

Date of Hearing: June 29, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

SB 244 (Wolk) – As Amended: June 23, 2011

SENATE VOTE: 25-14

SUBJECT: Land use: general plan: disadvantaged unincorporated communities.

SUMMARY: Requires cities, counties, and local agency formation commissions (LAFCOs) to analyze infrastructure deficiencies in unincorporated disadvantaged communities. Specifically, this bill:

- 1) Prohibits a LAFCO from approving an annexation to a city of any territory greater than 10 acres, or as determined by commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation, unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the LAFCO.
- 2) Defines, for purposes of LAFCO law, the term "disadvantaged inhabited community" to mean inhabited territory with 12 or more registered voters, or as determined by LAFCO policy, that constitutes all or a portion of a "disadvantaged community," as defined in the Water Code to be "a community with an annual median household income that is less than 80% of the statewide annual median household income."
- 3) Requires, upon the next update of a sphere of influence that occurs on or after July 1, 2012, the inclusion of the present and probable need for public facilities and services of any disadvantaged inhabited communities within or contiguous to the existing or proposed sphere of influence of the subject city or special district, for a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection.
- 4) Allows, in a LAFCO's determination of a sphere of influence, the LAFCO to assess the feasibility of governmental reorganization of particular agencies and recommend reorganization of those agencies when reorganization is found to be feasible and if reorganization will further the goals of orderly development and efficient and affordable service delivery.
- 5) Requires a LAFCO, in the written statement of its determinations for a municipal service review, to additionally include the following:
  - a) The location and characteristics of any disadvantaged inhabited communities; and,
  - b) Sewer, municipal and industrial water, and structural fire protection needs or deficiencies of disadvantaged unincorporated communities within or contiguous to the agency's proposed sphere of influence.

- 6) Allows a LAFCO, in conducting a municipal service review, to assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies.
- 7) Requires, on or before the due date for the next revision of its housing element, a city or county to review and update the land use element of its general plan to include all of the following:
  - a) In the case of a city, an identification of each unincorporated island or fringe community within the city's sphere of influence;
  - b) In the case of a county, an identification of each legacy community within the boundaries of the county, but not including any area within the sphere of influence of any city;
  - c) A description of each unincorporated island, fringe community, or legacy community and a map designating its location;
  - d) For each identified community, an analysis, based on available data, of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies; and
  - e) An analysis, based on available data, of benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible.
- 8) Requires, on or before the due date each subsequent revision of its housing element, a city or county to review, and if necessary amend its general plan to update the analysis.
- 9) Defines, for purposes of general plan law, the following terms:
  - a) Defines "community" to mean an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another;
  - b) Defines "disadvantaged unincorporated community" to mean a fringe, island, or legacy community in which the median household income is 80% or less than the statewide median household income;
  - c) Defines "unincorporated fringe community" to mean any inhabited and unincorporated territory that is within a city's sphere of influence; and
  - d) Defines "unincorporated island community" to mean any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary of the Pacific Ocean.
- 10) Provides that no reimbursement is required because local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the bill's provisions.

11) Makes legislative findings and declarations.

#### EXISTING LAW

- 1) Establishes the procedures for the organization and reorganization of cities, counties, and special districts under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000 (Government Code Section 56000, et seq.).
- 2) Provides that a LAFCO shall determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere, and provides that a LAFCO shall, as necessary, review and update each sphere of influence every five years (Government Code Section 56425).
- 3) Provides for the process of determining the sphere of influence, and specifies the different factors that a LAFCO shall consider and prepare in a written statement of its determinations (Government Code Section 56425, et seq.).
- 4) Provides, in order to prepare and to update spheres of influence, that a LAFCO shall conduct a review of the municipal services provided in the county or other appropriate area as designated by the LAFCO, and requires that a written statement of its determinations include all of the following:
  - a) Growth and population projections for the affected area;
  - b) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies;
  - c) Financial ability of agencies to provide services;
  - d) Status of, and opportunities for, shared facilities;
  - e) Accountability for community service needs, including governmental structure and operational efficiencies; and,
  - f) Any other matter related to effective or efficient service delivery, as required by commission policy.  
(Government Code Section 56430)
- 5) Defines "disadvantaged community" to mean a community with an annual median household income that is less than 80 % of the statewide annual median household income (Water Code Section 79505.5).
- 6) Requires every city and county to adopt a general plan that includes seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety (Government Code Section 65300, et seq.)

- 7) Requires the housing element of the general plan to be updated every eight, five, or four years depending on the jurisdiction (Government Code Section 65588).

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains a local mandate that could result in significant non-reimbursable costs to local governments.

COMMENTS:

Background

The U.S. Census Bureau identifies a “census designated place” as the statistical counterpart of a city in that is a named place with a concentration of residents, housing, and commercial activity, but located in a county’s unincorporated territory. The 2000 Census identified 583 census designated places in California. The Department of Finance says that 159 of those CDPs had 2005-09 household median incomes that were less than 80% of the statewide household median income. The 2010 Census identified 1,043 CDPs in California and when fresh income data become available in late 2011, many of them will be considered disadvantaged. Some of these disadvantaged unincorporated communities are county islands (mostly surrounded by cities), some are fringe communities (at or near the edge of cities), and others are legacy communities (geographically isolated).

The Cortese-Knox-Hertzberg Act creates a local agency formation commission (LAFCO) in each county to control the boundaries of cities and most special districts. The courts repeatedly refer to LAFCOs as the Legislature’s watchdog over boundary changes. A LAFCO must determine a sphere of influence for every local government agency within its county and must review and update the spheres as necessary every five years. In addition, any person or local agency may apply to LAFCO to update a sphere of influence at any time. A LAFCO’s boundary decisions must be consistent with the spheres of influence of affected cities and special districts. Bringing territory into a sphere is generally considered to be a precursor to annexation.

In determining a new or amended sphere of influence, the LAFCO must hold a public hearing and must prepare a statement of its determinations with respect to the present and planned land uses in the area; the present and probable needs for public facilities in the area; the present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide, and the existence of any social or economic communities of interest in the area, if relevant.

In the late 1990s, the Commission on Local Governance for the 21st Century reviewed LAFCOs’ activities, including how they prepared spheres of influence. The Legislature adopted the recommendation that LAFCOs must periodically conduct municipal service reviews (MSRs) to inform their decisions about spheres of influence. MSRs must analyze and make determinations about six topics:

- Growth and population projections.
- Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies.
- Agencies’ financial abilities to provide services.
- Opportunities for sharing facilities.

- Accountability for community service needs.
- Other matters relating to effective or efficient services.

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. Except for the housing elements, the Planning and Zoning Law does not require counties and cities to regularly revise their general plans. Cities and counties' major land use decisions—subdivisions, zoning, public works projects, use permits—must be consistent with their general plans. Development decisions must carry out and not obstruct a general plan's policies. Because the general plan is a long-range planning document, in preparing these documents cities typically plan for their entire sphere of influence rather than just their current physical boundaries.

### Purpose of the Bill

According to the author, many disadvantaged unincorporated communities lack public services and even public facilities like domestic water, sanitary sewers, paved streets, storm drains, and street lights. Some cities and special districts are reluctant to annex these areas. The intent of this bill is to require local officials to include disadvantaged unincorporated communities in their long-range planning for land use and public facilities.

SB 244 takes a two-pronged approach to bringing more attention to disadvantaged unincorporated communities in the planning process. First, the bill requires LAFCOs to consider these types of communities in both their sphere of influence updates and MSRs, starting after July 1, 2012. Second, the bill requires cities and counties to include information about disadvantaged unincorporated communities in their general plans.

With respect to LAFCOs, the bill requires a LAFCO, when preparing an MSR, to include a written statement determining the location and characteristics of any disadvantaged unincorporated communities. Additionally, in updating a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, and structural fire protection, the LAFCO must prepare a written determination of the present and probable need for public facilities and services of any disadvantaged unincorporated communities within or contiguous to the existing or proposed sphere of influence of the city or special district. Finally, the bill prohibits a LAFCO from approving an annexation to a city of any territory greater than 10 acres where there is a disadvantaged unincorporated community contiguous to the area proposed annexation, unless an application to annex the disadvantaged unincorporated community has also been filed with the LAFCO.

With respect to general plans, SB 244 requires each city and county to include in the land use element of its general plan an identification of any disadvantaged unincorporated communities, including a description of each community and a map designating its location; an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies in each identified community; and an analysis of benefit assessment districts or other financing alternatives that could make the extension of services to the identified communities financially feasible.

A city would be required to include the above information and analysis for any disadvantaged unincorporated communities that are within its sphere of influence, and counties would be

required to address any disadvantaged unincorporated communities that are not within a city's sphere. A jurisdiction's land use element would have to be updated to include the required information and analysis by the due date for the update of its next housing element, and the information would have to be reviewed and updated as necessary by each subsequent housing element due date.

### Arguments in Support

The sponsor of the bill, the California Rural Legal Assistance Foundation, argues that disadvantaged unincorporated communities "are systematically underserved in the overall allocation of public resources and are frequently left out of local planning processes...this neglect and deprivation prevents these neighborhoods from realizing their potential as livable and economically viable communities." Supporters further argue that few local government land use plans focus on the existence of disadvantaged unincorporated communities, much less how to solve their many challenges. This bill will result in greater awareness of these communities and their needs in local government plans.

### Arguments in Opposition

The opposition argues that while the intent of the bill is laudable, there is no identified funding source for the new duties mandated in the bill's provisions for cities, counties, and LAFCOs. This comes at a time when local agency budgets are already strained.

The League of California Cities believes that local agencies do not have the legal authority to impose fees to recover the costs of the new duties mandated in the bill. The bill's provisions right now include a fee disclaimer that says that "no reimbursement is required by this act...because a local agency has the authority to levy service charges, fees or assessments sufficient to pay for the program or level of service mandated by this act." The League is concerned that cities, under the rules dictated by Proposition 26, cannot charge current residents of the city for the costs associated with the considerable analysis required by the bill's provisions since the residents of the city are not being provided a service.

### Committee Amendments

1. In the sections amending the Cortese-Knox-Hertzberg Act, the bill alternates between the terms "disadvantaged inhabited community" and "disadvantaged unincorporated community." For the sake of clarity and consistency, the term "disadvantaged unincorporated community" should be used throughout.
2. In Section 5 of the bill, amend Government Code 56430(a)(2) and (3) as shown in the June 23, 2011, version of the bill as follows:

(2) The location and characteristics of any disadvantaged ~~inhabited~~ *unincorporated* communities *within or contiguous to the sphere of influence.*

(3) Present and planned capacity of public facilities, ~~and~~ *adequacy of public services, and infrastructure needs or deficiencies, including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection* ~~needs or deficiencies of in~~

any disadvantaged, unincorporated communities within or contiguous to the ~~agency's~~ ~~proposed~~ sphere of influence.

3. On page 9, line 18, delete "Upon the next update of a sphere of influence" and delete lines 19-26. After line 31 insert a new (5) to read as follows:

*(5) For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection that occurs pursuant to subdivision (g) on or after July 1, 2012, the present and probable need for public facilities and services of any disadvantaged unincorporated communities within or contiguous to the existing or proposed sphere of influence.*

#### Previous Legislation

SB 244 is the latest in a series of bills aimed at addressing the infrastructure deficiencies in disadvantaged unincorporated communities. SB 1174 (Wolk, 2010) concentrated on local general plans; the bill died on the Assembly Appropriations Committee's suspense file. AB 853 (Arambula, 2010) focused on LAFCO municipal service reviews, spheres of influence, and city annexation procedures; Governor Schwarzenegger vetoed the bill as "unnecessary." SB 194 (Florez, 2010) looked at disadvantaged communities' needs for public works funding; Governor Schwarzenegger vetoed the bill as "unnecessary."

#### Double Referral

This bill was also referred to the Local Government Committee, where it passed on June 22 with a 6-3 vote.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

California Rural Legal Assistance Foundation (co-sponsor)  
 PolicyLink (co-sponsor)  
 California League of Conservation Voter  
 Clean Water Action  
 Catholic Charities Diocese of Stockton  
 Community Water Center  
 Environmental Justice Coalition for Water  
 Food and Water Watch  
 Natural Resources Defense Council  
 Planning and Conservation League  
 Sierra Club California  
 Southern California Watershed Alliance  
 Unitarian Universalist Legislative Ministry Action  
 Unitarian Universalist Service Committee  
 Urban Habitat  
 Urban Semillas  
 Winnemem Wintu Tribe

Opposition

Association of California Water Agencies  
County of Los Angeles  
Cucamonga Valley Water District  
League of California Cities  
Orange County LAFCO  
Riverside LAFCO  
San Bernardino LAFCO  
San Diego LAFCO

Analysis Prepared by: Anya Lawler / H. & C.D. / (916) 319-2085