

**To:** Mark Drew, Holly Alpert

**From:** Heather Crall

**Re:** Summary of Senate Bill 244

---

I have been asked to give a brief summary of California Senate Bill 244 (“SB-244”). Generally, SB-244 alters and expands upon several California Government Code sections regarding municipal services and planning. The statutory additions require local governments within the State to take specific, additional steps to analyze the needs of disadvantaged communities. The new requirements are imposed on three types of local governmental bodies: Local Agency Formation Commissions (“LAFCOs”), cities and counties.

1. Requirements for LAFCOs

SB-244 expands upon several statutorily mandated duties of LAFCOs. Since 2000, LAFCO’s have been required to “determine the sphere of influence of each local governmental agency within the county” in which they operate. Cal. Gov. Code s. 56425(a). As part of making these sphere of influence determinations, each LAFCO is required to conduct a “Municipal Services Review” for every identified sphere of influence, and to prepare a written statement of its determinations with respect to growth projections, present and planned municipal services capacity, infrastructure needs, and several other related areas. See Cal. Gov. Code. s. 56430.

SB-244 adds to a LAFCO’s duties in three areas. First, additions to Code section 56430 require each LAFCO to consider disadvantaged unincorporated communities while performing Municipal Service Reviews. Specifically, each LAFCO must include in its written review a determination with respect to the “location and characteristics” of any disadvantaged unincorporated communities, as well as “the present and planned capacity of public facilities...including sewers, water, and structural fire protection needs or deficiencies in any disadvantaged, unincorporated communities” in each sphere of influence. Cal. Gov. Code s. 56430(a)(2-3).

Secondly, SB-244 requires a LAFCO to include in all mandatory sphere of influence updates “the present and probable need for [certain public facilities and services] of any disadvantaged unincorporated communities within the existing sphere of influence.” Cal. Gov. Code s. 56425(e)(5). This requirement applies to any sphere of influence updates made on or after July 1, 2012. Id.

Finally, SB-244 imposes certain restriction on a LAFCO’s ability to approve city annexations greater than 10 acres where there is a disadvantaged unincorporated community contiguous to the area of proposed annexation. Under the new requirements, a LAFCO is prohibited from approving such a city annexation unless an application to annex the nearby DUC has also been filed or several specific exceptions have been met. Cal. Govt. Code s. 56375(a)(8).

## 2. Requirements for Cities and Counties

Both cities<sup>1</sup> and counties have been giving additional responsibilities by SB-244. The law requires that, on or before the date for the next adoption of its Housing Element, each city or county “review and update the land use element of its general plan” to include specific information regarding the disadvantaged unincorporated communities within its boundaries. Cal. Gov. Code s. 65302.10(5)(b)(1).

Cities must identify specific types of disadvantaged unincorporated communities within their spheres of influence, and counties must do the same within their legal boundaries. Cities must identify “island” and “fringe” communities, as defined, in their spheres of influence. Cal. Gov. Code s. 65302(5)(b)(1). Counties must identify unincorporated “legacy” communities, as defined, within their borders but outside the sphere of influence of any city. Id.

For each identified community, every city or county must include a description of the community and a map designation of its location. Cal. Gov. Code s. 65302(5)(b)(1). Then, each city and county must include in the Land Use element of its general plan “an analysis of water, wastewater stormwater drainage and structural fire protection needs or deficiencies” for each identified disadvantaged unincorporated community. Cal. Gov. Code s. 65302(5)(b)(2). Finally, each city or county must include in its plan update “an analysis, based on existing available data, of benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible.” Cal. Gov. Code s. 65302(5)(b)(3). Basically, the law requires cities and counties to think specifically about the municipal needs of their poor communities and to attempt to procure necessary funds to have these needs addressed.

## 3. Definitions

SB-244 adds several definitions to the Govt. Code that help local governments interpret and comply with the law. The new identification and analysis requirements apply specifically to “disadvantaged unincorporated communities,” which are defined as “fringe, island or legacy communit[ies] in which the median household income is 80 percent or less than the statewide median household income.” Cal. Gov. Code s. 65302.10(a)(2). Fringe communities are inhabited and unincorporated communities that are “within a city’s sphere of influence,” while island communities are those that “are surrounded or substantially surrounded by one or more cities or by one or more cities

---

<sup>1</sup> The term “city” is not defined in SB-244, however, the Cal. Govt. Code section dealing with LAFCOs states that the term “city” includes “any incorporated or general law city, including any city the name of which includes the word “town.” Cal. Govt. Code s. 56023. So, Mammoth Lakes can’t get out of complying with this new legislation just because it chooses to call itself a town. Communities in California are not differentiated by population size, rather by the existence of local government. All incorporated communities that have local government and provide municipal services are cities, regardless of population. See <http://guidetogov.org/ca/state/overview/municipal.html> for a decent description of the formation and governance of California cities. So, Mammoth Lakes is a city, as is San Diego, and they are no different legally in the eyes of the State.

and a county boundary.” Cal. Gov. Code s. 65302.10(a)(3-4). Legacy communities are “geographically isolated” communities that are “inhabited and [have] existed for at least 50 years.” Cal. Gov. Code s. 65302.10(a)(5). The term “community” is defined in the new legislation as “an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to each other.” Cal. Gov. Code s. 65302.10(a)(1). Finally, an “inhabited area” has been defined for purposes of SB-244 as “territory within which there reside 12 or more registered voters...all other territory shall be deemed ‘uninhabited’”. Cal. Gov. Code s. 56046.

By reading all of the definitions together, cities, counties and LAFCO’s can understand exactly the types of communities within their areas of authority to which the new law applies. In short, if a settlement has 10 or more dwelling units, 12 or more registered voters, is not an incorporated city, meets the MHI driven definition of disadvantaged, and is either “fringe,” “island” or “legacy,” it will need to be included in the new analysis required by this law.

#### 4. Funding and Enforcement

The changes and additions made to the Cal. Govt. Code required by SB-244 create what is called a “state mandated local program.” Generally, whenever the state Legislature or a state agency mandates a new program or “higher level of service” on local government, the state must provide funds to reimburse local governments for their associated costs in compliance with the new legislation. California Constitution, Article XIII B. Local governments must keep track of their costs and apply for reimbursement to the Commission on State Mandates, which is responsible for determining if a given piece of legislation or agency rulemaking actually creates a state mandate requiring reimbursement, and, if so, how reimbursement should be measured. For a detailed description of the state mandate process, see Commission on State Mandates, Guide to the State Mandate Process, *available at* [http://www.sco.ca.gov/Files-ARD-Local/mancost\\_csmguidebook.pdf](http://www.sco.ca.gov/Files-ARD-Local/mancost_csmguidebook.pdf).

The state legislators responsible for introducing SB-244 believed that it might in fact create a state mandated local program, but argued that the legislation falls into a categorical exception to the reimbursement requirement called the “local fee disclaimer.” See SB-244, as Chaptered, Section 11. The local fee disclaimer states that the Commission on State Mandates “shall not find costs mandated by the state...in any claim submitted by a local agency if...the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Cal. Gov. Code 17556(d). Whether or not the significant costs associated with complying with the new SB-244 requirements are reimbursable or not will likely be tested before the Commission on State Mandates at some point in the future.

#### 5. Local Application

Inyo, Mono, Kern and San Bernadino Counties all have LAFCO’s that will be responsible for complying with the LAFCO-related requirements of SB-244. Additionally, each county planning department will have to complete the requisite identification of legacy communities and assessment of their water and fire services. LAFCO’s generally work in close contact with the planning departments of the counties in which they sit, so there is a potential for significant collaboration in this area.

Mono and Inyo County have one incorporated city each; Mammoth Lakes and Bishop, respectively. Kern County has 11 incorporated cities, including Ridgecrest, which is in our IRWM region. San Bernadino County has 24 incorporated cities. These cities will have to identify any fringe or island communities within their spheres of influence (as defined by county LAFCOs) and complete the required analysis with respect to these communities.

Because Inyo, Mono, and the parts of Kern and San Bernadino Counties served by our IRWM Group are generally rural, economically disadvantaged, and geographically spread out, it is likely that many of the small communities that exist throughout our region will be clearly identifiable as “disadvantaged unincorporated communities” under SB-244 without issue. However, the guidance on the law does provide some wiggle room. While the text of SB-244 uses the MHI based definition of disadvantaged, guidance from the Office of Policy and Research indicates that the State is aware that census level income data is an imperfect tool for capture of all small communities that could be served by this law. See Technical Advisory, Senate Bill 244, State of California Office of Planning and Research, pages 5-8 (available at [www.opr.ca.gov](http://www.opr.ca.gov)). OPR encourages local governments to do additional research if necessary and to employ local policies that “conform to the intent of SB244 to remedy the exclusion of communities from planning processes and critical municipal services.” Id., at 5. That is to say that OPR believes that LAFCO’s, counties and cities should err on the side of being inclusive when conducting their identification and analyses.