
FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT

AGENDA ITEM NO. 10-B

DATE: July 14, 2010
TO: Fresno Local Agency Formation Commission
FROM: Jeff Witte, Executive Officer
SUBJECT: AB 853 (Arambula)

Recommendation:

Provide direction to staff pertaining to legislation – AB 853.

Background:

During its June 9, 2010 hearing, the Commission directed staff to gather additional information regarding AB 853 and to work with its author, Assemblymember Juan Arambula, regarding possible revisions to address concerns raised by staff, other LAFCOs, and CALAFCO. Since the last meeting, AB 853 has been completely overhauled to address the various concerns raised about the legislation. However, we understand that there are likely to be additional amendments to the legislation to address other concerns. Attached is the latest version of the legislation.

The legislation primarily grew out of litigation in Stanislaus County involving an inhabited area within Modesto's sphere of influence, which had not been annexed to the City because of service and economic issues. In that case, the City declined to annex certain territories that were receiving inferior levels of service, especially sewer, water, and other municipal services, compared to more affluent areas in the City. The Commission asked staff to evaluate the bill and discuss its provisions with Assemblyman Arambula's staff.

Analysis and Discussion:

Initially, AB 853 gave LAFCo no discretion to approve the annexation of certain economically distressed areas that were within 1 ½ miles from city boundaries. The legislation was of great concern to LAFCOs and cities because it would have forbidden LAFCo to conduct an independent evaluation of the financial viability of the annexation, could have resulted in greater pockets of unincorporated areas, and did not address the practicality of annexing such areas.

Assemblymember Arambula and his staff met with numerous stakeholders regarding the bill and, as a result, made sweeping revisions to address various concerns. At present, the bill would do the following:

- Allows residents of "disadvantaged inhabited communities" to apply for annexation to a city through the Board of Supervisors of each county.
- Disadvantaged inhabited communities are not precisely defined in the legislation leaving each agency to make their own policies regarding qualifying areas (typically an area with residents that have an income of 75-80% of the statewide median income).
- Qualifying disadvantaged areas would have to be (i) inhabited, (ii) within a City's sphere of influence, and (iii) contiguous to a city.
- Cities would have the ability to file for annexation of such areas through a meet and confer process detailed in the statute.
- Additionally, 25% or more of residents or landowners of a disadvantaged inhabited community could sign a petition to the Board of Supervisors requesting annexation to a nearby City. If the Board of Supervisors receives a proper petition, it shall adopt a resolution of application to LAFCo for the disadvantaged inhabited community (and, as a result, would ostensibly be responsible for paying all annexation fees unless waived by LAFCo).
- LAFCo would continue to conduct a MSR every five years but, under the legislation, have to review and update, as necessary, the sphere of influence for each district and city within its jurisdiction that provides public facilities or services related to "sewers, nonagricultural water, or structure fire protection to include the present and probable need for public facilities and services of disadvantaged inhabited communities".

For LAFCo, the largest single issue may be that additional analysis would have to occur for the sphere review and update regarding disadvantaged inhabited communities. Moreover, at present LAFCo is not absolutely required to review and update each sphere every five years. It appears that LAFCo's analysis would need to rely more heavily on independent specialized information provided by consultants with knowledge of engineering, municipal finance, public safety, etc. LAFCo is currently reviewing the Commission's fee schedule, procedures, and process associated with sphere amendments and MSR reviews to cover costs and allow for a greater degree of review.

Key Issues:

1. Potential additional cost to counties to pay filing fees to LAFCo's for annexations of "Disadvantaged Inhabited Communities."
2. For Spheres of Influence and MSRs reviewed and approved by LAFCo's after July 1, 2011, the legislation contains a requirement for a much greater degree of scrutiny of municipal services-related issues as they may pertain to "Disadvantaged Inhabited Communities." This may translate into increased costs

for LAFCOs for specialists in various areas such as engineering, finance, and public safety, etc.

3. The Commission would have to, using any guidelines contained in the statute or legislative history, determine the characteristics of a "Disadvantaged Inhabited Community."

CALAFCO is presently opposed to the legislation and most other groups are either in support or have taken a neutral position. However, amendments to the legislation are still being negotiated and there is some speculation that the sphere update requirements may be modified.

Steps Following Commission Action:

At the direction of the Commission, staff and/or legal counsel will prepare the appropriate correspondence and forward it to the Legislature.

AB 853 (ARAMBULA)

Problem:

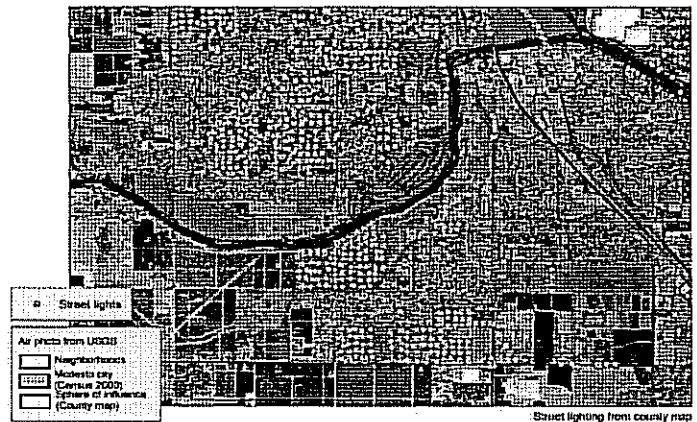
Across California there are hundreds of unincorporated neighborhoods geographically surrounded by, or at the fringes of, cities and towns but excluded from their services. In the eight county San Joaquin Valley alone, there are over 150 of these neighborhoods. Predominantly low-income and Latino and/or African American, these neighborhoods have been systematically excluded by growing cities and are underserved in the overall allocation of resources. Dependent almost exclusively on their own limited financial resources, excluded from neighboring cities resources, and lacking strong political representation, residents of these areas often live without the most basic features of a safe and healthy environment—services like clean water, sewage lines, storm drains, streetlights, sidewalks and safe housing. Neglect and deprivation prevent these neighborhoods from realizing their potential as livable and economically viable communities and threaten the health, safety, and economic security of residents.

Annexation to a neighboring city can provide numerous benefits to these communities as well as to the county and neighboring city. These benefits include: more efficient delivery of basic infrastructure and community services, more focused investment in existing urban areas, increased opportunities for residents to participate in decision making processes that affect their communities and ultimately, healthier communities.

Despite these benefits, existing law keeps disadvantaged unincorporated island and fringe communities from seeking annexation, by creating obstacles to annexation for unincorporated communities with limited financial resources.

Solution:

AB 853 will address existing obstacles and facilitate annexation of disadvantaged unincorporated fringe and island communities that lack basic infrastructure. AB 853 will accomplish this by establishing a unique annexation process that will apply only to disadvantaged, unincorporated island and fringe communities with basic infrastructure deficits.



*Map of unincorporated communities in Modesto. City street lights pass through the neighborhoods but do not provide service. The lack of street lights in these communities greatly contributes to a lack in public safety.
(Map created by Cedar Grove Institute for Sustainable Communities)*

This process will:

- Give residents of disadvantaged, unincorporated island and fringe communities the authority to petition their Board of Supervisors to initiate an annexation petition on behalf of their community;
- Require the Board of Supervisors to petition their respective Local Area Formation Commission (LAFCo) for the annexation when the unincorporated community is low-income and lacks basic infrastructure; and
- Require LAFCo to include the disadvantaged, unincorporated islands and fringe communities in their municipal service reviews and sphere reviews.
- Allow LAFCOs to define what a "disadvantaged inhabited community."

Sponsors of AB 853:

California Rural Legal Assistance Foundation
PolicyLink

AMENDED IN SENATE JULY 1, 2010
AMENDED IN SENATE JUNE 23, 2010
AMENDED IN SENATE JUNE 9, 2010
AMENDED IN ASSEMBLY MAY 18, 2009
AMENDED IN ASSEMBLY MAY 5, 2009
AMENDED IN ASSEMBLY APRIL 14, 2009
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 853

Introduced by Assembly Member Arambula

February 26, 2009

An act to amend Sections 56425 and 56430 of, and to add Sections 56033.5 and 56650.1 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 853, as amended, Arambula. Local government: organization.

(1) The Cortese-Knox-Hertzberg Act of 2000 governs the organization and reorganization of local governmental entities, including, among other things, the annexation of island territories to a city or county.

The bill would require a board of supervisors, within 180 days of receiving a petition to apply for annexation to a city or reorganization that includes an annexation to a city, to adopt a resolution of application for an annexation to a city or reorganization that includes an annexation to a city if the affected territory meets specified conditions, thereby imposing 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, including infrastructure needs or deficiencies, or any disadvantaged inhabited communities, 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, 2010, 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, nonagricultural water, or structural fire protection to include the present and probable need for public facilities and services of disadvantaged inhabited communities.

(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. Section 56033.5 is added to the Government
2 Code, to read:
3 56033.5. "Disadvantaged inhabited community" means
4 inhabited territory, *as defined by Section 56046 or as determined*

1 *by commission policy*, that constitutes all or a portion of a
2 “disadvantaged community,” as defined by Section 75005 of the
3 Public Resources Code.

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

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

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

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

39 (d) If no agreement is reached pursuant to subdivision (b), the
40 application may be submitted to the commission and the

1 commission shall consider a sphere of influence for the city
2 consistent with the policies adopted by the commission pursuant
3 to this section.

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

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

9 (2) The present and probable need for public facilities and
10 services in the area. Upon the next review and update of a sphere
11 of influence that occurs pursuant to subdivision (g) on or after July
12 1, 2011, the review and update of each sphere of influence of a
13 city or special district that provides public facilities or services
14 related to sewers, nonagricultural water, or structural fire protection
15 shall include the present and probable need for public facilities
16 and services of any disadvantaged inhabited communities.

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

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

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

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

27 (h) The commission may recommend governmental
28 reorganizations to particular agencies in the county, using the
29 spheres of influence as the basis for those recommendations. Those
30 recommendations shall be made available, upon request, to other
31 agencies or to the public. The commission shall make all reasonable
32 efforts to ensure wide public dissemination of the
33 recommendations.

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

36 (1) Require existing districts to file written statements with the
37 commission specifying the functions or classes of services provided
38 by those districts.

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

1 SEC. 3. Section 56430 of the Government Code is amended
2 to read:

3 56430. (a) In order to prepare and to update spheres of
4 influence in accordance with Section 56425, the commission shall
5 conduct a service review of the municipal services provided in the
6 county or other appropriate area designated by the commission.
7 The commission shall include in the area designated for service
8 review the county, the region, the subregion, or any other
9 geographic area as is appropriate for an analysis of the service or
10 services to be reviewed, and shall prepare a written statement of
11 its determinations with respect to each of the following:

- 12 (1) Growth and population projections for the affected area.
- 13 (2) The location and characteristics, including infrastructure
14 needs or deficiencies, of any disadvantaged inhabited communities.
- 15 (3) Present and planned capacity of public facilities and
16 adequacy of public services, including infrastructure needs or
17 deficiencies.
- 18 (4) Financial ability of agencies to provide services.
- 19 (5) Status of, and opportunities for, shared facilities.
- 20 (6) Accountability for community service needs, including
21 governmental structure and operational efficiencies.
- 22 (7) Any other matter related to effective or efficient service
23 delivery, as required by commission policy.

24 (b) In conducting a service review, the commission shall
25 comprehensively review all of the agencies that provide the
26 identified service or services within the designated geographic
27 area.

28 (c) The commission shall conduct a service review before, or
29 in conjunction with, but no later than the time it is considering an
30 action to establish a sphere of influence in accordance with Section
31 56425 or Section 56426.5 or to update a sphere of influence
32 pursuant to Section 56425.

33 SEC. 4. Section 56650.1 is added to the Government Code, to
34 read:

35 56650.1. (a) Within 180 days of receiving a petition that meets
36 the qualifications described in subdivision (b), a board of
37 supervisors shall adopt a resolution of application for an annexation
38 to a city or a reorganization that includes an annexation to a city
39 if the affected territory meets all of the following conditions:

1 (1) The territory is all or a portion of a disadvantaged inhabited
2 community.

3 (2) The territory is an inhabited territory.

4 (3) The territory is within the city's sphere of influence.

5 (4) The territory is contiguous to the city.

6 (b) A petition to request a board of supervisors to apply for an
7 annexation to a city or reorganization that includes an annexation
8 to a city shall be signed by either of the following:

9 (1) Not less than 25 percent of the registered voters residing in
10 the territory proposed to be annexed, as shown on the county
11 register of voters.

12 (2) Not less than 25 percent of the number of owners of land
13 within the territory proposed to be annexed who also own 25
14 percent of the assessed value of land within the territory as shown
15 on the last equalized assessment roll.

16 SEC. 5. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.

State law lists the factors that a LAFCO must consider when it reviews proposals. One factor is the extent to which the proposal will promote environmental justice; the fair treatment of people of all races, cultures, and incomes regarding the location of public facilities and provision of public services (SB 162, Negrete McLeod, 2007).

Proposed Law

I. Disadvantaged community . When the voters passed Proposition 84, "The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006," they authorized \$5.4 billion in state bonds. Proposition 84 set aside some of that money for disadvantaged communities, which it defined as communities with median household incomes less than 80% of statewide average. Assembly Bill 853 adds a definition of "disadvantaged inhabited community" to the Cortese-Knox-Hertzberg Act, relying on the Proposition 84 definition, but requiring it to be inhabited territory.

II. Municipal service reviews . In the late 1990s, the Commission on Local Governance for the 21st Century reviewed the LAFCOs' activities, including how they prepared their spheres of influence. The Legislature adopted the recommendation that LAFCOs must periodically conduct "municipal service reviews" to inform their decisions about spheres of influence. Municipal service reviews must analyze and make determinations about six topics (AB 2838, Hertzberg, 2000; AB 1744, Assembly Local Government Committee, 2007):

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.

Assembly Bill 853 adds disadvantaged inhabited communities' location and characteristics, including infrastructure needs or deficiencies, to the required contents of municipal service reviews.

III. Spheres of influence . Starting January 1, 2008,

and

then every five years, a LAFCO must, as needed, review and update the spheres of influence for each city and special district in its county. For each sphere, the LAFCO must prepare written determinations regarding:

Present and planned land uses.

Present and probable need for public facilities and services.

Present capacity of public facilities and adequacy of public services.

Any relevant social and economic communities of interest.

Assembly Bill 853 requires a LAFCO to review its spheres of influence every five years and update them, as necessary. For the next review and update after July 1, 2011, AB 853 requires the sphere of influence for a city or special district that provides sewers, nonagricultural water, or structural fire protection to include the present and probable need for public facilities and services of any disadvantaged inhabited community.

IV. City annexation applications . Boundary change procedures, such as city annexations, require four or possibly five steps:

An application to the LAFCO.

A public hearing for the LAFCO's review and approval.

Another formal hearing to measure public protests.

The possibility of an election, if there was significant protest.

The ministerial filing of final documents.

An application begins when (1) a local agency submits a resolution of application to the LAFCO, (2) when voters or landowners submit a petition to the LAFCO, or (3) in limited cases, when the LAFCO itself initiates the proposal. In addition to maps, data, and other information, boundary change proposals require environmental review. The LAFCO's executive officer cannot accept a city annexation application unless the city and county have negotiated a property tax exchange.

Assembly Bill 853 requires a county board of supervisors to adopt a resolution of application for a city annexation, or a reorganization that includes a city annexation, within 180 days of receiving a petition from the voters or landowners of a disadvantaged inhabited community. The petition must be signed by either at least 25% of the affected territory's voters or at least 25% of the affected territory's landowners who own 25% of the land's assessed value. AB 853 limits this provision to affected territory which is:

All or part of a disadvantaged community.

Inhabited territory.

Within the city's sphere of influence.

Contiguous to the city.

Comments

1. The wrong side of the tracks . Disparities in public facilities and services are nothing new. For decades, some neighborhoods have enjoyed good schools, parks, libraries, street lights, and police protection, while other areas have endured rutted streets, low water pressure, inadequate sewers and storm drains, and no curbs or sidewalks. There are plenty of reasons for these differences, including fiscal limits and political realities. A coalition of advocates has compiled compelling information about these persistent patterns. They want legislators to change the rules for allocating public works funds, land use decisions, and annexations so that disadvantaged unincorporated communities can remedy their past problems. AB 853 tackles that challenge by inserting these concerns into the LAFCOs' municipal service reviews, spheres of influence, and city annexation applications. The Legislature told the LAFCOs nearly 40 years ago to adopt spheres of influence to guide their thinking about cities' future service areas and boundaries. Ten years ago, legislators told the LAFCOs to examine infrastructure deficiencies in their municipal service reviews. Nevertheless, unfair disparities still persist. By putting the conditions faced by disadvantaged communities squarely in front of the LAFCOs, the bill makes it harder for local officials to ignore the questions of social equity.

2. Scarce resources . The classic definition of politics is that it's the process by which a society allocates scarce resources. Without enough money to satisfy every need, each community sorts out its priorities and spends its revenues accordingly. In a state that's geographically large, economically varied, and demographically diverse, it's no wonder that different communities make different choices about where to provide public services and facilities. The local elected officials who set policy for the 58 counties, 480 cities, and 3,400 special districts struggle with the classic question of "who gets what." When combined with the constitutional limits on raising new local revenues, the state's archaic revenue and taxation laws result in the fiscalization of land use. Hemmed in by these fiscal realities, local officials often chase land uses that generate more revenue while shunning low revenue neighborhoods that need expensive public works. Before legislators tell the cities and LAFCOs what to do about disadvantaged communities, they need to straighten out the state-local fiscal relationship.

3. Focused attention . To help disadvantaged communities get better public facilities and services, AB 853 changes the contents of the LAFCOs' municipal service reviews and spheres of influence, and requires county supervisors to apply for certain city annexations. The bill inserts

disadvantaged communities' concerns in three, increasingly focused ways. First, AB 853 inserts a general reference to disadvantaged communities' needs as part of the LAFCOs' broad municipal service reviews. Second, based on the municipal service reviews, the bill targets the spheres of influence for cities and districts that provide sewers, nonagricultural water, and structural fire protection --- the three services that are essential to suburban and urban development. Third, the bill requires county supervisors to help disadvantaged communities by applying for limited city annexations, when asked. The bill's petition threshold is five times higher than what current law requires for directly petitioning a LAFCO for a city annexation. This focused attention adapts the structure of the Cortese-Knox-Hertzberg Act to the disadvantaged communities' concerns.

4. Dodging districts ? Not every city provides the full range of municipal services; many rely on special districts to provide sewers, water, and fire protection. AB 853 tells the LAFCOs to consider disadvantaged communities' infrastructure and service needs when they prepare municipal service reviews and spheres of influence for both cities and special districts. However, the bill's implementation requirement applies only to cities and not special districts. When disadvantaged communities ask for help, AB 853 requires county supervisors to apply for city annexations. Why not districts? The Committee may wish to consider why the bill targets the 480 cities, but not the 3,400 special districts.

5. Legislative history . The Senate Local Government Committee heard AB 853 at its June 16 hearing, listening to a dozen witnesses. The Committee members discussed the bill with Assembly Member Arambula who then wanted more time to work on his bill. The June 23 amendments deleted the proposal for the LAFCOs to adopt new "comprehensive plans" and deleted the proposal to prevent the LAFCOs from approving annexations to cities that weren't in compliance with the comprehensive plans. The amendments also deleted complicated definitions of disadvantaged, fringe, island, and legacy communities and instead rely on Proposition 84's vocabulary to define disadvantaged communities. The Committee will hear the amended bill on June 30.

6. Two related bills . In 2008, the Committee passed SB 194 (Florez) to raise the questions of disadvantaged communities' needs in local general plans, Proposition 84 funding, air pollution control grants, federal Community Development Block Grant funds, and wastewater project funds. The Assembly Housing and Community Development Committee will hear the Florez bill on June 30. In April, the Committee passed SB 1174 (Wolk) to require cities and counties to plan for disadvantaged communities in their

general plans. The Assembly Local Government Committee will hear the Wolk bill on June 30. AB 853 raises similar policy concerns, but within the context of LAFCOs and boundary laws.

7. Back to Rules . When the Senate Rules Committee referred AB 853 last year, it said that the bill must come back to the Senate Rules Committee for further consideration if it passed the Senate Local Government Committee.

Assembly Actions

Assembly Local Government Committee: 5-2
Assembly Floor: 47-30

Support and Opposition (6/24/10)

Support : California Rural Legal Assistance Foundation,
PolicyLink.

Opposition : American Planning Association-California
Chapter, California Association of Local Agency Formation
Commissions, California State Association of Counties,
League of California Cities, City of Lynwood, Regional
Council of Rural Counties, Counties of Los Angeles and
Sacramento, Orange LAFCO, San Bernardino LAFCO, San Diego
LAFCO.