

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF JUNE 27, 2018

REGULAR MEETING

TO: Shiva Frentzen, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #7: DISCUSSION ON THE ABILITY FOR LAFCO TO INITIATE A
CONSOLIDATION OR DISSOLUTION

RECOMMENDATION

None beyond the receipt and file of this report.

REASON FOR RECOMMENDED ACTION

At the May meeting, the Commission asked that staff provide a synopsis of its authority under the law on the issue of consolidations.

BACKGROUND

The Legislature gave LAFCO broad authority when it comes to considering changes in the service area of local agencies. LAFCO's powers are delineated in Government Code Section 56375 (refer to Attachment A). In summary, the Commission can deny or approve, with or without conditions, a wide range of boundary changes to local governments (as defined by the Government Code) including annexations, dissolutions, detachments, formations, mergers and consolidations. Consolidations is the type of action that the Commission inquired about and will be the focus of this memorandum.

Three Fundamental Things to Keep in Mind

First, a consolidation is legally two actions rolled into one: the dissolution of two or more independent special districts, and the formation of a single district that encompasses the entirety of the service areas of the dissolved districts. This is an important characteristic to note because of what it means legally to the impacted agencies. It means a restriction on what districts are eligible to consolidate into one (only agencies under the same principal act) and that all of the legal rights, responsibilities and restrictions and all contractual commitments for each of the involved districts are "erased" upon dissolution, unless those contractual commitments are transferred to the new district by LAFCO.

Second, almost all LAFCO actions require that a petition be submitted by an external party [e.g. by registered voters, by landowners or by resolution(s) of application adopted by other governmental entity(ies)]. Unless waived by Commission action, the initiating party is responsible for all LAFCO processing costs and indemnification to this agency for any lawsuits that arise from the Commission action. Government Code Section 56375(a)3 does allow for the Commission to initiate some proposals on its own, including consolidations, provided that the action is consistent with the “recommendation or conclusion” of a study, be it an independent study or an MSR. Please note that the types of proposals that can be initiated by the Commission are limited to those listed in Government Code Section 56375(a)2.

Third, should LAFCO approve any proposal (with or without conditions) that does not have 100% consent from landowners or voters in the affected area, a second hearing, called a “conducting authority hearing,” must be held. The conducting authority hearing gives landowners and voters the opportunity to voice their opposition to the goals behind a project. The number of protests submitted and not withdrawn are counted at the conducting authority hearing, and that number determines the next course of action. The possible actions involve an affirmation of the Commission action (if the number of protests is below a certain threshold), the override of the Commission action (if the number of protests is over 50% of landowners or voters) or an election to decide the matter (if the number of protests is between the two other actions).

Interesting But What Does It All Mean For This Discussion?

The three items above are at the center of the answer to the question of “If LAFCO has the ability to initiate consolidations, why doesn’t it?” While it is certain that legally LAFCO has the ability to initiate consolidations, its ability to finish a consolidation – practically speaking – is less than certain. This is because the assumption behind LAFCO initiating a consolidation is that the impacted agencies, for whatever reason, have not initiated the consolidation themselves. It is likely that the impacted agencies *do not want* to initiate a consolidation. Otherwise, those districts would be applying to LAFCO to consolidate. By logical extension, if LAFCO were to force a consolidation, it means it is a hostile endeavor: Not only would there be no consent by the districts to the proposal, it may also be with their outright opposition to it.

Issue #1 - Impacts to Employees

With their opposition comes numerous issues. Please recall that a consolidation means, among other things, that the impacted districts dissolve. Along with the dissolution comes the termination of all of their legal obligations. One of those would be all labor agreements those districts have with their employees. Since LAFCO is initiating the consolidation without the consent of the districts, it means that there is a low probability that there is an already-negotiated contract that would serve as a replacement for those agreements. In addition, there are very few mechanisms that LAFCO has at its disposal that would compel the districts to negotiate a post-consolidation labor agreement against their will. This uncertain situation will cause angst and anger among the districts’ employees. Transferring the labor agreements to the new district would only work if all of the labor agreements are substantially the same; otherwise, in order to reduce or minimize outrage among the labor groups, the most palatable and mitigating transfer would be of the agreement with the highest

salaries and/or most generous benefits. This has the potential of undermining the argument of realizing salary savings as one of the justifications for the consolidation.

Issue #2 - Political Repercussions

The uncertainty, angst and anger among district employees also makes them a motivated group that can easily mobilize, or be mobilized, to thwart a consolidation effort. Please recall the third item above about the conducting authority hearing. Terminating the proceedings via protests will be difficult because it would take a highly motivated electorate to submit protests at a rate that would exceed 50% of landowners or voters. Sending the question to an election is another matter. On a petition brought to LAFCO by a third party, the protest threshold to trigger an election is 25% of landowners or registered voters. For a LAFCO-initiated consolidation, the threshold is down to 10%. Meaning, in order to combat going to an election, the LAFCO action must have an affirmation support of over 90% of registered voters or landowners. Outside of a resolution affirming that puppies and kittens are cute, that level of support of a LAFCO action among voters, and probably against the wishes of the locally-elected district board, is a tall order. As a result, getting to the election stage should be fairly easy when there is such a low protest threshold, especially when that effort is undertaken by a well-mobilized group like an unhappy board of directors, a union or an association.

Issue #3 - Then There are Costs to Consider

Lastly, because this would be a LAFCO-initiated petition, LAFCO would absorb all of the processing costs and any costs associated with conducting an election. In addition, no district would indemnify LAFCO should it be sued for ordering the consolidation. LAFCO would be unable to pass those costs as conditions upon the new district, since conditions are only good as leverage when LAFCO is doing something that the districts want to do.

Issue #4 – Not to Mention Political Fallout

What would be the effect on the relationships LAFCO has with its sibling agencies should it pursue a consolidation with little political or financial support? It is difficult to say for certain, but several dynamics could be identified. First, if it is a particularly unpopular consolidation, it is possible for the sibling agencies, which are also funding agencies to LAFCO's budget, would balk that part of their contributions went on to fund such a proposal. Then there would also be a concern that LAFCO might target other districts besides those of the consolidation. That may make some districts hesitate with giving LAFCO information about their operations and finances.

Conclusions

In essence, the authority to order consolidations is akin to a small country having a nuclear weapon. While it is a powerful thing to possess, under what circumstance can it be used? And if it is ever used, how confident can anyone be that there will not be substantial collateral damage that would occur as a result of using it? So, it is not necessarily a good thing to have if it cannot be used for anything productive. The answer to the question posed above is that LAFCO does not use its powers to initiate consolidations because LAFCO will end up using a lot of financial and political capital on an effort with a dubious chance of succeeding.

Over the years, the Legislature, the Little Hoover Commission and several grand juries have encouraged LAFCOs to be more “proactive” in initiating consolidations without recognizing that this is a small agency with limited resources and a substantial check on its power as a result of the low protest threshold. Staff from this LAFCO has joined others from around the state calling on the Legislature to do something about the low protest threshold but has yet to find a receptive audience in the Capitol.

Assemblywoman Caballero’s AB 2258 might provide partial answers to some of the issues listed above. The bill provides grants to LAFCOs to study possible consolidations and to fund any proceedings that LAFCOs want to pursue. In addition, the bill raises the protest threshold to 25% for any LAFCO-initiated consolidations that use AB 2258 funds. This bill’s future is uncertain as it is currently making its way through the Assembly at the time this report was written. The California Special Districts Association has taken an oppose position over concerns it has with the raising the protest threshold. As a result, the Assembly Republican Caucus has also taken an oppose position to the bill. AB 2258 faces an uncertain fate in the Senate should it make it out of the Assembly. Further, it is currently uncertain how Governor Brown will react should the bill reach his desk since he has not taken a position on the bill. However, AB 2258 has the support of Ken Alex, the current director of the Governor’s Office of Planning and Research, which will be the administrative agency dispensing the AB 2258 funds should it become law.

Attachments

Attachment A: Government Code Section 56375

Attachment B: LAFCO-Initiated Change of Organization/Reorganization Flowchart