



Contra
Costa
County

To: Board of Supervisors
From: LEGISLATION COMMITTEE
Date: June 9, 2015

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

RECOMMENDATION(S):

ADOPT an "Oppose" position on SB 239 (Hertzberg), as amended: Local Services: Contracts: Fire Protection Services, a bill that would establish local agency formation commission proceedings to consider the exercise of new or extended fire protection services outside a public agency's current service area by contract or agreement, as recommended by the Legislation Committee.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

At its May 7, 2015 meeting, the Legislation Committee considered and accepted the recommendation from the Contra Costa County Fire Chief to recommend a position of "Oppose" to the Board of Supervisors on SB 239.

Introduced: 02/17/2015

Last Amend: 04/23/2015

Disposition: Pending

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/09/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I
Supervisor
Candace Andersen, District II
Supervisor
Mary N. Piepho, District III
Supervisor
Karen Mitchoff, District IV
Supervisor

ABSENT: Federal D. Glover, District V
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 9, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: L. DeLaney,
925-335-1097

cc:

Committee: Senate Appropriations Committee

Hearing: 05/18/2015 10:00 am, John L. Burton Hearing Room (4203)

Status: 04/29/2015 From SENATE Committee on GOVERNANCE AND FINANCE: Do
pass to Committee on APPROPRIATIONS.

BACKGROUND: (CONT'D)

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:

o Transfers responsibility for providing services in more than 25% of the service area of any public agency affected by the contract or agreement.

o 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:

- o The analysis must include all direct and indirect cost impacts to the existing service provider in the affected territory.

- o 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.

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.

CONSEQUENCE OF NEGATIVE ACTION:

Contra Costa County would not have a position on the bill.

ATTACHMENTS

