

CALAFCO BULLETIN

The Implementation of SB 239



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

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

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

- ❖ Require the applicant to provide LAFCo, as part of the application, proof that the 25% trigger is occurring.
- ❖ It is up to each LAFCo to determine what the required proof would be (for example, service maps demonstrating the change of +25% of the service area, or employment statistics that would provide proof of the +25% of change in employment status). Each LAFCo is encouraged to create local policies on what they would require as the proper documentation.
- ❖ While the term "employment status" found in 56134 (B) is not defined, it is the intent of the sponsor that this means a change in service providers (department as employer). While a change in wages/benefits/hours worked/working conditions may be viewed by some as a change in "employment status, but, it was, according to the sponsor, not the original intent of the term. Each LAFCo is encouraged to create a local policy to define this term.
- ❖ The change of +25% in employment status of the employees of any public agency affected by the contract or agreement is intended to apply to the entire department. In other words, +25% as compared to the department affected.
- ❖ Section 56134 (a) (2) states in part, that if a contract or agreement that, in combination with other contracts or agreements, triggers the +25% change in service area or employment status, it shall be subject to the definition of a fire protection contract pursuant to this section, and as such will not be exempt from this process. What is unclear about this situation is if it is just this one contract that is subject to the law, or if all existing contracts within the jurisdictional area are affected. The sponsor indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the trigger of the +25%. Each LAFCo is encouraged to consider a local policy to clarify this situation.

What the bill is not intended to do according to the sponsor:

- ❖ The bill is not intended to apply to the renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the +25% change in service area or employment status.
- ❖ The bill is not intended to apply to mutual or automatic aid agreements.
- ❖ The bill is not intended to apply to ambulance services agreements.
- ❖ If a current contract expires and a service area no longer wants to contract for services and will take over providing the services themselves, this bill does not apply, as there is no contract to review and approve.

What has yet to be determined:

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

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