



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

TO: MEMBERS, FORMATION COMMISSION
FROM: DAVID CHURCH, AICP, EXECUTIVE OFFICER
DATE: FEBRUARY 18, 2016
SUBJECT: POLICY DISCUSSION: SB 239 AND SB 88

Recommendation. It is respectfully recommended that the Commission receive and file this report.

SB 239 and SB 88 became law on January 1, 2016. Each bill has impacts regarding LAFCO.

SB 239 (Hertzberg D)

Summary: This bill would, with certain exceptions, permit a public agency to exercise new or extended fire/emergency services outside the public agency's jurisdictional boundaries pursuant to a fire protection contract, only if the public agency receives written approval from the local agency formation commission in the affected county. This bill contains other related provisions and other existing laws and took effect on January 1, 2016.

CALAFCO Analysis: This bill sets forth requirements for the application of service extensions between other agencies relating to fire protection services. The bill calls for a new Fire Protection Contract to be submitted with the application to LAFCO for review. This is required for applications that (1) Transfer greater than 25% of the service area or (2) Changes the employment status of more than 25% of employees of any affected agencies. Prior to submitting the application for service extension, all affected agency employee unions must approve the request or provide at least 30 days notice of the public hearing with such notice being sent to each affected public agency and all affected employee unions and shall include a copy of the proposed agreement.

The bill requires contents of the Contract Plan to include: (1) Cost of providing services to be extended; (2) Cost to customers; (3) an ID of existing service providers; (4) Financing plan; (5) Alternatives to the extension; (6) Enumeration and description of services proposed; (7)

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level and range of services proposed; (8) Timeline for services to be provided; and (9) Improvements or upgrades that would be imposed or required to provide services. Further, it requires a comprehensive Fiscal Analysis to be conducted.

The bill also outlines determinations the commission must make that include the provider of services for the extension of service will build a "reasonable reserve" during the three years following the effective date of the contract. The bill sets several precedents. It requires a California state agency to apply for, and request LAFCo approval prior to undertaking an action that involves the provision of services outside of a public agency's current service area under contract or agreement.

Local Implementation. CAL FIRE and Cambria CSD are considering a contractual arrangement that would trigger implementation of this new law. LAFCO Staff has been in contact with local CAL FIRE representatives to discuss the process. A number of questions remain about how to implement the new law. Attached is a CALAFCO bulletin that provides information about the new law and the intent of some of the provisions. The new law does not apply to renewals that do not change area or employment status by greater than 25%.

Local Policies to Consider – SB 239

1. San Luis Obispo LAFCO shall consider an Outside User Agreement consistent with GC 56134 and the local policies adopted by the Commission.
2. The term "employment status" shall be interpreted to mean the actual number of employees that are transferred under the new contract to another agency.
3. The Commission has discretion to approve, modify or disapprove the application for an Outside User Agreement under GC 56134.
4. Renewals of existing agreements that do not exceed the 25% thresholds for employment status and area are exempt from GC 56134. The applicant shall consult with LAFCO to determine if the proposal is eligible for an exemption.
5. New agreements that do not exceed the 25% thresholds for employment status and area are exempt from GC 56134. The applicant shall consult with LAFCO to determine if the proposal is eligible for an exemption.

SB 88

Summary: Authorizes the State Water Resources Control Board to order consolidation with a receiving water system where a public water system, or a state small water system within a disadvantaged unincorporated community, consistently fails to provide an adequate supply of safe drinking water. This bill would authorize the state board to order the extension of service to an area that does not have

access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation.

CALAFCO Comments: As amended, SB 88 gives the State Water Resources Control Board (SWRCB) direct authority to mandate either an extension of service or consolidation of water systems, including public and private systems, and individual wells. The bill focuses on disadvantage unincorporated communities. Prior to ordering the consolidation, the SWRCB must make certain determinations and take certain actions, including conducting a public hearing in the affected territory.

The SWRCB are also required to "consult with and fully consider input from the relevant LAFCO, the PUC, and either the city or county (whichever has land use authority). Entities are allowed six months to find workable solutions before the SWRCB mandates the action. Prior to making the order, the SWRCB must make certain determinations. Upon making the order, the SWRCB must make funding available to the receiving water system for capacity building (no operations and maintenance funding is provided, adequately compensate the subsumed system, pay fees to the LAFCo for whatever work they will do (which is as of now undefined) to facilitate the action. The bill also contains certain CEQA exemptions and liability relief for the subsuming water entity, as well as various penalties.

Finally, the bill makes legislative findings and declarations as to the reason for the SWRCB to have these powers, which has been taken directly from the legislative findings and declarations of CKH and the reason LAFCos have the powers they do.

Local Implementation. The SWRCB has notified the owner of the Higuera Apartments, which is located adjacent to the City of San Luis Obispo, that the water system contains high nitrate levels. The SWRCB has advised the owner to voluntarily pursue consolidation with the City or further enforcement actions will be taken by the State of California. This could lead to LAFCO actions: either an annexation or outside user agreement based on a threat to public health and safety. The SWRCB representative called SLO LAFCO to discuss these options prior to sending the letter.

Local Policies to Consider – SB 88

1. LAFCO shall consider areas that have been notified by the SWRCB as needing service from an adjacent jurisdiction as being eligible for an outside user agreement under the threat to public health provision in GC 56133.
2. The application for an outside user agreement to comply with an order from the SWRCB shall be processed expeditiously by LAFCO. The application shall be brought to hearing with 60 days of submitting it to LAFCO.

3. Annexations proposed to comply with an SWRCB order, shall be processed in an expeditious manner. The application shall be brought to hearing within 90-days after submittal of an application.

Legislative Proposal: Require Information - Joint Power Authorities/Agencies

CALAFCO is considering sponsoring a bill that would require Joint Power Authorities to submit information to LAFCOs as needed for evaluating municipal services. The bill would modify code sections relevant to the Joint Powers Authorities. It uses the definition of a JPA found in the CKH Act and requires the authority or agency to submit a copy of the original joint powers agreement and any amendments to LAFCO. Opposition has been expressed on a previous version by the Rural Counties Representatives of California (RCRC) and the California Association of Joint Powers Authorities (CAJPA). This bill is still a work in progress. However, the deadline to introduce bills is February 19 and the bill must be reviewed by the Legislative Counsel. Below are the proposed language changes:

6503.6. Whenever an agency or entity files a notice of agreement or amendment with the office of the Secretary of State pursuant to Section 6503.5, the agency or entity shall file a copy of the full text of the original joint powers agreement, and any amendments to the agreement, with the Controller, **and if any such agency or entity includes a member that is a local agency as defined in Section 56054 and meets the definition of a joint-powers authority or joint-powers agency under Section 56047.7** , that agency or entity shall, **within 90 days after the effective date of the agreement or amendment thereto, file a copy of the agreement or amendment with the local agency formation commissions in all affected counties as defined in Section 56012.**

6503.8. No later than July 1, 2017, any separate agency or entity constituted pursuant to a joint powers agreement that includes, as a member, a local agency as defined in Section 56054 and meets the definition of a joint-powers authority or joint-powers agency under Section 56047.7 and was entered into prior to the effective date of this section shall, as the agency responsible for the administration of the agreement, cause a copy of the agreement to be filed with the local agency formation commissions in all affected counties, as defined in Section 56012.

Note: **black** existing statute / **red** original submitted revisions / **blue** new changes

CALAFCO BULLETIN

The Implementation of SB 239



This bulletin is intended to provide our member LAFCoS with information on the implementation of SB 239. It is a result of CALAFCO's meeting with a number of representatives from the Sponsor of the bill along with union representatives from CalFIRE Local 2881 and the CA Fire Chief's Association. Authored by Senator Hertzberg and sponsored by the California Professional Firefighters, the bill was signed into law by Governor Brown on October 10, 2015, and takes effect January 1, 2016.

In summary, the bill amends Government Code Sections 56017.2 and 56133, and adds GC §56134 relating to the extension of fire protection services outside existing city or district boundaries. The bill deems "existing boundaries" as those that exist as of 12-31, 2015. It requires LAFCo approval on any new contract for the extension of fire services or a contract extension or amendment that transfers greater than 25% of the service area or changes the employment status of more than 25% of employees of any affected agencies. Further, it requires the applicant to include in their application a comprehensive fiscal analysis (CFA) prepared by independent contract, and outlines the required contents of the application and the CFA. The contents of the CFA are identified in Section 56134 (f) and are not as exhaustive as what is required in a CFA for a proposed city incorporation.

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

- ❖ Require the applicant to provide LAFCo, as part of the application, proof that the 25% trigger is occurring.
- ❖ It is up to each LAFCo to 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 (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 term. Each LAFCo is encouraged to create a local policy to define this term.
- ❖ The change of +25% in employment status of the employees of any public agency affected by the contract or agreement is intended to apply to the entire department. In other words, +25% as compared to the department affected.
- ❖ 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. What is unclear about this situation is if it is just this one contract that is subject to the law, or if all existing contracts within the jurisdictional area are affected. 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 trigger of the +25%. Each LAFCo is encouraged to consider a local policy to clarify this 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 intended to apply to ambulance services agreements.
- ❖ If a current contract expires and a service area no longer wants to contract for services and will take over providing the services themselves, this bill does not apply, as there is no contract to review and approve.

What has yet to be determined:

- ❖ What happens if both parties agree on the contract? It has been suggested that future consideration may be given to an exemption in these cases. For now, if the situation meets the criteria, the new law must be followed, even though both parties may be in full agreement to the proposed changes.
- ❖ How to measure the cumulative effect of incremental extensions affecting less than 25% of the service area of employment status. Since the law requires the public agencies to go to LAFCo only in the instances where they have identified a greater than 25% impact, questions remain as to the process of documenting cumulative impacts to either the affected service area or the employment status when changes of either are less than 25%.

All LAFCos are encouraged to meet early with all of the stakeholders that may be impacted by this new law. You are also encouraged to create local policies as noted above to best implement the law based on local conditions and circumstances. Please contact CALAFCO with any questions.