

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MARCH 23, 2016

REGULAR MEETING

***** TIME SET 6:15 PM *****

TO: Ken Humphreys, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

**AGENDA ITEM #7: PUBLIC PRESENTATION ON SENATE BILL 239 AND ITS
POTENTIAL EFFECTS LOCALLY**

RECOMMENDATION

None. This is a public presentation for the purposes of educating the Commission and the public regarding Senate Bill 239 (Hertzberg) and to spur discussion

REASON FOR RECOMMENDED ACTION AND BACKGROUND

Last year, Governor Brown signed Senate Bill 239, which changed the process by which fire districts could contract out for services with other fire protection districts. Prior to SB 239, these types of contracts fell under the provisions of subsection (e) of the out of agency service provisions in Government Code (GC) 56133 (please refer to Attachment A). Subsection (e) exempts contracts from LAFCO review if those contracts or agreements between public agencies were for services that were an alternative to, or a substitute for, services already being provided by an existing public service provider in any given area. Because this subsection included all public agencies, it included public fire suppression agencies. As a result, it used to be that a fire district could outsource services to neighbors (for personnel, management or both) and could do so solely as a matter involving those two or more districts. Each district's board of directors would have to approve those types of agreements, but review and approval by LAFCO or any other entity was not necessary.

Among other things, SB 239 restructured Government Code 56133, along with Assembly Bill 402 (Dodd) (which made technical changes to GC56133 and added GC56133.5). Effective January 1, 2016, subsection (e) now separates the various exemptions that were in that subsection and excludes a "fire protection contract, as defined in subdivision (a) of Section 56134" from the provisions of GC56133 (refer to Attachment B). The effect of this change is that "fire protection contracts" have their own process outside of the regular "out of agency service" provisions of GC56133.

The newly added section, GC56134, serves to define a “fire protection contract” and to establish the process by which those contracts are approved. It is applicable to both each fire districts’ boards of directors and to LAFCO. GC56134 also applies to the State of California in those instances where one of the contracting parties of a “fire protection contract” is CalFIRE.

Fire Service Contract Definition

SB 239 defined a fire protection service contract as one that:

- Is for the exercise of new or extended fire protection services outside a public agency’s jurisdictional boundaries;
- 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; or
- Changes the employment status of more than 25 percent of the employees of any public agency affected by the contract or agreement; and
- Any other contract or agreement, in concert with other contract or agreement, that has a cumulative effect of changing more than 25% of a service area or employment status, is subject to SB 239.

CALAFCO met with the sponsors of SB 239 to clarify the intent of the provisions (refer to Attachment C). The sponsors provided direction in three areas.

1. They indicated that the change of 25% of employees is intended to apply to any one of the agencies signing on to the contract; it is not intended to be cumulative across all fire agencies.
2. They clarified that changes in wages, benefits, hours worked or working conditions are not intended to be include in the definition of “changes in employment status.”
3. They stated that the renewal of existing contracts are not subject to these new provisions unless the renewed contracts included amendments that triggered the 25% change in service area or employment status.

Those are the only clear directions provided regarding what constitutes a fire protection contract. Since the Cortese-Knox-Hertzberg Act allows LAFCO to adopt local policies to supplement (but not supplant) State Law, CALAFCO encourages the adoption of local policies to define:

- The type of proof each an applicant must provide to determine whether the percentage of the service area affected by the contract is or is not 25%;
- What constitutes “changes in employment status.” Alternatively, the local policy could state what this term does *not* mean (changes in wages, benefits, etc.);
- When should the renewal of a fire services contract that predates January 1, 2016 is exempt from the provisions of SB 239. The sponsors seemed to imply that SB 239 only requires LAFCO approval when new amendments that trigger the change in 25% service area/employment status are introduced. Presumably, the existing contract is grandfathered if it already affected those changes prior to January 1, 2016. An example of this would be Cameron Park CSD’s renewal of its contract with CalFIRE

is grandfathered because the change in service area and employment status of personnel had already occurred prior to SB239. But if Mosquito FPD contracts with a neighbor outsource fire services, then that contract is subject to SB 239.

- A local policy could also clarify that outsourcing the administration of a district, similar to El Dorado Hills CWD and Rescue FPD's contract, is also not subject to SB 239. This is because the fire departments remain largely intact and only the chief position has been altered.

CALAFCO also recommends adopting a policy stating that mutual aid, automatic aid and ambulance service agreements are not subject to SB 239. Staff recommends that any proposal to reorganize service area boundaries (annexations, dissolutions, formations, etc.) are not subject to SB 239.

Process under SB 239

As stated earlier, SB 239 creates its own process for "fire protection contracts" whenever a fire suppression agency wants to outsource or contract with a neighbor to provide services. If a contract triggers the 25% service area/employment status, it is subject to the following process:

1. They require LAFCO approval from the commission of the affected county.
2. The applicant must be the agency that is proposing to provide the new or extended service. The application must be through a resolution of application adopted by the agency's board of directors.
3. If the agency proposing to provide the new or extended services is a State agency, the application is initiated by the director of that agency, subject to the approval of the State Director of Finance.
4. The application cannot be submitted to LAFCO unless the applicant does both a) and b) below:
 - a. The applicant must either
 - i. Submit a written agreement validated and executed by each of the affected public agencies involved, including the "consent" of the recognized firefighter association from each district affected by the proposed fire protection contract;
or
 - ii. Provide written notice of a public hearing to each of the affected public agencies and recognized firefighter association affected by the proposed fire protection contract at least 30 days prior to the hearing. A copy of each written notice needs to be submitted with the resolution of application. The notice, at minimum, must include a full copy of the proposed contract.
 - b. Conduct a public hearing of the resolution of application.
5. The resolution of application must include the following:
 - a. Total estimated costs of the new or extension of services;
 - b. The estimated costs to the customers in the affected territory of the new or extended services;

- c. The identification of the agencies slated to provide the new or extended services and the estimate of costs to the customers of those agencies;
- d. A plan for financing the new or extended services on to the affected territory;
- e. Alternatives to providing new or extended services to the affected territory;
- f. The enumeration and description of the new or extended services to be provided;
- g. The level and range of the new or extended fire protection services;
- h. The timeline(s) of when the new or extended fire protection services can feasibly be extended to the affected territory;
- i. An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency slated to provide new or extended services would impose or require within the affected territory if the fire protection contract is completed;
- j. A determination, supported by documentation, that the proposed fire protection contract meets the criteria of a change in 25% of service area/employment status.

In addition to these, a “comprehensive fiscal analysis” (CFA) must also be submitted with the application. The CFA is defined as:

- A thorough review of the plan for services submitted by the public agency pursuant to the items listed in #5 above;
- 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.
- Any other information and analysis needed to support the findings required of the Commission, as listed in III) below.

Those are the requirements on the applicant. The requirements on LAFCO include:

- I. Timelines on when the Executive Officer is required to agendize the application for the Commission’s review and when to notice all affected agencies;
- II. The commission may approve, disapprove, or approve with conditions the contract for new or extended services following the hearing at the commission meeting.
- III. The commission may approve or conditionally approve of the contract if all of the following are met:
 - a. 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;
 - b. The commission has determined that the public agency will not have sufficient revenue to provide new or extended services but has conditioned the contract’s approval on the concurrent approval of new revenues per Section 56886. If the new revenues are not approved, then the approval of the contract is null and void.

- c. The proposed exercise of the new or extended fire protection services outside the applicant's current service area is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001 and 56300.
- d. The commission has reviewed the comprehensive fiscal analysis prepared pursuant to subdivision (f).
- e. The commission has reviewed any testimony presented at the public hearing.
- f. 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.

Analysis

While the process seems straightforward, it adds two layers of review not previously present before SB 239. First, as the Commission is aware, SB 239 requires the firefighter association to consent to the agreement negotiated between the boards of the affected districts. In addition, as stated earlier, these types of contracts were not reviewed by LAFCO in the past. Also, SB 239 adds more analysis to contract approvals that was not present before.

Especially troubling is SB 239's insertion of the requirement of a "comprehensive fiscal analysis," a term that was previously and exclusively used for incorporation efforts. Worse, SB 239 provides little direction on what constitutes a CFA beyond the new requirements outlined in #5 and III) above. Those requirements are very comprehensive and it is difficult to determine what else is left to be studied beyond these matters. Further, there is a question on how deep the level of analysis should be used when looking at the defined requirements. Is the intent for the analysis to be comparable to a CFA that is performed for a proposed city, meaning there should be an analysis of revenue figures from the Secretary of State? Is the CFA for LAFCO or should it be conducted prior to entering into an agreement? And if the CFA is for LAFCO, could an analysis performed by an independent third party on behalf of the affected agencies that are in the feasibility phase of such a contract be a good substitute for a CFA? Then there is the issue of equity: Who pays for the CFA? Is it the applicant, the recipient of new or extended services or is it LAFCO? Because if it is supposed to be the recipient, only well-to-do districts will engage in fire district contracts from here on out.

Meeting with Stakeholders

This presentation has two main objectives. The first is to educate on SB 239. The second is to solicit input from stakeholders around the county to assist LAFCO in crafting local policies to further refine these requirements and provide a road map on how this Commission will handle contracts subject to SB 239. As stated above, CALAFCO encourages local policies to plug some holes in the law. What those policies should state, and the manner in which the Commission wants to further define these terms, should be made in concert with all interested parties.

Concluding Thoughts

It should be noted that CALAFCO has inserted some clean up language on GC56134 in its annual omnibus bill. The Commission might recall that the omnibus bills contain

technical, non-controversial changes to CKH in order to “clean it up.” CALAFCO proposes striking out the word “comprehensive” from “comprehensive fiscal analysis” and changing the wording from “current service area” to “jurisdictional boundaries.” This language was vetted by the sponsors and – so far – they are supportive. While these changes are for clarification purposes, since the law is not going away any time soon, the removal of “comprehensive” is a huge change that should be supported. CALAFCO does not have a bill number at the time of this writing, so there is no mechanism by which the Commission can express its support of these changes. Staff will notify the Commission once a bill number is known.

Attachments

- Attachment A: Government Section 56133 as it existed prior to January 1, 2016
- Attachment B: Government Code Sections 56133, 56133.5 and 56134, effective January 1, 2016
- Attachment C: CALAFCO Bulletin, “Implementation of SB 239”