

**SB 239 (Hertzberg) Local Government
Extended Services – Senate Local
Government Committee Bill Analysis,
Copy of Bill as amended April 23, 2015;
CALAFCO Opposition Letter Dated
April 2, 2015**

Attachment 3

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Robert M. Hertzberg, Chair
2015 - 2016 Regular

Bill No: SB 239
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Version: 4/23/15
Consultant: Weinberger

Hearing Date: 4/29/15
Tax Levy: No
Fiscal: Yes

LOCAL AGENCY FORMATION COMMISSIONS AND FIRE PROTECTION SERVICE CONTRACTS

Requires a LAFCO to review a contract or agreement for new or extended fire service outside of an existing service area.

Background

The Cortese-Knox-Hertzberg Local Government Reorganization Act delegates the Legislature's power to control the boundaries of cities and special districts to local agency formation commissions (LAFCOs). The Act requires that cities and districts must get a LAFCO's written approval before they can serve territory outside their boundaries (AB 1553, Gotch, 1993). However, LAFCO approval is not required for 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 exiting service provider.

State law allows cities and fire protection districts to contract with a county to provide fire protection services within the local agency's jurisdiction. Similarly, local governments may contract with the California Department of Forestry and Fire Protection (CAL FIRE) to provide fire protection services. CAL FIRE is providing fire protection services within nearly 150 local jurisdictions pursuant to cooperative agreements.

Some of these contracts and cooperative agreements result in a local department shifting all responsibility for providing fire protection services to a county or CAL FIRE, while others supplement existing local fire services with additional services provided by a county or CAL FIRE. However, because these contracts and agreements solely involve public agencies and existing services, they are not subject to LAFCO approval.

In some communities that recently entered into contracts or agreements that shifted the responsibility for providing fire protection services from one public agency to another, the agreements have generated controversy while failing to produce anticipated cost savings and administrative efficiencies. As a result, firefighters' labor union officials want the Legislature to require LAFCOs to give fire protection service contracts and agreements more scrutiny than is required under current law.

Proposed Law

Senate Bill 239 requires a public agency to obtain a LAFCO's approval to provide new or extended services under a fire protection reorganization contract, pursuant to a specified approval process.

SB 239 defines a "fire protection reorganization contract" as a contract or agreement that:

- Is for the exercise of new or extended fire protection services outside a public agency's current service area;
- Is executed pursuant to specified statutes allowing local governments and CALFIRE to enter into fire protection service contracts and agreements; and,
- Does either of the following:
 - Transfers responsibility for providing services in more than 25% of the service area of any public agency affected by the contract or agreement.
 - Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

SB 239 applies the definition of a fire protection reorganization contract to a contract or agreement that, in combination with other contracts or agreements, meets the bill's definition of a fire protection contract.

SB 239 requires a public agency to initiate a request for commission approval of services provided under a fire protection reorganization contract by adopting a resolution of application as follows:

- The legislative body of a public agency that is not a state agency must adopt a resolution of application proposing to provide new or extended services outside the public agency's current service area.
- The director of a state agency must initiate an application, which must be approved by the Governor.

SB 239 requires that the legislative body of a public agency or the director of a state agency must do all of the following before submitting a resolution of application to the commission:

- Obtain and submit 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 change of organization.
- Conduct an open and public hearing on the resolution.

SB 239 requires that a proposal for a change of organization must be submitted with a plan for services prepared pursuant to specified statutory requirements. The plan for services must include:

- A total cost estimate for providing new or extended services.
- The estimated cost of the new or extended services to customers.
- An identification of existing service providers and the potential fiscal impact to the customers of those existing providers.
- A plan for financing the exercise of the new or extended services.
- Alternatives for the exercise of the new or extended services.

SB 239 requires a public agency to cause to be prepared by contract an independent comprehensive fiscal analysis that reviews and documents:

- The costs to the public agency that has proposed to provide new or extended services during the three fiscal years following a public agency entering into a contract to provide new or extended services outside its current service area by contract or agreement, in accordance with the following requirements:
 - The analysis must include all direct and indirect cost impacts to the existing service provider in the affected territory.
 - The analysis must review how the existing service provider's costs compare to the service costs in areas with similar populations and of similar geographic size that provide a similar level and range of services. The analysis must make a reasonable determination of the costs expected to be borne by the public agency providing new or extended services.
- The revenues of the public agency that has proposed a new or extended service outside its current service area during the three fiscal years following the effective date of a contract or agreement with another public agency to provide a new or extended service.
- The effects on the costs and revenues of any affected public agency, including the public agency proposing to provide the new or extended service, during the three fiscal years that the new or extended service will be provided.
- Any other information and analysis needed to support the findings that a LAFCO must make to approve services under a fire protection reorganization contract.

SB 239 requires the clerk of the legislative body of a public agency or the director of a state agency adopting a resolution of application to file a certified copy of the resolution with the LAFCO executive officer. The bill specifies how a LAFCO must process resolutions of application submitted to the executive officer.

SB 239 requires a LAFCO to review and approve, disapprove, or approve with conditions a fire protection reorganization contract after a public hearing called and held for that purpose. The bill allows an applicant to request reconsideration if a contract is disapproved or approved with conditions.

SB 239 generally prohibits a LAFCO from approving an application unless the LAFCO determines that the public agency will have sufficient revenues to carry out the exercise of the new or extended services outside its current area. However, if the LAFCO has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions or class of services, SB 239 allows a LAFCO to approve an application if the commission conditions its approval on the concurrent approval of sufficient revenue sources pursuant to state law. In approving an application, the LAFCO must provide that if the revenue sources are not approved, the public agency's authority to provide new or extended services must not be exercised.

SB 239 prohibits a LAFCO from approving an application for approval of a fire protection reorganization contract unless the LAFCO finds, based on the entire record, all of the following:

- The proposed exercise of new or extended services outside a public agency's current service area is consistent with the Cortese-Knox-Hertzberg Act.
- The commission has reviewed the comprehensive fiscal analysis.
- The commission has reviewed the testimony presented at the public hearing.

- 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 a new or extended service.

SB 239 specifies the manner in which a LAFCO executive officer must provide public notice by mail, in a newspaper, and on the Internet, of a hearing to review an application for approval of a fire protection reorganization contract. The bill allows a LAFCO to continue a hearing and requires that a LAFCO must hear and consider oral or written testimony presented by any affected local agency, affected county, or any interested person who appears at the hearing.

SB 239 specifies that a fire protection reorganization contract is exempt from the statute that governs LAFCOs' approval of extraterritorial service contracts.

The bill makes additional technical and conforming changes to the Cortese-Knox-Hertzberg Act.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. When a contract or agreement between two public agencies makes substantial changes to the administration of fire protection services in a community, it deserves to be scrutinized by LAFCO in a manner that is similar to how a detachment and annexation of fire protection services would be scrutinized under current law. When the Legislature enacted the 1993 Gotch bill requiring LAFCO review of some extraterritorial service contracts, it did so in response to concerns that local governments were using service contracts to circumvent LAFCO review of major changes to local service delivery. However, the review requirement for extraterritorial service contracts contained a substantial loophole for contracts that only involved public agencies. SB 239 will narrow that loophole. Some recent fire protection service contracts between public agencies have resulted in costly litigation and generated deep divisions among community members. Other agreements have been jeopardized by public officials' reliance on financial data that later was determined to be inaccurate. Problems like these can be avoided by providing more opportunities for the public to review and consider independent analyses of proposed changes to fire service delivery in their communities. By requiring a public agency to submit a plan for extended services for fire protection to LAFCO for review and approval, SB 239 will ensure that the details of service delivery and costs are thoroughly and independently examined, which will benefit the residents, the public agency and the firefighters in all of the affected areas.

2. Local control. Local voters elect county supervisors, city council members, and special district board members to make public policy in response to local needs. Local elected officials strive to provide their communities' residents with the best services at the most reasonable cost. They have to answer to residents who are displeased with the quality and cost of their services. As a result, a decision to enter into a contract with another public agency to provide fire protection services is a decision that elected officials make only after considering the fiscal, administrative, and service delivery implications for their communities. By requiring LAFCO review of fire protection reorganization contracts, SB 239 diminishes local officials' autonomy

to contract for fire protection services in the manner that they determine will best serve their constituents.

3. Delegation of powers. SB 239 prohibits a LAFCO from considering an application for approval of new or extended fire protection service unless the application is accompanied by 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. This requirement effectively gives some local officials and private employee organizations authority to decide whether or not a LAFCO can consider an application. The California Constitution gives the State Legislature complete authority to create local governments and set their boundaries. Because the Legislature has delegated much of its authority over city and special district boundaries to each county's LAFCO, LAFCOs are exercising a legislative power when they make decisions about changes to local governments' organization. By empowering local officials and labor organizations to determine whether a proposal for new or extended services can be reviewed by a LAFCO, SB 239 may delegate some legislative powers to those other parties. As a general doctrine, the power to make laws must be exercised by the Legislature, and may not be delegated. However, courts have frequently upheld the delegation of legislative powers to public boards or officers if the statutes specify definite standards to be used to carry out the delegated legislative purposes. By contrast, courts have invalidated statutes that delegate uncontrolled discretion to third parties. Granting local officials and employee organizations full discretion to determine which proposed changes of organization a LAFCO can consider may not be consistent with judicial interpretations of the nondelegation doctrine.

4. Next in line? Fire protection services aren't the only kind of public service that local agencies provide outside of their boundaries pursuant to contracts with other public agencies. Local agencies commonly contract for law enforcement services, utility services, and park and recreation services, among others. Enacting SB 239 may invite requests from other interest groups for LAFCOs to more carefully scrutinize other types of contracts for services provided outside of existing service areas.

5. Mandate. The Legislative Counsel's Office says that SB 239 would impose a state-mandated local program because it requires local government officials to perform additional duties related to the approval of fire protection reorganization contracts. The California Constitution generally requires the state to reimburse the costs of new or expanded state mandated local programs. However, on June 3, 2014, California voters approved Proposition 42, which amended the California Constitution to require local agencies to comply with the California Public Records Act. Proposition 42 also requires local agencies to comply with any subsequent statutory enactment amending the Public Records Act that contains specified findings that the newly enacted statute furthers specified constitutional provisions guaranteeing public access to public agency meetings and records. SB 239 contains legislative findings that the bill furthers the purpose of Section 3 of Article I of the California Constitution by providing for notice in accordance with existing provisions of open meeting statutes. As a result, SB 239 disclaims the state's responsibility for reimbursing local governments' costs of complying with the bill's requirements.

Support and Opposition (4/23/15)

Support: California Professional Firefighters; CALFIRE Local 2881; California Labor Federation.

Opposition: Alameda County LAFCO; Apple Valley Fire Protection District; California Association of LAFCOs; California Building Industry Association; California Special Districts Association; California State Association of Counties; Contra Costa County LAFCO; Covelo Fire Protection District; Happy Valley Fire Protection District; Fire Districts Association of California; Hesperia Recreation and Park District; League of California Cities; Los Angeles County LAFCO; Rural County Representatives of California; San Mateo County LAFCO; Saratoga Fire District; Shasta Lake Fire Protection District; Squaw Valley Public Service District.

-- END --

AMENDED IN SENATE APRIL 23, 2015

AMENDED IN SENATE MARCH 23, 2015

SENATE BILL

No. 239

Introduced by Senator Hertzberg

February 17, 2015

An act to amend Sections ~~56021, 56654, 56824.10, and 56824.12~~ *56017.2 and 56133* of, *and* to add Section ~~56800.5~~ *56134* to, ~~and to~~ add Article 1.6 (commencing with Section ~~56824.20~~) to Chapter 5 of Part 3 of Division 3 of Title 5 of; the Government Code, relating to local services.

LEGISLATIVE COUNSEL'S DIGEST

SB 239, as amended, 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 ~~establishes commission proceedings to consider the exercise of new or different functions or services, or the divestiture of the power to provide particular functions or services, by special districts: 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 establish commission proceedings to consider the permit a public agency to exercise of new or extended fire protection services outside a the public agency's current service area by contract or agreement. pursuant to a fire protection reorganization 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 to that is not a state agency adopt a resolution of application and submit the resolution along with a plan for services, as provided. The bill would require provided, and that a proposal by a state agency be initiated by the director of the agency with the approval of the Governor. 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 fire protection services pursuant to a fire protection reorganization contract with 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 provide that a proposal for a change of organization that involves the exercise of new or extended fire protection services outside a public agency's current service area by contract or agreement may be initiated only by these proceedings.~~

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, ~~to review~~ 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 ~~SECTION 1. Section 56021 of the Government Code is~~
- 2 ~~amended to read:~~
- 3 ~~56021. "Change of organization" means any of the following:~~

- 1 ~~(a) A city incorporation.~~
- 2 ~~(b) A district formation.~~
- 3 ~~(c) An annexation to a city.~~
- 4 ~~(d) An annexation to a district.~~
- 5 ~~(e) A detachment from a city.~~
- 6 ~~(f) A detachment from a district.~~
- 7 ~~(g) A disincorporation of a city.~~
- 8 ~~(h) A district dissolution.~~
- 9 ~~(i) A consolidation of cities.~~
- 10 ~~(j) A consolidation of special districts.~~
- 11 ~~(k) A merger of a city and a district.~~
- 12 ~~(l) Establishment of a subsidiary district.~~
- 13 ~~(m) The exercise of new or different functions or classes of~~
- 14 ~~services, or divestiture of the power to provide particular functions~~
- 15 ~~or classes of services, within all or part of the jurisdictional~~
- 16 ~~boundaries of a special district as provided in Article 1.5~~
- 17 ~~(commencing with Section 56824.10) of Chapter 5 of Part 3 of~~
- 18 ~~this division.~~
- 19 ~~(n) The exercise of new or extended fire protection services~~
- 20 ~~outside a public agency's current service area by contract or~~
- 21 ~~agreement, as authorized by Chapter 4 (commencing with Section~~
- 22 ~~55600) of Part 2 of Division 2 of Title 5 of this code or Article 4~~
- 23 ~~(commencing with Section 4141) of Chapter 1 of Part 2 of Division~~
- 24 ~~4 of the Public Resources Code, as provided in Article 1.6~~
- 25 ~~(commencing with Section 56824.20) of Chapter 5 of Part 3 of~~
- 26 ~~Division 3 of Title 5 of this code.~~
- 27 ~~SEC. 2. Section 56654 of the Government Code is amended~~
- 28 ~~to read:~~
- 29 ~~56654. (a) A proposal for a change of organization or a~~
- 30 ~~reorganization may be made by the adoption of a resolution of~~
- 31 ~~application by the legislative body of an affected local agency,~~
- 32 ~~except as provided in subdivision (b):~~
- 33 ~~(b) (1) Notwithstanding Section 56700, a proposal for a change~~
- 34 ~~of organization that involves the exercise of new or different~~
- 35 ~~functions or classes of services, or the divestiture of the power to~~
- 36 ~~provide particular functions or classes of services, within all or~~
- 37 ~~part of the jurisdictional boundaries of a special district, shall only~~
- 38 ~~be initiated by the legislative body of that special district in~~
- 39 ~~accordance with Article 1.5 (commencing with Section 56824.10)~~
- 40 ~~of Chapter 5.~~

1 (2) Notwithstanding Section 56700, a proposal for a change of
2 organization that involves the exercise of new or extended services
3 outside a public agency's current service area by contract or
4 agreement, as defined in subdivision (n) of Section 56021, shall
5 only be initiated in accordance with Article 1.6 (commencing with
6 Section 56824.20) of Chapter 5.

7 (c) ~~At least 21 days before the adoption of the resolution, the~~
8 ~~legislative body may give mailed notice of its intention to adopt~~
9 ~~a resolution of application to the commission and to each interested~~
10 ~~agency and each subject agency. The notice shall generally describe~~
11 ~~the proposal and the affected territory.~~

12 (d) ~~Except for the provisions regarding signers and signatures,~~
13 ~~a resolution of application shall contain all of the matters specified~~
14 ~~for a petition in Section 56700 and shall be submitted with a plan~~
15 ~~for services prepared pursuant to Section 56653.~~

16 SEC. 3. Section 56800.5 is added to the Government Code, to
17 read:

18 56800.5. ~~For a proposal for a change of organization that~~
19 ~~involves the exercise of new or extended services outside a public~~
20 ~~agency's current service area by contract or agreement, as defined~~
21 ~~in subdivision (n) of Section 56021, the executive officer shall~~
22 ~~prepare, or cause to be prepared by contract, a comprehensive~~
23 ~~fiscal analysis. This analysis shall become part of the report~~
24 ~~required pursuant to Section 56665. Data used for the analysis~~
25 ~~shall be from the most recent fiscal year for which data are~~
26 ~~available, preceding the issuance of the certificate of filing. When~~
27 ~~data requested by the executive officer in the notice of affected~~
28 ~~agencies are unavailable, the analysis shall document the source~~
29 ~~and methodology of the data used. The analysis shall review and~~
30 ~~document each of the following:~~

31 (a) ~~The costs to the public agency that has proposed to provide~~
32 ~~new or extended services during the three fiscal years following~~
33 ~~a public agency entering into a contract to provide new or extended~~
34 ~~services outside its current service area by contract or agreement,~~
35 ~~in accordance with the following requirements:~~

36 (1) ~~The executive officer shall include all direct and indirect~~
37 ~~cost impacts to the existing service provider in the affected~~
38 ~~territory.~~

39 (2) ~~The executive officer shall review how the costs of the~~
40 ~~existing service provider compare to the costs of services provided~~

1 in service areas with similar populations and of similar geographic
2 size that provide a similar level and range of services and shall
3 make a reasonable determination of the costs expected to be borne
4 by the public agency providing new or extended services.

5 (b) The revenues of the public agency that has proposed a new
6 or extended service outside its current service area during the three
7 fiscal years following the effective date of a contract or agreement
8 with another public agency to provide a new or extended service.

9 (c) The effects on the costs and revenues of any affected public
10 agency, including the public agency proposing to provide the new
11 or extended service, during the three fiscal years that the new or
12 extended service will be provided.

13 (d) Any other information and analysis needed to make the
14 findings required by Section 56824.24.

15 SEC. 4. Section 56824.10 of the Government Code is amended
16 to read:

17 56824.10. Commission proceedings for the exercise of new or
18 different functions or classes of services or divestiture of the power
19 to provide particular functions or classes of services, within all or
20 part of the jurisdictional boundaries of a special district, pursuant
21 to paragraph (1) of subdivision (b) of Section 56654, may be
22 initiated by a resolution of application in accordance with this
23 article.

24 SEC. 5. Section 56824.12 of the Government Code is amended
25 to read:

26 56824.12. (a) A proposal by a special district to provide a new
27 or different function or class of services or divestiture of the power
28 to provide particular functions or classes of services, within all or
29 part of the jurisdictional boundaries of a special district, pursuant
30 to paragraph (1) of subdivision (b) of Section 56654, shall be made
31 by the adoption of a resolution of application by the legislative
32 body of the special district and shall include all of the matters
33 specified for a petition in Section 56700, except paragraph (6) of
34 subdivision (a) of Section 56700, and be submitted with a plan for
35 services prepared pursuant to Section 56653. The plan for services
36 for purposes of this article shall also include all of the following
37 information:

38 (1) The total estimated cost to provide the new or different
39 function or class of services within the special district's
40 jurisdictional boundaries:

1 ~~(2) The estimated cost of the new or different function or class~~
2 ~~of services to customers within the special district's jurisdictional~~
3 ~~boundaries. The estimated costs may be identified by customer~~
4 ~~class.~~

5 ~~(3) An identification of existing providers, if any, of the new~~
6 ~~or different function or class of services proposed to be provided~~
7 ~~and the potential fiscal impact to the customers of those existing~~
8 ~~providers.~~

9 ~~(4) A written summary of whether the new or different function~~
10 ~~or class of services or divestiture of the power to provide particular~~
11 ~~functions or classes of services, within all or part of the~~
12 ~~jurisdictional boundaries of a special district, pursuant to paragraph~~
13 ~~(1) of subdivision (b) of Section 56654, will involve the activation~~
14 ~~or divestiture of the power to provide a particular service or~~
15 ~~services, service function or functions, or class of service or~~
16 ~~services.~~

17 ~~(5) A plan for financing the establishment of the new or different~~
18 ~~function or class of services within the special district's~~
19 ~~jurisdictional boundaries.~~

20 ~~(6) Alternatives for the establishment of the new or different~~
21 ~~functions or class of services within the special district's~~
22 ~~jurisdictional boundaries.~~

23 ~~(b) The clerk of the legislative body adopting a resolution of~~
24 ~~application shall file a certified copy of that resolution with the~~
25 ~~executive officer. Except as provided in subdivision (c), the~~
26 ~~commission shall process resolutions of application adopted~~
27 ~~pursuant to this article in accordance with Section 56824.14.~~

28 ~~(c) (1) Prior to submitting a resolution of application pursuant~~
29 ~~to this article to the commission, the legislative body of the special~~
30 ~~district shall conduct a public hearing on the resolution. Notice of~~
31 ~~the hearing shall be published pursuant to Sections 56153 and~~
32 ~~56154.~~

33 ~~(2) Any affected local agency, affected county, or any interested~~
34 ~~person who wishes to appear at the hearing shall be given an~~
35 ~~opportunity to provide oral or written testimony on the resolution.~~

36 ~~SEC. 6. Article 1.6 (commencing with Section 56824.20) is~~
37 ~~added to Chapter 5 of Part 3 of Division 3 of Title 5 of the~~
38 ~~Government Code, to read:~~

1 Article 1.6. Fire Protection Services

2
3 ~~56824.20. Commission proceedings pursuant to paragraph (2)~~
4 ~~of subdivision (b) of Section 56654 may be initiated in accordance~~
5 ~~with this article.~~

6 ~~56824.22. (a) A proposal for a change of organization that~~
7 ~~involves the exercise of new or extended services outside a public~~
8 ~~agency's current service area by contract or agreement, as defined~~
9 ~~in subdivision (n) of Section 56021, shall be made by the adoption~~
10 ~~of a resolution of application as follows:~~

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

16 ~~(2) In the case of a public agency that is a state agency, the~~
17 ~~proposal shall be initiated by the director of the state agency~~
18 ~~proposing to provide new or extended services outside the agency's~~
19 ~~current service area and be approved by the Governor.~~

20 ~~(b) Prior to submitting a resolution of application pursuant to~~
21 ~~this article to the commission, the legislative body of a public~~
22 ~~agency or the director of a state agency shall do all of the~~
23 ~~following:~~

24 ~~(1) Obtain and submit with the resolution a written agreement~~
25 ~~validated and executed by each affected public agency and~~
26 ~~recognized employee organization that represents firefighters of~~
27 ~~the existing and proposed service providers consenting to the~~
28 ~~proposed change of organization.~~

29 ~~(2) Conduct a public hearing on the resolution. Notice of the~~
30 ~~hearing shall be published pursuant to Sections 56154 and 56156.~~
31 ~~The legislative body of the public agency or the director of the~~
32 ~~state agency shall provide an affected public agency or an interested~~
33 ~~person who wishes to appear at the hearing the opportunity to~~
34 ~~present oral or written testimony on the resolution.~~

35 ~~(c) A proposal for a change of organization submitted pursuant~~
36 ~~to this article shall be submitted with a plan for services prepared~~
37 ~~pursuant to Section 56653. The plan for services shall include all~~
38 ~~of the following information:~~

39 ~~(1) The total estimated cost to provide the new or extended~~
40 ~~services in the affected territory.~~

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

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

6 ~~(4) A plan for financing the exercise of the new or extended~~
7 ~~services in the affected territory.~~

8 ~~(5) Alternatives for the exercise of the new or extended services~~
9 ~~in the affected territory.~~

10 ~~(d) The clerk of the legislative body of a public agency or the~~
11 ~~director of a state agency adopting a resolution of application~~
12 ~~pursuant to this article shall file a certified copy of the resolution~~
13 ~~with the executive officer. The commission shall process~~
14 ~~resolutions of application adopted pursuant to this chapter in~~
15 ~~accordance with Section 56824.24.~~

16 ~~56824.24. (a) The commission shall review and approve or~~
17 ~~disapprove a proposal for a change of organization as defined in~~
18 ~~subdivision (n) of Section 56021 after a public hearing called and~~
19 ~~held for that purpose. The commission shall not consider or~~
20 ~~approve a proposal that does not comply with the requirements of~~
21 ~~subdivision (b) of Section 56824.22.~~

22 ~~(b) (1) The commission shall not approve a proposal for a~~
23 ~~change of organization as defined in subdivision (n) of Section~~
24 ~~56021 unless the commission determines that the public agency~~
25 ~~will have sufficient revenues to carry out the exercise of the new~~
26 ~~or extended services outside its current area, except as specified~~
27 ~~in paragraph (2).~~

28 ~~(2) The commission may approve a proposal for a change of~~
29 ~~organization as defined in subdivision (n) of Section 56021 where~~
30 ~~the commission has determined that the public agency will not~~
31 ~~have sufficient revenue to provide the proposed new or different~~
32 ~~functions or class of services, if the commission conditions its~~
33 ~~approval on the concurrent approval of sufficient revenue sources~~
34 ~~pursuant to Section 56886. In approving a proposal, the~~
35 ~~commission shall provide that if the revenue sources pursuant to~~
36 ~~Section 56886 are not approved, the authority of the public agency~~
37 ~~to provide new or extended services shall not be exercised.~~

38 ~~(c) Notwithstanding Section 56375, the commission shall not~~
39 ~~approve a proposal for a change of organization as defined in~~

1 subdivision (n) of Section 56021 unless the commission finds,
2 based on the entire record, all of the following:

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

7 (2) ~~The commission has reviewed the comprehensive fiscal~~
8 ~~analysis prepared pursuant to Section 56800.5.~~

9 (3) ~~The commission has reviewed the executive officer's report~~
10 ~~and recommendation prepared pursuant to Section 56665 and any~~
11 ~~testimony presented at the public hearing.~~

12 (4) ~~The proposed affected territory is expected to receive~~
13 ~~revenues sufficient to provide public services and facilities and a~~
14 ~~reasonable reserve during the three fiscal years following the~~
15 ~~effective date of the contract or agreement between the public~~
16 ~~agencies to provide a new or extended service.~~

17 (d) ~~At least 21 days prior to the date of the hearing, the executive~~
18 ~~officer shall give mailed notice of that hearing to each affected~~
19 ~~local agency or affected county, and to any interested party who~~
20 ~~has filed a written request for notice with the executive officer. In~~
21 ~~addition, at least 21 days prior to the date of that hearing, the~~
22 ~~executive officer shall cause notice of the hearing to be published~~
23 ~~in accordance with Section 56153 in a newspaper of general~~
24 ~~circulation that is circulated within the territory affected by the~~
25 ~~proposal proposed to be adopted and shall post the notice of the~~
26 ~~hearing on the commission's Internet Web site.~~

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

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

34 56017.2. "Application" means any of the following:

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

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

1 (c) A request by a city or district for commission approval of
2 an extension of services outside the agency's jurisdictional
3 boundaries pursuant to Section ~~56133~~, 56133 or 56134.

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

6 56133. (a) A city or district may provide new or extended
7 services by contract or agreement outside its jurisdictional
8 boundaries only if it first requests and receives written approval
9 from the commission in the affected county.

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

14 (c) The commission may authorize a city or district to provide
15 new or extended services outside its jurisdictional boundaries and
16 outside its sphere of influence to respond to an existing or
17 impending threat to the public health or safety of the residents of
18 the affected territory if both of the following requirements are met:

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

22 (2) The commission has notified any alternate service provider,
23 including any water corporation as defined in Section 241 of the
24 Public Utilities Code, or sewer system corporation as defined in
25 Section 230.6 of the Public Utilities Code, that has filed a map and
26 a statement of its service capabilities with the commission.

27 (d) The executive officer, within 30 days of receipt of a request
28 for approval by a city or district of a contract to extend services
29 outside its jurisdictional boundary, shall determine whether the
30 request is complete and acceptable for filing or whether the request
31 is incomplete. If a request is determined not to be complete, the
32 executive officer shall immediately transmit that determination to
33 the requester, specifying those parts of the request that are
34 incomplete and the manner in which they can be made complete.
35 When the request is deemed complete, the executive officer shall
36 place the request on the agenda of the next commission meeting
37 for which adequate notice can be given but not more than 90 days
38 from the date that the request is deemed complete, unless the
39 commission has delegated approval of those requests to the
40 executive officer. The commission or executive officer shall

1 approve, disapprove, or approve with conditions the contract for
2 extended services. If the contract is disapproved or approved with
3 conditions, the applicant may request reconsideration, citing the
4 reasons for reconsideration.

5 (e) This section does not apply to ~~contracts~~ *any of the following:*

6 (1) *Contracts* or agreements solely involving two or more public
7 agencies where the public service to be provided is an alternative
8 to, or substitute for, public services already being provided by an
9 existing public service provider and where the level of service to
10 be provided is consistent with the level of service contemplated
11 by the existing service provider. ~~This section does not apply to~~
12 ~~contracts~~

13 (2) *Contracts* for the transfer of nonpotable or nontreated water.
14 ~~This section does not apply to contracts~~

15 (3) *Contracts* or agreements solely involving the provision of
16 surplus water to agricultural lands and facilities, including, but not
17 limited to, incidental residential structures, for projects that serve
18 conservation purposes or that directly support agricultural
19 industries. However, prior to extending surplus water service to
20 any project that will support or induce development, the city or
21 district shall first request and receive written approval from the
22 commission in the affected county. ~~This section does not apply to~~
23 ~~an~~

24 (4) *An* extended service that a city or district was providing on
25 or before January 1, 2001. ~~This section does not apply to a~~

26 (5) *A* local publicly owned electric utility, as defined by Section
27 9604 of the Public Utilities Code, providing electric services that
28 do not involve the acquisition, construction, or installation of
29 electric distribution facilities by the local publicly owned electric
30 utility, outside of the utility’s jurisdictional boundaries.

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

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

35 *56134. (a) (1) For the purposes of this section, “fire protection*
36 *reorganization contract” means a contract or agreement for the*
37 *exercise of new or extended fire protection services outside a public*
38 *agency’s current service area, as authorized by Chapter 4*
39 *(commencing with Section 55600) of Part 2 of Division 2 of Title*
40 *5 of this code or by Article 4 (commencing with Section 4141) of*

1 Chapter 1 of Part 2 of Division 4 of the Public Resources Code,
2 that does either of the following:

3 (A) Transfers responsibility for providing services in more than
4 25 percent of the service area of any public agency affected by the
5 contract or agreement.

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

9 (2) A contract or agreement for the exercise of new or extended
10 fire protection services outside a public agency's current service
11 area, as authorized by Chapter 4 (commencing with Section 55600)
12 of Part 2 of Division 2 of Title 5 of this code or Article 4
13 (commencing with Section 4141) of Chapter 1 of Part 2 of Division
14 4 of the Public Resources Code, that, in combination with other
15 contracts or agreements, would produce the results described in
16 subparagraph (A) or (B) of paragraph (1), shall be deemed a fire
17 protection reorganization contract for the purposes of this section.

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

23 (c) A request by a public agency for commission approval of
24 services provided under a fire protection reorganization contract
25 shall be made by the adoption of a resolution of application as
26 follows:

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

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

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

39 (1) The public agency obtains and submits with the resolution
40 a written agreement validated and executed by each affected public

1 agency and recognized employee organization that represents
2 firefighters of the existing and proposed service providers
3 consenting to the proposed change of organization.

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

10 (e) A resolution of application submitted pursuant to this section
11 must be submitted with a fire services reorganization contract plan
12 that conforms to the requirements of Section 56653. The plan shall
13 include all of the following information:

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

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

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

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

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

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

29 (1) The costs to the public agency that has proposed to provide
30 new or extended fire protection services during the three fiscal
31 years following a public agency entering into a fire protection
32 reorganization contract, in accordance with the following
33 requirements:

34 (A) The analysis must include all direct and indirect cost impacts
35 to the existing service provider in the affected territory.

36 (B) The analysis must review how the costs of the existing
37 service provider compare to the costs of services provided in
38 service areas with similar populations and of similar geographic
39 size that provide a similar level and range of services and shall
40 make a reasonable determination of the costs expected to be borne

1 by the public agency providing new or extended fire protection
2 services.

3 (2) The revenues of the public agency that has proposed a new
4 or extended fire protection services outside its current service area
5 during the three fiscal years following the effective date of a
6 contract or agreement with another public agency to provide a
7 new or extended service.

8 (3) The effects on the costs and revenues of any affected public
9 agency, including the public agency proposing to provide the new
10 or extended fire protection services, during the three fiscal years
11 that the new or extended fire protection services will be provided.

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

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

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

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

38 (i) (1) The commission shall not approve an application for
39 approval of a fire protection reorganization contract unless the
40 commission determines that the public agency will have sufficient

1 revenues to carry out the exercise of the new or extended fire
2 protection services outside its current area, except as specified in
3 paragraph (2).

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

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

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

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

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

25 (4) The proposed affected territory is expected to receive
26 revenues sufficient to provide public services and facilities and a
27 reasonable reserve during the three fiscal years following the
28 effective date of the contract or agreement between the public
29 agencies to provide a new or extended fire protection services.

30 (k) At least 21 days prior to the date of the hearing, the executive
31 officer shall give mailed notice of that hearing to each affected
32 local agency or affected county, and to any interested party who
33 has filed a written request for notice with the executive officer. In
34 addition, at least 21 days prior to the date of that hearing, the
35 executive officer shall cause notice of the hearing to be published
36 in accordance with Section 56153 in a newspaper of general
37 circulation that is circulated within the territory affected by the
38 proposal proposed to be adopted and shall post the notice of the
39 hearing on the commission's Internet Web site.

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

6 ~~SEC. 7.~~

7 SEC. 4. The Legislature finds and declares that Section-6 3 of
8 this act, which adds Section-56824.22 56134 to the Government
9 Code, furthers, within the meaning of paragraph (7) of subdivision
10 (b) of Section 3 of Article I of the California Constitution, the
11 purposes of that constitutional section as it relates to the right of
12 public access to the meetings of local public bodies or the writings
13 of local public officials and local agencies. Pursuant to paragraph
14 (7) of subdivision (b) of Section 3 of Article I of the California
15 Constitution, the Legislature makes the following findings:

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

O

April 2, 2015

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Executive Assistant

Senator Robert Hertzberg
California State Senate
State Capitol, Room 4038
Sacramento, CA 95814

RE: **SB 239 (Hertzberg) – Local Services: Contracts: Fire Protection Services – OPPOSE**

Dear Senator Hertzberg:

The California Association of Local Agency Formation Commissions (CALAFCO) has reviewed your bill (**SB 239**), which establishes an entirely new hybrid process pursuant to which Local Agency Formation Commissions (LAFCos) will consider the extension, by contract or agreement, of fire protection services outside a public agency's boundaries. Based on our review, we must respectfully **Oppose** the bill at this time. Simply put, we find the current version of **SB 239** flawed in various respects as follows:

- 1. Is Unnecessary in Light of Current Statutory Provisions/Amends the Wrong Provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH):** The bill amendments, which not only revises several provisions in CKH, but also proposes to add entire new sections to CKH (including an entire new Article) related to the extension of fire services, by contract or agreement, outside a public agency's boundaries, are unnecessary. Specifically, Government Code section 56133, in CKH, already fully addresses the provision of all types of out of area service extensions by local public agencies and empowers LAFCos to independently consider all relevant factors associated with such requests prior to rendering a decision. CALAFCO fails to see why the provision of fire protection services, by contract or agreement, outside of a public agency's boundaries, requires a different level of review than other types of equally vital services or demands a heightened or weighted review from any commenter or affected agency. In sum, while CALAFCO believes that Government Code section 56133 fully addresses the issue of out of area services, any new provisions deemed necessary to specifically address the provision of out of area fire protection services should be included in 56133 instead of the statutory revisions and additions provided for in SB 239.
- 2. Would Unnecessarily Categorize the Provision of Extraterritorial Fire Protection Services as a "Change of Organization" under CKH and Unnecessarily Require the Same Level of Review Currently Required Only for Incorporations:** Not only will the bill amendments make LAFCo's review of the provision of extraterritorial fire protection services under contract or agreement a "change of organization" under CKH, thereby triggering the tax exchange negotiation requirements of Revenue and Taxation Code section 99 and compliance with CEQA, but also will require LAFCo's review to entail activities currently only reserved for proposals involving incorporations. Specifically, the bill amendments introduced last week require LAFCos to undertake a comprehensive fiscal analysis—an analysis used by LAFCos to analyze whether the creation of an entirely new city is fiscally feasible. We want to point out that in great many instances the provision of any service (including fire protection services) outside an agency's boundaries involves extension of services

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to a very limited area—sometimes just a few homes/properties or neighborhoods. In light of this, CALAFCO finds that requiring this level of review for provision of fire protection services outside an agency's boundaries excessive. The bill completely fails to demonstrate how the proposed requirements will be synthesized with all relevant code sections in CKH or the Revenue and Taxation Code thus creating future conflicts to its implementation.

3. **Would for the First Time Require State Agencies to Obtain LAFCo Approval Authority:** LAFCos are charged with “discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.” (Government Code section 56301, emphasis added.) Under CKH, the term “local agency” is defined as including only a county, city or district. While LAFCos actions certainly at times involve interaction with public agencies of all types, including the State of California and its state agencies, **SB 239** would for the first time require a California state agency to apply for, and request LAFCo approval prior to undertaking an action that involves the provision of services outside of a public agency's current service area under contract or agreement.

4. **Would Remove Discretion From Elected and Appointed Boards of Public Agencies Throughout the State as Well as From State Agencies by Requiring Pre-Approval of Recognized Employee Associations That are Already Fully Protected by the Meyers Millias Brown Act (MMBA):** The State legislature has provided for LAFCos to exist in each of the 58 counties for the purpose of promoting the efficient delivery of services and encouraging the orderly formation and development of local agencies. This structure ensures that all decisions are made in a transparent and orderly fashion and by locally elected and appointed officials representing the very agencies and voters affected by those decisions. To abrogate this critical function for a single category of services is not only inconsistent with CKH, but also obstructs the democratic process. Additionally, the rights of recognized employee associations is fully covered by the Meyers Millias Brown Act (MMBA), which already requires local agencies to “meet and confer” over decisions made by the agency that may result in changed work conditions. **SB 239** would require each and every possible contract or agreement involving the provision of extraterritorial fire protection services to be “pre-approved” by the affected labor associations, not only prior to moving forward with any such contract or agreement, but also prior to seeking LAFCo approval. CALAFCO fails to see why such “pre-approval” is appropriate or necessary when the interests of labor are already protected by the MMBA.

CALAFCO is gravely concerned about the precedent being set in **SB 239** by inappropriately and exclusively allowing fire protection services labor associations this kind of approval.

Furthermore, removing local control and authority of agency Boards and LAFCo decisions goes against one of CALAFCO's core policies of preserving LAFCo authority and ability to make decisions and enact recommendations related to the delivery of services and the agencies providing those services.

Senator Hertzberg
RE: SB 239 – Oppose
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Page 3

CALAFCO remains committed to supporting legislation that maintains and/or enhances the ability of LAFcos throughout the state to fulfill the legislative goals behind CKH, and specifically the efficient provision of government services. We appreciated the opportunity to meet with your staff and the bill's sponsor. However, we believe that the current statutory provisions governing the review and/or approval of the provision of services outside an agency's boundaries more than fully provide LAFcos with the means to completely evaluate the feasibility, both from a fiscal and service level perspective. As a result, we must respectfully **oppose SB 239**.

Yours sincerely,



Pamela Miller
Executive Director

Cc: Committee Members, Senate Local Governance and Finance Committee
Brian Weinberger, Consultant, Senate Local Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus
Christy Bouma, CA Professional Firefighters Association

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Rollings-McDonald, Kathleen

From: Pamela Miller <pmiller@calafco.org>
Sent: Thursday, April 23, 2015 8:22 AM
To: Rollings-McDonald, Kathleen
Subject: FW: Responses to your questions regarding SB 239

Kathy,

As an FYI for you as you work on your SB 239 letter. When I met with them they asked about what triggers CEQA and also the conflicts we mentioned in our letter (which we were not specific on). This answered those questions. Legal counsel did not want to expand on CEQA because some use the 56133 provision with CEQA and some do not.

Pamela

From: Pamela Miller [mailto:pmiller@calafco.org]
Sent: Wednesday, April 22, 2015 11:41 AM
To: 'Christy Bouma'
Cc: 'Bedard, Michael'
Subject: Responses to your questions regarding SB 239

Good morning Christy.

Apologies for the delay in responding to your questions regarding SB 239 coming from our meeting, I was out of the office all last week.

You asked if the conflicts we referenced in our letter were real or perceived. SB 239 creates an actual internal conflict in the CKH law by proposing an odd hybrid model that is problematic for a number of reasons. First and foremost, the State Legislature has provided for LAFCos to exist in each of the 58 counties for the purpose of promoting the efficient delivery of services and encouraging the orderly formation and development of local agencies. This structure ensures that all decisions are made in a transparent and orderly fashion and by locally elected and appointed officials representing the very agencies and voters affected by those decisions. To abrogate this critical function for a single category of services is not only inconsistent with CKH, but also obstructs the democratic process. We fail to see how providing one specific type of employee association an outsized role in this process is consistent with current legislative directives or in the basic fairness of the democratic process.

More specifically, there is no explicit cross correlation in the CKH Act between a change of organization and a service extension. The Legislature established them as two separate processes. But the proposed hybrid model appears to blend the two in a haphazard approach. How would you suggest they be formally reconciled with respect to protest provisions and noticing requirements? These issues, which are essential for effective implementation, are not addressed. As written, the hybrid model will establish a change of organization that will require a property tax exchange agreement whereas a service extension under Government Code section 56133 does not. The bill needs to reconcile this disconnect.

Additionally, you asked about CEQA. Public Resources Code section 21080(a) (a part of CEQA) generally applies to discretionary projects that are proposed to be carried out or approved by public

agencies. A change of organization of the type this bill proposes would be considered a discretionary project and subject to CEQA review.

Our further review of the bill results in the same simple fundamental question asked of every legislative initiative - what is the problem that the bill attempts to address? Currently there is a legitimate, publicly transparent process governed by statute (GC §56133) by which each LAFCo undertakes to evaluate and approve the extension of services beyond an agency's boundaries. This process has worked successfully for over 20 years since enacted by the legislature in 1994 and enshrined into the CKH Act for the very purpose of placing such extensions under the purview of a local body acting transparently for the good of all citizens. There is also a process by which agencies can change their boundaries (called a change of organization) under the purview of LAFCos if that is a more logical approach to deliver services. Each process serves a different purpose that is ultimately evaluated and considered by LAFCos based on the input of all affected agencies, landowners, registered voters, and the public.

CALAFCO must oppose any bill that strips local LAFCos of their authority to make decisions in the best interest of their residents. As such, focusing on the technical deficiencies of the bill does not advance our understanding of the problem it is attempting to fix. Having said that, however, we remain happy to talk with you further should you want to continue the dialogue, with the hope of reaching an understanding of the perceived problem and possible alternative solutions to remedy that problem.

Thank you,

Pamela

Pamela Miller
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April 2, 2015

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- 1. Is Unnecessary in Light of Current Statutory Provisions/Amends the Wrong Provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH):** The bill amendments, which not only revises several provisions in CKH, but also proposes to add entire new sections to CKH (including an entire new Article) related to the extension of fire services, by contract or agreement, outside a public agency's boundaries, are unnecessary. Specifically, Government Code section 56133, in CKH, already fully addresses the provision of all types of out of area service extensions by local public agencies and empowers LAFCos to independently consider all relevant factors associated with such requests prior to rendering a decision. CALAFCO fails to see why the provision of fire protection services, by contract or agreement, outside of a public agency's boundaries, requires a different level of review than other types of equally vital services or demands a heightened or weighted review from any commenter or affected agency. In sum, while CALAFCO believes that Government Code section 56133 fully addresses the issue of out of area services, any new provisions deemed necessary to specifically address the provision of out of area fire protection services should be included in 56133 instead of the statutory revisions and additions provided for in SB 239.
- 2. Would Unnecessarily Categorize the Provision of Extraterritorial Fire Protection Services as a "Change of Organization" under CKH and Unnecessarily Require the Same Level of Review Currently Required Only for Incorporations:** Not only will the bill amendments make LAFCo's review of the provision of extraterritorial fire protection services under contract or agreement a "change of organization" under CKH, thereby triggering the tax exchange negotiation requirements of Revenue and Taxation Code section 99 and compliance with CEQA, but also will require LAFCo's review to entail activities currently only reserved for proposals involving incorporations. Specifically, the bill amendments introduced last week require LAFCos to undertake a comprehensive fiscal analysis--an analysis used by LAFCos to analyze whether the creation of an entirely new city is fiscally feasible. We want to point out that in great many instances the provision of any service (including fire protection services) outside an agency's boundaries involves extension of services

to a very limited area—sometimes just a few homes/properties or neighborhoods. In light of this, CALAFCO finds that requiring this level of review for provision of fire protection services outside an agency's boundaries excessive. The bill completely fails to demonstrate how the proposed requirements will be synthesized with all relevant code sections in CKH or the Revenue and Taxation Code thus creating future conflicts to its implementation.

3. **Would for the First Time Require State Agencies to Obtain LAFcos Approval Authority:** LAFcos are charged with “discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.” (Government Code section 56301, emphasis added.) Under CKH, the term “local agency” is defined as including only a county, city or district. While LAFcos actions certainly at times involve interaction with public agencies of all types, including the State of California and its state agencies, **SB 239** would for the first time require a California state agency to apply for, and request LAFco approval prior to undertaking an action that involves the provision of services outside of a public agency's current service area under contract or agreement.

4. **Would Remove Discretion From Elected and Appointed Boards of Public Agencies Throughout the State as Well as From State Agencies by Requiring Pre-Approval of Recognized Employee Associations That are Already Fully Protected by the Meyers Millias Brown Act (MMBA):** The State legislature has provided for LAFcos to exist in each of the 58 counties for the purpose of promoting the efficient delivery of services and encouraging the orderly formation and development of local agencies. This structure ensures that all decisions are made in a transparent and orderly fashion and by locally elected and appointed officials representing the very agencies and voters affected by those decisions. To abrogate this critical function for a single category of services is not only inconsistent with CKH, but also obstructs the democratic process. Additionally, the rights of recognized employee associations is fully covered by the Meyers Millias Brown Act (MMBA), which already requires local agencies to “meet and confer” over decisions made by the agency that may result in changed work conditions. **SB 239** would require each and every possible contract or agreement involving the provision of extraterritorial fire protection services to be “pre-approved” by the affected labor associations, not only prior to moving forward with any such contract or agreement, but also prior to seeking LAFco approval. CALAFCO fails to see why such “pre-approval” is appropriate or necessary when the interests of labor are already protected by the MMBA.

CALAFCO is gravely concerned about the precedent being set in **SB 239** by inappropriately and exclusively allowing fire protection services labor associations this kind of approval.

Furthermore, removing local control and authority of agency Boards and LAFco decisions goes against one of CALAFCO's core policies of preserving LAFco authority and ability to make decisions and enact recommendations related to the delivery of services and the agencies providing those services.

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CALAFCO remains committed to supporting legislation that maintains and/or enhances the ability of LAFcos throughout the state to fulfill the legislative goals behind CKH, and specifically the efficient provision of government services. We appreciated the opportunity to meet with your staff and the bill's sponsor. However, we believe that the current statutory provisions governing the review and/or approval of the provision of services outside an agency's boundaries more than fully provide LAFcos with the means to completely evaluate the feasibility, both from a fiscal and service level perspective. As a result, we must respectfully **oppose SB 239**.

Yours sincerely,



Pamela Miller
Executive Director

Cc: Committee Members, Senate Local Governance and Finance Committee
Brian Weinberger, Consultant, Senate Local Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus
Christy Bouma, CA Professional Firefighters Association