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

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**AGENDA ITEM No. 8**

**DATE:**        **May 12, 2010**  
**TO:**           **Local Agency Formation Commission**  
**FROM:**       **Jeff Witte, Executive Officer**  
**SUBJECT:**   **Legislation – SB 1174 (Wolk) and AB 853 (Arambula)**

**Summary:**

This report covers two pieces of legislation, SB 1174 (Senator Wolk) and AB 853 (Assemblyman Arambula), and has been placed on your agenda at the request of Commissioner Perea. These bills are designed to address the need for the provision of important municipal services to the “unincorporated fringe communities” through annexation to a city. A previous court case involving the City of Modesto, took the position that unincorporated areas on the edges of cities had not been dealt with fairly by the cities and that extensive improvements were needed to provide health and safety items related to sewer, water, pave streets etc.

Central issues in both pieces of legislation include:

1.     The responsibility of the city or county for preparing a housing element/General Plans to identify areas with specific problems such as water service, sewer service, lighting, street issues, etc.
2.     The need to conduct assessments of infrastructure conditions within these areas.
3.     Include in their planning goals, objective and timelines for addressing the items identified.
4.     Allows a petition to LAFCo for island annexations if certain conditions are met.
5.     In the case of annexations, raises issues about pre-zoning and application to the city's general plan.
6.     Would add mandated costs to counties and cities.
7.     Would apply to areas which have 80% or less of the state-wide median household income.

**Background:**

AB 853, by Assemblyman Arambula (attached), would establish a process for annexation of disadvantaged, unincorporated island and fringe communities to a city so they could receive basic features of health and safety that include services like clean water, sewage lines, storm drains, streetlights, sidewalks and safe housing. This bill attempts to deal with past development practices which resulted in much lower standards of living for unincorporated communities that are not served by systems (city or county special districts) that provide these services. Although there are

two pieces of legislation (AB 853 & SB 1174), the intended outcome is largely the same, in which these communities can obtain important municipal services for health and safety of the residents. Presently, the planning process with the required mandated general plan elements does not “spot light” or specifically identify these areas, and thus it is difficult to gauge the total impact of the legislation. Both pieces of legislation seek to require detailed analysis of infrastructure systems in county and city planning efforts. While AB 853 does deal with some discussion related to revenue, tax sharing, etc., SB 1174 would impose another state-mandated local program, but provides no reimbursement by the State. Without some type of reimbursement it is expected that counties and cities would have reservations.

### **Staff Analysis:**

In addition to amending the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, they have some far reaching impacts. SB 1174 would direct more detailed planning for areas with 80% or less of the statewide median household income that are surrounded by cities, or are adjacent to cities during the planning process. As an example, a household with five people and an income of \$48,200, would constitute the 80% standard. While the primary impact would ultimately be directed at cities in terms of annexations, the legislation would also have some impact on county planning and housing elements, in terms of detailed identification of such area(s). Historically, many of these areas were developed well before the state-mandated general plan elements of the 1970s, and subsequent legislation dealing with local planning and general plans. Since the mid-1970s, California land use, development, and annexations have been driven by more of a cost/benefit analysis by local government (cities & counties) in which areas that are revenue neutral or revenue producing tend to get annexed, and the other areas left in the county. This type of annexation and development pattern can leave behind areas that economically do not offset the costs they generate related to the provision of municipal services. Many of the areas intended to receive the benefits from this legislation were developed in counties many years ago, before much formal planning existed, and local governments operated under vastly different revenue and expenditure practices.

While both pieces of legislation provide a more streamlined method for disadvantaged areas to be recognized in the formal planning process of their adjacent communities, neither bills contain provisions about how the cost of these services can ultimately be provided for. Some services that would benefit communities described in this legislation are local “general fund” costs such as for code enforcement and planning. Other services that have to do with water, sewer, etc., are typically “enterprise funded” services in the cities where these areas would be annexed to under this legislation.

As a part of the existing planning process there is some presumption that local government, and especially cities, should already include an analysis for dealing with housing issues in their housing elements, not only for areas within their city, but within their sphere of influence and potentially larger planning areas.

While it may be possible to make substantial progress in health and safety issues with grants, etc., such funding is not universally available to all cities, as it requires both available funding and technical assistance that may not be possible in some smaller communities. Additional information in the legislation related to the process of pre-zoning vs. general plans and specifics related to funding of utility planning, installation and cost of utilities to disadvantaged residents, would be

helpful in an analysis of the legislation. While legislation (AB 853) goes into detail on tax sharing agreements resulting from proposed annexations, without specific knowledge of an identified area, it would be difficult to know if any or all taxes would be sufficient to resolve the issues that they may have.

### **Potential Impacts:**

As envisioned in this legislation, the impact on residential areas described in this legislation could result in better systems for water, sewer, storm drainage, and improvement of quality of life. Impacts to the municipalities in which the residents could annex themselves are mixed. In the case of larger cities, it may be possible to make a nexus in the planning process to use funds to design systems, administer the process associated with facility installation, and later have life line rates that would allow for such improvements in disadvantaged areas. Conversely, smaller less affluent communities may be hard pressed to accommodate adjacent existing development, when the area to be annexed is out of scale to the size of the community it would be annexed to, and would place a burden on the capacity of their service system that existing, older units would use.

### **Additional Opinions and Comments:**

Attached to this report are copies of material from various sources that have supported or commented on this issue. This material includes

1. CALAFCO letter of concern in which five areas are discussed.
2. AB 853 Bill Analysis – contains information from CALAFCO, League of California Cities, and California Special Districts Association, in which special districts express reservations similar to cities in terms of impacts of extending services.
3. CapitolTrack – (AB 853). In addition to the aforesaid issues, this information raises questions on who is the lead agency, who pays for the environmental work, outreach and any mitigation.
4. CapitolTrack – (SB-1174). Discusses impacts on scarce resources for California's 3,400 special districts, 480 cities, and 58 counties on making this legislation work. Also included is a discussion on the need for details related to the implications on local planning and public utility infrastructure, in addition to concerns about more mandated legislation.
5. Political/Social Action piece related to SB 1174, which outlines disparities in community services related to disadvantaged income groups in unincorporated communities.
6. Comments and information from California Rural Legal Assistance outlining the need for such legislation and the value to disadvantaged communities.

2009

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7 May 2009

Assembly Member Juan Arambula  
Honorable Anna Caballero, Chair  
Assembly Local Government Committee  
P.O. Box 942849  
Sacramento, CA 94249-0028

RE: **AB 853 Letter of Concern**

Dear Assembly Member Arambula:

Thank you for the opportunity to work with you and the sponsors to improve the language in your legislation, Assembly Bill 853. We appreciate the efforts reflected in the 4 May amendments. We look forward to continue working with you and all involved to address issues which additional attention before we believe the intent of this legislation could be properly implement by local agency formation commissions.

There remains five key areas of concern for CALAFCO that we would like to continue working with you to resolve:

- 1. Definitions.** The amended language eliminates the definition of islands; however it contains a different definition of "unincorporated fringe community" from SB 194. In 853 it is identified as an inhabited unincorporated area that is within 1.5 miles of a city or within or adjacent to a city's SOI. CALAFCO is concerned that this will contribute to leapfrog development and sprawl by allowing cities to extend services through uninhabited territories; increasing the likelihood that other development will occur in agricultural or open spaces. In addition, this compromises the LAFCo SOI process by allowing annexations outside of the sphere of influence. The language here should be consistent with SB 194.
- 2. LAFCo Discretion.** AB 853 requires a LAFCo to approve the annexation unless it finds, based on a preponderance of evidence that the change of reorganization will not result in a net benefit to the public health of the communities. It specifically excludes financial impact as a consideration. Financial considerations are just one of the 15 factors a LAFCo must consider in evaluating an application (GC §56668). There may be other significant issues – including the financial ability of the annexing city to provide services – that a LAFCo should consider, and should have the discretion to deny the application if the annexation would significantly affect the delivery of local services or conflict with other legislative mandates in the Cortese-Knox-Hertzberg Local Government Reorganization Act.
- 3. Prezoning.** AB 853 requires the city to amend its general plan after LAFCo approval, rather than the current requirements of prezoning prior to a LAFCo consideration of an application. As in any annexation application, prezoning should be a requirement.

4. **Affect on Special Districts.** The bill is silent about affected special districts. It is unclear what happens to districts that may be currently providing services that would be provided in the future by the city. Under the current language there is no opportunity for LAFCo to deny an application if the city does not have the capacity to provide water, sewer or other municipal service. In fact the bill does not address the preparation of a plan for services (i.e. what services would be provided by the city; whether a special district will remain to provide certain services, etc.). Typically that is a requirement of the application. In addition there is no opportunity to address the remaining special districts' ability to provide services to their territory that was not detached in the annexation. LAFCo should retain the discretion to deny an annexation if a plan for services has not been prepared which adequately assesses and addresses the ability of all affected local agencies to continue to provide efficient municipal services.
5. **No Protest Process.** The legislation refers to GC §57080(a) with the intent that the annexation would occur without protest. Therefore this bill essentially requires the annexation of inhabited territory based only on a petition of 25% of the registered voters. The majority of the residents never have an opportunity to be engaged in the decision. In addition, as currently written both the board of supervisors and LAFCo have very limited discretion in the decision. Perhaps there is a way to balance LAFCo discretion with a modified protest process. This is an important area for continued discussion.

Again, we appreciate your willingness to engage CALAFCO in the process and work to address our concerns. This will contribute to a law that conforms to existing law in Cortese-Knox-Hertzberg and contributes to streamlining the annexations that are the intent of your legislation. We look forward to continue working with you and the sponsors on the language.

Yours sincerely,



William Chiat

- c: Members, Assembly Local Government Committee  
Debbie Michael, Consultant, Assembly Local Government Committee  
William Weber, Assembly Republican Caucus

## BILL ANALYSIS

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Date of Hearing: May 13, 2009

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Anna Marie Caballero, Chair  
AB 853 (Arambula) - As Amended: May 5, 2009

SUBJECT : Local government: organization.

SUMMARY : Establishes a process for how unincorporated fringe or island communities shall be annexed into a city. Specifically, this bill :

- 1) Defines "unincorporated fringe community" to mean any inhabited, unincorporated area that is within 1.5 miles of a city or within or adjacent to a city's sphere of influence.
- 2) Provides that a board of supervisors (board) shall petition the Local Agency Formation Commission (LAFCO) in the board's county to approve the annexation to a city of any island or fringe community after notice and hearing if all of the following conditions exist:
  - a) 25% of the registered voters or landowners in the unincorporated territory file a petition with the board to initiate an annexation of that community to a municipality.
  - b) The territory contained in the annexation petition constitutes an island or constitutes an unincorporated fringe community that lacks wastewater, drinking water services, storm drainage, paved streets, sidewalks, or streetlights, or there exists a serious infrastructure-related health hazard.
  - c) The territory that is the subject of the annexation petition constitutes a disadvantaged community, meaning a community with an annual median household income that is less than 80% of the statewide annual median household income.
- 3) Provides that within 180 days of the board mailing the petition, a separate property tax transfer agreement shall be agreed to between the annexing city and the county pursuant to Section 99 of the Revenue & Taxation Code.
- 4) Provides, if a property tax transfer agreement is not reached

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within 180 days, the agreement shall be determined pursuant to an alternative means as provided [see #s 10-17].

- 5) Specifies that a property tax transfer agreement shall not affect any existing master tax sharing agreement between the city and county.
- 6) Provides that LAFCO shall approve, after notice and hearing, the annexation, and as needed, the change of organization or reorganization of a city, unless the commission finds, based on the preponderance of evidence, that the change of reorganization will not result in a net benefit to the public health of the affected communities.
- 7) Specifies that the financial impact of the annexation shall not be a factor in the determination of the net benefit.
- 8) Specifies that subject to LAFCO's approval of an annexation, no affected special district shall have the authority to terminate the annexation.
- 9) Specifies that subject to LAFCO's approval of an annexation, the city shall amend its general plan to ensure that the annexation conforms with the municipality's general plan.
- 10) Specifies that LAFCO shall determine a revenue neutrality agreement, including the amount of property tax revenue to be exchanged by the affected local agency.
- 11) Provides that LAFCO shall notify the county auditor of the proposal and the services that the annexing city will assume within the territory to be annexed and identify for the auditor the existing service providers with the area subject to the proposal.
- 12) Provides for a method of calculation if the proposal would not transfer all of an affected agency's service responsibilities to the proposed city; the method of calculation involves the county auditor's determination of the proportion that the amount of property tax derives bears to the total amount of revenue from all sources available for general purposes.
- 13) Defines "total amount of revenue from all sources available for general purposes" as the total amount of revenue which an

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affected local agency may use on a discretionary bases for any

purpose, and does not include revenue that is required to be used for a specific purpose, revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services, or revenue that is received from the federal government for a specific purpose.

- 14) Provides that LAFCO shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services that the annexing city will assume within the area subject to the proposal, including the cost of connecting residents to wastewater or drinking water services.
- 15) Defines "total net cost" to mean the total direct and indirect costs that were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost that was funded by any revenues of that agency that are listed in 13) above.
- 16) Provides for calculations on how to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal, and provides for the county auditor to adjust this amount.
- 17) Provides that a LAFCO may transfer to the annexing city an amount of property taxes if a separate fund or funds were established consisting of revenues derived from the unincorporated area of the county and from which fund or fund services rendered in the unincorporated area have been paid; and provides for a timeline and considerations on how the timeline will be applied.
- 18) Specifies that an action brought by a city or district to contest any determinations of the county auditor or LAFCO with regard to the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section, shall be commenced within three years of the effective date of the annexation.

EXISTING LAW :

- 1) Establishes the procedures for the organization and reorganization of cities, counties, and special districts

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under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000.

- 2) Provides for the adjustment of the allocation of property taxes for jurisdictional changes, and provides a process for

the determination of a property tax transfer agreement.

- 3) Provides that in the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues; and provides that the board consult with the affected district prior to entering into negotiation on behalf of a district for the exchange of property tax revenue.
- 4) Establishes requirements for a revenue neutrality agreement for incorporations.

FISCAL EFFECT : None

COMMENTS :

- 1) AB 853 provides for a process for a city to annex an unincorporated fringe or island community, if 25% of the registered voters or landowners in the unincorporated territory file a petition with the board to initiate an annexation, and the unincorporated territory:
- a) Meets the definition of an island or an unincorporated fringe community that lacks wastewater, drinking water services, storm drainage, paved streets, sidewalks or streetlights, or there exists a serious infrastructure-related health hazard; and,
  - b) Constitutes a disadvantaged community.

If the conditions are met, then the board must file a petition with LAFCO to approve the annexation of an island or fringe community. Within 180 days of the petition, a separate property tax transfer agreement must be agreed to between the annexing city and the county pursuant to existing law. If an agreement cannot be reached, this bill provides for an alternative method of determining a revenue neutrality

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agreement. LAFCO must then approve, after notice and hearing, the annexation, unless the commission finds that the change in reorganization will not result in a net benefit to the public health of the affected community. LAFCO then determines a revenue neutrality agreement and will notify the county auditor of the proposal and the services that the annexing city will assume within the territory.

- 2) The author notes that AB 853 identifies communities that are

inhabited, close to or adjacent to a city, poor, and lacking in a critical infrastructure or service, and for those communities, establishes a process to be annexed into the nearby city. If annexation would not provide a health benefit to the community, LAFCO has the authority to reject the annexation. The bill specifies a process for the city and county to reach a revenue agreement, without allowing for indefinite delays that have marked such local reorganizations.

By pushing forward these annexations, disadvantaged communities will begin to have the level of municipal service that equals adjacent neighborhoods.

According to the author, AB 853 is intended to improve the quality of life for people currently living in communities that have no sidewalks, no streetlights, no proper storm drainage, no proper sewer service, or no adequate drinking water. As some cities have expanded, they ignored the priorities in state law and bypassed communities, leaving entire working neighborhoods without the most basic amenities.

- 3) PolicyLink, a national research and action institute advancing economic and social equity, notes that "residents of these areas often live without the most basic features of a safe and healthy environments - services like clean water, sewage lines, storm drains, streetlights, sidewalks, and safe housing." PolicyLink believes that "annexation to a neighboring city can provide numerous benefits to these communities, their county and the neighboring city."
- 4) SB 194 (Florez), the Community Equity Investment Act of 2009, is the companion measure to AB 853. That bill also deals with disadvantaged unincorporated communities, but focuses on local planning for these communities, and incentivizes the addressing of the infrastructure problems in disadvantaged unincorporated communities with a tie to different pots of state funding. SB 194 passed out of the Senate Local

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Government Committee, and at the time of print, is pending in the Senate Rules Committee.

- 5) AB 853 allows 25% of the registered land owners or voters in an unincorporated area that fits the specific provisions of the bill to petition the board, on their behalf, to initiate an annexation. The bill does include a reference to Government Code Section 57080 which contains very limited protest requirements. The California Special Districts Association (CSDA) notes that "it is highly possible that a majority of registered voters do not want the annexation to take place, but there is no way for them to halt the proceedings or even protest hearings for stakeholders to voice

their opinions in a public forum." If the author's intent is to allow for the standard protest hearing process, the correct code section of 57000 needs to be added to this section of the bill.

- 6) The California Association of Local Agency Formation Commissions (CALAFCO) notes that under the provisions of this bill, it is unclear what would happen to special districts that may be currently providing services that would then be provided in the future by the city, after annexation. Under the current bill language there is no opportunity for LAFCO to deny any application if the city does not have the capacity to provide water, sewer or other municipal services. CALAFCO believes that a LAFCO should retain the discretion to deny an annexation if a plan for services has not been prepared that adequately assesses and addresses the ability of all affected local agencies to continue to provide efficient municipal services.

CSDA has similar concerns, and notes that Section 56375.6 (e) of the bill says that "no affected special district shall have the authority to terminate the annexation" which would result in the special district being stripped of the services it provides to the community. The special district would consequently lose the property tax revenue and other taxes and fees it may be receiving from that area, all without consultation with the district.

- 7) The League of California Cities (League), in their opposition letter, says that "while [the League] can appreciate the absolute importance of assuring that residents of an unincorporated fringe community receive the most basic of

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services, we must generally oppose a bill that imposes a process that would require cities to pick up the cost of such infrastructure that could have been provided by the county." The League is concerned that the provisions of the bill that require the county auditor to take into account the cost of providing sufficient infrastructure to unincorporated fringe communities in the determination of "revenue neutrality" will not take into account the full cost of providing infrastructure and services, and will result in a significant cost shift to cities.

AB 853 operates on the premise that the annexation to a city will solve the service deficiencies in the unincorporated fringe community. The League notes this may or may not be true because services may be provided by a special district, or there may be insufficient water or sanitary sewer treatment capacity to serve the area. The Committee may wish to add in

a requirement that LAFCO confirm that the city has the capacity to provide the services before the annexation is approved.

- 8) AB 853 requires a LAFCO to approve the annexation unless it finds, based on a preponderance of evidence that the change of reorganization will not result in a net benefit to the public health of the community. The provisions of AB 853 specifically exclude the financial impact of the annexation as one of LAFCO's considerations. The Committee may wish to strike this section of the bill and reference an existing code section that details what LAFCO must consider in evaluating an annexation proposal (Government Code 56668).
- 9) AB 853, in Section 1 of the bill, requires that within 180 days of the Board filing a petition on behalf of an unincorporated fringe community, a separate property tax transfer agreement shall be agreed to between the annexing city and county, pursuant to Section 99 of the Revenue & Taxation Code. This code section specifies protections for special districts when a jurisdictional change would affect the service area or service responsibility of a special district, and requires the board to consult with the affected district on financial matters.

Section 2 of the bill designates an alternative means of completing a property tax transfer agreement, if a property tax transfer agreement pursuant to Section 99 could not be

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reached. Section 2 is modeled after the revenue neutrality agreement as used in the process for new city incorporations contained in Government Code 56810. Section 2 of this bill does not specify any protections for special districts. The Committee may wish to add the protections for special districts to the bill, and remove the language that exempts special districts from the authority to terminate the annexation.

- 10) An annexation under the provisions of AB 853 would be considered a project under the California Environmental Quality Act (CEQA), and as such, the Committee may wish to ask the author the following questions:
- a) Who would be the lead agency?
  - b) Who will pay for the cost of environmental review, public outreach, and climate change inducing impacts?
  - c) Who will bear the mitigation costs?
- 11) AB 853 takes into account the cost of providing existing

services, but does not consider what the cost will be for the city to update existing infrastructure or put in new infrastructure. The Committee may wish to consider whether some sort of infrastructure financing district should be used to help finance the improvements that the city would need to do under the provisions of this bill, given the poor economic situation that local governments currently face.

- 12) Based on the bill's requirements for an unincorporated fringe community to meet the disadvantaged community threshold of 80% of the statewide median income, an assumption can be made that the residents in these areas are generally of lower income. The Committee may wish to consider if these residents will be able to pay for the costs of sewer and water once the unincorporated area is annexed under the provisions of this bill.

13) TECHNICAL AMENDMENTS :

- a) TECHNICAL CORRECTION: On Page 2 line 36, strike ~~36375.7~~ and insert 56375.7.
- b) In order to be consistent with to the definitions in SB 194 (Florez), the following amendments should be taken:

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- i) Strike the definition of "unincorporated fringe community" in the bill and replace with:

An "unincorporated fringe community" means any inhabited unincorporated territory that is within a city's sphere of influence.

- ii) Insert the definition of "island community" into the bill:

An "island community" means any inhabited 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.

- c) To address issues of ambiguity about what a "territory" is in one part of the bill, the following clarifying amendment should be taken:

- i) On page 2, line 17, strike "territory" and insert:

fringe or island community

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REGISTERED SUPPORT / OPPOSITION :

Support

CA Rural Legal Assistance Foundation [CO-SPONSOR]  
PolicyLink [CO-SPONSOR]

Concerns

CA Association of Local Agency Formation Commissions

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Opposition

CA Special Districts Association  
League of CA Cities

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Analysis Prepared by : Debbie Michel / L. GOV. / (916)  
319-3958

**AB 853** (Arambula) Local government: organization.

From text dated: 05/18/09

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.

This bill would provide procedures for annexing unincorporated fringe communities *and unincorporated island communities*, as defined, to a city under specified circumstances, including provisions for a revenue neutrality agreement between the affected local government entities.

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

**SB 1174** (Wolk) Land use: general plan: disadvantaged unincorporated communities.

From text dated: 04/29/10

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, among others, a housing element for the preservation, improvement, and development of the community's housing.

This bill would require, prior to January 1, 2013, and thereafter upon each revision of its housing element, a city or county to review and update one or more elements of its general plan, as necessary to address the presence of island, fringe, or legacy unincorporated communities, as defined, inside or near its boundaries, and would require the updated general plan to include specified information.

This bill would also require the city or county to make a diligent effort to involve all members of the public in preparing the review and update of the general plan. By adding to the duties of city and county officials, this bill would impose a state-mandated local program.

~~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 shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.~~

*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.

## **SB 1174 (Wolk) – Planning for Disadvantaged Unincorporated Communities // Working to fix a problem is better than re-branding it**

Submitted by SHANSEN on Tue, 2010-04-13 10:48. **Politics/Social Action**

I am writing to express support for SB 1174 (Wolk), which would require a city or county to amend its general plan to address the needs of disadvantaged, unincorporated communities.

Over one million<sup>1</sup> Californians live in disadvantaged, unincorporated communities. Predominantly Latino and African American, these communities range from remote but concentrated historical settlements of industrial or agricultural laborers, to neighborhoods at the fringes of cities and towns that have been left out of city borders, to islands within cities, surrounded on all sides by an incorporated city but excluded from all of its services.

Residents of these areas often live without the most basic features of a safe and healthy environment—services like clean water, sewer lines, storm drains, streetlights, sidewalks, public transit, and safe housing. Dependent on county governance for urban needs, these communities are systematically underserved in the overall allocation of public resources and are frequently left out of local planning processes. This neglect and deprivation prevents these neighborhoods from realizing their potential as livable and economically viable communities and threatens the health, safety, and economic security of residents.

"Social equity advocates have sued the City of Modesto alleging that a checkerboard annexation pattern is proof of selectively excluding low income, largely Hispanic communities. The Ninth Circuit agreed to let the claim relating to slower public safety response times proceed." League of California Cities 2010

"Deplorable Conditions. There is no doubt that there are legacy, fringe or island communities that lack basic infrastructure such as roads, streets, and water/sewer service." League of California Cities 2010

We must not reband the real issues! To restore and enhance the quality of life within legacy, fringe and island communities we must support Legislation that can fix Modesto California's problems.

SB 1174 requires local governments to include these communities in the local planning process. Local governments, at the time of their next housing element update or comprehensive general plan update (which ever occurs first) will need to (1) identify disadvantaged unincorporated communities within their region; (2) conduct an assessment of the infrastructure conditions within these communities and identify existing deficiencies; and (3) develop goals, objectives, and a timeline for addressing those needs.

SB 1174 ensures that local planning responds to the unmet needs of some of California's poorest communities and supports the development of healthy, equitable, and prosperous communities for all Californians

## CURRENT BILL STATUS

MEASURE : S.B. No. 1174  
AUTHOR(S) : Wolk (Principal coauthor: Senator Price).  
TOPIC : Land use: general plan: disadvantaged unincorporated  
communities.  
HOUSE LOCATION : SEN  
+LAST AMENDED DATE : 04/29/2010

## TYPE OF BILL :

Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 04/30/2010  
LAST HIST. ACTION : Set for hearing May 10.  
COMM. LOCATION : SEN APPROPRIATIONS  
HEARING DATE : 05/10/2010

TITLE : An act to add Section 65302.10 to the Government Code,  
relating to land use.

## CURRENT BILL STATUS

MEASURE : A.B. No. 853  
AUTHOR(S) : Arambula.  
TOPIC : Local government: organization.  
HOUSE LOCATION : SEN  
+LAST AMENDED DATE : 05/18/2009

## TYPE OF BILL :

Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Non-Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 06/11/2009  
LAST HIST. ACTION : Referred to Coms. on L. GOV. and RLS.  
COMM. LOCATION : SEN LOCAL GOVERNMENT

TITLE : An act to add Sections 56375.6 and 56375.7 to the  
Government Code, relating to local government.

## BILL ANALYSIS

SENATE LOCAL GOVERNMENT COMMITTEE  
Senator Dave Cox, ChairBILL NO: SB 1174  
AUTHOR: Wolk  
VERSION: 4/13/10HEARING: 4/19/10  
FISCAL: Yes  
CONSULTANT: Detwiler

## DISADVANTAGED COMMUNITIES

Background and Existing Law

The U.S. Census Bureau identifies a "census designated place" as the statistical counterpart of a city in that it is a named place with a concentration of residents, housing, and commercial activity, but located in a county's unincorporated territory. Of the 598 census designated places in California, 241 have household median incomes that are less than 80% of the statewide household median income. Some of these disadvantaged unincorporated communities are county islands (mostly surrounded by cities), some are fringe communities (at or near the edge of cities), and others are "legacy communities" (geographically isolated). More than 1 million people live in these island, fringe, and legacy communities.

Many of the disadvantaged unincorporated communities lack public services and even public facilities like domestic water, sanitary sewers, paved streets, storm drains, and street lights. Some cities and special districts are reluctant to annex these areas. Advocates want legislators to create incentives and opportunities for local officials to deliver better services and facilities.

Proposition 84 (2006) authorized \$5.4 billion in state bonds and specifically set aside \$90 million for "planning grants and planning incentives." The Strategic Growth Council manages these programs (SB 732, Steinberg, 2008). The Council intends to award planning grants to cities and counties worth \$22 million a year in 2010-11, 2011-12, 2012-13. Concerned about the inequities faced by disadvantaged communities, the Council will prioritize 20% of each year's grants for work that benefits economically disadvantaged communities.

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. Except for

SB 1174 -- 4/13/10 -- Page 2

the housing elements, the Planning and Zoning Law does not require counties and cities to regularly revise their general plans. Cities and counties' major land use decisions --- subdivisions, zoning, public works projects, use permits --- must be consistent with their general plans. Development decisions must carry out and not obstruct a general plan's policies.

Proposed Law

Senate Bill 1174 requires cities and counties to review and update the elements of their general plans to include data and analysis, goals, and implementation measures regarding unincorporated islands, fringe, or legacy communities. Local officials must act before January 1, 2013 and, after that, each time they revise their housing elements.

SB 1174 requires these general plans reviews and revisions to include:

- Identification of unincorporated islands, fringe, or legacy communities, including descriptions and maps.
- Quantification and analysis of six conditions regarding deficient services, facilities, and housing conditions.
- Analysis of current programs and activities that address those conditions.
- Specific, quantified goals for eliminating or reducing those conditions.
- Flexible implementation measures to carry out those goals.

The bill defines these terms:

"Disadvantaged unincorporated community" is a fringe, island, or legacy community where the median household income is 80% or less of the statewide

median household income.

"Unincorporated fringe community" is the inhabited territory within a city's sphere of influence.

"Unincorporated island community" is the inhabited territory that is substantially surrounded by city limits or cities and the Pacific Ocean.

"Unincorporated legacy community" is a

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geographically isolated community that has existed for at least 50 years.

SB 1174 also contains legislative declarations in support of its requirements.

#### Comments

1. The wrong side of the tracks . Disparities in public facilities and services is 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 so that these disadvantaged unincorporated communities can remedy their past problems. SB 1174 tackles that challenge by inserting these concerns into local general plans. Long considered the constitutions for community development, city and county general plans guide local officials' development and public works decisions. By putting these conditions squarely in front of city councilmembers and county supervisors, the bill makes it harder 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 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

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neighborhoods that need expensive public works. Before legislators tell local officials what to do about disadvantaged communities, they need to straighten out the state-local fiscal relationship.

3. Details, details, details . The data required by SB 1174 exceed what local planners usually use in their general plans. While knowing the availability of water and sewer service and other public works is important when describing disadvantaged communities, the bill's level of detail looks more like a community plan or specific plan than the direction found in general plans. Only the housing element law is this prescriptive. The Committee may wish to consider amendments that compress these requirements into broad categories and allow local officials to draft their general plans based on local conditions and circumstances.

4. Just another mandate . The Legislature first required cities and counties to adopt general plans in 1937 (AB 722, Weber, 1937). Over the last 70 years, legislators have insisted on increasingly detailed local plans. The recent trend has been to require general plans to pay more attention to specialized topics: San Joaquin Valley's air quality (AB 170, Reyes, 2003), wildland fires (AB 3065, Kehoe, 2004), tribal cultural places (SB 18, Burton, 2004), military operating areas (SB 926, Knight, 2004), and flood hazards (AB 162, Wolk, 2007). On April 7, the Committee passed SB 1207 (Kehoe) which requires cities and counties

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5. Better planning, better decisions . Comprehensive land use planning serves two purposes. First, it helps public officials avoid problems when they make decisions about the future. Second, it helps public officials solve past

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SB 1174 -- 4/13/10 -- Page 5

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6. Legislative history . Last year, the Senate Local Government Committee passed a much broader bill dealing with disadvantaged communities. SB 194 (Flores, 2008) remains in the Assembly Rules Committee, waiting for an assignment to a policy committee. SB 1174 takes a narrower focus, concentrating on local general plans and avoiding the reallocation of federal and state grant funds.

Support and Opposition (4/15/10)

Support : CRLA Foundation, California Pan-Ethnic Health Network, California Communities Against Toxics, California Environmental Rights Alliance, California Safe Schools, Catholic Charities-Diocese of Stockton, Clean Water Action, Community Water Center, Del Amo Action Committee, Ella Baker Center for Human Rights, Environmental Justice Coalition for Water, Fresno Metro Ministry, Housing California, Just Transition Alliance, Physicians for Social Responsibility, PolicyLink, San Joaquin Valley Latino Environmental Advancement Project, Sierra Club-California, The City Project, Urban Habitat, Professor Michelle Wilde Anderson, Fresno County Supervisor Henry Perea, Kern County Supervisor Michael J. Rubio.

Opposition : City of Fountain Valley, County of Los Angeles.

## BILL ANALYSIS

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Page 1

Date of Hearing: May 13, 2009

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Anna Marie Caballero, Chair  
AB 853 (Arambula) - As Amended: May 5, 2009

SUBJECT : Local government: organization.

SUMMARY : Establishes a process for how unincorporated fringe or island communities shall be annexed into a city. Specifically, this bill :

- 1) Defines "unincorporated fringe community" to mean any inhabited, unincorporated area that is within 1.5 miles of a city or within or adjacent to a city's sphere of influence.
- 2) Provides that a board of supervisors (board) shall petition the Local Agency Formation Commission (LAFCO) in the board's county to approve the annexation to a city of any island or fringe community after notice and hearing if all of the following conditions exist:
  - a) 25% of the registered voters or landowners in the unincorporated territory file a petition with the board to initiate an annexation of that community to a municipality.
  - b) The territory contained in the annexation petition constitutes an island or constitutes an unincorporated fringe community that lacks wastewater, drinking water services, storm drainage, paved streets, sidewalks, or streetlights, or there exists a serious infrastructure-related health hazard.
  - c) The territory that is the subject of the annexation petition constitutes a disadvantaged community, meaning a community with an annual median household income that is less than 80% of the statewide annual median household income.
- 3) Provides that within 180 days of the board mailing the petition, a separate property tax transfer agreement shall be agreed to between the annexing city and the county pursuant to Section 99 of the Revenue & Taxation Code.
- 4) Provides, if a property tax transfer agreement is not reached

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within 180 days, the agreement shall be determined pursuant to an alternative means as provided (see #s 10-17).

- 5) Specifies that a property tax transfer agreement shall not affect any existing master tax sharing agreement between the city and county.
- 6) Provides that LAFCO shall approve, after notice and hearing, the annexation, and as needed, the change of organization or reorganization of a city, unless the commission finds, based on the preponderance of evidence, that the change of reorganization will not result in a net benefit to the public health of the affected communities.
- 7) Specifies that the financial impact of the annexation shall not be a factor in the determination of the net benefit.
- 8) Specifies that subject to LAFCO's approval of an annexation, no affected special district shall have the authority to terminate the annexation.
- 9) Specifies that subject to LAFCO's approval of an annexation, the city shall amend its general plan to ensure that the annexation conforms with the municipality's general plan.
- 10) Specifies that LAFCO shall determine a revenue neutrality agreement, including the amount of property tax revenue to be exchanged by the affected local agency.
- 11) Provides that LAFCO shall notify the county auditor of the proposal and the services that the annexing city will assume within the territory to be annexed and identify for the auditor the existing service providers with the area subject to the proposal.
- 12) Provides for a method of calculation if the proposal would not transfer all of an affected agency's service

responsibilities to the proposed city; the method of calculation involves the county auditor's determination of the proportion that the amount of property tax derives bears to the total amount of revenue from all sources available for general purposes.

- 13) Defines "total amount of revenue from all sources available for general purposes" as the total amount of revenue which an

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Page 3

affected local agency may use on a discretionary bases for any purpose, and does not include revenue that is required to be used for a specific purpose, revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services, or revenue that is received from the federal government for a specific purpose.

- 14) Provides that LAFCO shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services that the annexing city will assume within the area subject to the proposal, including the cost of connecting residents to wastewater or drinking water services.
- 15) Defines "total net cost" to mean the total direct and indirect costs that were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost that was funded by any revenues of that agency that are listed in 13) above.
- 16) Provides for calculations on how to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal, and provides for the county auditor to adjust this amount.
- 17) Provides that a LAFCO may transfer to the annexing city an amount of property taxes if a separate fund or funds were established consisting of revenues derived from the unincorporated area of the county and from which fund or fund services rendered in the unincorporated area have been paid; and provides for a timeline and considerations on how the timeline will be applied.
- 18) Specifies that an action brought by a city or district to contest any determinations of the county auditor or LAFCO with regard to the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section, shall be commenced within three years of the effective date of the annexation.
- EXISTING LAW :
- 1) Establishes the procedures for the organization and reorganization of cities, counties, and special districts

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Page 4

under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000.

- 2) Provides for the adjustment of the allocation of property taxes for jurisdictional changes, and provides a process for the determination of a property tax transfer agreement.
- 3) Provides that in the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues; and provides that the board consult with the affected district prior to entering into negotiation on behalf of a district for the exchange of property tax revenue.
- 4) Establishes requirements for a revenue neutrality agreement for incorporations.

FISCAL EFFECT : None

COMMENTS :

- 1) AB 853 provides for a process for a city to annex an

unincorporated fringe or island community, if 25% of the registered voters or landowners in the unincorporated territory file a petition with the board to initiate an annexation, and the unincorporated territory:

- a) Meets the definition of an island or an unincorporated fringe community that lacks wastewater, drinking water services, storm drainage, paved streets, sidewalks or streetlights, or there exists a serious infrastructure-related health hazard; and,
- b) Constitutes a disadvantaged community.

If the conditions are met, then the board must file a petition with LAFCO to approve the annexation of an island or fringe community. Within 180 days of the petition, a separate property tax transfer agreement must be agreed to between the annexing city and the county pursuant to existing law. If an agreement cannot be reached, this bill provides for an alternative method of determining a revenue neutrality

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agreement. LAFCO must then approve, after notice and hearing, the annexation, unless the commission finds that the change in reorganization will not result in a net benefit to the public health of the affected community. LAFCO then determines a revenue neutrality agreement and will notify the county auditor of the proposal and the services that the annexing city will assume within the territory.

- 2) The author notes that AB 853 identifies communities that are inhabited, close to or adjacent to a city, poor, and lacking in a critical infrastructure or service, and for those communities, establishes a process to be annexed into the nearby city. If annexation would not provide a health benefit to the community, LAFCO has the authority to reject the annexation. The bill specifies a process for the city and county to reach a revenue agreement, without allowing for indefinite delays that have marked such local reorganizations. By pushing forward these annexations, disadvantaged communities will begin to have the level of municipal service that equals adjacent neighborhoods.

According to the author, AB 853 is intended to improve the quality of life for people currently living in communities that have no sidewalks, no streetlights, no proper storm drainage, no proper sewer service, or no adequate drinking water. As some cities have expanded, they ignored the priorities in state law and bypassed communities, leaving entire working neighborhoods without the most basic amenities.

- 3) PolicyLink, a national research and action institute advancing economic and social equity, notes that "residents of these areas often live without the most basic features of a safe and healthy environments - services like clean water, sewage lines, storm drains, streetlights, sidewalks, and safe housing." PolicyLink believes that "annexation to a neighboring city can provide numerous benefits to these communities, their county and the neighboring city."
- 4) SB 194 (Flores), the Community Equity Investment Act of 2009, is the companion measure to AB 853. That bill also deals with disadvantaged unincorporated communities, but focuses on local planning for these communities, and incentivizes the addressing of the infrastructure problems in disadvantaged unincorporated communities with a tie to different pots of state funding. SB 194 passed out of the Senate Local

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AB 853

Page 6

Government Committee, and at the time of print, is pending in the Senate Rules Committee.

- 5) AB 853 allows 25% of the registered land owners or voters in an unincorporated area that fits the specific provisions of the bill to petition the board, on their behalf, to initiate an annexation. The bill does include a reference to Government Code Section 57080 which contains very limited protest requirements. The California Special Districts Association (CSDA) notes that "it is highly possible that a majority of registered voters do not want the annexation to take place, but there is no way for them to halt the proceedings or even protest hearings for stakeholders to voice

their opinions in a public forum." If the author's intent is to allow for the standard protest hearing process, the correct code section of 57000 needs to be added to this section of the bill.

6) The California Association of Local Agency Formation Commissions (CALAFCO) notes that under the provisions of this bill, it is unclear what would happen to special districts that may be currently providing services that would then be provided in the future by the city, after annexation. Under the current bill language there is no opportunity for LAFCO to deny any application if the city does not have the capacity to provide water, sewer or other municipal services. CALAFCO believes that a LAFCO should retain the discretion to deny an annexation if a plan for services has not been prepared that adequately assesses and addresses the ability of all affected local agencies to continue to provide efficient municipal services.

CSDA has similar concerns, and notes that Section 56375.6 (e) of the bill says that "no affected special district shall have the authority to terminate the annexation" which would result in the special district being stripped of the services it provides to the community. The special district would consequently lose the property tax revenue and other taxes and fees it may be receiving from that area, all without consultation with the district.

7) The League of California Cities (League), in their opposition letter, says that "while [the League] can appreciate the absolute importance of assuring that residents of an unincorporated fringe community receive the most basic of

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services, we must generally oppose a bill that imposes a process that would require cities to pick up the cost of such infrastructure that could have been provided by the county." The League is concerned that the provisions of the bill that require the county auditor to take into account the cost of providing sufficient infrastructure to unincorporated fringe communities in the determination of "revenue neutrality" will not take into account the full cost of providing infrastructure and services, and will result in a significant cost shift to cities.

AB 853 operates on the premise that the annexation to a city will solve the service deficiencies in the unincorporated fringe community. The League notes this may or may not be true because services may be provided by a special district, or there may be insufficient water or sanitary sewer treatment capacity to serve the area. The Committee may wish to add in a requirement that LAFCO confirm that the city has the capacity to provide the services before the annexation is approved.

8) AB 853 requires a LAFCO to approve the annexation unless it finds, based on a preponderance of evidence that the change of reorganization will not result in a net benefit to the public health of the community. The provisions of AB 853 specifically exclude the financial impact of the annexation as one of LAFCO's considerations. The Committee may wish to strike this section of the bill and reference an existing code section that details what LAFCO must consider in evaluating an annexation proposal (Government Code 56668).

9) AB 853, in Section 1 of the bill, requires that within 180 days of the Board filing a petition on behalf of an unincorporated fringe community, a separate property tax transfer agreement shall be agreed to between the annexing city and county, pursuant to Section 99 of the Revenue & Taxation Code. This code section specifies protections for special districts when a jurisdictional change would affect the service area or service responsibility of a special district, and requires the board to consult with the affected district on financial matters.

Section 2 of the bill designates an alternative means of completing a property tax transfer agreement, if a property tax transfer agreement pursuant to Section 99 could not be

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reached. Section 2 is modeled after the revenue neutrality

agreement as used in the process for new city incorporations contained in Government Code 56810. Section 2 of this bill does not specify any protections for special districts. The Committee may wish to add the protections for special districts to the bill, and remove the language that exempts special districts from the authority to terminate the annexation.

10) An annexation under the provisions of AB 853 would be considered a project under the California Environmental Quality Act (CEQA), and as such, the Committee may wish to ask the author the following questions:

- a) Who would be the lead agency?
- b) Who will pay for the cost of environmental review, public outreach, and climate change inducing impacts?
- c) Who will bear the mitigation costs?

11) AB 853 takes into account the cost of providing existing services, but does not consider what the cost will be for the city to update existing infrastructure or put in new infrastructure. The Committee may wish to consider whether some sort of infrastructure financing district should be used to help finance the improvements that the city would need to do under the provisions of this bill, given the poor economic situation that local governments currently face.

12) Based on the bill's requirements for an unincorporated fringe community to meet the disadvantaged community threshold of 80% of the statewide median income, an assumption can be made that the residents in these areas are generally of lower income. The Committee may wish to consider if these residents will be able to pay for the costs of sewer and water once the unincorporated area is annexed under the provisions of this bill.

13) TECHNICAL AMENDMENTS :

- a) TECHNICAL CORRECTION: On Page 2 line 36, strike ~~56375.7~~ and insert 56375.7.
- b) In order to be consistent with to the definitions in SB 194 (Flores), the following amendments should be taken:

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Page 9

- i) Strike the definition of "unincorporated fringe community" in the bill and replace with:

An "unincorporated fringe community" means any inhabited unincorporated territory that is within a city's sphere of influence.

- ii) Insert the definition of "island community" into the bill:

An "island community" means any inhabited 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.

- c) To address issues of ambiguity about what a "territory" is in one part of the bill, the following clarifying amendment should be taken:

- i) On page 2, line 17, strike "territory" and insert:  
fringe or island community

REGISTERED SUPPORT / OPPOSITION :

Support

CA Rural Legal Assistance Foundation [CO-SPONSOR]  
PolicyLink [CO-SPONSOR]

Concerns

CA Association of Local Agency Formation Commissions

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Page 10

Opposition

CA Special Districts Association  
League of CA Cities

Analysis Prepared by : Debbie Michel / L. GOV. / (916)  
319-3958

## BILL ANALYSIS

SENATE LOCAL GOVERNMENT COMMITTEE  
Senator Dave Cox, ChairBILL NO: SB 1174  
AUTHOR: Wolk  
VERSION: 4/13/10HEARING: 4/19/10  
FISCAL: Yes  
CONSULTANT: Detwiler

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SB 1174 -- 4/13/10 -- Page 3

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6. Legislative history . Last year, the Senate Local Government Committee passed a much broader bill dealing with disadvantaged communities. SB 194 (Florez, 2008)

remains in the Assembly Rules Committee, waiting for an assignment to a policy committee. SB 1174 takes a narrower focus, concentrating on local general plans and avoiding the reallocation of federal and state grant funds.

Support and Opposition (4/15/10)

Support : CRLA Foundation, California Pan-Ethnic Health Network, California Communities Against Toxics, California Environmental Rights Alliance, California Safe Schools, Catholic Charities-Diocese of Stockton, Clean Water Action, Community Water Center, Del Amo Action Committee, Ella Baker Center for Human Rights, Environmental Justice Coalition for Water, Fresno Metro Ministry, Housing California, Just Transition Alliance, Physicians for Social Responsibility, PolicyLink, San Joaquin Valley Latino Environmental Advancement Project, Sierra Club-California, The City Project, Urban Habitat, Professor Michelle Wilde Anderson, Fresno County Supervisor Henry Perea, Kern County Supervisor Michael J. Rubio.

Opposition : City of Fountain Valley, County of Los Angeles.

**Sample Letter of Support**  
**SB 1174 (Wolk) – Planning for Disadvantaged Unincorporated Communities**

**[Date]**

Honorable Lois Wolk  
State Capitol, Room 4032  
Sacramento, CA 95814  
Fax: (916) 323-2304

**RE: SB 1174 (Wolk) – Support**

Dear Senator Wolk,

I am writing to express support for SB 1174 (Wolk), which would require a city or county to amend its general plan to address the needs of disadvantaged, unincorporated communities.

Over *one million*<sup>1</sup> Californians live in disadvantaged, unincorporated communities. Predominantly Latino and African American, these communities range from remote but concentrated historical settlements of industrial or agricultural laborers, to neighborhoods at the fringes of cities and towns that have been left out of city borders, to islands within cities, surrounded on all sides by an incorporated city but excluded from all of its services.

Residents of these areas often live without the most basic features of a safe and healthy environment—services like clean water, sewer lines, storm drains, streetlights, sidewalks, public transit, and safe housing. Dependent on county governance for urban needs, these communities are systematically underserved in the overall allocation of public resources and are frequently left out of local planning processes. This neglect and deprivation prevents these neighborhoods from realizing their potential as livable and economically viable communities and threatens the health, safety, and economic security of residents.

**[Describe your community, its needs, and your interest in this bill. Include a few specific examples of what the bill would mean for your community.]**

SB 1174 requires local governments to include these communities in the local planning process. Local governments, at the time of their next housing element update or comprehensive general plan update (which ever occurs first) will need to (1) identify disadvantaged unincorporated communities within their region; (2) conduct an assessment of the infrastructure conditions within these communities and identify existing deficiencies; and (3) develop goals, objectives, and a timeline for addressing those needs.

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<sup>1</sup> This number is derived from US Census data and only includes those residents living in disadvantaged Census Designated Places (unincorporated communities that are tracked by the US Census Bureau). It does not account for the residents living in approximately 650 additional unincorporated communities that Census does not track and for which there is no single reliable source of demographic and economic data by which to identify disadvantaged communities.

SB 1174 ensures that local planning responds to the unmet needs of some of California's poorest communities and supports the development of healthy, equitable, and prosperous communities for all Californians. We thank you for your leadership on SB 1174.

Sincerely,

CC: Martin Martinez, California Pan-Ethnic Health Network, Fax: (510) 832-1175

# SB 194

## Community Equity Investment Act of 2009

Author Senator Dean Florez

### The Problem

Over *one million*<sup>1</sup> Californians live in disadvantaged, unincorporated communities. Predominantly Latino and African-American, these communities range from remote but concentrated settlements of industrial or agricultural laborers to neighborhoods at the fringes of cities and towns that have been excluded from city borders. **Residents of these areas struggle to attain the most basic features of a safe and healthy environment**—services like clean water, sewerage lines, storm drains, streetlights, sidewalks and safe housing. Dependent on county governance for urban needs, **these communities are systematically underserved in the overall allocation of public resources.** 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.



### The Solution

SB 194 will expand equity and prosperity by:

1. **Reprioritizing existing funding** streams to ensure that public health, sustainable development, and infrastructure resources are directed to disadvantaged, unincorporated communities, and
2. **Incentivizing local planning** to address infrastructure deficits by linking state planning funds to the adoption of Community Equity Investment Plans;

Each Community Equity Investment Plan will:

1. Identify disadvantaged unincorporated communities within, or proximate to, a city or county's boundary;
2. Analyze basic infrastructure and identify infrastructure deficits in each disadvantaged, unincorporated community;
3. Establish goals to address infrastructure deficits; and
4. Include a comprehensive program of actions to accomplish these goals and address infrastructure deficits.

SB 194 will facilitate much needed investment in disadvantaged unincorporated communities and will ensure that all California communities are able to realize their potential as livable, healthy and economically viable places.

### Sponsors of SB 194

California Pan-Ethnic Health Network - California Rural Legal Assistance Foundation  
Center on Race, Poverty and the Environment - Planning and Conservation League - PolicyLink

<sup>1</sup> This number is derived from US Census Data and only includes those residents living in disadvantaged Census Designated Places (unincorporated communities that are tracked by the US Census Bureau). It does not account for the residents living in approximately 650 additional unincorporated communities that Census does not track and for which there is no single reliable source of demographic and economic data by which to identify disadvantaged communities.

# SB 194 (FLOREZ) – EQUITABLE INVESTMENT IN DISADVANTAGED COMMUNITIES

## THE PROBLEM

Over *one million*<sup>1</sup> Californians live in disadvantaged, unincorporated communities. Predominantly Latino and African-American, these communities range from remote but concentrated settlements of industrial or agricultural laborers to neighborhoods at the fringes of cities and towns that have been excluded from city borders. Residents of these areas struggle to attain the most basic features of a safe and healthy environment—services like clean water, sewage lines, storm drains, streetlights, sidewalks and safe housing. Dependent on county governance for urban needs, these communities are systematically underserved in the overall allocation of public resources and are frequently left out of local planning processes. This neglect and deprivation prevents these neighborhoods from realizing their potential as livable and economically viable communities and threatens the health, safety, and economic security of residents.

## THE SOLUTION

SB 194 focuses on one aspect of this problem: targeting Federal infrastructure dollars to those most in need.

Each year, the federal government sends millions of dollars directly to communities in California under the Community Development Block Grant (CDBG) program. CDBG dollars are an important source of investment for infrastructure improvements—one of the few sources available in low-income communities. Although communities are eligible for the dollars based largely upon the extent of poverty in their communities, too often the funds are used in ways that do not benefit lower-income households directly. SB 194 will prioritize existing funding streams to ensure that public health, sustainable development, and infrastructure resources are directed to those communities most in need. SB 194 would require counties and cities that receive Community Development Block Grants directly from the federal government to spend that money proportionately in the areas within their jurisdiction that have the greatest number of low- and moderate-income residents, and to target the majority of those funds to those most in need.

SB 194 provides much needed investment to disadvantaged unincorporated communities and ensures that all California communities are able to realize their potential as livable, healthy and economically viable places.

## SUPPORTED BY:

California Pan-Ethnic Health Network\*  
California Rural Legal Assistance Foundation\*  
Center for Environmental Health  
Center on Race, Poverty and the Environment\*  
The City Project

El Comité para el Bienestar de Earlimart  
Community Water Center  
Dolores Huerta Foundation

\*Denotes co-sponsoring organization

East L.A. Residents Association  
Ella Baker Center for Human Rights  
Environmental Justice Coalition for Water  
Fresno City Councilmember Henry T. Perea  
Fresno County Supervisor Henry Perea  
Fresno Metro Ministry  
Kern County Supervisor Michael Rubio  
Organización en California de Líderes Campesinas, Inc.

Physicians for Social Responsibility  
Planning and Conservation League\*  
PolicyLink\*  
Seven Trees Coalition  
Society for Positive Action  
Sonoma County Supervisor Efrén Carrillo

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<sup>1</sup> This number is derived from US Census Data and only includes those residents living in disadvantaged Census Designated Places (unincorporated communities that are tracked by the US Census Bureau). It does not account for the residents living in approximately 650 additional unincorporated communities that Census does not track and for which there is no single reliable source of demographic and economic data by which to identify disadvantaged communities.

## BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 194
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## THIRD READING

Bill No: SB 194  
Author: Florez (D)  
Amended: 1/7/10  
Vote: 21

SENATE LOCAL GOVERNMENT COMMITTEE : 3-2, 4/29/09  
AYES: Wiggins, Kehoe, Woik  
NOES: Cox, Aarstad

SUBJECT : Community Equity Investment Act of 2010

SOURCE : Author

DIGEST : This bill enacts the Community Equity Investment Act of 2010 and specifies how funds received under the federal State Community Development Block Grant Program are expended at the local government level.

ANALYSIS :Existing law

The Community Development Block Grant (CDBG) program was established by the federal Housing and Community Development Act of 1974 and is administered at the federal level by the U.S. Department of Housing and Urban Development (HUD). The primary objective of the CDBG program is the development of viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities for households of

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low and moderate income. HUD allocates money directly to large cities and metropolitan areas (CDBG entitlement funds).

The state CDBG program, which is administered by the Department of Housing and Community Development (HCD), provides federal funds to cities with a population of less than 50,000 and counties with a population in unincorporated areas of less than 200,000 (CDBG non-entitlement funds). In order to be eligible for non-entitlement CDBG funds, a nonmetropolitan city or county must submit its housing element to HCD.

This bill:

1. Requires a city or county which receives CDBG funds from HCD spend the funds within each supervisorial or city council district based on the percentage of low and moderate-income persons within each district.
2. Requires at least 75 percent of all CDBG fund benefit these targeted income groups.
3. Defines "targeted income groups" as families, households, and individuals whose income does not exceed 80 percent of the county median income, with adjustments for family and household size.
4. Contains related Legislative findings and declarations.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SUPPORT : (Verified 1/14/09)

California Pan-Ethnic Health Network  
California Rural Legal Assistance Foundation

Center on Race  
Community Water Center  
Dolores Huerta Foundation  
El Comite para el Bienestar de Earlimart  
Ella Baker Center for Human Rights  
Environmental Justice Coalition for Water  
Fresno City Councilmember Henry T. Perea

□

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Fresno County Supervisor Henry Perea  
Fresno Metro Ministry  
Organzacion en California de Lideres Campesinas Inc.  
Planning and Conservation League  
Poverty & the Environment  
Seven Trees Coalition

OPPOSITION : (Verified 1/14/10)

League of California Cities

JA:do 1/14/10 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

CURRENT BILL STATUS

MEASURE : S.B. No. 194  
AUTHOR(S) : Florez.  
TOPIC : Community Equity Investment Act of 2010.  
HOUSE LOCATION : ASM  
+LAST AMENDED DATE : 01/07/2010

TYPE OF BILL :  
Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
Non-State-Mandated Local Program  
Non-Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 01/28/2010  
LAST HIST. ACTION : In Assembly. Read first time. Held at Desk.  
COMM. LOCATION : SEN APPROPRIATIONS

TITLE : An act to add Section 50834.5 to the Health and Safety Code, relating to community development.

AMENDED IN SENATE JANUARY 7, 2010

AMENDED IN SENATE MAY 18, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 194**

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**Introduced by Senator Florez**

February 23, 2009

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~~An act to amend Section 50829 of, and to add Section 50834.5 to, the Health and Safety Code, to add Sections 75067 and 75130 to the Public Resources Code, to amend Section 2333.5 of the Streets and Highways Code, and to amend Section 13477.6 of the Water Code, relating to community development. An act to add Section 50834.5 to the Health and Safety Code, relating to community development.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 194, as amended, Florez. Community Equity Investment Act of 2009: 2010.

*Under the federal State Community Development Block Grant Program, funds are allocated to the state and administered by the Department of Housing and Community Development for projects and programs that meet the housing and economic development needs of persons and families of low or moderate income.*

*This bill would enact the Community Equity Investment Act of 2010. The bill would make legislative findings and declarations relating to disadvantaged, unincorporated communities. The bill would specify how funds received pursuant to the federal State Community*

~~Development Block Grant Program are expended at the local government level.~~

~~(1) Existing law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city, and of specified land outside its boundaries.~~

~~This bill would enact the Community Equity Investment Act of 2009 and declare the intent of the Legislature to create incentives for communities to engage in sustainable community planning that incorporates into each element of its general plan data and analysis, goals, policies and objectives, and feasible implementation measures addressing the presence of disadvantaged unincorporated communities in or near their boundaries, as specified.~~

~~(2) Existing law requires each city or county that requests funding pursuant to the federal State Community Development Block Grant Program to submit a housing element to the Department of Housing and Community Development, as specified.~~

~~This bill would also require each city or county, for applications submitted on or after January 1, 2013, to certify that it has amended its general plan in accordance with specified law. The bill would also specify how funds received pursuant to a federal entitlement are expended at the local government level.~~

~~(3) Existing law requires the Strategic Growth Council to manage and award financial assistance to specified entities for planning activities to achieve various environmental purposes.~~

~~This bill would require the council, in awarding the financial assistance, to give funding priority to any regional plan or other planning instrument that proposes to include an assessment and analysis of island and fringe communities, as specified.~~

~~(4) The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), an initiative bond measure, makes available \$90,000,000 for urban greening projects and \$90,000,000 for planning grants and planning incentives to encourage the development of regional and local land use plans that are designed for various purposes. Proposition 84 specifies that appropriation of those funds may be made only upon enactment of implementation legislation.~~

~~This bill would require the council, in awarding the above funds, to give priority to, and as appropriate, provide additional funding for, applicants that propose to incorporate the amendments to a general plan~~

that are specified in this bill into the planning activities receiving funding.

~~(5) Existing law requires the Department of Transportation, in consultation with the Department of the California Highway Patrol, to establish and administer a "Safe Routes to School" construction program pursuant to authority granted under specified federal law and to use federal transportation funds for construction of bicycle and pedestrian safety and traffic calming projects. Existing law requires the department to make grants available to local agencies under the program through a competitive grant process that considers various factors in rating the proposals.~~

~~This bill would additionally require, in rating a proposal, the consideration of the proposal's benefit to a disadvantaged community.~~

~~(6) Existing law authorizes the State Water Resources Control Board to assess a specified annual charge in connection with any financial assistance made pursuant to the revolving State Water Pollution Control Revolving Fund program in lieu of interest that otherwise would be charged. Existing law requires the proceeds generated from the imposition of the annual charge, along with other moneys, to be deposited in the State Water Pollution Control Revolving Fund Small Community Grant Fund. Existing law authorizes the board to expend the money in the fund, upon appropriation by the Legislature to the board, for grants for eligible projects under the revolving fund program that serves small communities. For the purpose of expending these funds, the board is required to give priority to projects that serve severely disadvantaged communities.~~

~~This bill would make a technical nonsubstantive change to that provision.~~

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

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

- 1 SECTION 1. (a) This act shall be known and may be cited as
- 2 the Community Equity Investment Act of 2009 2010.
- 3 (b) The Legislature finds and declares both of the following:
- 4 (1) There exists in California hundreds of disadvantaged
- 5 unincorporated communities, commonly referred to as "colonias."
- 6 There are more than 200 of these communities in the San Joaquin
- 7 Valley alone. Many of these communities are geographically

1 isolated islands, surrounded by the city limits of large and  
2 medium-sized cities.

3 (2) The conditions within these disadvantaged unincorporated  
4 communities evidence a distinct lack of public and private  
5 investment that presents a threat to the health and safety of the  
6 residents and fosters economic, social, and educational inequality.  
7 Many of these communities lack basic infrastructure, including,  
8 but not limited to, streets, sidewalks, storm drainage, clean drinking  
9 water, and adequate sewer service.

10 ~~(e) The Legislature further finds and declares that sustainable~~  
11 ~~community planning that addresses the infrastructure and~~  
12 ~~transportation inequities that exist within a locality's boundaries~~  
13 ~~is an important planning goal for each city and county. In order to~~  
14 ~~address these inequities, it is the intent of the Legislature, through~~  
15 ~~this act, to create incentives for communities to engage in~~  
16 ~~sustainable community planning that incorporates into each element~~  
17 ~~of its general plan, where appropriate, data and analysis, goals,~~  
18 ~~policies and objectives, and feasible implementation measures~~  
19 ~~addressing the presence of disadvantaged unincorporated~~  
20 ~~communities in or near their boundaries.~~

21 ~~SEC. 2. Section 50829 of the Health and Safety Code is~~  
22 ~~amended to read:~~

23 ~~50829. As a condition of receiving funds pursuant to this~~  
24 ~~chapter, an eligible city or county shall submit a housing element~~  
25 ~~to the department in accordance with the requirements of Article~~  
26 ~~10.6 (commencing with Section 65580) of Chapter 3 of Division~~  
27 ~~1 of Title 7 of the Government Code and for applications submitted~~  
28 ~~on or after January 1, 2013, certify that the city or county has~~  
29 ~~amended its general plan in accordance with the requirements of~~  
30 ~~Section 75067 of the Public Resources Code. However, except as~~  
31 ~~otherwise provided in Section 50830, no application for funds shall~~  
32 ~~be denied because of the content of the housing element or because~~  
33 ~~of the findings made by the department pursuant to Section 65585~~  
34 ~~of the Government Code.~~

35 ~~SEC. 3.~~

36 ~~SEC. 2. Section 50834.5 is added to the Health and Safety~~  
37 ~~Code, to read:~~

38 ~~50834.5. (a) Unless prohibited by federal law, where a federal~~  
39 ~~entitlement exists under the Community Development Block Grant~~  
40 ~~Program (24 C.F.R. Part 570), a city or county shall comply with~~

1 the following requirements *with* the funds made available pursuant  
2 to this chapter:

3 (1) The funds shall be expended within each supervisorial or  
4 city council district, to the extent those districts exist, based on the  
5 percentage of low- and moderate-income persons within each  
6 district.

7 (2) No less than 75 percent of all funds shall benefit targeted  
8 income groups.

9 (b) For the purposes of this section, “targeted income group”  
10 means families, households, and individuals whose income does  
11 not exceed 80 percent of the county median income, with  
12 adjustments for family and household size.

13  
14  
15 **All matter omitted in this version of the bill**  
16 **appears in the bill as amended in the**  
17 **Senate, May 18, 2009. (JR11)**  
18



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*Directors of Litigation,  
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May 6, 2010

Fresno Local Agency Formation Commission  
c/o Jeff Witte, Executive Officer  
c/o Henry Perea, Commissioner  
2115 Kern Street, Suite 310  
Fresno, CA 93721

**RE:** Request for Information regarding AB 853 and SB 1174

Dear Fresno LAFCO:

Pursuant to your request for information regarding AB 853 and SB 1174, we are providing you with background information on the problems those two pieces of legislation seek to address and how they would do so.

Throughout California there exist hundreds of disadvantaged unincorporated communities, which are home to an estimated one million people. Some are island communities that were created as cities grew and left them behind, others are fringe communities that sit on the edge of cities. Still others are what have been termed “legacy communities”; long standing unincorporated communities that are geographically separated from an incorporated cities. Hundreds of these communities are in the San Joaquin Valley and several in Fresno.

Almost all of these disadvantaged unincorporated communities share two things in common: They are disproportionately low-income and residents often live without the most basic features of a safe and healthy environment—services like clean water, sanitary sewer service, storm drains, streetlights, sidewalks, and safe housing. Dependent on county governance for urban needs, these communities are systematically underserved in the overall allocation of public resources and are frequently left out of local planning processes. This neglect and deprivation prevents these neighborhoods from realizing their potential as livable and economically viable communities and threatens the health, safety, and economic security of residents.

These infrastructure disparities create significant public health problems--- overflowing and leaking septic systems that bring raw sewage to the surface, unsafe drinking water, and threats to the physical safety of children heading to and from school without the safety of sidewalks or streetlights. It also creates barriers to investment in new or rehabilitated housing for residents that could improve both their safety and economic security.

One example of one such community is the community of Drummond and Jensen, just south of the city of Fresno. Within the City's sphere of influence but beyond its boundaries, the community remains dependent on inadequate septic systems. Community members are forced to empty their gray water into their yards and their septic tanks often back up. The community also lacks sidewalks and streetlights.

While the Cortese-Knox-Hertzberg Act has been amended in recent years to discourage the creation of new islands, addressing their existence and the existence

of fringe communities and confronting the serious infrastructure deficits within them remains a thorny problem.

Two bills in the state legislature this year take aim at the issue.

The first, SB 1174 (Wolk) addresses the planning side of the problem. It would require local governments to amend their general plans no later than January 1, 2013 to identify unincorporated communities within their boundaries, conduct an analysis of the infrastructure deficits within the community and set achievable goals to address those deficits.

The existence of many of these disadvantaged unincorporated communities arises in part from a lack of adequate planning. In fact, there are many unincorporated communities that have been left out entirely from general plans and consequently, long term planning processes. Accordingly, addressing these long-standing inequities requires first a focused plan—one that assess the extent of the problem, considers potential solutions and sets reasonable and achievable goals. Yet few local governments' focus any attention on the existence of these communities, much less how to solve their many challenges, in their local land use plans. SB 1174 would begin focusing local governments' planning efforts on these long standing issues.

The bill is complemented by nearly \$12 million in Proposition 84 planning dollars set aside in March by the Strategic Growth Council to support planning in disadvantage unincorporated communities. These grant funds will help defray the costs of general plan updates required by SB 1174.

The second bill is AB 853 (Arambula). The goal of this bill, which focuses on the LAFCO side of the equation, is to create a mechanism for disadvantaged unincorporated communities to seek annexation or extension of services. AB 853 will 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. 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 for the annexation when the unincorporated community is low-income and lacks basic infrastructure;
- Reform the tax transfer agreement process to ensure that an agreement is met and the annexation application is able to move forward; and
- Require LAFCo's approval of applications when the proposed annexation will result in public health and safety benefits for residents.

AB 853 is in the Senate and expected to be heard in policy committees beginning in June.

Sincerely,

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Phoebe Seaton, Program Director, Community Equity Initiative