

**San Bernardino LAFCO Letter Dated
June 24, 2014 on SB 614 and Proposed
Amendments Dated July 7, 2014**

Attachment 2



**Local Agency
Formation Commission**
for San Bernardino County

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Established by the State of California
to serve the Citizens, Cities, Special Districts
and the County of San Bernardino

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CLARK H. ALSOP

June 24, 2014

The Honorable Lois Wolk
California State Senate
State Capitol Room 4032
Sacramento, CA 95814

SUBJECT: SB 614 – Letter of Concern

Dear Senator Wolk:

The Local Agency Formation Commission (LAFCO) for San Bernardino County wishes to express its appreciation for your efforts to address the issues regarding the disparity in delivery of public services especially to the residents within disadvantaged unincorporated communities. However, the Commission has identified significant areas of concern with the legislation as currently drafted and took a position following its June 18, 2014 hearing to express its concern to you. It is our understanding that a letter of concern has been submitted by the California Association of LAFCOs (CALAFCO) dated June 20, 2014 and we concur with its concerns. LAFCO's additional concerns under these headings are generally summarized as:

1. Long Term Financial Sustainability. The bill as presented in the June 17, 2014 amendment does not identify the mechanism for long-term management and operation of the new entity contemplated by the bill. This is a key concern to San Bernardino LAFCO since we have been reviewing and addressing financing issues for small special districts as a part of our service review process. We want to be sure that any new entity that contemplates the delivery of service identify its financial position for evaluation in the LAFCO process. We feel that amendments proposed by CALAFCO, and reviewed with your staff, will address this concern if included in their entirety. Absent these changes, we would need to oppose the bill.
2. Application criteria. As outlined above, in order for LAFCO to evaluate the financing of the special district anticipated to deliver the infrastructure envisioned by SB 614, the application needs to be required to include complete financial feasibility information. This is especially relevant as the financing of the infrastructure improvements are through the transfer of tax increment revenues. This funding stream is limited to the construction costs and must identify its termination; however, the need to provide the ongoing service remains. With the inclusion of the amendments as proposed to clarify the financial feasibility study contemplated, this concern has been ameliorated.

The San Bernardino LAFCO position remains one of concern at this time as we have had limited time to ruminate on the long-term impacts of the legislation. We, like all LAFCOs, remain committed to working toward solutions for the effective, efficient and sustainable delivery of services to all communities within our jurisdiction which includes addressing those unique needs of disadvantaged unincorporated communities. However, should the amendments as outlined to us following the CALAFCO June 20 letter not be included in the bill moving forward, we will need to change our position from concern to opposition unless amended.

We would like to express our appreciation in your efforts to include the LAFCO community in ongoing discussions on this legislation. We believe that in sharing expertise on the matters included in the legislation will provide for better legislation for all affected.

Thank you for your consideration of our concerns related to your bill. Please contact Ms. Kathleen Rollings-McDonald, Executive Officer, at the address listed above, by email at kmcdonald@lafco.sbcounty.gov, or at (909) 383-9900 should you wish to further discuss the Commission's position on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "James V. Curatalo". The signature is fluid and cursive, with a large initial "J" and a stylized "C".

JAMES V. CURATALO
Chairman

cc: Pamela Miller, Executive Director, CALAFCO
Josh Candelaria, Director, Legislative Affairs, San Bernardino County
San Bernardino County Legislative Delegation

Amends of 7.03.2014

Add co-authors: Assembly Member Alejo

Add sunset provision (ten years): January
1, 2015 2025

AMENDED IN ASSEMBLY JUNE 16, 2014

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 4, 2013

SENATE BILL

No. 614

Introduced by Senator Wolk

February 22, 2013

An act to amend Section 56653 of the Government Code, and to add Section 99.3 to the Revenue and Taxation Code, relating to local government.

legislative counsel's digest

SB 614, as amended, Wolk. Local government: jurisdictional changes: infrastructure financing.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the authority and procedures for the initiation, conduct, and completion of changes of organization and reorganization of cities and districts. The act requires a local agency or school district that initiates proceedings for a change of local government organization or reorganization by submitting a resolution of application to a local agency formation commission to also submit a plan for providing services within the affected territory, as specified.

This bill would instead require, if a proposal for a change of organization or reorganization is submitted to a local commission, that the applicant submit a plan for providing services within the affected territory. The bill would, in the case of a change of organization *or reorganization initiated by a local agency and consented to by each affected agency*, that includes a disadvantaged, unincorporated

community, authorize a local agency to include in its resolution of application a plan to improve or upgrade structures, roads, sewer or water facilities, or other infrastructure to serve the disadvantaged, unincorporated community and would authorize the local *agency formation* commission to amend the proposal to include the formation of a special district, as specified.

Existing law requires a county auditor, in the case of a jurisdictional change caused by the formation of a district, to adjust the allocation of property tax revenue pursuant to the agreement of, ~~for~~ local agencies whose service area or service responsibility would be altered by the jurisdictional change, as specified.

This bill would authorize a local agency that files a petition for change of organization, and one or more other local agencies that will improve or upgrade structures to serve a disadvantaged, unincorporated community, to agree on a plan for financing services and structures that may provide that taxes, levied upon taxable property in the area included within the territory each year by or for the benefit of the local agency and one or more other local agencies that consent to the plan, be divided between the respective affected local agencies and the special district. This bill would require the plan to include a date on which that division of taxes shall terminate, and would allow the plan to provide for the issuance of indebtedness, as specified. The bill would prohibit any plan developed under these provisions from resulting in a reduction of property tax revenues to school entities.

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

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

- 1 SECTION 1. It is the intent of the Legislature to provide
- 2 additional options for financing infrastructure that can be **considered by the affected**
- 3 **local agencies and the local agency formation commission when evaluating**
- 4 ~~incorporated into~~ the approval of an annexation of a disadvantaged,
- 5 unincorporated community.
- 6 SEC. 2. Section 56653 of the Government Code is amended
- 7 to read:
- 8 56653. (a) If a proposal for a change of organization or
- 9 reorganization is submitted pursuant to this part, the applicant shall
- submit a plan for providing services within the affected territory.

1 (b) The plan for providing services shall include all of the
2 following information and any additional information required by
3 the **local agency formation** commission or the **its** executive officer:

4 (1) An enumeration and description of the services to be
5 extended to the affected territory.

6 (2) The level and range of those services.

7 (3) An indication of when those services can feasibly be
8 extended to the affected territory.

9 (4) An indication of any improvement or upgrading of structures,
10 roads, sewer or water facilities, or other conditions the local agency
11 would impose or require within the affected territory if the change
12 of organization or reorganization is completed.

13 (5) Information with respect to how those services will be
14 financed.

15 (c) **Only in** In the case of a change of organization or reorganization
16 *initiated by a local agency and consented to by each affected*
17 *agency*, that includes a disadvantaged, unincorporated community
18 as defined in Section 56033.5

19 ~~(12) A~~, a local agency may include in its resolution of application
20 for change of organization or reorganization a plan adopted
21 pursuant to Section 99.3 of the Revenue and Taxation Code to
22 improve or upgrade structures, roads, sewer or water facilities, or
23 other infrastructure to serve the disadvantaged, unincorporated
24 community through the formation of a special ~~district~~, *district or*
25 *reorganization of **an existing** special district with the special district's*
26 *consent.*

(1) The plan submitted pursuant to this subdivision shall include a financial feasibility plan that demonstrates that the formation or reorganization of the special district will:

(A) Provide the necessary financial resources to improve or upgrade structures, roads, sewer, or water facilities or other infrastructure. The plan shall also clarify which local entity shall be responsible for the delivery and maintenance of the desired services identified in the application.

(B) An estimated time frame for constructing and delivering the desired services identified in the application.

(C) A plan for the governance, oversight, and long-term maintenance of the services identified in the application once the initial costs are recouped and the tax increment financing terminates.

27 (2 ~~3~~) (2) If a local agency includes a financial feasibility plan pursuant to paragraph ~~(12) 1~~, a
28 a commission may, subject to paragraph (3), amend the petition
29 *local agency formation commission may ~~amend~~ **approve** the proposal* for
30 a change of organization or reorganization to include the formation
31 of a special ~~district~~, *district or reorganization of a special district*
32 *with the special district's consent*, including, but not limited to, a
33 community services district, municipal water district, or sanitary
34 district, to provide financing to improve or upgrade structures,
35 roads, sewer or water facilities, or other infrastructure to serve the
36 disadvantaged, unincorporated community, in conformity with the
37 requirements of the principal act of the district proposed to be

38 formed *and all required formation proceedings.*

39 ~~(3) Consistent with paragraph (3) of subdivision (a) of Section~~

40 ~~56375, a commission may initiate the formation of a special district~~

1 only if a request to form a special district is made by a local agency
2 pursuant to paragraph (1).

3 (d) Nothing in this section precludes a local agency formation
4 commission from considering any other options or exercising its
5 powers under Section 56375.

6 SEC. 3. Section 99.3 is added to the Revenue and Taxation
7 Code, to read:

8 99.3. (a) The plan for financing services that is included in a
9 **petition resolution of application** for change of
organization or reorganization filed by a

10 local agency *and consented to by each affected agency*, pursuant
11 to Section 56653 of the Government Code for a disadvantaged,
12 unincorporated community may include a plan adopted pursuant
13 to this section.

14 (b) For purposes of this section, the following definitions apply:

15 (1) "Local agency" means a local agency as defined by
16 subdivision (a) of Section 95, and does not include any school
17 entity as defined in subdivision (f) of Section 95.

18 (2) "Affected local agency" means a local agency that has
19 adopted a resolution of its governing ~~board~~ *body* consenting to the
20 plan developed pursuant to this section.

21 (3) "Territory" means all or part of the land that is included in
22 the petition for change of organization or reorganization filed by
23 the local agency.

24 (4) "Certificate of completion" is defined as provided in Section
25 56020.5 of the Government Code.

26 (5) "Disadvantaged, unincorporated community" is defined as
27 provided in Section 56033.5 of the Government Code.

28 (c) A local agency that files a ~~petition for resolution of~~
29 *application for a* change of organization or reorganization, and
30 one or more other local agencies that will improve or upgrade
31 structures to serve a disadvantaged, unincorporated community
32 subject to that **petition resolution of application**, may agree on a plan for financing services
33 and structures pursuant to this section.

34 (d) The plan agreed upon pursuant to subdivision (c) may
35 contain a provision that taxes levied upon taxable property in the
36 area included within the territory each year by or for the benefit
37 of the local agency and one or more other local agencies that
38 consent to the plan, be divided as follows:

39 (1) That portion of the taxes that would have been produced by
40 the rate upon which the tax is levied each year by or for each of

1 the affected local agencies upon the total sum of the assessed value
 2 of the taxable property in the territory as shown upon the
 3 assessment roll used in connection with the taxation of the property
 4 by the affected local agency, last equalized prior to the effective
 5 date of the certification of completion, and that portion of taxes
 6 by or for each school entity, shall be allocated to, and when
 7 collected shall be paid to, the respective affected local agencies
 8 and school entities as taxes by or for the affected local agencies
 9 and school entities on all property are paid.

10 (2) That portion of the levied taxes each year specified in the
 11 adopted infrastructure financing plan for the city and each affected
 12 taxing entity that has agreed to participate pursuant to this section,
 13 in excess of the amount specified in paragraph (1), shall be
 14 allocated to, and when collected shall be paid into a special fund
 15 of a special district formed *or reorganized with the special district's*
 16 *consent* pursuant to subdivision (c) of Section 56653 of the
 17 Government Code that will finance the infrastructure improvements
 18 to serve the disadvantaged, unincorporated community.

An affected local agency may advance funds to the special district that is formed or reorganized pursuant to paragraph (2) of subdivision (c) of section 56653 of the Government Code. The special district shall use such funds solely for the purposes specified in the plan adopted pursuant to subdivision (a) and shall repay the affected local agency with revenue from the taxes received pursuant to this subdivision.

19 (e) A plan adopted pursuant to this section shall specify a date
 20 upon which the division of taxes described in subdivision (d) shall
 21 terminate.

22 (f) A plan adopted pursuant to this section may include a
 23 provision for the issuance of indebtedness. Any indebtedness shall
 24 be issued in conformity with Articles 4.5 (commencing with
 25 Section 53506) and 5 (commencing with Section 53510) of Chapter
 26 3 of Part 1 of Division 2 of Title 5 of the Government Code or the
 27 principal act of the special district.

28 (g) Any plan adopted under this section shall not result in a
 29 reduction of property tax revenues allocated to any school entity
 30 as defined in subdivision (f) of Section 95.