shall not be exercised.

9 (j) The commission shall not approve an application for approval
10 of a fire protection contract unless the commission determines,
11 based on the entire record, all of the following:

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

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

18 (3) The commission has reviewed any testimony presented at
19 the public hearing.

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

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

35 (l) The commission may continue from time to time any hearing
36 called pursuant to this section. The commission shall hear and
37 consider oral or written testimony presented by any affected local
38 agency, affected county, or any interested person who appears at
39 any hearing called and held pursuant to this section.

1 (m) This section shall not be construed to abrogate a public
2 agency’s obligations under the Meyers-Milias-Brown Act (Chapter
3 10 (commencing with Section 3500) of Division 4 of Title 1).

4 SEC. 4. The Legislature finds and declares that, with respect
5 to fire protection contracts subject to this act, the provisions of this
6 act are not intended to change, alter, or in any way affect either of
7 the following:

8 (a) The existing jurisdiction of a local agency formation
9 commission over proceedings that involve the provision of
10 prehospital emergency medical services.

11 (b) Mutual aid agreements, including mutual aid agreements
12 entered into pursuant to the California Emergency Services Act
13 (Chapter 7 (commencing with Section 8550) of Division 1 of Title
14 *1 of the Government Code*) or the Fire Protection District Law
15 of 1987 (Part 2.7 (commencing with Section 13800) of Division
16 12 of the Health and Safety Code).

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

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

30 *SEC. 6. Section 2.5 of this bill incorporates amendments to*
31 *Section 56133 of the Government Code proposed by both this bill*
32 *and Assembly Bill 402. It shall only become operative if (1) both*
33 *bills are enacted and become effective on or before January 1,*
34 *2016, (2) each bill amends Section 56133 of the Government Code,*
35 *and (3) this bill is enacted after Assembly Bill 402, in which case*
36 *Section 2 of this bill shall not become operative.*