

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

Attachment 1

Senate Bill No. 239

CHAPTER 763

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

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

LEGISLATIVE COUNSEL'S DIGEST

SB 239, Hertzberg. Local services: contracts: fire protection services.

Existing law prescribes generally the powers and duties of the local agency formation commission in each county with respect to the review approval or disapproval of proposals for changes of organization or reorganization of cities and special districts within that county. Existing law permits a city or district to provide extended services, as defined, outside its jurisdictional boundaries only if it first requests and receives written approval from the local agency formation commission in the affected county. Under existing law, the commission may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under specified circumstances.

This bill would, with certain exceptions, permit a public agency to exercise new or extended services outside the public agency's jurisdictional boundaries pursuant to a fire protection contract, as defined, only if the public agency receives written approval from the local agency formation commission in the affected county. The bill would require that the legislative body of a public agency that is not a state agency adopt a resolution of application and submit the resolution along with a plan for services, as provided, that a proposal by a state agency be initiated by the director of the agency with the approval of the Director of Finance, and that a proposal by a local agency that is currently under contract for the provision of fire protection services be initiated by the local agency and approved by the Director of Finance. The bill would require, prior to adopting the resolution or submitting the proposal, the public agency to enter into a written agreement for the performance of new or extended services pursuant to a fire protection contract with, or provide written notice of a proposed fire protection contract to, each affected public agency and recognized employee organization representing firefighters in the affected area, and to conduct a public hearing on the resolution.

The bill would require the commission to approve or disapprove the proposal as specified. The bill would require the commission to consider, among other things, a comprehensive fiscal analysis prepared by the executive officer in accordance with specified requirements.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

This bill would incorporate additional changes to Section 56133 of the Government Code proposed by AB 402 that would become operative if this bill and AB 402 are both enacted and this bill is enacted last.

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

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

56017.2. "Application" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

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

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

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Obtains and submits with the resolution a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed fire protection contract.

(B) Provides, at least 30 days prior to the hearing held pursuant to paragraph (2), written notice to each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers of the proposed fire protection contract and submits a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (1) The commission shall not approve an application for approval of a fire protection contract unless the commission determines that the public agency will have sufficient revenues to carry out the exercise of the new or

extended fire protection services outside its current area, except as specified in paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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