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Senator Patricia Wiggins, Chair



January 15, 2009

TO: Distribution (attached)
FROM: Peter Detwiler 
SUBJECT: Converting RIDs and MIDs into CSDs

Because you work with Resort Improvement Districts (RIDs), Municipal Improvement Districts (MIDs), and Local Agency Formation Commissions (LAFCOs), I invite your advice on a possible future bill that would make it easier to convert RIDs and MIDs into Community Services Districts (CSDs) without changing their boundaries, powers, duties, or finances.

I have attached a policy paper and a draft bill for your comment. As you review these materials, you might think about these questions:

- Would my district be better managed if it were a CSD?
- Is my district board interested in converting to a CSD?
- Is my LAFCO likely to use the proposed procedures?
- Are the proposed procedures sufficiently transparent?
- Do the proposed procedures provide enough accountability?
- Can you recommend improvements to the proposed bill?

Please understand that this project is my own work and does not represent a proposal by Senator Wiggins or any other member of the Committee. However, based on your advice, I may recommend that a legislator introduce a version of this proposed bill in 2010.

Please send me your written comments.

Thanks for your help.

Attachments



Distribution List

Kris Berry, Placer County LAFCO
Bob Braitman, Santa Barbara County LAFCO
Bill Chiat, California Association of LAFCOs
Richard Culp, Resort Improvement District No. 1
Ron Davis, Association of California Water Agencies
Steve Dunn, Tahoe Paradise Resort Improvement District
Ryan Eisberg, Senate Republican Caucus
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John Gullixson, Plumas County LAFCO
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Dan Obermeyer, Glenn County LAFCO
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Kelly Polk, Montalvo Municipal Improvement District
Martha Poyatos, San Mateo County LAFCO
Don Ridenhour, Napa County Public Works Department
David Shoemaker, County of Glenn
Keene Simonds, Napa County LAFCO
Paul Smith, Regional Council of Rural Counties
Steve Spence, Bethel Island Municipal Improvement District
Lou Ann Texeira, Contra Costa County LAFCO
Kim Ulrich, Ventura County LAFCO
Thomas Vu, California Special Districts Association
William Weber, Assembly Republican Caucus
George Williamson, Humboldt County LAFCO

Converting Special Districts

Summary. Create an expedited procedure for converting special districts that operate under archaic statutes into community services districts, without substantive changes to their powers, duties, finances, or service areas.

Existing law. The Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code §56000, et seq.) sets up a local agency formation commission (LAFCO) in each county with the power to govern the formation, boundaries, and dissolution of most special districts (§56036 & §56037). These procedures usually require five steps:

- Application to LAFCO, including environmental review.
- A formal public hearing for LAFCO review and approval.
- Another formal hearing to measure public protests.
- The possibility of an election, if there was significant protest.
- Ministerial filing of final documents.

A reorganization (§56073) is merely a way to combine two or more proposed boundary changes (§56021) into a single proposal. For example, a reorganization could involve the simultaneous dissolution (§56035) of an existing special district and the formation (§56021) of a new district.

From the mid-1950s until 1960, the Legislature created several special-act special districts called Municipal Improvement Districts (MIDs) to deliver public services to particular communities, some of which supported specific development projects. The practice of creating special districts for particular developers stopped in 1960. There are five remaining MIDs:

Bethel Island MID	Contra Costa County
Embarcadero MID	Santa Barbara County
Estero MID	Foster City, San Mateo County
Guadalupe Valley MID	Brisbane, San Mateo County
Montalvo MID	Ventura County

City councils are the ex officio governing boards of the two MIDs in San Mateo County, while the other three MIDs have their own directly elected boards of directors.

In 1961, the Legislature passed the Resort Improvement District Law (Public Resources Code §13000, et seq.; SB 384, Cameron, 1961). In 1965, the Assembly held hearings into special districts' abuses and one result was to ban new resort improvement districts (Public Resources Code §13003).

Nevertheless, seven RIDs still remain:

Grizzly Lake RID	Plumas County
Lake Berryessa RID	Napa County
Napa Berryessa RID	Napa County
Resort Improvement District No. 1	Humboldt County
Stony Gorge RID	Glenn County
Tahoe Paradise RID	El Dorado County
Talmont RID	Placer County

The county boards of supervisors in Napa and Glenn Counties govern their RIDs ex officio, but the other four RIDs have their own directly elected boards of directors.

In 2005, the Legislature revised the Community Services District Law (Government Code §61000, et seq.; SB 135, Kehoe, 2005). Under this principal act, more than 300 community services districts (CSDs) can deliver a wide variety of public facilities and services. The new CSD Law improves the transparency of CSD decisions and increases their accountability. The statute clearly spells out the districts' authorized services. However, before a CSD can activate its latent powers and offer a new public service, it must receive LAFCO's approval (§61106 & §56824.1). Practitioners also see the new statute as an opportunity to convert existing special districts that operate under outdated statutes into CSDs that can operate under contemporary laws.

Policy question and two responses. Practitioners note that the MIDs' special acts and the RID statute are archaic, making it hard for these special districts to govern themselves and deliver public services with transparency and accountability. Some LAFCOs and some RIDs are interested in converting those districts into CSDs, without changing their boundaries, services, finances, or other duties.

To switch a district's principal acts under current law, an applicant must formally ask LAFCO to approve a reorganization that proposes the dissolution of the existing RID or MID and the formation of a new CSD. The five-step LAFCO procedures take about a year to complete. Further, these reorganizations require the payment of LAFCO processing fees (Government Code §56383) and they need majority-voter approval (Government Code §57077 [b][1]).

To convert RIDs and MIDs into CSDs more quickly, there are at least two policy options:

Special legislation. The Legislature has plenary authority over general law local governments, including special districts. Legislators have the constitutional authority to reorganize local governments without the need for local elections or even against citizen protests (*Broadmoor Police Protection Dist. v. San Mateo Local Agency Formation Com.* [1994] 26 Cal.App.4th 304, relying on *Hunter v. City of Pittsburgh* [1907] 207 U.S. 161).

Examples of how the Legislature has used this plenary authority include:

- Dissolving the Avenal Sanitary District and the Avenal Heights Sanitary District and forming the Avenal Community Services District to replace the two dissolved districts (SB 1998, Montgomery, 1955; Chapter 1702, Statutes of 1955).
- Dissolving the obsolete Hunters Point Reclamation District (SB 615, Kopp, 1987).
- Converting the Hot Spring Valley Irrigation District into the Hot Spring Valley Water District (SB 1117, Cox, 2008).
- Converting the Vandalia Irrigation District into the Vandalia Water District (SB 1276, Ashburn, 2008).

Expedited reorganization. Rather than unilaterally wield its plenary authority, the Legislature has delegated control over the formation, powers, and boundaries of special districts to LAFCOs. The courts regard LAFCOs at the Legislature's "watchdog" over boundary changes (*Timberidge Enterprises, Inc. v. City of Santa Rosa* [1978] 86 Cal.App.3d 873).

The Legislature could modify the five-step procedures in the Cortese-Knox-Hertzberg Act and provide the procedures for an “expedited reorganization.”

Proposed bill. In 2010, the Legislature should pass a bill to create an expedited procedure that allows LAFCOs to convert special districts that operate under archaic statutes into community services districts, without substantive changes to their powers, duties, financing, or service areas.

The proposed bill should allow for expedited reorganizations with these features:

- Standard procedures for applying to LAFCO (i.e., petition or resolution).
- LAFCO retains existing discretion to approve or disapprove.
- If LAFCO approves, there is no protest hearing and no election.
- If LAFCO approves, it must impose the terms and conditions listed in the bill.
- The terms and conditions transfer everything to the new CSD, without change.
- LAFCO can change terms and conditions, but only after notifying RID or MID.
- The RID or MID can stop the conversion up to the time of LAFCO approval.
- Declare that an “expedited reorganization” is a Class 20 categorical exemption.
- Applies only to RIDs and independent MIDs, not to city-dependent MIDs.
- Sunset these special procedures after seven years, on January 1, 2018.

Expedited Reorganizations

SECTION 1. Section 56853.5 is added to the Government Code, to read:

56853.5 (a) In the case of an expedited reorganization, notwithstanding any provision of this division or the Community Services District Law (Division 3 (commencing with Section 61000) of Title 6), unless the governing body of the subject agency files a resolution of objection with the commission before the close of the hearing held pursuant to Section 56666, the commission may approve, disapprove, or conditionally approve, the expedited reorganization. If the commission approves or conditionally approves the expedited reorganization, the commission shall order the expedited reorganization without an election.

(b) If the governing body of the subject agency files a resolution of objection with the commission before the close of the hearing held pursuant to Section 56666, the commission shall disapprove the proposed expedited reorganization.

(c) The commission may order any material changes to the terms and conditions of the expedited reorganization, as set forth in the proposal. The commission shall direct the executive officer to give the subject agency mailed notice of any change prior to ordering a change. The commission shall not, without the written consent of the subject agency, take any further action on the expedited reorganization for 30 days following that mailing.

(d) A proposal for an expedited reorganization shall include proposed terms and conditions that shall include at least all of the following:

(1) The proposed community services district is declared to be, and shall be deemed a community services district as if the district had been formed pursuant to the Community Services District Law (Division 3 (commencing with Section 61000) of Title 6). The exterior boundary and sphere of influence of the proposed community services district shall be the exterior boundary and sphere of influence of the district proposed to be dissolved.

(2) The proposed community services district succeeds to, and is vested with, the same powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the district proposed to be dissolved.

(3) The status, position, and rights of any officer or employee of the district proposed to be dissolved are not affected by the transfer and shall be retained by the person as an officer or employee of the proposed community services district.

(4) The proposed community services district shall have ownership, possession, and control of all of the books, records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, entitlements, agreements, contracts, claims, judgments, land, and other assets and property, real or personal, owned or leased by, connected with the administration of, or held for the benefit or use of, the district proposed to be dissolved.

(5) The unexpended balance as of the effective date of the expedited reorganization, of any funds available for use by the district proposed to be dissolved shall be available for use by the proposed community services district.

(6) No payment for the use, or right of use, of any property, real or personal, acquired or constructed by the district proposed to be dissolved shall be required by reason of the succession pursuant to the expedited reorganization, nor shall any payment for the proposed community ser-

vices district's acquisition of the powers, duties, responsibilities, obligations, liabilities, and jurisdiction be required by reason of that succession.

(7) All ordinances, rules, and regulations adopted by the district proposed to be dissolved in effect immediately preceding the effective date of the expedited reorganization, shall remain in effect and shall be fully enforceable unless amended or repealed by the proposed community services district, or until they expire by their own terms. Any statute, law, rule, or regulation in force as of the effective date of the expedited reorganization, or that may be enacted or adopted with reference to the district proposed to be dissolved shall mean the proposed community services district.

(8) All shares of property tax revenue allocated pursuant to Part 0.5 (commencing with Section 50) of the Revenue and Taxation Code, special taxes, benefit assessments, fees, charges, or any other impositions of the district proposed to be dissolved shall remain in effect unless amended or repealed by the proposed community services district, or until they expire by their own terms.

(9) The appropriations limit established pursuant to Division 9 (commencing with Section 7900) of Title 1 of the district proposed to be dissolved shall be the appropriations limit of the proposed community services district.

(10) Any action by or against the district proposed to be dissolved shall not abate, but shall continue in the name of the proposed community services district, and the proposed community services district shall be substituted for the district proposed to be dissolved by the court in which the action is pending. The substitution shall not in any way affect the rights of the parties to the action.

(11) No contract, lease, license, permit, entitlement, bond, or any other agreement to which the district proposed to be dissolved is a party shall be void or voidable by reason of the enactment of the expedited reorganization, but shall continue in effect, with the proposed community services district assuming all of the rights, obligations, liabilities, and duties of the district proposed to be dissolved.

(12) Any obligations, including, but not limited to, bonds and other indebtedness, of the district proposed to be dissolved shall be the obligations of the proposed community services district. Any continuing obligations or responsibilities of the district proposed to be dissolved for *managing and maintaining* bond issuances shall be transferred to the proposed community services district without impairment to any security contained in the bond instrument.

(e) The Legislature finds and declares that an expedited reorganization is a reorganization of local governmental agencies which will not change the geographical area in which previously existing powers are exercised and, therefore, qualifies as a Class 20 categorical exemption pursuant to Section 15320 of Title 14 of the California Code of Regulations.

(f) As used in this section, "expedited reorganization" means a reorganization that consists solely of the formation of a community services district and the dissolution of any of the following:

(1) A resort improvement district formed pursuant to the Resort Improvement District Law, Division 11 (commencing with Section 13000) of the Public Resources Code.

(2) The Montalvo Municipal Improvement District formed pursuant to Chapter 549 of the Statutes of 1955.

(3) The Bethel Island Municipal Improvement District formed pursuant to Chapter 22 of the Statutes of 1960.

(4) The Embarcadero Municipal Improvement District formed pursuant to Chapter 81 of the Statutes of 1960.

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later statute which is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 57007 of the Government Code is amended to read:

57077. (a) Where a change of organization consists of a dissolution, disincorporation, incorporation, establishment of a subsidiary district, consolidation, or merger, the commission shall do either of the following:

(1) Order the change of organization subject to confirmation of the voters, or in the case of a landowner-voter district, subject to confirmation by the landowners, unless otherwise stated in the formation provisions of the enabling statute of the district or otherwise authorized pursuant to Section 56854.

(2) Order the change of organization without election if it is a change of organization that meets the requirements of Section 56854, 57081, 57102, or 57107; otherwise, the commission shall take the action specified in paragraph (1).

(b) Where a reorganization consists of one or more dissolutions, incorporations, formations, disincorporations, mergers, establishments of subsidiary districts, consolidations, or any combination of those proposals, the commission shall do either of the following:

(1) Order the reorganization subject to confirmation of the voters, or in the case of landowner-voter districts, subject to confirmation by the landowners, unless otherwise authorized pursuant to Section 56854.

(2) Order the reorganization without election if it is a reorganization that meets the requirements of Section 56853.5, 56854, 57081, 57102, 57107, or 57111; otherwise, the commission shall take the action specified in paragraph (1).

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