

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1449 (Caballero) – As Amended April 19, 2022

SENATE VOTE: 39-0

SUBJECT: Office of Planning and Research: grant program: annexation of unincorporated areas.

SUMMARY: Requires the Governor’s Office of Planning and Research (OPR) to establish, upon appropriation by the Legislature, the Unincorporated Area Annexation Incentive Program (Program). Specifically, **this bill:**

- 1) Defines the following terms:
 - a) “City” as any incorporated chartered or general law city, including any city the name of which includes “town.”
 - b) “Director” as the Director of State Planning and Research.
 - c) “Fully surrounded” as the entire perimeter of the unincorporated area adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.
 - d) “Program” as the Unincorporated Area Annexation Incentive Program.
 - e) “Qualified urban use” as any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
 - f) “Substantially surrounded” as at least 75% of the perimeter of the unincorporated area adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.
 - g) “Unincorporated area” as inhabited territory, as defined, that is not part of a city or that a city has annexed according to the process described in local agency formation commission (LAFCO) law.
- 2) Requires OPR to establish, upon appropriation by the Legislature, the Program.
- 3) Specifies that pursuant to the Program, OPR may issue, subject to approval by the Director, a grant to a city for the purpose of funding projects related to the proposed or completed annexation of an unincorporated area into the city.
- 4) Provides that the Director shall not issue a grant to a project unless that project is related to the annexation of a substantially surrounded unincorporated area.
- 5) Specifies that the Director may issue grants that fund projects related to municipal infrastructure including, but not limited to, roads, street lighting, sidewalks, curbs, gutters, stormwater management infrastructure, parks, and greenways.

- 6) Requires the Director to prioritize the issuance of grants to applications to fund projects related to any of the following:
 - a) Annexation of fully surrounded unincorporated areas.
 - b) Annexations that would result in the improvement of public health and safety infrastructure.
 - c) Annexation of disadvantaged unincorporated communities (DUCs), as defined.
- 7) Specifies that the Director shall require a city to submit an application to the office in order to participate in the Program. The application shall include, but not be limited to, all of the following:
 - a) A description of the unincorporated area and the population that resides in the unincorporated area.
 - b) A statement on the infrastructure that the project proposes to construct or improve, including the estimated capital cost of the infrastructure and the timeline for the development of the infrastructure.
 - c) A funding plan, including estimated funds from the Program, for the costs and ongoing maintenance of the infrastructure.
- 8) Provides that a project funded by the Program shall not receive funding that exceeds a maximum threshold determined by the Director.
- 9) Specifies that any dollar contribution a city makes toward a project funded by the Program shall be matched by OPR on a dollar-for-dollar basis. Matching funds from OPR shall be subject to the maximum threshold determined by the Director.
- 10) Requires OPR to develop guidelines for the purposes of implementing the Program no later than September 1, 2023. In preparing the guidelines, OPR shall consult with representatives of all of the following:
 - a) LAFCOs.
 - b) Counties.
 - c) Cities.
 - d) Residents of disadvantaged unincorporated communities, as defined.
- 11) Provides that the guidelines developed pursuant to 10) above shall not be subject to state regulation and rulemaking requirements.

EXISTING LAW:

- 1) Creates a LAFCO in each county to control the boundaries of cities, county service areas, and most special districts.

- 2) Requires LAFCO to approve an annexation of an unincorporated island if it meets statutory requirements, subject to some exclusions.
- 3) Requires LAFCO to waive any protest proceedings for an island annexation.
- 4) Prohibits annexations to a city territory or contiguous territories greater than 10 acres if a DUC is contiguous with the territory proposed for annexation, unless there is an application with the commission to annex the unincorporated area or if the residents of the affected territory oppose annexation.
- 5) Requires cities and counties to identify, describe, and map in their land use elements, DUCs that are any of the following:
 - a) Island communities that are completely surrounded by a city.
 - b) Fringe communities that are adjacent to or within the sphere of influence of a city.
 - c) Legacy communities that are more remote but long established communities that may not have a nearby city that could provide services.

FISCAL EFFECT:

According to the Senate Appropriations Committee:

- 1) OPR estimates ongoing costs of at least \$550,000 annually for 3.0 PY of new staff to establish and administer the new grant Program. Staff notes these costs could be significantly higher, depending on the level of funding provided for the Program. See staff comments. (General Fund)
- 2) Unknown annual cost pressures, likely in the tens of millions annually, at a minimum, to fund the grant Program. (General Fund)

COMMENTS:

- 1) **Bill Summary.** This bill directs OPR to establish, upon appropriation by the Legislature, the Program, and allows OPR to issue a grant to a city for the purpose of funding projects related to the proposed or completed annexation of an unincorporated area into the city, and requires the project to be related to the annexation of a substantially surrounded unincorporated area. This bill also allows these grants to fund projects related to municipal infrastructure including, but not limited to, roads, street lighting, sidewalks, curbs, gutters, storm water management infrastructure, parks, and greenways. Additionally, this bill requires the Director of OPR to prioritize the issuance of grants to applications to fund specified projects and requires a city to submit an application to OPR in order to participate in the Program.

Lastly, this bill requires OPR to develop guidelines for purposes of implementing the Program no later than September 1, 2023. In preparing the guidelines, OPR must consult with representatives of LAFCOs, counties, cities, and residents of DUCs. This bill is sponsored by the author.

- 2) **Author’s Statement.** “Throughout California, many residents live in unincorporated areas that lack basic city services and infrastructure such as paved roads, sidewalks, streetlights, and storm drains. The absence of these services and infrastructure creates public health and safety risks. For example, when rainy conditions cause an area without sidewalks and storm drains to flood, community members are forced to walk in the road or in muddy conditions. In some areas of the state, these unincorporated areas can be fully or significantly surrounded by a city’s boundaries, resulting in a patchwork of unincorporated islands that could benefit greatly from annexation by the city. In many cases, the cost to develop an unincorporated area is a major impediment for cities interested in annexing these islands.

“SB 1449 creates the Unincorporated Area Annexation Program administered by the Governor’s Office of Planning and Research to incentivize the annexation of unincorporated islands. Through this grant program, a city that is annexing an unincorporated area can apply to receive funding to support the development of infrastructure and services in the unincorporated area. Grants will fund public health and safety infrastructure such as roads, sidewalks, and storm drains, but can also be used for parks and greenways. SB 1449 will reduce the costs of annexation by providing state resources for cities investing in improving the quality of life and safety for its community members.”

- 3) **LAFCOs.** The Cortese-Knox-Hertzberg Act (CKH Act) creates a LAFCO in each county to control the boundaries of cities, county service areas, and most special districts. The courts repeatedly refer to LAFCOs as the Legislature’s watchdog over boundary changes. Controlling boundaries means LAFCOs influence the timing and location of development, because they generally determine the type of services that are available to support development—and those that are not. The Legislature created LAFCOs to discourage urban sprawl, preserve open space and prime agricultural lands, encourage the orderly formation and development of local agencies, and to ensure the efficient provision of government services. LAFCOs must adopt written policies to further these goals.

Local governments, in almost all cases, can only exercise their powers and provide services where LAFCO allows them to: within their boundaries (which are set by LAFCO), within their SOI but outside their boundaries (with authorization by LAFCO), and outside their SOI to address a major threat to public health if the extension is consistent with LAFCO’s policies. LAFCOs are charged with ensuring that services are effectively and efficiently delivered to all communities throughout the state.

- 4) **Island Annexations.** In 1977, the Legislature enacted the Municipal Organization Act, which created an expedited procedure for cities to annex unincorporated islands surrounded or “substantially surrounded” by the annexing city [AB 1533 (Knox), Chapter 1253, Statutes if 1977]. If a city applies to annex an unincorporated island, the LAFCO must approve the annexation if the island meets statutory requirements, subject to some exclusions. The territory to be annexed must:
- a) Be less than 150 acres and constitute an entire unincorporated island.
 - b) Be surrounded or substantially surrounded by the annexing city, or by the annexing city and one of the following: a county boundary, other adjacent cities, or the Pacific Ocean.

- c) Be substantially developed or developing.
 - d) Not be prime agriculture land.
 - e) Benefit from the change of organization or is receiving benefits from the annexing city.
- 5) **Addressing Service Deficiencies.** LAFCOs, along with the planning agencies of cities and counties, are supposed to ensure that services are effectively and efficiently delivered to all communities throughout the state. Nevertheless, some communities continue to lack adequate public services, including safe drinking water and functioning wastewater systems, often due to their low-income status. In some cases, these disadvantaged communities are contained within a city but lack certain services like adequate water and wastewater services. In other cases, these communities are located in unincorporated areas.

In recent years, the Legislature has taken several steps to try to address some of the service problems experienced by DUCs. SB 244 (Wolk), Chapter 513, Statutes of 2011, aimed to prevent cities from carving out DUCs by generally prohibiting annexations of small areas to a city if a DUC is contiguous with that area. SB 244 also required LAFCOs to include in a municipal service review a description of the location and characteristics of any DUCs within or contiguous to the sphere of influence and to consider the water, sewer, or fire protection needs of DUCs within the sphere when considering updates. Finally, SB 244 required cities and counties to review the water and fire service needs of DUCs in their general plans. SB 244 made it easier for LAFCOs to identify boundary changes and governmental reorganizations necessary to fix problems faced by disadvantaged communities.

- 6) **Arguments in Support.** According to the California Association of LAFCOs (CALAFCO), “Substantially surrounded unincorporated areas (also known as ‘islands’), have long been a concern for LAFCOs because of the problems that they create for cities, counties, the various agencies and special districts responsible for providing the area with urban services and facilities and, of course, the residents. Annexation of these islands in a transparent and public process results in better and sustainable infrastructure that efficiently delivers services such as water, sewer, trash collection, etc. We are particularly supportive of the provisions that would make the program applicable to both proposed and completed annexations since many LAFCOs have been diligently working with small cities on island annexations for some time.

“CALAFCO is also supportive of having the various stakeholders provide input on the development of the program guidelines, as the end product will then be informed by the needs and expertise of those most affected by it. We, of course, stand ready to assist in any way possible. By providing grant funds to help alleviate the cost of infrastructure build-outs, SB 1449 will provide much-needed assistance for the cities that would be annexing these areas.”

Arguments in Opposition. None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

CALAFCO
California State Association of Counties
City of San Bernardino
League of California Cities
Orange County LAFCO

Opposition

None on file

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958