

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #12 – Legislative Report – Changes Effective
January 1, 2012**

Changes signed by the Governor effective January 1, 2012 have had both minor and significant changes for LAFCO. The following provides an identification of the changes, with the bill number identified, along with staff's assessment of those requiring further discussion for policy issues:

1. **AB 54 (Solario) Chapter 512** – adds additional requirements for Mutual Water Companies and authorizes LAFCOs to include mutual water companies in its service review. San Bernardino LAFCO has historically included information regarding these private water operations under prior language included in Government Code §56430 (b) which requires the Commission to “comprehensively review all of the agencies that provide identifies service or services within the designated geographic area”. AB 54 strengthens the position of the Commission in requiring this additional information. Of importance, this law requires the Mutual Water Companies to provide a map of its service area when requested by LAFCO.
2. **AB 912 (Gordon) Chapter 109** – this statute provides for an expedited dissolution process for a special district if dissolution is recommended as a part of a separate LAFCO action. This anticipates that a dissolution would be recommended by either a service review or other special study conducted by LAFCO. Staff does not foresee any policy changes required by implementation of this provision.
3. **AB 1430 (Assembly Committee on Local Government), Chapter 300** – provides for non-substantive, non-controversial changes to LAFCO law. The majority of the changes included in this legislation were to the definitions section of Cortese Knox Hertzberg Local Government Reorganization Act (CKH) from §56011 through §56078.

4. **SB 244 (Wolk), Chapter 513** – this legislation provides the requirement that LAFCOs, cities and counties plan for “disadvantaged unincorporated communities”. San Bernardino LAFCO opposed this legislation, as did the balance of southern California LAFCOs. However, the legislation was signed by the Governor, and became effective January 1, 2012. Its provisions include the following:

- Adds (§56033.5) which provides a definition of disadvantaged unincorporated community. This section states that a disadvantaged unincorporated community is “...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”. This reference to Water Code identifies that disadvantaged community “means a community with an annual median household income that is less than 80 percent of the statewide annual median household income”.

Staff is currently working on developing maps by region identifying the communities which meet this requirement. Additional policy determinations regarding the size of the area which represents a community will be presented at the March hearing for Commission consideration as a part of the Policy and Procedure Manual review.

- Adds §56375(a)(8)(A through B) which requires that for any city annexation greater than 10 acres, or as determined by Commission policy, which is contiguous to a disadvantaged unincorporated community, the proposal cannot be approved without a companion annexation of the disadvantaged unincorporated community. It provides for two exceptions to this mandate: (1) a prior application for annexation of the same area was received in the prior five years; or (2) the Commission finds that based upon written evidence that a majority of the residents within the community are opposed to annexation.

No criteria have been established for what the “written evidence” shall be; therefore, this section will require a policy response by the Commission. The mapping being undertaken by staff outlined in the bullet above will provide for a visual depiction of the areas which will be affected by this new provision.

- Adds §56425(e)(5) which states that for an update of a sphere of influence for a city or special district which provides public facilities and/or services for sewers, municipal and industrial water or structural fire on or after July 1, 2012 a written statement of the present and probable need for those services within the disadvantaged unincorporated community shall be reviewed and considered by the Commission. This does not require a new policy declaration by the Commission; but does expand the requirements for review and analysis by staff for presentation to the Commission for consideration.

- Adds §56425(h) which requires that when determining a sphere of influence “the Commission **may** assess the feasibility of government reorganization of particular agencies and recommend reorganization when such are found to be feasible and will further the goals of orderly development and efficient and affordable service delivery.” This section continues to require that the Commission make all reasonable efforts to ensure wide public dissemination of the recommendations.

This section of the new law is permissive, but when and how the Commission wishes to address this question will need to be outlined in a policy to direct staff on future considerations.

- Amends §56430 (a)(2) to add as a new factor of consideration. It reads “*The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.*” The requirement for addressing this new factor takes effect January 1, 2012 and requires a written statement by the Commission of this determination.

The mapping previously identified will allow the Commission to make this determination. Agencies which have current sphere of influence updates and service reviews in progress will be notified of this new requirement.

- §56430 (a)(3) is amended to include the added requirement that the “...needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged unincorporated community within or contiguous to the sphere of influence” be addressed. Including the language “contiguous” to the sphere of influence will require supplemental information in all future service reviews. As noted above, agencies which have current sphere of influence updates and service reviews in progress will be notified of this new requirement.
- §56430 (b) is amended to include new permissive language that the “...commission **may** 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.”

This new language will augment the determinations currently presented by staff to require more detailed cost information. Again the inclusion of language about “contiguous” to the sphere calls into play more analysis on the part of staff and considerations by the Commission.

- §56430 (c) and (d) have been added to address questions related to the adequacy of water service and the ability to request information from private and mutual water companies. At present, San Bernardino LAFCO has requested information from private and mutual water companies in order to assess the municipal service within a community. These new sections

provide a stronger standing for requesting this information in the future. No change in policy or direction is anticipated by staff regarding these additions.

As anticipated, the signing of SB 244 will require more work on future sphere of influence updates and service reviews, an unfunded mandate whose cost must be shared by all entities funding LAFCO. In addition, in some cases the annexation process has become more complex on the basis of the requirement to address disadvantaged unincorporated communities contiguous to the application received for processing.

Staff is requesting that the Commission provide direction on the policy issues outlined in this report so that when the Policy and Procedure Manual is returned for consideration it will be complete. Staff will be happy to answer any questions prior to or at the hearing related to the materials presented.

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