

**PROPOSED REVISIONS TO WAIVER PROVISIONS FOR  
NOTICE, PUBLIC HEARING AND/OR PROTEST PROCEEDINGS**

*Sections 56662 and 56663 in the CKH Act include provisions that describe the circumstances under which notice, public hearing and/or protest proceedings may be waived in the processing of an annexation or a detachment proposal or a reorganization proposal that includes annexations, detachments or the formation of a county service area. The intent of the law is to provide for a streamlined process for those proposals that are non-controversial while at the same time ensuring an open process with adequate opportunity for input.*

*LAFCOs have found that the current law, as written, can lead to confusion and inconsistent application of the provisions. The key issues with the existing law include:*

- 1. As written, section 56663 can be and is interpreted variably by different LAFCOs resulting in inconsistent application and confusion. For example, it is not entirely clear from the structure of the text if and under what circumstances, the waiver of protest proceedings applies to non-100% consent proposals.*
- 2. There is an inherent conflict between Section 56663(a) and Section 56663(d) regarding waiver of protest proceedings for inhabited proposals.*
- 3. Sections 56662(a) and 56663(a) are largely repetitive.*

*The purpose of the proposed legislation is to clarify existing law in order to allow for easier comprehension of the notice and hearing requirements and for consistent application of the waiver provisions. Broadly, the proposed legislation involves restructuring the provisions such that:*

- 1. Section 56662 pertains to waiver of notice, hearing and/or protest proceedings for specified uninhabited proposals that are unopposed by property owners in the affected territory, and*
- 2. Section 56663 pertains to waiver of protest proceedings for specified proposals that do not meet the criteria under 56662.*

*The intention was to not make substantive changes to the waiver provisions, so the various provisions from existing law are simply rearranged into these sections and edited for clarity. Other related, but minor revisions are also proposed to Section 56658.*

*Included below are:*

- 1. The proposed text of the revisions (in underline and ~~strikethrough~~ format) along with a brief discussion of the rationale and origin for the proposed changes.*
- 2. Smooth version of the proposed legislation.*

**1. PROPOSED LEGISLATION (WITH REASONS FOR PROPOSED CHANGES)**

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56658. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) (1) Immediately after receiving an application and before

issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to ~~each interested agency and~~ each ~~subject affected~~ agency, the county committee on school district organization, and each school superintendent whose school district overlies the ~~subject area affected territory~~. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56654.

*Reason for Change: The terms "interested agency" and "subject agency" are replaced by "affected agency" because "affected agency" includes both interested and subject agencies. The term "subject area" is replaced by "affected territory" which is a defined term in the CKH Act.*

(2) It is the intent of the Legislature that an incorporation proposal shall be processed in a timely manner. With regard to an application that includes an incorporation, the executive officer shall immediately notify all affected local agencies and any applicable state agencies by mail and request the affected agencies to submit the required data to the commission within a reasonable timeframe established by the executive officer. Each affected agency shall respond to the executive officer within 15 days acknowledging receipt of the request. Each affected local agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines established by the executive officer. Each affected state agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines agreed upon by the executive officer and the affected state departments.

(~~e3~~) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(~~dc~~) Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources **Code**, the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.

(~~ed~~) The executive officer shall not accept an application for filing and issue a certificate of filing for at least 20 days after giving the mailed notice required by subdivision (b). The executive officer shall not be required to comply with this subdivision in the case of an application which meets the requirements of Section ~~566632~~ or in the case of an application for which a local agency has already given notice pursuant to subdivision (~~bc~~) of Section 56654.

(~~fe~~) If the appropriate fees have been paid, an application shall be deemed accepted for filing if no determination has been made by the executive officer within the 30-day period. An executive officer shall accept for filing, and file, any application submitted in the form prescribed by the commission and containing all of the information and data required pursuant to Section 56652.

(~~gf~~) When an application is accepted for filing, the executive

officer shall immediately issue a certificate of filing to the applicant. A certificate of filing shall be in the form prescribed by the executive officer and shall specify the date upon which the proposal shall be heard by the commission. From the date of issuance of a certificate of filing, or the date upon which an application is deemed to have been accepted, whichever is earlier, an application shall be deemed filed pursuant to this division.

(hg) If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.

(i) Following the issuance of the certificate of filing, the executive officer shall proceed to set the proposal for hearing and give published notice thereof as provided in this part. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier. Notwithstanding Section 56106, the date for conducting the hearing, as determined pursuant to this subdivision, is mandatory.

56662. (a) If a proposal for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or formation of a county service area meets all of the following criteria, the commission may make determinations upon the proposal without notice and hearing and may waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000).

(1) The territory is uninhabited.

(2) No affected local agency has submitted a written demand for notice and hearing during the 10-day period as described in subdivision (c) below and

(3) The proposal meets either of the following criteria:

(A) The petition accompanying the proposal is signed by all of the owners of land within the affected territory.

(B) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to the proposal.

~~The commission may make either of the following determinations without notice and hearing:~~

~~—(1) Subject to the limitations of Section 56663, approval or disapproval of a proposal for an annexation, detachment, or reorganization which consists solely of annexations or detachments, or both.~~

~~—(2) Subject to the limitations of Section 56663, approval or disapproval of the formation of a county service area.~~

(b) Except for the determinations authorized to be made by subdivision (a), the commission shall not make any determinations upon any proposal, plan of reorganization, or report and recommendation of a reorganization committee until after public hearing by the commission on that proposal, plan of reorganization, or report and recommendation of a reorganization committee.

(c) The commission shall not take any action on the petition or resolution of application for 10 days following the mailed notice required under 56658(b). Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application.

(d) If a proposal for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or formation of a county service area meets all of the following criteria, the commission may make determinations upon the proposal and waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000).

(1) The territory is uninhabited.

(2) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory, exclusive of land owned by a private railroad company, have given their written consent to the proposal and no private railroad company that is an owner of land within the affected territory has submitted written opposition to the waiver of protest proceedings prior to the conclusion of the commission hearing.

(3) No subject agency has submitted written opposition to a waiver of protest proceedings.

***Reason for Change:***

***Waiver provisions for notice, public hearing and/or protest proceedings for specified reorganization proposals that are uninhabited and have 100% consent from property owners or are unopposed by the property owners in the affected territory are now consolidated into Section 56662 - the language for which comes from existing Section 56663.***

***Subdivision (a) includes criteria for waiver of notice, hearing and protest proceedings for uninhabited proposals that have 100% consent from property owners. The proposed language for Subdivision (a)(1) is based on existing Section 56663(c); Subdivision (a)(2) is based on existing Section 56663(b); Subdivision (a)(3) is based on existing Section 56663(a)&(c) and Subdivision (c) is taken from existing Section 56663(b).***

***Subdivision (d) is taken from existing Section 56663 (c) and includes criteria for waiver of protest proceedings for uninhabited proposals that have consent from all property owners except from any private railroad company that owns land within the territory. Such proposals will require notice and hearing, as under existing law.***

~~56663. (a) If a petition for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is signed by all of the owners of land within the affected territory of the proposed change of organization or reorganization, or if a resolution of application by a legislative body of an affected district, affected county, or affected city making a proposal for an annexation or detachment, or for a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is accompanied by proof, satisfactory to the commission, that all the~~

~~owners of land within the affected territory have given their written consent to that change of organization or reorganization, the commission may approve or disapprove the change of organization or reorganization, without notice and hearing by the commission. In those cases, the commission may also approve and conduct proceedings for the change of organization or reorganization under any of the following conditions:~~

~~—(1) Without notice and hearing.~~

~~—(2) Without an election.~~

~~—(3) Without notice, hearing, or an election.~~

~~(b) The executive officer shall give any affected agency mailed notice of the filing of the petition or resolution of application initiating proceedings by the commission. The commission shall not, without the written consent of the subject agency, take any further action on the petition or resolution of application for 10 days following that mailing. Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application. If no written demand is filed, the commission may make those determinations without notice and hearing. By written consent, which may be filed with the executive officer at any time, a subject agency may do any of the following:~~

~~—(1) Waive the requirement of mailed notice.~~

~~—(2) Consent to the commission making determinations without notice and hearing.~~

~~—(3) Waive the requirement of mailed notice and consent to the commission making determinations without notice and hearing.~~

~~(c) In the case of uninhabited territory, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following apply:~~

~~—(1) All the owners of land within the affected territory have given their written consent to the change of organization or reorganization, or in the case of private railroad companies, no private railroad company that is an owner of land within the affected territory has submitted written opposition to a waiver of protest proceedings prior to the conclusion of the commission hearing.~~

~~—(2) No subject agency has submitted written opposition to a waiver of protest proceedings.~~

~~(d) In the case of inhabited city and district annexations or detachments, or both, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following conditions apply:~~

~~—(1) The commission has provided written notice of commission proceedings to all registered voters and landowners within the affected territory and no written opposition from registered voters or landowners within the affected territory is received prior to the conclusion of the commission hearing. The written notice shall disclose to the registered voters and landowners that unless written opposition is received regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings.~~

~~—(2) No subject agency has submitted written opposition to a waiver of protest proceedings.~~

For a change of organization consisting of an annexation or a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area that would otherwise require the conduct of protest proceedings, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) if all of the following have occurred:

(a) Mailed notice pursuant to section 56157 has been given to landowners and registered voters within the affected territory.

(b) The mailed notice discloses to the registered voters and landowners that unless written opposition to the proposal is received before the conclusion of the commission proceedings on the proposal, the commission intends to waive protest proceedings. Such notice shall disclose that there is potential for the extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency in the affected territory.

(c) No written opposition to the proposal from landowners or registered voters within the affected territory is received before the conclusion of the commission proceedings on the proposal.

**Reason for Change:**

*The proposed text in Section 56663 includes waiver provisions for protest proceedings for specified reorganization proposals that do not qualify for waiver of protest proceedings under the proposed Section 56662. The proposed revision clarifies that notice and public hearing cannot be waived for such proposals. The proposed Section 56663(b) provides for expanded notice to allow for full disclosure and more informed decisions. The proposed language for Section 56663 originates from the existing Section 56663(d).*

## **2. SMOOTH VERSION OF THE PROPOSED LEGISLATION**

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56658. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) (1) Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each affected agency, the county committee on school district organization, and each school superintendent whose school district overlies the affected territory. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(2) It is the intent of the Legislature that an incorporation

proposal shall be processed in a timely manner. With regard to an application that includes an incorporation, the executive officer shall immediately notify all affected local agencies and any applicable state agencies by mail and request the affected agencies to submit the required data to the commission within a reasonable timeframe established by the executive officer. Each affected agency shall respond to the executive officer within 15 days acknowledging receipt of the request. Each affected local agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines established by the executive officer. Each affected state agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines agreed upon by the executive officer and the affected state departments.

(3) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(c) Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources **Code**, the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.

(d) The executive officer shall not accept an application for filing and issue a certificate of filing for at least 20 days after giving the mailed notice required by subdivision (b). The executive officer shall not be required to comply with this subdivision in the case of an application which meets the requirements of Section **56662** or in the case of an application for which a local agency has already given notice pursuant to subdivision (c) of Section 56654.

(e) If the appropriate fees have been paid, an application shall be deemed accepted for filing if no determination has been made by the executive officer within the 30-day period. An executive officer shall accept for filing, and file, any application submitted in the form prescribed by the commission and containing all of the information and data required pursuant to Section 56652.

(f) When an application is accepted for filing, the executive officer shall immediately issue a certificate of filing to the applicant. A certificate of filing shall be in the form prescribed by the executive officer and shall specify the date upon which the proposal shall be heard by the commission. From the date of issuance of a certificate of filing, or the date upon which an application is deemed to have been accepted, whichever is earlier, an application shall be deemed filed pursuant to this division.

(g) If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.

(h) Following the issuance of the certificate of filing, the executive officer shall proceed to set the proposal for hearing and give published notice thereof as provided in this part. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been

accepted, whichever is earlier. Notwithstanding Section 56106, the date for conducting the hearing, as determined pursuant to this subdivision, is mandatory.

56662. (a) If a proposal for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or formation of a county service area meets all of the following criteria, the commission may make determinations upon the proposal without notice and hearing and may waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000).

(1) The territory is uninhabited.

(2) No affected local agency has submitted a written demand for notice and hearing during the 10-day period as described in subdivision (c) below and

(3) The proposal meets either of the following criteria:

(A) The petition accompanying the proposal is signed by all of the owners of land within the affected territory.

(B) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to the proposal.

(b) Except for the determinations authorized to be made by subdivision (a), the commission shall not make any determinations upon any proposal, plan of reorganization, or report and recommendation of a reorganization committee until after public hearing by the commission on that proposal, plan of reorganization, or report and recommendation of a reorganization committee.

(c) The commission shall not take any action on the petition or resolution of application for 10 days following the mailed notice required under 56658(b). Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application.

(d) If a proposal for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or formation of a county service area meets all of the following criteria, the commission may make determinations upon the proposal and waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000).

(1) The territory is uninhabited.

(2) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory, exclusive of land owned by a private railroad company, have given their written consent to the proposal and no private railroad company that is an owner of land within the affected territory has submitted written opposition to the waiver of protest proceedings prior to the conclusion of the commission hearing.

(3) No subject agency has submitted written opposition to a waiver of protest proceedings.

**56663.** For a change of organization consisting of an annexation or a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area that would otherwise require the conduct of protest proceedings, the commission may



waive protest proceedings pursuant to Part 4 (commencing with Section 57000) if all of the following have occurred:

(a) Mailed notice pursuant to section 56157 has been given to landowners and registered voters within the affected territory.

(b) The mailed notice discloses to the registered voters and landowners that unless written opposition to the proposal is received before the conclusion of the commission proceedings on the proposal, the commission intends to waive protest proceedings. Such notice shall disclose that there is potential for the extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency in the affected territory.

(c) No written opposition to the proposal from landowners or registered voters within the affected territory is received before the conclusion of the commission proceedings on the proposal.