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County Board of
Supervisors

February 1, 2016

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Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Local Agency Formation Commission
FROM: Executive Officer
Local Governmental Analyst

Members

Dianne Jacob
County Board of
Supervisors

SUBJECT: Draft Guidelines Addressing the Review and Approval of Fire
Protection Contracts

Andrew Vanderlaan
Public Member

EXECUTIVE SUMMARY

Lorie Zapf
Councilmember
City of San Diego

Enactment of Senate Bill No. 239 (SB 239) amended state law and now requires public agencies, under specified circumstances, to receive written approval from the Local Agency Formation Commission (LAFCO) before exercising new or extended fire protection services outside the agencies' jurisdictional boundaries. The new law went into effect on January 1, 2016 and places added responsibilities on both local and state agencies prior to the submittal of fire protection contract applications to LAFCO.

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Vacant
Special District

Alternate Members

A copy of the signed bill by Governor Brown is included in this report as **Attachment 1**. There are many uncertainties with respect to implementation of SB 239. This report identifies outstanding issues requiring further Commission discussion and direction prior to development of a consistent approach for review of fire protection contract applications.

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

In addition to the notification of today's hearing, LAFCO staff has taken a proactive role to increase awareness of the new law by presenting SB 239 to the Commission's Special Districts Advisory Committee and the San Diego County Fire Chief's Association. Not only did these meetings provide a forum to address the new law's legislative intent but they also assisted in the development of a proposed process for the review of future fire protection contracts. As a result, local agency representatives provided substantial input that was included in staff's final draft documents attached to this report.

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

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BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 directs each LAFCO to review and take action on city or district contract or agreements which extend services outside jurisdictional boundaries. For example, the Commission may authorize a city or district to provide new or extended services outside jurisdictional boundaries to respond to an existing or impending threat to the public health or safety of the residents of the affected territory. Prior to 2016, state law exempted many contracts from LAFCO purview. For example, contracts between two or more public agencies were generally exempt from LAFCO review. This exemption has since been repealed with respect to fire protection contracts.

Following the enactment of SB 239 and establishment of Government Code Section 56134, state law now defines a fire protection contract as: an agreement for the exercise of new or extended fire protection services outside a public agency's boundary that either (1) affects services in more than twenty-five percent of the area within the jurisdictional boundaries of any public agency, or (2) if the employment status of more than twenty-five percent of any public agency is affected by the contract. The San Diego LAFCO opposed this and other provisions in SB 239 because such provisions could potentially have a dampening impact on cost-effective methods of service delivery. SB 239 was nonetheless enacted, and it is now necessary for the San Diego LAFCO to adopt guidelines to ensure that this new law is implemented in a rational manner.

DISCUSSION

The new law requires applicants and LAFCOs to consider various determinations when considering the transfer of fire protection responsibilities including in-depth costs analyses, plans for service, enhanced public notification and additional hearing dates. To illustrate the required steps outlined in SB 239, staff has developed a flowchart similar to other change of organization diagrams available on the San Diego LAFCO's website (see ***Attachment 2***).

While these requirements allow for additional transparency regarding specific fire protection agreements, certain steps outlined in the new law require further clarification before they can be implemented. This led to a meeting between representatives of the California Association of Local Agency Formation Commissions (CALAFCO), the California Fire Chief's Association (bill sponsor), and union representatives from CalFIRE Local 2881 to discuss the legislative intent and address any concerns with respect to how SB 239 should be interpreted. The following is a summary of the SB 239's intent according to the bill's sponsor. Also included in this summary are specific recommendations from LAFCO staff regarding clarification and concurrence needed from the Commission.

Threshold Requirement: Public agencies that provide fire protection must now comply with new requirements when extending services by contract or agreement outside of their jurisdictional boundaries whenever the SB 239 service area or employment status thresholds are reached. SB 239 does not contain verification standards for these thresholds.

- **LAFCO Staff Recommendation:** The bill sponsor indicated that each LAFCO in California may determine what the required proof would be in verifying whether a fire protection contract demands LAFCO review. For example, service maps demonstrating the change of twenty-five percent of the service area or employment statistics that would provide proof of the twenty-five percent of change in employment status could be sufficient documentation for verification. Staff is recommending that several documents be provided as part of the application, including: (1) a copy of the proposed contract, (2) a map and/or Geographic Information System shapefiles recognized by the San Diego LAFCO to determine if the contract affects twenty-five percent of the service area, and (3) budgetary documents which include current employment statistics to determine if the contract affects twenty-five percent of the area's employment status.

Employment Status Undefined: SB 239 applies to an extension of a fire protection contract if either the service area or employment status threshold conditions are triggered. The term "employment status" found in Section 56134(a)(1)(B) is not defined and may lead to different interpretations from affected public agencies, fire unions, and LAFCOs.

- **LAFCO Staff Recommendation:** The bill sponsor indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of the employment status determination, but rather the change in service providers as it applies to an entire department. Staff has proposed a definition for employment status which is provided on page 5 of this report. This definition focuses on departmental level and service provider changes rather than individual employee level changes.

Single vs. Cumulative Contracts: Currently, Section 56134(a)(2) states in part, if a contract or agreement that, in combination with other contracts or agreements, triggers the twenty-five percent 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 the SB 239 process.

- **LAFCO Staff Recommendation:** The sponsor indicated that it was their intent to review single contracts rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the twenty-five percent threshold. It was not the intent by the sponsor to trigger each twenty-five threshold by a cumulative approach. Staff is proposing to review and consider proposed fire protection contracts on a case-by-case basis as encouraged by the bill sponsor to clarify this situation.

Contract Exemptions: SB 239 excludes from its requirements mutual aid agreements, including those entered into under the California Emergency Services Act (Gov. Code § 8550 et seq.), or Fire Protection District Law of 1987 (Health & Safety Code § 13800 et seq.). SB 239 is also not intended to change or affect existing LAFCO jurisdiction over proceedings that involve the provision of pre-hospital emergency medical services. No other agreements are exempt from the SB 239 process.

- **LAFCO Staff Recommendation:** The bill sponsor made it clear that several types of fire contracts should not be subject to the new law. These include: renewal of existing contracts (unless renewal includes amendments that trigger the twenty-five percent threshold), ambulance service agreements, and mutual or automatic aid agreements. Additionally, if a current contract expires and an agency no longer wants to contract and assumes providing the service, the bill does not apply, as there is no contract to review and approve. Staff recommends excluding these fire agreements from LAFCO purview as intended by the bill sponsor. In addition, the amendment or renewal of contracts generally does not represent the exercise of “new or extended” service per the meaning of these terms in SB 239. Therefore, contract amendments or renewals will not generally be subject to LAFCO purview.

Collaborative Effort

The meeting with the bill sponsor provided much needed clarification on several areas of the bill. In addition to the newly introduced information, LAFCO staff crafted a preliminary analysis (see **Attachment 3**) of the bill and distributed the document to all fire agencies in order to inform the public agencies at the local and state level of the new law as well as highlight all the outstanding issues within SB 239. To address these issues and develop some type of comprehensive policy, staff also held meetings with LAFCO’s Special Districts Advisory Committee (Committee) and the San Diego County Fire Chief’s Association to discuss SB 239 and provide an opportunity for public agencies to evaluate the new law in an open forum.

The first meeting was held on December 18, 2015 with the Special Districts Advisory Committee. The Committee reviewed the preliminary report and provided direction on several uncertainties within the new statute including term definitions, required documentation, and application procedures. The second meeting was held on January 7, 2016 with the San Diego County Fire Chief’s Association. The Association invited LAFCO to present an overview of the new law. Several members raised concerns on the lack of term definitions used throughout the statute as well as questioning whether agreements between local entities such as Joint Powers Authorities or Indian tribes were subject to LAFCO purview. Such inquiries were subsequently addressed in the draft guidelines. The benefits of both meetings were two-fold: (1) it allowed LAFCO staff to introduce SB 239 to public agencies unfamiliar with the new law and (2) the public agencies were instrumental in identifying several gaps in the law which ultimately assisted in the development of the proposed policy guidelines.

Proposed Fire Protection Contract Policy Guidelines

Based on staff's review and the input from our outreach with affected agencies, staff believes the following areas require clarification and are addressed in the proposed guidelines.

Definition of Various Terms

During our meetings with local agencies, a reoccurring concern was the lack of clear definitions. The primary terms in question and in need of clarification were "new and extended services," "employment status," and "fire protection." Staff is proposing these terms be defined as follows:

New and Extended Services

"New service" should be defined independently from extended services and address the governmental functions that were not previously provided by a public agency on or after January 1, 2016. "Extended service" should be defined as a governmental function that goes above and beyond what a public agency currently provides.

Employment Status

The term "employment status" found in Section 56134(a)(1)(B) was not defined; it was the intent of the sponsor that this term means a change in service provider. Furthermore, the bill sponsor indicated that the intent was also not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department. While their explanation added supplemental information, the term "employment status" needs a clearer definition before moving forward. The term should, therefore, be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees.

Fire Protection

The term "fire protection" is not defined in the statute. The Merriam-Webster dictionary defines fire protection as the "measures and practices for preventing or reducing injury and loss of life or property by fire." However, there are several divisions and administrative services that fall under the fire protection umbrella. For example, the Fire Protection District Law of 1987 defines the general powers and duties of a fire district to include fire protection, rescue, emergency medical, hazardous material emergency response, ambulance and any other services relating to the protection of lives and property. To clarify the definition, staff is proposing that fire protection be defined the same as in the Fire Protection District Law of 1987. All other subordinate services related to this definition (e.g. administration, management, operations, etc.) should be included within the primary function/definition of fire protection and should be exempt from SB 239 unless otherwise directed by the Commission.

Application Procedure

The new law outlines explicit obligations and tasks for both public agencies and LAFCOs when the transfer of fire services is considered. The complete process is outlined in the draft guidelines. In addition, it should be recommended that local and state agencies interested in providing new or extended fire services contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. The draft guidelines identify the benefits of a pre-application discussion between applicants and LAFCO and outline the necessary steps when proposed contracts require LAFCO review or are deemed exempt. Currently, SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. In the event that all affected agencies consent to the proposed change in services, it is recommended that the Commission delegate the approval process to the Executive Officer as a streamlined approach. Also recommended is the filing of a Certificate of Exemption (see ***Attachment 4***) if a proposed contract is determined to be exempt from LAFCO purview by the Executive Officer. Any administratively-approved or exempted fire contract would still be scheduled as an informational item at the next available LAFCO hearing be subject to ratification, as necessary.

Commission Hearing Proceedings

The Commission has the discretion to approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. While the new law covers in detail how the Commission cannot approve a proposed fire protection contract unless specific actions are taken, there is a lack of direction in the event if a contract is disapproved or approved with conditions. The draft guidelines provide additional information on the request for reconsideration and termination proceedings if applicable.

Legislative Intent

Following Governor Brown's approval of SB 239 in October 2015, representatives of the CALAFCO met with stakeholders and Sponsors of the bill to discuss the legislative intent. The draft guidelines provide a summary of the meeting between CALAFCO and stakeholders which may be adopted by the Commission as part of the implementation process.

CONCLUSION

Prior to the enactment of SB 239, the Cortese-Knox-Hertzberg Act did not require LAFCO review for most fire protection contracts between two or more public agencies. While the Act recognizes that interagency contracting is often an efficient and cost-saving manner in which to provide local public services, the enactment of SB 239 makes this harder to achieve. SB 239 has accordingly imposed new requirements for Commission approval of fire service contract extensions. To clarify some definitions and procedural aspects of the new law, staff is recommending the adoption of the attached policy guidelines.

RECOMMENDED: That your Commission,

1. Review and approve the attached Policy Guidelines for Fire Protection Contracts (Attachment 5); and
2. Direct the Executive Officer to implement the Guidelines as part of future consideration of fire protection contracts.

Respectfully submitted,

MICHAEL D. OTT
Executive Officer

JOE A. SERRANO
Local Governmental Analyst

MDO:JS:trl

Attachments

1. SB 239 Legislative Language
2. SB 239 Flowchart
3. SB 239 Preliminary Analysis Report
4. Certificate of Exemption
5. Fire Protection Contract Policy Guidelines

Senate Bill No. 239

CHAPTER 763

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

[Approved by Governor October 10, 2015. Filed with
Secretary of State October 10, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 239, 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.

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

SECTION 1. Section 56017.2 of the Government Code is amended to read:

56017.2. "Application" means any of the following:

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

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

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

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

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

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

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

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional 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:

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

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public

Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

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

(1) 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 existing service provider.

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

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

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

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, 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) A fire protection contract, as defined in subdivision (a) of Section 56134.

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

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

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

(c) If consistent with adopted policy, the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

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

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

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

(1) 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 existing service provider.

(2) The transfer of nonpotable or nontreated water.

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

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

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, 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 boundary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) 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.

(B) Provides, at least 30 days prior to the hearing held pursuant to paragraph (2), 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. The notice shall, at minimum, include a full copy of the proposed contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (1) The commission shall not approve an application for approval of a fire protection contract unless the commission 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 paragraph (2).

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

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

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

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

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

(4) 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.

(k) At least 21 days prior to the date of the hearing, the executive officer shall give mailed notice of that 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. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the territory affected by the proposal proposed to be adopted and shall post the notice of the hearing on the commission's Internet Web site.

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

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

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

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

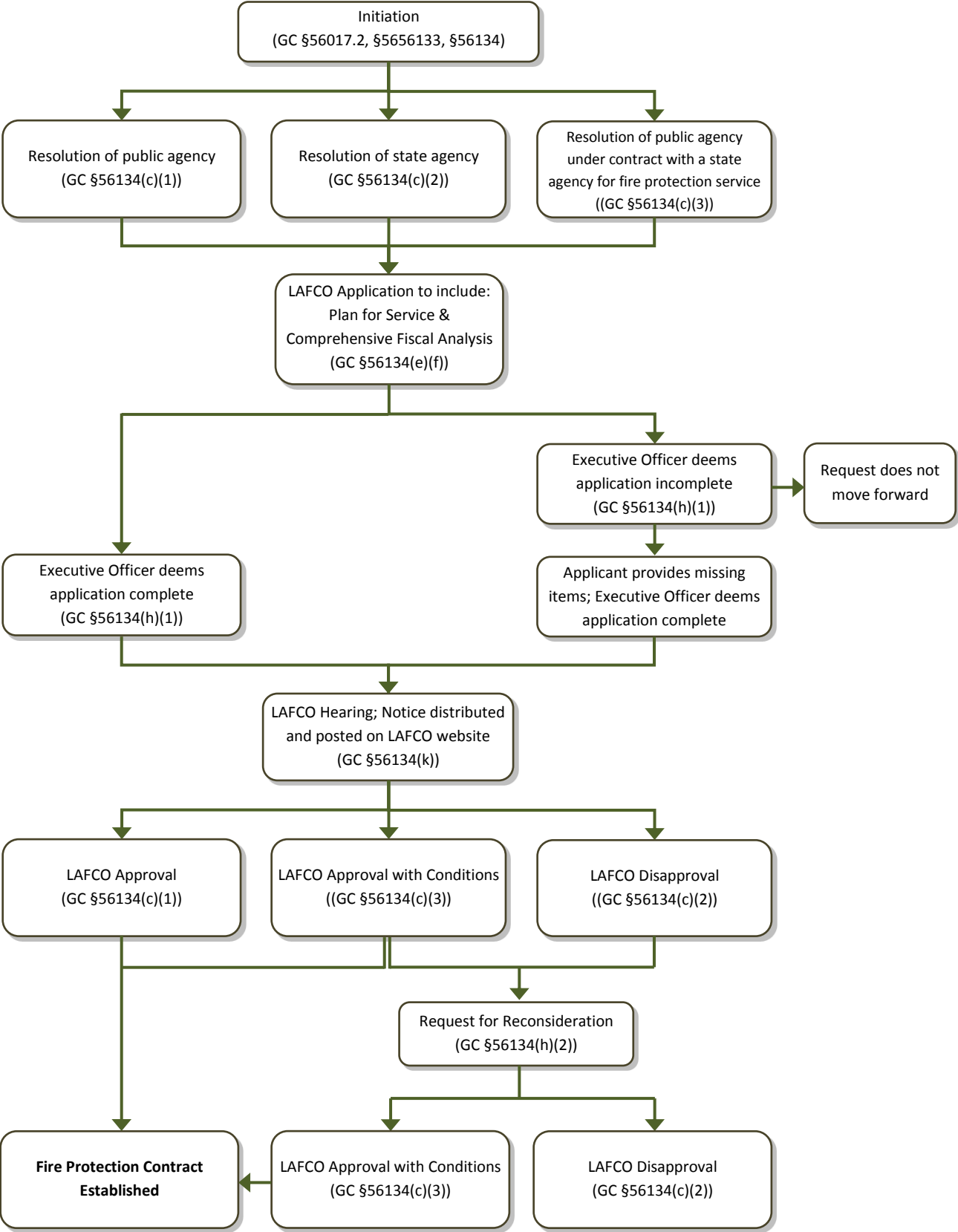
(b) Mutual aid agreements, including mutual aid agreements entered into pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 1 of the Government Code) or the Fire Protection District Law of 1987 (Part 2.7 (commencing with Section 13800) of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

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

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

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

Fire Protection Contract



Chairman

Bill Horn
County Board of
Supervisors

December 18, 2015

Attachment 3

Vice Chairman

Sam Abed
Mayor
City of Escondido

Members

Dianne Jacob
County Board of
Supervisors

Andrew Vanderlaan
Public Member

Lorie Zapf
Councilmember
City of San Diego

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

TO: Special Districts Advisory Committee

FROM: Executive Officer
Local Governmental Analyst

SUBJECT: Senate Bill 239 Overview & Implementation

INTRODUCTION

On October 10, 2015, Governor Brown signed Senate Bill No. 239 (SB 239) which amends current law and requires public agencies, under specified circumstances, to receive written approval from the Local Agency Formation Commission (LAFCO) in the affected counties before exercising new or extended fire protection services outside the agencies' jurisdictional boundaries. Refer to Attachment 2 for SB 239. Existing law exempts from LAFCO purview contracts between two or more public agencies where the public services to be provided is an alternative for existing public services. This exemption has been repealed with respect to fire protection contracts and agreements.

Following the enactment of SB 239, agreements between two or more public agencies to provide fire protection services are now subject to LAFCO purview if the proposed contract affects services in more than 25% of the area within the jurisdictional boundaries of any public agency or if the employment status of more than 25% of any public agency is affected. The San Diego LAFCO opposed this and other provisions in SB 239 because such provisions can potentially have a dampening impact on cost-effective methods of service delivery. SB 239 was nonetheless enacted and it is now necessary for the San Diego LAFCO to adopt guidelines to ensure that this new law is implemented in a rational manner.

FIRE PROTECTION CONTRACT

The newly established Government Code Section 56134 defines a “fire protection contract” as a contract or agreement for the exercise of new or extended fire protection services outside a public agency’s jurisdictional boundaries that does either of the following:

- Transfer responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or
- Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

An extension of a fire protection contract entered into on or before December 31, 2015 that would produce either of the 25% thresholds above is deemed to be a fire protection contract per SB 239. A recent November meeting between representatives from the California Association of LAFCOs (CALAFCO) and bill sponsors determined that the 25% threshold is not attributive to a cumulative calculation approach. The bill sponsors also indicated that there was no particular significance associated with the selection of a “25%” threshold versus a different percentage. Additionally, the group clarified that this law does not apply to mutual aid agreements, agreements to provide year-round full staffing at seasonal wildland stations, pre-hospital emergency medical services, or existing agreements executed prior to January 1, 2016, unless contractual amendments in 2016 caused either of the 25% thresholds to be reached.

The new law determines that if a proposed contract or agreement for fire protection services is in combination with other contracts or agreements which results in either of the two threshold criteria, then the contract or agreement shall be deemed a fire protection contract and subject to LAFCO purview.

INITIATION CRITERIA

Applicant Responsibilities

In accordance with the Cortese-Knox-Hertzberg Act, proposals require extensive LAFCO analysis to determine the feasibility and sustainability of a proposed change of organization or reorganization. SB 239 increases the analytical responsibilities for both the applicant and LAFCO. For example, public agencies interested in providing new or extended fire services must complete the following steps prior to adopting an initiating resolution:

- Obtain and submit 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 with their adopted resolution; or

- Provide, at least 30 days prior to the hearing in regards to the initiating resolution, a written notice to each affected public agency and recognized employee organization that represents firefighters of the existing proposed service providers of the proposed fire protection contract and submit a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract; and
- In addition to completing one of the above steps, public agencies must also conduct an open and public hearing on the resolution pursuant to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable.

If a resolution is adopted, the clerk of the public agency or the director of the state agency adopting the resolution of application shall file a certified copy with the LAFCO Executive Officer. The initiating resolution can be adopted by different public agencies. There are explicit initiating requirements for public agencies under SB 239 as shown in Exhibit A.

Exhibit A: Initiating Application Requirements

In the case of a public agency that is...	The application shall be initiated by adopting a resolution of application by the...
Not a state agency	Legislative body proposing to provide new or extended services
A state agency	Director of the state agency proposing to provide new or extended services and approved by the Director of Finance
A local agency under contract with a state agency for fire protection services	Public agency that is a local agency and approved by the Director of Finance

Plan for Service Discussion

In addition to the initiation criteria, an application cannot be submitted to LAFCO unless the legislative body of a public agency or the director of a state agency completes a plan for service and independent comprehensive fiscal analysis as part of the application. Exhibit B lists the information required to be disclosed in the plan.

Exhibit B: Plan for Service Requirements

(1) The total estimated cost to provide the new or extended fire protection services in the affected territory	(6) An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory
(2) The total estimated cost of the new or extended fire protection services to customers in the affected territory	(7) The level and range of new or extended fire protection services
(3) An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers	(8) An indication of when the new or extended fire protection services can feasibly be extended to the affected territory
(4) A plan for financing the exercise of the new or extended fire protection services in the affected territory	(9) An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed
(5) Alternatives for the exercise of the new or extended fire protection services in the affected territory	(10) A determination, supported by documentation, that the proposed fire protection contract meets either 25% threshold

Independent Comprehensive Fiscal Analysis Discussion

The applicant is required to prepare by contract an independent comprehensive fiscal analysis, in conjunction with the plan for service, to be submitted with the application. The analysis shall review and document all of the following:

1. A thorough review of the plan for services submitted by the public agency;
2. How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services; and
3. Any other information and analysis needed to support the findings required by the Commission’s determinations as shown on page 5 (refer to Categories A-E)

LAFCO Responsibilities

Once a public agency submits an application with an adopted initiating resolution, completed plan for service and finalized independent comprehensive fiscal analysis, the Executive Officer has within 30 days of receipt to determine whether the request is complete and acceptable for filing. The Executive Officer will notify the applicant if the application is incomplete and the manner in which the application can be rectified to move forward. When the applicant fulfills all requirements, the Executive Officer shall place the request on the agenda of the next commission meeting but not more than 90 days from the date that the application is deemed complete.

Commission Hearing

Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date. Under previous law, a noticed public hearing was not mandatory.

SB 239 allows the Commission to approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. If the contract is denied or approved with conditions, the applicant may request reconsideration by citing the reasons for reevaluation. The new law also states that the Commission cannot approve a proposed fire protection contract unless the Commission determines, based on the entire record, all of the following:

- A. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area¹.
- B. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- C. The Commission has reviewed the comprehensive fiscal analysis.
- D. The Commission has reviewed any testimony presented at the public hearing.
- E. 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.

¹The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

NEED FOR COMMISSION CLARIFICATION

While SB 239 contains new steps for an applicant to follow before submitting a fire protection contract and for LAFCO when processing a contractual service agreement application, some of these steps require clarification before they can be implemented. LAFCO staff has identified the below issues and questions requiring Commission discussion in order to properly conduct a review of a fire protection contract application.

Twenty-five Percent Threshold Verification

As previously stated, a proposed fire protection contract requires LAFCO approval if the transfer of responsibility represents more than 25% of the area within the affected public agency's jurisdictional boundary **or** if it changes the employment status of more than 25% of any affected public agency. However, the law only requires the applicant to provide a "determination supported by documentation" but lacks direction regarding responsibility for making associated threshold calculations. Based on discussions with the bill sponsors, it was determined that the law places responsibility on the applicant. If that is the case, then LAFCO's role would be to verify such documentations similar to any other submitted proposal.

- 1) *What type of documentation should be required to determine whether the 25% threshold has been reached? (e.g. official service area maps maintained by the affected public agency, LAFCO, or other sources).*
- 2) *Should the 25% threshold be reached using a cumulative approach or by single contract consideration?*

Definition of Key Terms

Certain terms found in the new law have either not defined or have adequate supporting statutory definitions within the Cortese-Knox-Hertzberg Act. Similar terminology issues originally affected the implementation of Government Code Section 56133 (out-of-area service agreements) but were ultimately addressed by individual LAFCOs through the adoption of definitions for specific terms. The Commission may consider adopting the following definitions to avoid any future misinterpretation during the LAFCO process.

- **New or extended services** – shall mean **for Cities** the provision of those services on or after January 1, 2016 authorized by a city under government code section, and **for Special Districts** service as defined in Government Code Section 56074². It should be pointed out that a District would be precluded from providing a "new service" unless it has been first authorized that service under existing special district regulations regarding activation of latent powers.

² GCS 56074 – "Service" means a specific governmental activity established within, and as a part of, a general function of the special district as provided by regulations adopted by the commission pursuant to Chapter 5 (commencing with Section 56821) of Part 3.

References to “new” or “extended” services in SB 239 could mean that LAFCO has the discretion of regulating either “new” contractual services proposed for extension on or after January 1, 2016 or existing contracts for services “extended” on or before December 31, 2015.

- 3) *Should “new” service mean a service extended on or after the January 1, 2016?*
 - 4) *Should “extended” services mean a service extended via a contract or agreement in existence on or before December 31, 2015?*
- **Contract or agreement** – shall mean a contract, agreement or other legal instrument, specifying how service will be extended, provided, or delivered to an affected public agency.
 - 5) *Are there any minimum standards for what constitutes a contract or agreement (e.g. written versus unwritten documents)?*
 - **Written approval of the Commission** – shall mean the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-fire protection contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract. SB 239 does not specify whether LAFCO approval or disapproval of a fire contract/agreement should be subject to a written resolution.
 - 6) *Should a resolution of approval/disapproval and/or minute item be adopted by LAFCO?*
 - **Public Agency** – shall be defined in compliance with Government Code Section 56070. The statutory definition of public agency is “the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision.” The definition of public agency does not include Indian tribes, a private or mutual water company. Any contract by a city or district to extend service to these types of service entities would require approval from the Commission prior to contract execution.
 - 7) *Should fire contracts require LAFCO review if all public agencies agree to the proposed change in services?*
 - **Affected public agency** – shall mean any public agency that contains, or would contain, or whose sphere of influence contains or would contain, any territory for which an extension of fire service is to be reviewed by the commission. SB 239 contains no sphere consistency requirements.

8) *Does the term “affected agency” include the service provider and service recipient with respect to fire protection contracts?*

- **Employment status** – shall be defined as change in service providers and/or the legal status and classification of someone in employment of a public agency and considered an employee. The bill sponsors indicated that the intent was not to focus on wages, hours, benefits, or terminations as part of employment status but rather the change in service providers. Their response has raised the following questions:

9) *Should the term “employment status” include factors such as terminations, layoffs, position reclassifications, benefit changes, etc.?*

10) *Should the term “employment status” be defined as a change in service providers only per the intent of the bill sponsors?*

11) *What defines a change in service providers (e.g. certain specified impacts to annual budgets)?*

Request for Reconsideration

SB 239 specifies that an applicant may submit a request for reconsideration if the commission denies the contract or approves with conditions. Under LAFCO law, any person or affected agency may file a written request with the Executive Officer requesting amendments to or reconsideration of a resolution adopted by the commission within 30 days of the adoption date. However, SB 239 does not require that the commission adopt a resolution of approval or disapproval; therefore, the typical reconsideration process in Government Code Section 56895 may not apply. The Section 56895 provisions establish a 30-day request for reconsideration deadline. The Commission may consider setting a deadline to coincide with current reconsideration procedures when LAFCO fire contracts/agreements are approved by the Commission.

12) *Should a 30-day request for reconsideration apply to fire protection contract/agreement applications, if approved by the Commission?*

Termination of Proceedings

Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. The new law discusses the requirements to execute a fire protection contract but there is no reference of any termination proceedings. The Commission may consider establishing a termination proceeding similar to other LAFCO actions.

- 13) *Should a termination proceeding be applied to disapproved fire protection contracts?*

Fee Schedule Discussion

The Commission adopted a fee schedule for all LAFCO proposals including contractual service agreements. The charges for each jurisdictional change (i.e. annexation, detachment) range from \$2,660 to more than \$9,000. For contractual service agreements, payment of the applicable annexation and/or detachment fees as well as sphere amendment(s) must be made upon submittal of a contractual service agreement application. There is also a 30% surcharge for consideration of contractual service agreements. This surcharge is due prior to LAFCO consideration of the related annexation/detachment application. The surcharge does not apply to service agreements involving health or safety concerns where the property is eligible for immediate annexation. The current contractual service agreement fees and charges may not be applicable to the fire protection contracts due to the additional staff analysis and requirements in comparison to traditional out-of-area service agreement proposals. The Commission may consider adopting a new fee schedule category for fire protection contracts.

- 14) *Should a new fee schedule category be established for fire protection contracts or update the contractual service agreement fee classification to include fire protection contracts?*

CONCLUSION/RECOMMENDATIONS

Prior to the enactment of SB 239, the Cortese-Knox-Hertzberg Act did not require LAFCO review for contracts between two or more public agencies since current law exempts the provision of out-of-area service extensions between public agencies. The Act recognizes that interagency contracting is often an efficient and cost-saving manner in which to provide local public services. SB 239 complicates the intergovernmental process by requiring LAFCO review and approval for each new fire protection contract. A flowchart depicting the requirements set forth by SB 239 is located at the end of the report (Exhibit C). To assist LAFCO staff and the Commission in the development of implementation guidelines for SB 239, it is recommended that the Committee discuss, comment, and answer the following questions in Exhibit D.

Respectfully submitted,

MICHAEL D. OTT
Executive Officer

JOE A. SERRANO
Local Government Analyst

Exhibit C: LAFCO Process Flow Chart – Fire Protection Service Contract

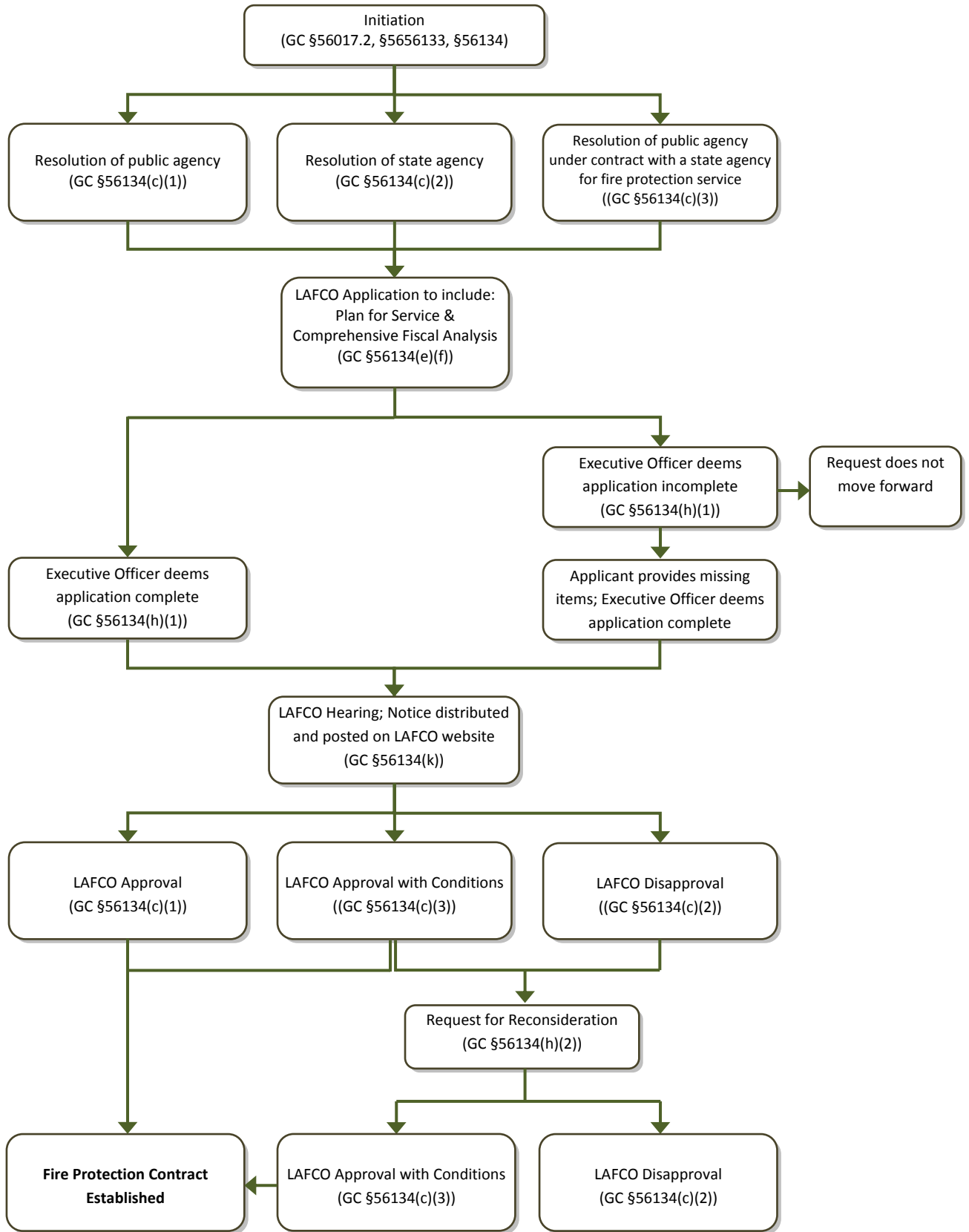


Exhibit D: Summary of SB 239 Questions

1. What type of documentation should be required to determine whether the 25% threshold has been reached? (e.g. official service area maps maintained by the affected public agency, LAFCO, or other sources).
2. Should the 25% threshold be reached using a cumulative approach or by single contract considerations?
3. Should “new” service mean a service extended on or after the January 1, 2016?
4. Should “extended” services mean a service extended via a contract or agreement in existence on or before December 31, 2015?
5. Are there any minimum standards for what constitutes a contract or agreement (e.g. written versus unwritten documents)?
6. Should a resolution of approval/disapproval and/or minute item be adopted by LAFCO?
7. Should fire contracts require LAFCO review if all public agencies agree to the proposed change in services?
8. Does the term “affected agency” include the service provider and service recipient with respect to fire protection contracts?
9. Should the term “employment status” include factors such as terminations, layoffs, position reclassifications, benefit changes, etc.?
10. Should the term “employment status” be defined as a change in service providers only per the intent of the bill sponsors?
11. What defines a change in service providers (e.g. certain specified impacts to annual budgets)?
12. Should a 30-day request for reconsideration apply to fire protection contract applications, if approved by the Commission?
13. Should a termination proceeding be applied to disapproved fire protection contracts?
14. Should a new fee schedule category be established for fire protection contracts or update the contractual service agreement fee classification to include fire protection contracts?

**SAN DIEGO COUNTY
LOCAL AGENCY FORMATION COMMISSION
CERTIFICATE OF EXEMPTION OF
CONTRACTUAL SERVICE AGREEMENT
PURSUANT TO GOVERNMENT CODE SECTION 56134**

**Name of Public Agency: XXXX / Name of Property Owner or Public Agency: XXXX
(Ref. No.: OAS 16-XX)**

I hereby certify that I have examined the above-cited agreement and have found it to be exempt from LAFCO purview pursuant to Government Code Section 56134. This certificate is therefore issued based on below facts.

The name of each city and/or district included in the contractual service agreement, all located within San Diego County, and the type of service(s) to be provided is/are as follows:

<u>Public Agency</u>	<u>Service(s) to be Provided</u>
Name of Agency: XXXX	Fire Protection

A legal description and/or map of the boundaries of the above-cited contractual service agreement area as well as a copy of the proposed agreement are available in the LAFCO office. The terms and conditions, if any, are contained in the agreement. The affected property consists of approximately XX acres located at: XXXX.

The proposed fire protection contract has been reviewed to determine whether the contract or agreement for the exercise of new or extended fire protection services outside a public agency’s jurisdictional boundaries is subject to or exempt from LAFCO purview per Government Code Section 56134. Proposed contracts or agreements are subject to LAFCO purview if the contract will: (A) Transfer responsibility for providing services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement or (B) Change the employment status of more than 25 percent of the employees of any public agency affected by the contract or agreement.

The following facts pertain to the proposed extension of services:

1. According to information reviewed and confirmed by the Executive Officer, a fire protection contract currently exists between the following agencies: XXXX, and the subject contract amendment or renewal constitutes the continuation of services and does not accordingly represent the exercise or transfer of responsibility for providing new or extended services within the jurisdictional boundaries of any public agency.
2. The proposed contract for services within the XXXX agency consists of XX acres. The acreage within the proposed service provider (XXXX agency) consists of XX acres.

The service contract territory consists of **XX** percent of the area within the contract service provider's boundaries.

3. A potential change in the employment status of any of the public agencies affected by the contract or agreement is equivalent to **XX** percent when the value of the contract is viewed as a percentage of the most recent adopted budget of the proposed service provider's budget.

4. A potential **XX** percent increase in the number of employees in any of the affected public agencies will result from the execution of said contract or agreement.

5. A potential **XX** percent decrease in the number of employees in any of the affected public agencies will result from the execution of said contract or agreement.

Check One Below:

Based on the above facts, the proposed service contract between **XXXX** and **XXXX** is **exempt** from LAFCO purview because none of the above conditions have been found to exist; therefore, LAFCO authorization for the provision of new or extended services is not required.

Based on the above facts, the proposed service contract between **XXXX** and **XXXX** is **not exempt** from LAFCO purview because one or more of the above conditions exist; therefore, LAFCO authorization will be required before provision of new or extended services can be provided.

This above determination(s) is/are considered final, unless a written appeal is filed within 30 days with the Executive Officer. Such appeal must conform to Article III of the San Diego LAFCO's Rules pertaining to reconsideration and will be docketed for consideration by the Commission at the next available agenda for which appropriate notice can be given.

MICHAEL D. OTT
Executive Officer

Date: **XXXX**, 2016

SAN DIEGO LAFCO FIRE PROTECTION CONTRACT GUIDELINES

I. PURPOSE

To provide guidance to the San Diego Local Agency Formation Commission (LAFCO) in conducting fire protection contract reviews.

II. BACKGROUND

Senate Bill No. 239 (SB 239) was signed into law requiring public agencies, under specified circumstances, to receive written approval from the LAFCO in the affected counties before providing new or extended fire protection services outside the agencies' jurisdictional boundaries. The law does not apply to mutual aid agreements, pre-hospital emergency medical services, or existing agreements executed prior to January 1, 2016, unless contractual amendments in 2016 causing either of the 25% thresholds referenced below are reached. SB 239 amended Government Code Sections 56017.2, 56133, and added 56134.

III. OBJECTIVE

Government Code Section 56134 requires LAFCO review and approval for each new fire protection contract. Section 56134 defines a "fire protection contract" as a contract or agreement for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries that does either of the following:

- Transfer responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or
- Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

An extension of a fire protection contract entered into on or before December 31, 2015 that would produce either of the 25% thresholds above is deemed to be a fire protection contract per SB 239. A proposed contract or agreement for fire protection services in combination with other contracts or agreements, which results in either of the two threshold criteria, is deemed a fire protection contract and is subject to LAFCO purview. However, the sponsor of SB 239 has 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 cumulative trigger of the 25% thresholds. As a result, San Diego LAFCO will review and consider proposed fire contracts on a case-by-case basis.

In addition, the amendment or renewal of contracts does not necessarily represent the exercise of “new or extended” services per the meaning of these terms in SB 239. Most contract amendments or renewals represent transfer of existing service responsibilities from one agency to another and not the exercise of “new or extended” services. Therefore, contract amendments and renewals will generally be exempt from LAFCO purview.

IV. DEFINITIONS

The definition of the following terms will assist in the implementation of Government Code Section 56134:

- **Affected public agency** – shall mean any public agency that contains, or would contain, or whose sphere of influence contains or would contain any territory for which an extension of fire service is to be reviewed by the commission. SB 239 contains no sphere consistency requirements with respect to fire protection contracts.
- **Contract or agreement** – shall mean a written contract, agreement or other legal instrument, specifying how service will be extended, provided, or delivered to an affected public agency.
- **Employment status** – shall be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees. Note: the bill sponsors indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department.
- **Extended services** – services that go above and beyond a class of or special governmental activity established within and as a part of a single public agency general function currently provided.
- **Fire protection** – shall be defined as the governmental activities including and related to fire protection, rescue, emergency medical, hazardous material emergency response, ambulance and any other services consistent with the Fire Protection District Law of 1987 related to the protection of lives and property. All other subordinate services (e.g. administration, management, operations, etc.) are included within the primary definition of fire protection and will be exempt from SB 239 unless directed by the Commission.
- **New services** – a class of or special governmental activity established within and as a part of a single public agency general function as provided on or after January 1, 2016. It should be pointed out that a special district would be precluded from providing a “new service” unless it has received LAFCO authorization for activation of latent powers.

- **Public Agency** – shall be defined in compliance with Government Code Section 56070. The statutory definition of public agency means “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.” The definition of public agency does not include Indian tribes, private or mutual water companies.
- **Written approval of the Commission** – shall mean the adoption of a resolution or other similar document of the Commission and signed by the Executive Officer approving the service agreement/contract at a noticed public hearing.

V. PRE-APPLICATION PROCESS

Public agencies interested in providing new or extended fire services should contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. A pre-application discussion is recommended to address any possible issues associated with the expansion of fire protection services.

If the proposed contract is determined to be exempt from LAFCO purview, a Certificate of Exemption will be filed. The Executive Officer’s determination of exemption is appealable to the Commission within 30 days of the issuance of the determination. Such appeal must be filed in writing with the Executive Officer and must include specific substantiation for the appeal, directly related to fire protection and SB 239 requirements. The appeal shall be heard at the next available Commission meeting that permits adequate public notification.

SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. Therefore, in the event that all affected agencies are in agreement to the proposed change in services, the surcharge for the consideration of a fire protection contract will be waived for the applicant and a streamlined administrative approval process will be followed. For more information on the processing fee regarding fire protection contracts, please review the **“Processing Fee Schedule”** section of this policy.

VI. EXEMPTIONS

The bill sponsor, the California Professional Firefighters, indicated that several fire protection agreements should not be subject to the new law. The following contracts and agreements are exempt from SB 239:

- 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
- Ambulance service agreements
- Mutual or automatic aid agreements

Fire protection contracts that address fire protection activities included in the definition section of Section IV of the guidelines are subject to SB 239 requirements unless otherwise exempted per these guidelines. Subordinate or subsidiary fire protection services (e.g. administration, management, operations, etc.) will be exempt from LAFCO purview unless otherwise directed by the Commission.

VII. INITIATION CRITERIA

Public agencies interested in providing new or extended fire services must complete the following steps prior to adopting an initiating resolution:

- Obtain and submit 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 with their adopted resolution; or
- Provide, at least 30 days prior to the hearing in regards to the initiating resolution, a written notice to each affected public agency and recognized employee organization that represents firefighters of the existing proposed service providers of the proposed fire protection contract and submit a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract; and
- In addition to completing one of the above steps, public agencies must also conduct an open and public hearing on the resolution pursuant to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable.

If a resolution is adopted, the clerk of the public agency or the director of the state agency adopting the resolution of application shall file a certified copy with the LAFCO Executive Officer. A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

- **Non-State Agency:** In the case of a public agency that is not a state agency; the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current service area.
- **State Agency:** In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current service area and be approved by the Director of Finance.
- **Local Agency Under Contract:** In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended

services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local and be approved by the Director of Finance.

VIII. PLAN FOR SERVICE

An application cannot be submitted to LAFCO unless the legislative body of a public agency or the director of a state agency completes a plan for service and independent comprehensive fiscal analysis as part of the application. The plan for service must address the following items:

1. The total estimated cost to provide the new or extended fire protection services in the affected territory;
2. The total estimated cost of the new or extended fire protection services to customers in the affected territory;
3. An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers;
4. A plan for financing the exercise of the new or extended fire protection services in the affected territory;
5. Alternatives for the exercise of the new or extended fire protection services in the affected territory;
6. An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory;
7. The level and range of new or extended fire protection services;
8. An indication of when the new or extended fire protection services can feasibly be extended to the affected territory;
9. An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed; and
10. A determination supported by documentation, that the proposed fire protection contract meets either 25% threshold. The documentation must include a copy of the proposed contract. In addition, if the contract affects 25% of the service area, a map and/or Geographic Information System (GIS) shapefiles recognized by the San Diego LAFCO must be provided in order for data verification by LAFCO. If the contract affects 25% of the employment status, budgetary documents disclosing employment statistics must be provided to LAFCO.

IX. INDEPENDENT COMPREHENSIVE FISCAL ANALYSIS

The applicant is required to prepare by contract an independent comprehensive fiscal analysis, in conjunction with the plan for service, to be submitted with the application. The analysis shall review and document all of the following:

1. A thorough review of the plan for services submitted by the public agency;
2. How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services; and
3. Any other information and analysis needed to support the findings required by the Commission's determinations.

X. LAFCO REVIEW

Once a public agency submits an application with an adopted initiating resolution, completed plan for service and finalized independent comprehensive fiscal analysis, the Executive Officer has within 30 days of receipt to determine whether the request is complete and acceptable for filing. The Executive Officer will notify the applicant if the application is incomplete and the manner in which the application can be rectified to move forward. When the applicant fulfills all requirements, the Executive Officer shall place the request on the agenda of the next commission meeting but not more than 90 days from the date that the application is deemed complete.

XI. COMMISSION HEARING

Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date.

The Commission may approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. If the contract is denied or approved with conditions, the applicant may request reconsideration by citing the reasons for reevaluation. The new law also states that the Commission cannot approve a proposed fire protection contract unless the Commission determines, based on the entire record, all of the following:

- A. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area. The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to

provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

- B. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- C. The Commission has reviewed the comprehensive fiscal analysis.
- D. The Commission has reviewed any testimony presented at the public hearing.
- E. 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.

Contract Approved

If the Commission determines all the requirements under Government Code Section 56134 have been met, the Commission will adopt a resolution of approval or other associated document. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Approved with Conditions

If the Commission approves the contract with conditions, the Commission will adopt a resolution of approval or other document with the conditions listed. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Disapproval

If the Commission or Executive Officer disapproves the contract, the applicant may request for reconsideration by citing the reasons for reevaluation. If the reconsideration does not change the initial decision, the Commission will adopt a resolution of disapproval.

XII. REQUEST FOR RECONSIDERATION

SB 239 specifies that an applicant may submit a request for reconsideration if the commission denies the contract or approves with conditions. Under LAFCO statute, any person or affected agency may file a written request with the Executive Officer requesting amendments to or reconsideration of a resolution adopted by the commission within 30 days of the adoption date pursuant to Government Code Section 56895. The new law discusses the opportunity to request for

reconsideration but there is no reference of any deadline to submit a request. For continuity, the Commission will establish a 30-day request for reconsideration period tolled from when fire protection contract(s) are considered by the Commission.

XIII. TERMINATION PROCEEDINGS

Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. The new law discusses the requirements to execute a fire protection contract but there is no reference of any termination proceedings. For continuity, the Commission will establish termination proceedings mirroring the procedures outlined in GCS 57090.

XIV. PROCESSING FEE SCHEDULE

The Commission currently has in place a fee schedule for contractual service agreements based on acreage. Fire protection contracts will be included as part of the established fee schedule structure. In addition to the standard processing fee, there will be a 30% non-refundable surcharge for consideration of fire protection contracts. The surcharge will not apply to fire protection contract when all affected public agencies agree to the proposed change in service.

XV. CLARIFYING INFORMATION FROM BILL SPONSORS

Following Governor Brown's approval of SB 239 in October 2015, representatives of the California Association of Local Agency Formation Commissions (CALAFCO) met with stakeholders and Sponsors of the bill to discuss the legislative intent. The following is a summary of the meeting between CALAFCO and stakeholders. The Commission will accordingly consider the following when implementing SB 239.

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

- Require the applicant to provide LAFCO, as part of the application, whether the 25% service area or employment status trigger is occurring.
- It is up to each LAFCO in California may 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(a)(1)(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 sponsors.
- The change in employment status of the employees of any public agency affected by the contract or agreement is intended to apply to the entire department.
- 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. 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 cumulative trigger of the +25%. Each LAFCO is encouraged to consider a local policy to clarify the 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 included to apply to ambulance service agreements.
- If a current contract expires and an agency no longer wants to contract for services and will take over providing the services themselves, the bill does not apply, as there is no contract to review and approve.

Adopted: February 1, 2016

Chairman

Bill Horn
County Board of
Supervisors

February 1, 2016

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Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Local Agency Formation Commission

FROM: Executive Officer
Local Governmental Analyst

Members

Dianne Jacob
County Board of
Supervisors

SUBJECT: Errata to Agenda Item No. 12–Draft Guidelines Addressing the Review and Approval of Fire Protection Contracts

Andrew Vanderlaan
Public Member

Comments were provided to LAFCO staff following the distribution of the February 1st staff report from the Office of County Counsel (San Diego County), Bonita-Sunnyside Fire Protection, and Rancho Santa Fe Fire Protection District. The comments were very constructive and LAFCO staff is recommending several technical changes that are summarized below. Representatives from the agencies that provided the comments concur with these recommended changes.

Lorie Zapf
Councilmember
City of San Diego

Lorraine Wood
Councilmember
City of Carlsbad

BILL SPONSOR

Jo MacKenzie
Vista Irrigation District

Senate Bill 239 was sponsored by the California Professional Firefighters. The staff report on page 2 incorrectly identifies the California Fire Chief's Association as the bill sponsor. All further LAFCO records, including the draft guidelines, correctly indicate the California Professional Firefighters as the bill sponsor.

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

FIRE PROTECTION DEFINITION AND EXEMPTION

Chris Cate
Councilmember
City of San Diego

LAFCO staff indicated within the report that "fire protection" is not a defined term under the new law (Government Code Section 56134) and developed a draft definition for Commission consideration. Based on the comments received, staff determined that the definition should be amended to include a list of possible subordinate or subsidiary activities as examples of exemptions. Staff also determined that the subordinate or subsidiary components of fire protection, such as administration, management, and operations, should be referenced as "activities" rather than "services" to further clarify the exemption language. As a result, staff has made a revision to the proposed fire protection definition and included a list of exemptions. Refer to the attached errata for changes recommended to the staff report and proposed guidelines.

Racquel Vasquez
Councilmember
City of Lemon Grove

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

No further comments were submitted to LAFCO and representatives of these agencies that provided comments agree with the changes recommended by LAFCO staff.

Executive Officer

Michael D. Ott

Respectfully submitted,

Legal Counsel

Michael G. Colantuono


MICHAEL D. OTT
Executive Officer


JOE SERRANO
Local Governmental Analyst

MDO:JS:TRL
Attachment: Errata to Agenda Item No. 12

**ERRATA: AGENDA ITEM NO. 12
SB 239 DRAFT GUIDELINES**

Staff Report, page 2

"...California Fire Chiefs Association Professional Firefighters..."

Staff Report, page 5

~~All other subordinate services related to this definition (e.g., administration, management, operations, etc.) should be included within the primary function/definition of fire protection and should be exempt from SB 239 unless otherwise directed by the Commission. Subordinate or subsidiary fire protection activities (e.g. administration, management, operations, etc.) will be exempt from LAFCO purview unless otherwise directed by the Commission. Examples of subordinate or subsidiary activities exempt from LAFCO purview include, but are not limited to the following:~~

- Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)
- Plan review/Ministerial Permit review (usually building permits)
- New construction fire inspections
- Fire investigations
- Fire sprinkler system plan review and inspections
- Fire alarm system plan review and inspections
- Defensible space inspections and enforcement
- Business/occupancy inspections in existing structures
- Vehicle maintenance and repair
- Sharing of management or other personnel between or among multiple agencies
- Sharing or loaning of equipment or property between or among multiple agencies

Proposed Guidelines, page 2

~~All other subordinate services (e.g., administration, management, operations, etc.) are included within the primary definition of fire protection and will be exempt from SB 239 unless directed by the Commission. Subordinate or subsidiary fire protection activities (e.g. administration, management, operations, etc.) will be exempt from LAFCO purview unless otherwise directed by the Commission. Examples of subordinate or subsidiary activities exempt from LAFCO purview include, but are not limited to the following:~~

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- Business/occupancy inspections in existing structures
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- Sharing of management or other personnel between or among multiple agencies
- Sharing or loaning of equipment or property between or among multiple agencies

Proposed Guidelines, page 4

Subordinate or subsidiary fire protection ~~services~~ activities (e.g. administration, management, operations, etc.) will be exempt from LAFCO purview unless otherwise directed by the Commission.