



Primer on Senate Bill 239 | Implementation in Marin County

Background...

- Government Code Section 56133 was established in 2001 as part of a comprehensive rewrite of LAFCO law authored by then Assemblymember Hertzberg (Van Nuys) to require cities and districts to receive LAFCO approval to provide “new” or “extended” services outside their boundaries by contract less certain exemptions. One of these exemptions originally chaptered included contracts between public agencies where the services are an equal or greater substitute for existing services.
- The California Professional Firefighters Association approached Senator Robert Hertzberg (San Fernando Valley) in late 2014 to author a change to Section 56133 to eliminate the exemption status for certain types of fire protection contracts. The stated policy purpose by the sponsor for the request was “past agreements have generated controversy while failing to produce anticipated cost-savings and administrative efficiencies, and accordingly more scrutiny is required.”
- Senator Hertzberg introduced SB 239 in February 2015 to eliminate the exemption allowances under Section 56133 for certain fire protection contracts as well as prescribing submittal, review, and approval processes therein under Section 56134. SB 239 was substantively amended throughout its legislative process – including dropping a union approval requirement – before passing along party lines in both the Senate and Assembly and getting signed by Governor Brown.

Explicit Requirements of SB 239...

- As of January 1, 2016 all cities and special districts must request and receive LAFCO approval before entering into contracts to provide new or extended fire protection services if either of the following conditions apply:
 - Contracts that transfers responsibility for providing fire protection services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or
 - Contracts that changes the employment status of more than 25 percent of the employees of any public agency affected by the contract or agreement.
- Mandates local agencies first provide written notice to all recognized employee organizations that represent the affected firefighters before applying with LAFCO.

- Prescribes specific approval thresholds to LAFCOs in reviewing applicable requests for outside fire protection service contracts. This includes all requests necessitating the preparation of an independent comprehensive fiscal analysis.
- Specifies contracts between local agencies and the State of California (CalFire) for fire protection services now be approved by LAFCOs if the referenced conditions (i.e., 25% of service area or 25% of employment status) are triggered.

Implicit Requirements of SB 239...

- Establishes a new negotiation/intervention process for the public to participate, redirect, and or stop fire protection outsourcing in California.
- New or extended automatic and mutual aid agreements for outside fire protection services are now subject to LAFCO approval if the referenced conditions (i.e., 25% of service area or 25% of employment status is affected).
- Functional consolidations of fire protection services involving joint power authorities (JPAs) are indirectly now subject to LAFCO approval; not the formation of the JPA but the underlying service contract for fire protection services.

Implementation Issues / Possible Local Policy Guidelines...

- LAFCO's process for documenting and determining when 25% of one or more of the contracting agencies' employment status is affected? Does it apply to the entire agency or just the department within the agency providing fire protection services?
- The term "employment status" is not defined; does it mean just employment or does it also mean changes in wages, benefits, and hours?
- Assessing cumulative impacts? Section 56134(a)(2) makes reference to contracts that in combination of other contracts producing the change of 25% or more in employment status or 25% or more in service area being subject to the approval process. Should this include all agency contracts for outside services or just those contracts that affect a specific contracted area?
- Should the approval process apply to ambulance services?
- Should new and or extended automatic aid agreements be exempted through the adoption of local policies... why or why not? What about mutual-aid agreements?
- Need to define "extended" fire protection services... does adding a new engine company or anything else that arguably elevates service levels and incorporated into a new contract trigger LAFCO approval now under SB 239?