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TO: MEMBERS, FORMATION COMMISSION
FROM: DAVID CHURCH, EXECUTIVE OFFICER
DATE: NOVEMBER 15, 2018
SUBJECT: LEGISLATIVE UPDATE – SB 1215 SEWER SERVICE TO DISADVANTAGED COMMUNITIES

Recommendation. It is respectfully recommended that the Commission receive and file this report on newly passed legislation; SB 1215.

SB 1215 (Hertzberg D). Provision of sewer service to disadvantaged communities.

Summary. This bill has been signed into law and allows the regional water quality control boards (regional boards) to require a city, special district or county to provide of sewer service to disadvantaged communities with failing onsite sewer/septic systems. This is sewer side of a previously approved law, SB 88, which gave the regional board the authority to require water service by a jurisdiction in close proximity to a disadvantaged community. SB 1215 provides that where a disadvantaged community or residents of a disadvantaged community are served by one or more inadequate onsite sewage treatment systems, the regional board may order the provision of sewer service by a receiving sewer system to the disadvantaged community, or to all or a portion of the area within the disadvantaged community. The regional board may set timelines and performance measures to facilitate completion of the provision of sewer service.

Attachment A:
Coalition
Opposition Flyer

Attachment B:
SB 1215

SECTION 1. The Legislature finds and declares that it is critical to protect drinking water and groundwater supplies from inadequate onsite sewage treatment systems, as defined in Section 13288 of the Water Code.

This bill would, except as provided, authorize the regional board to order the provision of sewer service by a special district, city, or county to a disadvantaged community, as defined, and under specified circumstances. By authorizing the regional board to require a special district, city, or county to provide sewer service, this bill imposes a state-mandated local program.

By-Passing LAFCO. As indicated below, the bill also by-passes existing processes implemented by the Local Agency Formation Commission under the Cortese-Knox-Hertzberg Act. This bill specifically circumvents the LAFCO process and allows the regional board to require a jurisdiction to hook up properties that are disadvantaged community to a receiving sewer system that is within three miles of a failing system. The bill would require the regional board to

take certain actions before ordering the provision of sewer service that are similar to those required for the consolidation or extension of water systems; noticing, a public hearing, etc. There is not a protest process for local residents or a local agency. The bill would authorize the state board to develop and adopt policy, through the adoption of a policy handbook, that provides a process by which members of disadvantaged communities may petition the regional board for consideration of provision of sewer service.

13289 (e) Division 3 (commencing with Section 56000-CKH ACT) of Title 5 of the Government Code shall not apply to an action taken by the state board or the regional board pursuant to this section.

13289. (a) (1) Except as provided in paragraph (4), where a disadvantaged community or residents of a disadvantaged community are served by one or more inadequate onsite sewage treatment systems, the regional board may order the provision of sewer service by a receiving sewer system to the disadvantaged community, or to all or a portion of the area within the disadvantaged community. The regional board may set timelines and performance measures to facilitate completion of the provision of sewer service.

CALAFCO and a number of other local government organizations took an oppose position on this bill. Some of the reasons for this opposition were found in the attached Floor Alert from a coalition of these organizations:

- Rural County Representatives of California (RCRC)
- California State Association of Counties (CSAC)
- Leagues of California Cities
- California Special District Association (CSDA) and CALAFCO

LAFCO References. The bill still circumvents the LAFCO process and therefore CALAFCO opposed the bill. The bill does contain a number of references to LAFCO. CALAFCO worked with the author to modify the bill and did get a number of changes;

(C) Consult with, and consider input from, the relevant local agency formation commission regarding the sewer service in the affected area, the recommendations for improving service in a municipal service review, and any other relevant information.

(iii) Upon a showing of good cause, the deadline set forth in clause (i) may be extended by the regional board at the request of the potential receiving sewer system, the affected residents, or the local agency formation commission with jurisdiction over the sewer system.

(iv) There is no pending local agency formation commission process that is likely to resolve the problem in a reasonable amount of time.

(B) Ensure payment of standard local agency formation commission costs caused by the regional board's order. Additional costs or fees related to provision of sewer service, including, but not limited to, other public works costs or upgrades, shall not be used to delay the provision of sewer service required by the order.

(C) Coordinate with the appropriate local agency formation commission and other relevant local agencies to document the change of organization or reorganization.

Funding Mechanism. The bill does provide a mechanism for funding services, but it is at the discretion of the regional board and state legislature as described on the previous pages. 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 with regard to certain mandates no reimbursement is required by this act for a specified reason. With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(A) As necessary and appropriate, make funds available, upon appropriation by the Legislature, to the receiving sewer system for the costs of completing the provision of sewer service, including, but not limited to, compensation for any capacity lost as a result of the provision of sewer service, by paying the receiving sewer system's capacity connection fee at the rate it charges others, providing additional capacity needed as a result of the provision of sewer service, and paying legal fees.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Regional Board Process. The bill sets up a process for a disadvantaged community to be served by a City, Special District, or County:

- Disadvantaged Community with a failing sewer system is identified-by either the Regional Board or by Petition from area residents/landowners
- Area must be within three miles of a city, county, or district sewer system
- Regional Board encourages voluntary resolution through annexation or outside user agreement approvals by LAFCO
- Regional Board consults with State Board, Local Planning Authority, LAFCO
- Regional Board notifies area residents and landowners and jurisdiction that will be receiving the sewer service
- Regional Board can allow a reasonable time frame to negotiate annexation or outside user agreement-no more than six months
- Regional Board evaluates financial and operational issues for hooking up the area
- Regional Board orders the hook up of the disadvantaged community to the receiving sewer system

Attachment A

Coalition Opposition Flyer to SB 1215



**California Special
Districts Association**
Districts Stronger Together

FLOOR ALERT – FILE ITEM # 322

LOCAL GOVERNMENT COALITION OPPOSES SB 1215 (HERTZBERG): SEPTIC TO SEWER SERVICE EXTENSIONS

The above listed statewide local government organizations must regrettably express our opposition to SB 1215 (Hertzberg), which grants new authority to the Water Boards to order local governments to extend sewer service to certain septic users in disadvantaged communities. The August 21 amendments did not adequately address local government concerns with the proposed approach outlined in the bill. As amended, the bill does the following:

- Gives broad new authority to the Water Boards to compel property owners who have functioning septic systems that aren't considered "inadequate" to connect to the sewer;
- Mandates a "standby charge" for residents who opt out of the service extension, even when there is no actual residential connection to the sewer system – this is legally questionable under Prop 218 and Prop 26;
- Excludes key sewer service providers from the process by failing to recognize the complicated nature of sewage collection and treatment systems, which are often jointly managed by multiple public agencies;
- Doesn't provide for due process for a local receiving sewer agency to contest the order for extension of service;
- Contains vague language relative to the types of local agency and residential costs that would be required to be considered in the Water Board's financing package.

Disadvantaged communities with failing septic systems should be provided the opportunity to connect to a sanitary sewer system, and the key impediments are proximity to an existing sewer system and cost. Unfortunately, the approach outlined in SB 1215 fails to solve these problems and doesn't represent a practical solution to realizing and achieving this worthy objective.

For these reasons, the local government organizations listed above urge your "NO" vote on SB 1215 on the Assembly Floor.

For more information contact: Jessica Gauger (CASA) jgauger@casaweb.org; Cara Martinson (CSAC) cmartinson@counties.org; Erin Evans-Fudem (League) eevansfudem@cacities.org; Mary-Ann Warmerdam (RCRC) MWarmerdam@rcrcnet.org; Rylan Gervase (CSDA) rylang@csda.net; Pamela Miller (CALAFCO) pmiller@calafco.org

Attachment B

SB 1215 as signed by the Governor

Senate Bill No. 1215

CHAPTER 982

An act to add Chapter 4.3 (commencing with Section 13288) to Division 7 of the Water Code, relating to water.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1215, Hertzberg. Provision of sewer service: disadvantaged communities.

Existing law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

Existing law, the California Safe Drinking Water Act, provides for the operation of public water systems and imposes on the State Water Resources Control Board various responsibilities and duties. The act authorizes the state board to order consolidation with a receiving water system where a public water system or a state small water system, serving a disadvantaged community, as defined, consistently fails to provide an adequate supply of safe drinking water. The act authorizes the state board to order the extension of service to an area that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. The act requires the state board, before ordering consolidation or extension of service, to, among other things, consult with specified entities, hold at least one public meeting, and make certain findings. The act authorizes the state board to set timeline and performance measures to facilitate completion of consolidation.

Existing law, the Porter-Cologne Water Quality Control Act, requires each California regional water quality control board to adopt water quality control plans and to establish water quality objectives in those plans, considering certain factors, to ensure the reasonable protection of beneficial uses and the prevention of nuisance.

This bill would, except as provided, authorize the regional board to order the provision of sewer service by a special district, city, or county to a disadvantaged community, as defined, under specified circumstances. By authorizing the regional board to require a special district, city, or county to provide sewer service, this bill would impose a state-mandated local program. The bill would require the regional board to take certain actions before ordering the provision of sewer service that are similar to those required for the consolidation or extension of water systems. The bill would authorize the state board to develop and adopt policy, through the adoption of a policy handbook, that provides a process by which members of

disadvantaged communities may petition the regional board for consideration of provision of sewer service.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. The Legislature finds and declares that it is critical to protect drinking water and groundwater supplies from inadequate onsite sewage treatment systems, as defined in Section 13288 of the Water Code.

SEC. 2. Chapter 4.3 (commencing with Section 13288) is added to Division 7 of the Water Code, to read:

CHAPTER 4.3. SEWER SERVICE

13288. For purposes of this chapter, the following definitions apply:

(a) "Affected residence" means a residence within a disadvantaged community that may be subject to provision of sewer service pursuant to this chapter.

(b) "Affected resident" means a resident or a property owner of an affected residence.

(c) "Annexation" has the same meaning as set forth in Section 56017 of the Government Code.

(d) "Disadvantaged community" means a disadvantaged community as defined in Section 79505.5.

(e) "Extension of service" has the same meaning as set forth in Section 56133 of the Government Code.

(f) "Inadequate onsite sewage treatment system" means an onsite sewage treatment system that has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state.

(g) (1) "Onsite sewage treatment system" means an onsite sewage treatment system, as defined in Section 13290, that is not operated by a local agency, as defined in Section 56064 of the Government Code, or a utility regulated by the Public Utilities Commission.

(2) "Onsite sewage treatment system" includes, but is not limited to, a septic tank, cesspool, leach field, and seepage pit.

(h) “Provision of sewer service” means the provision of sanitary sewer service, including the collection or treatment of sewage, to a disadvantaged community by any of the following processes:

(1) Annexation where the receiving sewer system is a special district.

(2) Extension of service where the receiving sewer system is a city, county, or special district.

(3) Additional sewer service provided within city, county, or special district boundaries.

(i) “Receiving sewer system” means the sewer system that provides service to a disadvantaged community pursuant to this chapter.

(j) “Special district” means a special district as defined in Section 56036 of the Government Code.

13289. (a) (1) Except as provided in paragraph (4), where a disadvantaged community or residents of a disadvantaged community are served by one or more inadequate onsite sewage treatment systems, the regional board may order the provision of sewer service by a receiving sewer system to the disadvantaged community, or to all or a portion of the area within the disadvantaged community. The regional board may set timelines and performance measures to facilitate completion of the provision of sewer service.

(2) In issuing an order pursuant to paragraph (1), the regional board is not required to determine that all of the onsite sewage treatment systems in the disadvantaged community, or portion of the disadvantaged community, to be provided with sewer service are inadequate onsite sewage treatment systems.

(3) (A) The property owner of an affected residence may opt out of an order for the provision of sewer service for a maximum of five years for the residence from the date of the issuance of the order by demonstrating to the regional board that the affected residence is served by an onsite sewage treatment system that meets both of the following criteria:

(i) The onsite sewage treatment system was installed no more than 10 years prior to the issuance of the order.

(ii) The onsite sewage treatment system is not an inadequate onsite sewage treatment system.

(B) A property owner who opted out pursuant to subparagraph (A) shall be responsible for the payment of reasonable standby charges to the receiving sewer system.

(C) Subsequent property owners of an affected residence that has opted out pursuant to subparagraph (A) shall have the option of opting in to the provision of sewer service pursuant to the order upon gaining ownership of the affected residence. The subsequent property owners shall have access to all financial assistance made available under this section, including connection fees and infrastructure costs, if any, available to the affected residence.

(4) The regional board shall not require the provision of sewer service to a disadvantaged community by a receiving sewer system if the service

territory of the receiving sewer system is more than three miles away from the disadvantaged community.

(b) (1) Before ordering the provision of sewer service as provided in this section, the regional board shall do all of the following:

(A) Encourage voluntary provision of sewer service, which may include voluntary annexation to a city.

(B) Consider other enforcement remedies specified in this division.

(C) Consult with, and consider input from, the relevant local agency formation commission regarding the sewer service in the affected area, the recommendations for improving service in a municipal service review, and any other relevant information.

(D) Consult with the state board.

(E) Consult with, and fully consider input from, the local government with land use planning authority and environmental health oversight over the affected area, particularly regarding any information in the general plan required by Section 65302.10 of the Government Code.

(F) (i) Notify the potential receiving sewer system and affected residents within the disadvantaged community, and establish a reasonable deadline of no less than six months, unless a shorter period is justified, for the potential receiving sewer system and the affected property owners to negotiate annexation, extension of service, or another means of providing an adequate sewage service.

(ii) During the period set forth in clause (i), the regional board shall provide technical assistance and work with the potential receiving sewer system and the affected residents to develop a financing package that benefits both the receiving sewer system and the affected residents by addressing the receiving sewer system's planning and capital costs and the affected residents' connection costs.

(iii) Upon a showing of good cause, the deadline set forth in clause (i) may be extended by the regional board at the request of the potential receiving sewer system, the affected residents, or the local agency formation commission with jurisdiction over the sewer system.

(G) Hold at least one public meeting at the initiation of the process established in this section in a place as close as feasible to the affected areas. The regional board shall make reasonable efforts to provide a 30-day notice of the meeting to the affected residents and all affected local government agencies and sewer service providers. The meeting shall provide representatives of the affected residents and the potential receiving sewer system an opportunity to present testimony. The meeting shall provide an opportunity for public comment.

(H) Provide opportunity to submit comments by mail or electronic mail during the 30-day notice period and for at least one week after the public meeting.

(I) Consider whether existing programs or alternative methods are available and feasible.

(J) Consider the affordability of the provision of sewer service to the disadvantaged community.

(2) Upon expiration of the deadline set by the regional board pursuant to subparagraph (F) of paragraph (1), the regional board shall do the following:

(A) Consult with the potential receiving sewer system and the affected residents.

(B) Review comments received during the public meeting held, and comments received, pursuant to subparagraph (G) of paragraph (1).

(3) Before ordering the provision of sewer service, the regional board shall do both of the following:

(A) Find all of the following:

(i) One or more affected residences are served by an inadequate onsite sewage treatment system.

(ii) Reasonable efforts to negotiate voluntary provision of sewer service were made.

(iii) The provision of sewer service is appropriate and technically and economically feasible.

(iv) There is no pending local agency formation commission process that is likely to resolve the problem in a reasonable amount of time.

(v) The provision of sewer service is an effective and cost-effective means to address the inadequate onsite sewage treatment system.

(vi) The capacity of the proposed interconnection needed to accomplish the provision of sewer service designed to serve the disadvantaged community, as determined by the regional board.

(B) Hold a subsequent public meeting in a place as close as feasible to the affected areas if a period of six or more months has passed since the public meeting held pursuant to subparagraph (G) of paragraph (1). The regional board shall make reasonable efforts to provide a 30-day written notice of the meeting to the affected residents and all affected local government agencies and sewer service providers. The meeting shall provide representatives of the affected residents and the potential receiving sewer system an opportunity to present testimony. The meeting shall provide an opportunity for public comment.

(4) Upon the issuance of a regional board's order requiring provision of sewer service, the state board shall do all of the following:

(A) As necessary and appropriate, make funds available, upon appropriation by the Legislature, to the receiving sewer system for the costs of completing the provision of sewer service, including, but not limited to, compensation for any capacity lost as a result of the provision of sewer service, by paying the receiving sewer system's capacity connection fee at the rate it charges others, providing additional capacity needed as a result of the provision of sewer service, and paying legal fees. If capacity beyond what is needed for provision of sewer service is provided, the state board shall retain its rights to use the additional capacity without paying additional capacity charge fees for five years, unless it releases those rights in writing. Funding pursuant to this subparagraph is available for the general purpose of providing financial assistance for the water infrastructure needed for the provision of sewer service and does not need to be specific to each individual

project. The state board shall provide appropriate financial assistance for the infrastructure needed for the provision of sewer service. The state board's existing financial assistance guidelines and policies shall be the basis for the financial assistance.

(B) Ensure payment of standard local agency formation commission costs caused by the regional board's order. Additional costs or fees related to provision of sewer service, including, but not limited to, other public works costs or upgrades, shall not be used to delay the provision of sewer service required by the order.

(C) Coordinate with the appropriate local agency formation commission and other relevant local agencies to document the change of organization or reorganization.

(c) The receiving sewer system shall not increase charges on existing customers of the receiving sewer system solely as a consequence of the provision of sewer service unless the customers receive a corresponding benefit.

(d) The receiving sewer system shall not charge rates to newly absorbed customers of the sewer system that are higher than those necessary to provide the sewage service.

(e) Division 3 (commencing with Section 56000) of Title 5 of the Government Code shall not apply to an action taken by the state board or the regional board pursuant to this section.

(f) The state board may develop and adopt policy, through the adoption of a policy handbook that is not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, that provides a process by which members of a disadvantaged community may petition the regional board for consideration of provision of sewer service pursuant to this chapter.

(g) Article 5 (commencing with Section 13280) of Chapter 4 does not apply to any action taken by the state board or a regional board pursuant to this chapter.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.