

July \_\_, 2011

The Honorable Jerry Brown  
Governor, State of California  
State Capitol, Suite 1173  
Sacramento, CA 95814

SUBJECT: SB 244 – REQUEST FOR VETO

Dear Governor Brown:

The Local Agency Formation Commission (LAFCO) for San Bernardino County wishes to request your veto of SB 244 as presented to you for signing. Our reasons for this request are generally summarized below. The concern related to SB 244 being an unfunded mandate has been conveyed to the author during this process. However, with the passage of SB 89, new concerns have arisen not previously conveyed to the author:

- **QUESTION OF SUSTAINABILITY:** The inclusion of the changes to Government Code Section 56375 requiring the submission of an application for annexation of disadvantaged unincorporated communities as a companion proposal to a development application is no longer sustainable. Through the signing of SB 89, the primary discretionary funding for disadvantaged unincorporated communities has been removed and the annexation to the neighboring city will not be sustainable without increases in taxes, fees and/or special charges. Based upon their very identification as disadvantaged, these are the areas least able to provide for or accept an increase in taxes to provide for payment of the costs for increased services.
- **UNFUNDED MANDATE:** The primary concern identified by San Bernardino LAFCO during the processing of the legislation is the bill's status as a new unfunded mandate. The legislation, as amended, will require LAFCOs to include new studies and preparation of new types of reports for the consideration of any sphere of influence amendment, review, or update. This requirement is proposed at a time when many LAFCOs, including San Bernardino LAFCO, are looking at cutting staffing, reducing apportionments required by Government Code Section 56381 due to

the perilous local economy, and identifying all economies in processing to maintain existing programs. Unless there is a clearly identified source for funding these new requirements through payment by the State or a grant program specifically addressing the requirement, we request that you veto this legislation. It is our opinion that signing this legislation will add significant new study responsibilities, potential delays, and costs with no expected actual provision of these services.

Thank you for your consideration of our concerns related to this bill and it is our hope that you will veto this measure. Please contact Kathleen Rollings-McDonald, Executive Officer of San Bernardino LAFCO, at the address listed above or at (909) 383-9900 should you wish to further discuss the Commission's position on this issue.

Sincerely,

BRAD MITZELFELT  
Chairman

cc: William Chiat, Executive Director, CALAFCO  
Josh Candelaria, Director, Legislative Affairs, San Bernardino County  
Senator Lois Wolk  
Peter Detwiler, Chief Consultant, Senate Local Government and Finance Committee  
San Bernardino County Legislators:  
Senator Robert Dutton  
Senator Jean Fuller  
Senator Bob Huff  
Senator Gloria Negrete-McLeod  
Senator Sharon Runner  
Assemblywoman Wilmer A. Carter  
Assemblywoman Connie Conway  
Assemblyman Paul Cook  
Assemblyman Tim Donnelly  
Assemblywoman Shannon Grove  
Assemblyman Curt Hagman  
Assemblyman Steve Knight  
Assemblyman Mike Morrell  
Assemblywoman Norma Torres

AMENDED IN ASSEMBLY JULY 1, 2011  
AMENDED IN ASSEMBLY JUNE 23, 2011  
AMENDED IN ASSEMBLY JUNE 14, 2011  
AMENDED IN SENATE MAY 18, 2011  
AMENDED IN SENATE MAY 3, 2011  
AMENDED IN SENATE APRIL 25, 2011  
AMENDED IN SENATE MARCH 15, 2011

**SENATE BILL**

**No. 244**

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**Introduced by Senator Wolk**  
**(Coauthors: Senators Price and Rubio)**  
(Coauthors: Assembly Members Fong, Perea, and V. Manuel Pérez)

February 10, 2011

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An act to amend Sections 56375, 56425, and 56430 of, and to add Sections 56033.5 and 65302.10 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 244, as amended, Wolk. Land use: general plan: disadvantaged unincorporated communities.

(1) The Planning and Zoning Law requires a city or county to adopt a comprehensive, long-term general plan for the physical development of the city or county and of any land outside its boundaries that bears relation to its planning. That law also requires the general plan to contain specified mandatory elements, including a housing element for the preservation, improvement, and development of the community's housing.

This bill would require, on or before the next adoption of its housing element, a city or county to review and update the land use element of its general plan to include an analysis of the presence of island, fringe, or legacy unincorporated communities, as defined, and would require the updated general plan to include specified information. This bill would also require the city or county planning agency, after the initial revision and update of the general plan, to review, and if necessary amend, the general plan to update the information, goals, and program of action relating to these communities therein. By adding to the duties of city and county officials, this bill would impose a state-mandated local program.

(2) The Cortese-Knox-Hertzberg Act of 2000 requires a local agency formation commission to develop and determine the sphere of influence of each local governmental agency within the county and to enact policies designed to promote the logical and orderly development of areas within the sphere, and requires the commission, in preparing and updating spheres of influence to conduct a service review of the municipal services provided in the county or other area designated by the commission, and to prepare a written statement of its determinations with respect to the growth and population projections for the affected area, the present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies, financial ability of agencies to provide services, status of, and opportunities for, shared facilities, accountability for community service needs, including governmental structure, and operational efficiencies, as specified.

This bill would also require the agency to include in its written statement a determination with respect to the location and characteristics and the present and planned capacity of public facilities and adequacy of public services, including sewers, water, and structural fire protection needs or deficiencies, of any disadvantaged-~~inhabited~~ *unincorporated* communities within or adjacent to the sphere of influence, thereby imposing a state-mandated local program. The bill would also require a commission, upon the review and update of a sphere of influence on or after July 1, 2012, to include in the review or update of each 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 to include the present and probable need for public facilities and services of disadvantaged-~~inhabited~~ *unincorporated* communities within or adjacent to the sphere of influence, and would

authorize the agency to assess the feasibility of governmental reorganization of particular agencies, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Hundreds of disadvantaged unincorporated communities,  
4 commonly referred to as “colonias,” exist in California. There are  
5 more than 200 of these communities in the San Joaquin Valley  
6 alone. Many of these communities are geographically isolated  
7 islands, surrounded by the city limits of large and medium-sized  
8 cities.

9 (2) Conditions within these disadvantaged unincorporated  
10 communities evidence a distinct lack of public and private  
11 investment that threatens the health and safety of the residents of  
12 these communities and fosters economic, social, and educational  
13 inequality. Many of these communities lack basic infrastructure,  
14 including, but not limited to, streets, sidewalks, storm drainage,  
15 clean drinking water, and adequate sewer service.

16 (3) The Clean Water State Revolving Fund, the Safe Drinking  
17 Water State Revolving Fund, and the Community Development  
18 Block Grant are robust and continuous sources of funding for  
19 drinking water, wastewater, and other basic infrastructure.

20 (b) It is the intent of the Legislature to encourage investment in  
21 these communities and address the complex legal, financial, and  
22 political barriers that contribute to regional inequity and  
23 infrastructure deficits within disadvantaged unincorporated  
24 communities.

25 SEC. 2. Section 56033.5 is added to the Government Code, to  
26 read:

27 56033.5. “Disadvantaged—~~inhabited~~ *unincorporated*  
28 community” means inhabited territory, as defined by Section

1 56046, or as determined by commission policy, that constitutes  
2 all or a portion of a “disadvantaged community” as defined by  
3 Section 79505.5 of the Water Code.

4 SEC. 3. Section 56375 of the Government Code is amended  
5 to read:

6 56375. The commission shall have all of the following powers  
7 and duties subject to any limitations upon its jurisdiction set forth  
8 in this part:

9 (a) (1) To review and approve or disapprove with or without  
10 amendment, wholly, partially, or conditionally, proposals for  
11 changes of organization or reorganization, consistent with written  
12 policies, procedures, and guidelines adopted by the commission.

13 (2) The commission may initiate proposals by resolution of  
14 application for any of the following:

15 (A) The consolidation of a district, as defined in Section 56036.

16 (B) The dissolution of a district.

17 (C) A merger.

18 (D) The establishment of a subsidiary district.

19 (E) The formation of a new district or districts.

20 (F) A reorganization that includes any of the changes specified  
21 in subparagraph (A), (B), (C), (D), or (E).

22 (3) A commission may initiate a proposal described in paragraph  
23 (2) only if that change of organization or reorganization is  
24 consistent with a recommendation or conclusion of a study  
25 prepared pursuant to Section 56378, 56425, or 56430, and the  
26 commission makes the determinations specified in subdivision (b)  
27 of Section 56881.

28 (4) A commission shall not disapprove an annexation to a city,  
29 initiated by resolution, of contiguous territory that the commission  
30 finds is any of the following:

31 (A) Surrounded or substantially surrounded by the city to which  
32 the annexation is proposed or by that city and a county boundary  
33 or the Pacific Ocean if the territory to be annexed is substantially  
34 developed or developing, is not prime agricultural land as defined  
35 in Section 56064, is designated for urban growth by the general  
36 plan of the annexing city, and is not within the sphere of influence  
37 of another city.

38 (B) Located within an urban service area that has been delineated  
39 and adopted by a commission, which is not prime agricultural land,

1 as defined by Section 56064, and is designated for urban growth  
2 by the general plan of the annexing city.

3 (C) An annexation or reorganization of unincorporated islands  
4 meeting the requirements of Section 56375.3.

5 (5) As a condition to the annexation of an area that is  
6 surrounded, or substantially surrounded, by the city to which the  
7 annexation is proposed, the commission may require, where  
8 consistent with the purposes of this division, that the annexation  
9 include the entire island of surrounded, or substantially surrounded,  
10 territory.

11 (6) A commission shall not impose any conditions that would  
12 directly regulate land use density or intensity, property  
13 development, or subdivision requirements.

14 (7) The decision of the commission with regard to a proposal  
15 to annex territory to a city shall be based upon the general plan  
16 and rezoning of the city. When the development purposes are not  
17 made known to the annexing city, the annexation shall be reviewed  
18 on the basis of the adopted plans and policies of the annexing city  
19 or county. A commission shall require, as a condition to  
20 annexation, that a city rezone the territory to be annexed or present  
21 evidence satisfactory to the commission that the existing  
22 development entitlements on the territory are vested or are already  
23 at build-out, and are consistent with the city's general plan.  
24 However, the commission shall not specify how, or in what  
25 manner, the territory shall be rezoned.

26 (8) Except for those changes of organization or reorganization  
27 authorized under Section 56375.3, a commission shall not approve  
28 an annexation to a city of any territory greater than 10 acres, or as  
29 determined by commission policy, where there exists a  
30 disadvantaged unincorporated community that is contiguous to  
31 the area of proposed annexation, unless an application to annex  
32 the disadvantaged unincorporated community to the subject city  
33 has been filed with the executive officer.

34 (b) With regard to a proposal for annexation or detachment of  
35 territory to, or from, a city or district or with regard to a proposal  
36 for reorganization that includes annexation or detachment, to  
37 determine whether territory proposed for annexation or detachment,  
38 as described in its resolution approving the annexation, detachment,  
39 or reorganization, is inhabited or uninhabited.

1 (c) With regard to a proposal for consolidation of two or more  
2 cities or districts, to determine which city or district shall be the  
3 consolidated successor city or district.

4 (d) To approve the annexation of unincorporated, noncontiguous  
5 territory, subject to the limitations of Section 56742, located in the  
6 same county as that in which the city is located, and that is owned  
7 by a city and used for municipal purposes and to authorize the  
8 annexation of the territory without notice and hearing.

9 (e) To approve the annexation of unincorporated territory  
10 consistent with the planned and probable use of the property based  
11 upon the review of general plan and rezoning designations. No  
12 subsequent change may be made to the general plan for the annexed  
13 territory or zoning that is not in conformance to the rezoning  
14 designations for a period of two years after the completion of the  
15 annexation, unless the legislative body for the city makes a finding  
16 at a public hearing that a substantial change has occurred in  
17 circumstances that necessitate a departure from the rezoning in  
18 the application to the commission.

19 (f) With respect to the incorporation of a new city or the  
20 formation of a new special district, to determine the number of  
21 registered voters residing within the proposed city or special district  
22 or, for a landowner-voter special district, the number of owners  
23 of land and the assessed value of their land within the territory  
24 proposed to be included in the new special district. The number  
25 of registered voters shall be calculated as of the time of the last  
26 report of voter registration by the county elections official to the  
27 Secretary of State prior to the date the first signature was affixed  
28 to the petition. The executive officer shall notify the petitioners of  
29 the number of registered voters resulting from this calculation.  
30 The assessed value of the land within the territory proposed to be  
31 included in a new landowner-voter special district shall be  
32 calculated as shown on the last equalized assessment roll.

33 (g) To adopt written procedures for the evaluation of proposals,  
34 including written definitions consistent with existing state law.  
35 The commission may adopt standards for any of the factors  
36 enumerated in Section 56668. Any standards adopted by the  
37 commission shall be written.

38 (h) To adopt standards and procedures for the evaluation of  
39 service plans submitted pursuant to Section 56653 and the initiation

1 of a change of organization or reorganization pursuant to  
2 subdivision (a).

3 (i) To make and enforce regulations for the orderly and fair  
4 conduct of hearings by the commission.

5 (j) To incur usual and necessary expenses for the  
6 accomplishment of its functions.

7 (k) To appoint and assign staff personnel and to employ or  
8 contract for professional or consulting services to carry out and  
9 effect the functions of the commission.

10 (l) To review the boundaries of the territory involved in any  
11 proposal with respect to the definiteness and certainty of those  
12 boundaries, the nonconformance of proposed boundaries with lines  
13 of assessment or ownership, and other similar matters affecting  
14 the proposed boundaries.

15 (m) To waive the restrictions of Section 56744 if it finds that  
16 the application of the restrictions would be detrimental to the  
17 orderly development of the community and that the area that would  
18 be enclosed by the annexation or incorporation is so located that  
19 it cannot reasonably be annexed to another city or incorporated as  
20 a new city.

21 (n) To waive the application of Section 22613 of the Streets and  
22 Highways Code if it finds the application would deprive an area  
23 of a service needed to ensure the health, safety, or welfare of the  
24 residents of the area and if it finds that the waiver would not affect  
25 the ability of a city to provide any service. However, within 60  
26 days of the inclusion of the territory within the city, the legislative  
27 body may adopt a resolution nullifying the waiver.

28 (o) If the proposal includes the incorporation of a city, as defined  
29 in Section 56043, or the formation of a district, as defined in  
30 Section 2215 of the Revenue and Taxation Code, the commission  
31 shall determine the property tax revenue to be exchanged by the  
32 affected local agencies pursuant to Section 56810.

33 (p) To authorize a city or district to provide new or extended  
34 services outside its jurisdictional boundaries pursuant to Section  
35 56133.

36 (q) To enter into an agreement with the commission for an  
37 adjoining county for the purpose of determining procedures for  
38 the consideration of proposals that may affect the adjoining county  
39 or where the jurisdiction of an affected agency crosses the boundary  
40 of the adjoining county.

1 SEC. 4. Section 56425 of the Government Code is amended  
2 to read:

3 56425. (a) In order to carry out its purposes and responsibilities  
4 for planning and shaping the logical and orderly development and  
5 coordination of local governmental agencies to advantageously  
6 provide for the present and future needs of the county and its  
7 communities, the commission shall develop and determine the  
8 sphere of influence of each local governmental agency within the  
9 county and enact policies designed to promote the logical and  
10 orderly development of areas within the sphere.

11 (b) Prior to a city submitting an application to the commission  
12 to update its sphere of influence, representatives from the city and  
13 representatives from the county shall meet to discuss the proposed  
14 new boundaries of the sphere and explore methods to reach  
15 agreement on development standards and planning and zoning  
16 requirements within the sphere to ensure that development within  
17 the sphere occurs in a manner that reflects the concerns of the  
18 affected city and is accomplished in a manner that promotes the  
19 logical and orderly development of areas within the sphere. If an  
20 agreement is reached between the city and county, the city shall  
21 forward the agreement in writing to the commission, along with  
22 the application to update the sphere of influence. The commission  
23 shall consider and adopt a sphere of influence for the city consistent  
24 with the policies adopted by the commission pursuant to this  
25 section, and the commission shall give great weight to the  
26 agreement to the extent that it is consistent with commission  
27 policies in its final determination of the city sphere.

28 (c) If the commission's final determination is consistent with  
29 the agreement reached between the city and county pursuant to  
30 subdivision (b), the agreement shall be adopted by both the city  
31 and county after a noticed public hearing. Once the agreement has  
32 been adopted by the affected local agencies and their respective  
33 general plans reflect that agreement, then any development  
34 approved by the county within the sphere shall be consistent with  
35 the terms of that agreement.

36 (d) If no agreement is reached pursuant to subdivision (b), the  
37 application may be submitted to the commission and the  
38 commission shall consider a sphere of influence for the city  
39 consistent with the policies adopted by the commission pursuant  
40 to this section.

1 (e) In determining the sphere of influence of each local agency,  
2 the commission shall consider and prepare a written statement of  
3 its determinations with respect to each of the following:

4 (1) The present and planned land uses in the area, including  
5 agricultural and open-space lands.

6 (2) The present and probable need for public facilities and  
7 services in the area. ~~Upon the next update of a sphere of influence~~  
8 ~~that occurs pursuant to subdivision (g) on or after July 1, 2012,~~  
9 ~~the update of each sphere of influence of a city or special district~~  
10 ~~that provides public facilities or services related to sewers,~~  
11 ~~municipal and industrial water, or structural fire protection shall~~  
12 ~~include the present and probable need for public facilities and~~  
13 ~~services of any disadvantaged inhabited communities within or~~  
14 ~~contiguous to the existing or proposed sphere of influence of the~~  
15 ~~subject city or special district.~~

16 (3) The present capacity of public facilities and adequacy of  
17 public services that the agency provides or is authorized to provide.

18 (4) The existence of any social or economic communities of  
19 interest in the area if the commission determines that they are  
20 relevant to the agency.

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

28 (f) Upon determination of a sphere of influence, the commission  
29 shall adopt that sphere.

30 (g) On or before January 1, 2008, and every five years thereafter,  
31 the commission shall, as necessary, review and update each sphere  
32 of influence.

33 (h) In determining ~~the a~~ sphere of influence, the commission  
34 may assess the feasibility of governmental reorganization of  
35 particular agencies and recommend reorganization of those  
36 agencies when ~~they are~~ *reorganization is* found to be feasible and  
37 if reorganization will further the goals of orderly development ~~as~~  
38 ~~well as~~ *and* efficient and affordable service delivery. The  
39 commission shall make all reasonable efforts to ensure wide public  
40 dissemination of the recommendations.

1 (i) When adopting, amending, or updating a sphere of influence  
2 for a special district, the commission shall do all of the following:

3 (1) Require existing districts to file written statements with the  
4 commission specifying the functions or classes of services provided  
5 by those districts.

6 (2) Establish the nature, location, and extent of any functions  
7 or classes of services provided by existing districts.

8 SEC. 5. Section 56430 of the Government Code is amended  
9 to read:

10 56430. (a) In order to prepare and to update spheres of  
11 influence in accordance with Section 56425, the commission shall  
12 conduct a service review of the municipal services provided in the  
13 county or other appropriate area designated by the commission.  
14 The commission shall include in the area designated for service  
15 review the county, the region, the subregion, or any other  
16 geographic area as is appropriate for an analysis of the service or  
17 services to be reviewed, and shall prepare a written statement of  
18 its determinations with respect to each of the following:

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

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

23 (3) Present and planned capacity of public facilities ~~and~~,  
24 adequacy of public services, *and infrastructure needs or*  
25 *deficiencies including needs or deficiencies related to sewers,*  
26 *municipal and industrial water, and structural fire protection needs*  
27 ~~or deficiencies of~~ *in any* disadvantaged; unincorporated  
28 communities within or contiguous to the ~~agency's proposed~~ sphere  
29 of influence.

30 (4) Financial ability of agencies to provide services.

31 (5) Status of, and opportunities for, shared facilities.

32 (6) Accountability for community service needs, including  
33 governmental structure and operational efficiencies.

34 (7) Any other matter related to effective or efficient service  
35 delivery, as required by commission policy.

36 (b) In conducting a service review, the commission shall  
37 comprehensively review all of the agencies that provide the  
38 identified service or services within the designated geographic  
39 area. The commission may assess various alternatives for  
40 improving efficiency and affordability of infrastructure and service

1 delivery within and contiguous to the sphere of influence,  
2 including, but not limited to, the consolidation of governmental  
3 agencies.

4 (c) The commission shall conduct a service review before, or  
5 in conjunction with, but no later than the time it is considering an  
6 action to establish a sphere of influence in accordance with Section  
7 56425 or Section 56426.5 or to update a sphere of influence  
8 pursuant to Section 56425.

9 SEC. 6. Section 65302.10 is added to the Government Code,  
10 to read:

11 65302.10. (a) As used in this section, the following terms shall  
12 have the following meanings:

13 (1) "Community" means an inhabited area within a city or  
14 county that is comprised of no less than 10 dwellings adjacent or  
15 in close proximity to one another.

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

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

23 (4) "Unincorporated island community" means any inhabited  
24 and unincorporated territory that is surrounded or substantially  
25 surrounded by one or more cities or by one or more cities and a  
26 county boundary or the Pacific Ocean.

27 (5) "Unincorporated legacy community" means a geographically  
28 isolated community that is inhabited and has existed for at least  
29 50 years.

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

34 (1) In the case of a city, an identification of each unincorporated  
35 island or fringe community, within the city's sphere of influence.  
36 In the case of a county, an identification of each legacy community  
37 within the boundaries of the county, but not including any area  
38 within the sphere of influence of any city. This identification shall  
39 include a description of the community and a map designating its  
40 location.

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

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

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

12 SEC. 7. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 a local agency or school district has the authority to levy service  
15 charges, fees, or assessments sufficient to pay for the program or  
16 level of service mandated by this act, within the meaning of Section  
17 17556 of the Government Code.