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TO: Local Agency Formation Commission

FROM: George J, Spiliotis, Executive Officer
Crystal M. Craig, Local Government Analyst II

SUBJECT: SB 244 - Disadvantaged Communities

PRIOR AGENDAS/RELATED ACTIONS: Legislative Update on 4/28/2011 and Legislative Update & Potential Positions on SB 244 on 5/26/2011.

Senate Bill 244 was perhaps the most significant piece of LAFCO-related legislation passed in 2011. The Commission, Coalition of California LAFCOs (CCL) and the League of California Cities opposed this bill.

Despite opposition, SB 244 imposed unfunded state mandates on local governments, including cities, counties and LAFCOs. This bill requires LAFCO to make determinations regarding "disadvantaged unincorporated communities" (DUCs), which are the focus of this legislation. Disadvantaged unincorporated communities are defined as *territory that constitutes all or a portion of a "disadvantaged community" including 12 or more registered voters or some other standard as determined by the Commission. A "disadvantaged community" is defined as a community with an annual median household income that is less than 80 percent of the statewide annual median household income (Water Code Section 79505.5).*

The legislation will impact LAFCO operations in three areas:

- 1) Municipal Service Review (MSR) determinations.
- 2) Sphere of Influence (SOI) updates on or after July 1, 2012.
- 3) Annexation approval restrictions of territory adjacent to DUCs.

Municipal Service Reviews §56430

The bill will require the Commission to prepare specific written determinations on infrastructure needs or deficiencies related to sewer, water, and fire protection services in any DUCs within or contiguous to the sphere of influence of a city or special district that provides those services.

Spheres of Influence §56425

SB 244 will also require the commission after July 1, 2012, to adopt additional determinations for an update of a sphere of influence of a city or special district that provides public facilities, or services related to sewer, water, or fire protection. The Commission must make determinations regarding the present and probable need for those public facilities and services in any DUCs within the existing sphere of influence.

Annexation Approval Restrictions §56375(a)(8)

This bill also imposes restrictions on approval of city annexations greater than 10 acres, or as determined by commission policy, where there is a DUC contiguous to the area of the proposed annexation. The Commission is prohibited from approving such an annexation unless an application to annex the DUC has also been filed. However, there are two exemptions to the requirement to file an application to annex a contiguous DUC:

- 1) An application to annex the DUC has been filed in the past five years.
- 2) The commission finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexations. There is no statutory direction regarding what constitutes "written evidence."

Identifying Disadvantage Communities & Disadvantage Unincorporated Communities

As noted earlier, a Disadvantaged Unincorporated Community (DUC) is defined as inhabited territory that is all or a portion of a Disadvantaged Communities (DC). The first task in implementation of SB 244 is identification of DCs and DUCs. The sole statutory criterion for determination of a DC is median household income. As stated earlier a DC is defined as a community with an annual median household income that is less than 80 percent of the statewide annual median household income. Using data from *the 2010 Census*, the median statewide household income is \$54,459. Eighty percent is \$43,567. Based on our first data gathering efforts, identification of DCs and DUCs might not be a simple task. We are currently working with the County's Center for Demographic Research to explore the most efficient way to gather relevant income data for small areas.

While there is no discretion in the determination of DCs, the statute does allow some policy discretion in the determination of DUCs. DUCs must include inhabited territory using the statutory definition of inhabited (12 or more registered voters) or as otherwise determined by commission policy. A low threshold, such as 12 registered voters, will have two distinct effects. First, by likely increasing the

number of identifiable DUCs it will require a greater effort to make determinations required for Municipal Service Reviews and SOI updates. Second, it will likely increase the number of annexation proposals to which the aforementioned restriction will apply. Nevertheless, the Commission should be cautious about establishing a policy threshold that is excessive. The Legislature, by setting the default at 12 or more registered voters, clearly felt that the DUC provisions should apply to smaller enclaves that some might not consider full fledged "communities".

County & City Requirements

This bill was not only geared towards LAFCOs but also affects cities and counties as well. Each city or county must review and update the land use element of its General Plan to include the following criteria prior to the next update of its Housing Element. These requirements and definitions are completely independent of Cortese-Knox-Hertzberg Act of 2000.

- Cities must identify and describe "unincorporated islands" and "fringe communities," as defined, which are within their spheres.
- Counties must identify and describe each "unincorporated legacy community", as defined, outside the SOI of any city.
- The Land Use element update must include an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies for each of the identified communities.
- An analysis of potential financing mechanisms that could make the extension of services to identified communities financially feasible is also required.

An information sheet distributed by the League of California Cities is attached for reference.

Staff will develop draft criteria to guide identification of disadvantage communities and DUCs and return to the Commission for further policy direction.

Respectfully Submitted,

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Executive Officer

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SB 244 Relevant Code Sections

Govt. Code 56033.5. "Disadvantaged unincorporated community" means inhabited territory, as defined by Section 56046, or as determined by commission policy, that constitutes all or a portion of a "disadvantaged community" as defined by Section 79505.5 of the Water Code.

Govt. Code 56046. "Inhabited territory" means territory within which there reside 12 or more registered voters. The number of registered voters, as determined by the elections officer, shall be established as of the date a certificate of filing is issued by the executive officer. All other territory shall be deemed "uninhabited."

Water Code 79505.5. As used in this division, the following terms shall have the following meanings:

(a) "Disadvantaged community" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

...

Govt. Code 56375(a)...

(8) (A) Except for those changes of organization or reorganization authorized under Section 56375.3, and except as provided by subparagraph (B), a commission shall not approve 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 executive officer.

(B) An application to annex a contiguous disadvantaged community shall not be required if either of the following apply:

(i) A prior application for annexation of the same disadvantaged community has been made in the preceding five years.

(ii) The commission finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation.

Govt. Code 56425 ...

(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 those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.

...

Govt. Code 56430

(a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

(1) Growth and population projections for the affected area.

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

(3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.

...

Govt. Code 65302.10

(Note: These definitions are included in the Planning & Zoning Law and only applicable to cities and counties.)

Section 65302.10 is added to the Government Code, to read:

(a) As used in this section, the following terms shall have the following meanings:

(1) "Community" means 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.

(2) "Disadvantaged unincorporated community" means a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income.

(3) "Unincorporated fringe community" means any inhabited and unincorporated territory that is within a city's sphere of influence.

(4) "Unincorporated island community" means 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 or the Pacific Ocean.

(5) "Unincorporated legacy community" means a geographically isolated community that is inhabited and has existed for at least 50 years.

(b) On or before the due date for the next adoption of its housing element pursuant to Section 65588, each city or county shall review and update the land use element of its general plan to include all of the following:

(1) In the case of a city, an identification of each unincorporated island or fringe community within the city's sphere of influence. 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. This identification shall include a description of the community and a map designating its location.

(2) For each identified community, an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies.

(3) An analysis, based on then existing available data, of benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible.

(c) On or before the due date for each subsequent revision of its housing element pursuant to Section 65588, each city and county shall review, and if necessary amend, its general plan to update the analysis required by this section.



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Prepare Now for SB 244 Implementation

In October, Gov. Jerry Brown signed SB 244 (Wolk) despite significant League opposition. While this bill may not yet be on every city's radar, it is critical to take a serious look at SB 244's requirements as they relate to a city's housing element or annexation of territory.

SB 244 deals with inhabited unincorporated territories defined as a community that has at least 12 registered voters (Government Code section 56064) or the Local Agency Formation Commission (LAFCO) determines that all or a portion of the community has an annual median household income that is less than 80 percent of the statewide annual median household income (Water Code section 79505.5).

The bill impacts cities in two major ways:

- This bill prohibits the annexation to a city of any territory greater than 10 acres 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 has also been filed. The only exceptions are for a prior application filed in the last five years or the LAFCO finds that a majority of the residents in the disadvantaged community are opposed to the annexation.
- On or before the next due date for the adoption of the housing element, cities are required to update the land use element of the general plan to include:
 - The identification of each unincorporated island or fringe community within a city's sphere of influence. Identification includes a description of the community and a map designating its location.
 - An analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies.
 - An analysis of benefit assessment districts or other financing alternatives that could make the extension of services to these communities financially feasible.
 - A review, and if necessary, amendments before every revision of the housing element.

Your city will need to do the following:

- Identify any disadvantaged unincorporated communities outside the city's limits but within the city's sphere of influence.
- Determine if your city is in the process of or in the near future considering annexing territory that could be impacted by this bill.
- Notify developers that may be impacted by the annexation piece in this bill.
- Begin keeping careful records of the costs imposed by this bill. Department of Finance wrote in its analysis of SB 244 "Finance believes the general plan requirements constitute a reimbursable

mandate linked to the state required housing element update cycle. Costs are likely to be several million per year based on the claimed cost for the Regional Housing Needs Allocation Mandate." The complete analysis is available [online](#).

The League is interested in monitoring the impacts of this bill as it unfolds. An SB 244 implementation survey is available [online](#). Cities are encouraged to complete the survey after thoroughly reviewing SB 244, but before Dec. 16, 2011 so that the League can track the problems and gather information to respond to cities' concerns.

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