

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 561 (Gaines and Hill) – As Amended May 10, 2018

**SENATE VOTE:** 36-0

**SUBJECT:** Fallen Leaf Lake Community Services District: elections.

**SUMMARY:** Allows non-resident landowners and specified non-resident property owners to be voters and board members for the Fallen Leaf Lake Community Services District. Specifically, **this bill:**

- 1) Requires the El Dorado County elections official (elections official), with the assistance of the Fallen Leaf Lake Community Services District (FLL CSD), to conduct district elections pursuant to the Uniform District Election Law, as specified, except as otherwise provided in this bill.
- 2) Provides, notwithstanding any other law, that qualified voters at district elections in the FLL CSD shall be any of the following:
  - a) Voters who are residents of the district; or,
  - b) Voters who are not residents of the district, but meet either of the following:
    - i) Own a real property interest within the district; or,
    - ii) Have been designated by the owner of a real property interest to cast the vote for that property.
- 3) Provides that a real property interest shall include both of the following:
  - a) Ownership within the district of a fee simple interest in real property; and,
  - b) Ownership of a United States Forest Service (USFS) Recreation Permit (permit) for land within the district.
- 4) Provides that the last equalized county assessment roll shall be conclusive evidence of ownership of a real property interest within the district.
- 5) Requires, if the real property interest is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of the real property interest to designate in writing the person qualifying as a voter.
- 6) Requires, if the real property interest is held in the name of a trust, the trustee to designate in writing which trustee or beneficiary shall be the owner of the real property interest for purposes of qualifying as a voter.

- 7) Allows, if the real property interest is held in the name of a corporation, company, or an estate, a legal representative to vote on behalf of the corporation, company, or estate or designate another person to be the voter.
- 8) Defines "legal representative" for the purposes of this bill to mean an official of a corporation or company owning the real property interest or a guardian, executor, or administrator of the estate of the holder of title to the real property who is:
  - a) Appointed under the laws of this state;
  - b) Entitled to the possession of the estate's real property interest; and,
  - c) Authorized by the appointing court to exercise the particular right, privilege, or immunity which he or she seeks to exercise.
- 9) Requires a legal representative, before he or she votes at a district election, to present to the elections official and the secretary of the FLL CSD a certified copy of his or her authority which shall be maintained with the list of voters qualified to vote in elections of the FLL CSD.
- 10) Provides, if the real property interest is held in the name of an individual, that person will be the voter, unless that person designates another person in writing to be the voter.
- 11) Requires, if a person other than a legal representative or a person or entity listed on the last equalized county assessment roll is to be the voter, the designation of that person by the person or entity listed on the assessor's roll to be in writing, include the signature of the person so designated, filed with the elections official and the secretary of the FLL CSD, and maintained with the list of voters qualified to vote in elections of the FLL CSD. All designations shall be submitted at least 60 days before the election.
- 12) Allows, regardless of the number of parcels owned by a voter who is not a resident of the district but owns a real property interest in the district, that voter to designate only one person to vote on his or her behalf at district elections.
- 13) Prohibits a parcel from simultaneously having a designated voter and a resident voter or voters.
- 14) Requires, if a voter registers as a resident voter at a parcel, the elections official to immediately disqualify and remove from the list of voters qualified to vote at district elections any designated voter for that parcel.
- 15) Requires, if more than one parcel is owned by a voter registered as a resident voter, the elections official to immediately disqualify and remove from the list of voters qualified to vote at district elections any designated voter for any of those parcels.
- 16) Prohibits the FLL CSD and any entity the district controls from being permitted to designate a voter for itself if it is a property owner.

- 17) Requires the elections official, with the assistance of the secretary of the FLL CSD, to notify each parcel owner regarding the parcel owner's right to designate a person to cast a vote at district elections. When the ownership of parcels changes, the elections official, with the assistance of the FLL CSD, shall notify new parcel owners regarding the right to designate a person to vote at district elections. Notification may be made either:
  - a) Individually, at the time each parcel changes ownership; or,
  - b) Together, all parcel owners that are new since the last notification, once every two years.
- 18) Prohibits a voter who is a resident of the district from designating anyone else to vote at district elections.
- 19) Requires, at least 125 days before a district election, the secretary of the FLL CSD to deliver to the elections official, in a form prescribed by the elections official, a preliminary list of eligible voters determined by the district as meeting the requirements of this bill, including voters who are residents of the district and designees for voters who are not residents but who own real property.
- 20) Requires the secretary of the FLL CSD to update the preliminary list of eligible voters at least 45 days before the election.
- 21) Requires, when a petition for a recall, referendum, or initiative is filed with the elections official, the secretary of the FLL CSD to update the preliminary list of eligible voters within 10 days of being notified by the elections official that a petition has been filed.
- 22) Requires the elections official to have sole responsibility for certifying the eligibility of voters pursuant to this bill and make a copy of the official list of eligible voters available to the district.
- 23) Requires, at least seven days before a district election, the FLL CSD to conspicuously post a copy of the official list of eligible voters in the office of the district in a place where the public generally has access and make the list available on the district's Internet Web site.
- 24) Requires the election of the FLL CSD Board of Directors (board) to be held on the last Tuesday of August of odd numbered years, unless the elections official determines the public interest is best served by holding the election on a different date.
- 25) Provides that a person qualified to vote pursuant to this bill is qualified to be a candidate for, and serve on, the FLL CSD board.
- 26) Provides that violations of this bill are subject to the penal provisions of the Elections Code, as specified.
- 27) Prohibits the FLL CSD from providing any of the services or facilities set forth in the Community Services District Law (CSD Law), except fire protection, including medical response and emergency services, and parks and recreation services or facilities.

- 28) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need to ensure that property owners have an equal opportunity to vote in FLL CSD elections and serve as members of the district's board.
- 29) Provides that no reimbursement is required by this bill pursuant to the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, or changes the definition of a crime, as specified. However, if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to existing law, as specified.

**EXISTING LAW:**

- 1) Specifies, pursuant to the CSD Law, the procedures for district formation, voting and the selection of district governing board members which, among other things, requires a person to be a voter of the district in order to vote in district elections and serve on a district's board.
- 2) Provides, pursuant to the Uniform District Election Law, for landowner voting districts, in which each voter is required to be an owner of land located within the district in order to vote in district elections and/or serve on a district's board.
- 3) Provides for resident voting districts, such as school districts, CSDs, etc., which are districts other than landowner voting districts.
- 4) Defines "residence" for voting purposes as a person's domicile. The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile. The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **Author's Statement.** According to the authors, "Out of about 300 cabins in the FLL CSD, less than 10 individuals live there full time. The rest of the cabin owners live around the state and they assess themselves to pay for a fire department as well as the parking, restrooms, store and post office utilized by visitors to the lake. The issue is that current law has caused the district attorney to inform cabin owners that they can no longer vote on community services district matters since they don't live there full time. They can't even continue to serve on the board of the district. This bill just allows them to continue to serve on the board and vote on community service district matters such as increasing funding for the fire department which benefits thousands of Californians and international travelers that visit Fallen Leaf Lake each year." This bill is sponsored by the FLL CSD.

- 2) **Background.** Special districts come in two types: dependent and independent. Dependent districts are governed by other, existing legislative bodies (either a city council or a county board of supervisors). All County Service Areas, for example, are dependent districts because their county boards of supervisors govern them. Independent special districts are separate local governments formed to provide limited public services to a geographically designated area. Most special districts provide a focused service, but some forms of special districts – such as CSDs – can provide a range of services. California has more than 3,000 special districts, with about two-thirds being independent special districts.

Special districts are statutorily authorized in two manners. The Legislature has enacted "principal acts" that authorize residents or local officials to call for the formation of a special district, usually through local petition and approval by a county local agency formation commission (LAFCO). The powers and duties of special districts formed pursuant to a principal act are contained in the principal act under which each district is formed. There are some 50 different principal acts.

Occasionally, the needs of a community are not adequately addressed under a principal act and the Legislature authorizes the formation of a special district via a special act written specifically for that district. These districts' governing structure, powers and duties are authorized in a special statutory provision. There are more than 100 special act districts in California.

Most special districts have a five-member board of directors, although the size of a board can range from three members (in the case of small single-purpose districts) to more than 30 members. Most special district voters and board members must be registered voters/residents in the district. For some districts, generally water-oriented districts, political authority can rest with landowners and the formation process, election authority and governing board membership rests only with landowners. There are also a small handful of "hybrid" districts, where the franchise and the ability to sit on a board is a mix of registered voters and landowners.

The Legislature has authorized some special districts to increase or decrease the size of their boards. For example, SB 235 (Negrete McLeod), Chapter 122, Statutes of 2011, authorized water conservation districts with boards consisting of seven directors to reduce the number of directors to five by a resolution adopted by two-thirds of the board. SB 210 (Committee on Local Government), Chapter 176, Statutes of 2001, authorized the Sawyers Bar County Water District to decrease the size of its board from five to three members if a majority of the district's voters signed a petition requesting that reduction. The Sawyers Bar County Water District served a remote rural community in the County of Siskiyou with approximately 14 registered voters, which made it difficult to find individuals willing and able to serve as members of the district's board of directors.

- 3) **CSD Law.** The CSD Law generally authorizes the formation of CSDs to provide more than 30 types of public services and facilities, and includes special statutes for the delivery of additional services. CSDs are typically established to provide services in an unincorporated area as an alternative to incorporation or as a transition into cityhood. The CSD Law provides for the election of CSD boards of directors and specifies requirements for open government, such as adoption of annual budgets, setting up designated reserves, following the Ralph M. Brown Act, holding regular meetings, and following standard auditing rules.

The CSD Law also requires voter approval of special taxes and property owners' approval of benefit assessments, as required by Propositions 13, 62, and 218. The Legislature originally enacted the CSD Law in 1951, re-enacted it in 1955, and re-enacted it again via SB 135 (Kehoe), Chapter 249, Statutes of 2005.

CSD boards consisted of directors that are registered voters within the district's jurisdiction (with some exceptions for districts with smaller numbers of registered voters, in which case the respective county board of supervisors acts as the CSD's governing board). Prior to 2005, CSDs were allowed to have boards of directors with either three or five members. The 2005 CSD law revision specifically required all CSDs to have five-member boards. CSD Law also restricts voting in district elections to voters in the district.

In recent years, a small number of CSDs have had difficulty filling a five-member board and achieving a necessary quorum during board meetings. CSDs that have difficulty filling five board seats are usually located in rural areas that have a majority of vacation homes and very few year-round residents. The Legislature recently approved AB 2455 (Williams), Chapter 505, Statutes of 2014, which allowed the Santa Rita Hills CSD to decrease its board membership from five to three members on a temporary basis, until January 1, 2035. At the time of the bill's passage, the CSD comprised 35 parcels of land and only 10 registered voters.

- 4) **FLL CSD.** Formed in 1982, FLL CSD has a service area of six square miles and is authorized to provide fire protection and recreation and park services to approximately 300 homes and vacation cabins, a resort, and the Stanford Sierra Camp in the FLL Basin, which is west/southwest of the City of South Lake Tahoe and north of Echo Summit. Stanford Sierra Camp is a summer camp primarily attended by Stanford University alumni and is owned and operated by the Stanford University Alumni Association. FLL CSD also owns and operates a general store, a marina, and a community center.

The district abuts Desolation Wilderness and is bounded on all sides by El Dorado National Forest Service lands. Federally-owned lands compose the majority of the district, and all private lands are designated as State Responsibility Area. The principal natural features of FLL CSD include Fallen Leaf Lake in the center of the district and steep, densely wooded ridges and mountains. Roads and access within the district are limited by terrain, weather and topography. Fallen Leaf Lake Road is not open year-round, although winter use is increasing because of the ski season. The popular Glen Alpine trailhead into Desolation Wilderness is in the district. Several other trails also originate in the district. Residential and visitor use in the district is an identified risk in the Lake Tahoe wildland area.

According to the FLL CSD, nearly half of the 300 cabins in the district are privately owned but located on land owned by the USFS to whom the cabin owners pay an annual recreational use permit fee. According to the USFS website, "The Forest Service Recreation Residence program gives private citizens the opportunity to own a single-family cabin in designated areas on the National Forests. They are commonly called 'summer homes' or 'recreation cabins.' These privately owned cabins (improvements) are located within formally established 'tracts' on 'lots' designated for that purpose and are authorized and administered under the terms and conditions of a special use authorization called a permit. The individual owns the improvements but not the land. The permit requires the payment of an annual

rental fee based upon fair market value of the land, not including improvements, as determined by an appraisal."

- 5) **El Dorado LAFCO Review.** El Dorado LAFCO's 2013 Municipal Services Review (MSR) of FLL CSD states that the district "contains approximately 90 registered voters within its boundaries. The communities served include year-round and summer owner-residents, Forest Service leaseholders, and numerous recreational users (day hikers and overnight backpackers). Numerous homes surround the lake, including Fallen Leaf Lake Associates (25 families), Fallen Leaf Lake Homeowners Association (at least 11 families), Fallen Leaf Lodge Homeowners Association (23 families), Fallen Leaf Tract Association, and Lakeview Corporation (42 homeowners). A total of 344 structures are contained in FLL's service area, including one three-story 20,000 square foot conference center, one three-story store/grill/residence and two marinas.

"The estimated population is 10-100 residents during the winter season and 1,000-2,000 residents during the summer. Year-round residents include residents of some of the 35 newer 'winterized' homes, the fire chief, security officer, and permanent Stanford Sierra Conference Center (Stanford Center) employees. An estimated 400 persons use the Stanford Center at any given time during the summer season.

"The District operates one station with structure fire engines and wildland fire units. The nearby City of South Lake Tahoe Fire Department provides important automatic aid and assistance to augment the services provided by the Fallen Leaf Fire Department. Under the provisions of an annual contract with the District, the City has one fire engine and a battalion chief available on a 24-hour basis to respond automatically to fires, provided that the roads are passable...The fire department pumps lake water with its fire boat. Fire service levels vary within the district; structures closer to the lake with better access to water have an ISO (International Organization for Standardization) rating of four and higher service response from the fire department. However, service is difficult to provide to some remote 'walk-in' cabins with no road access at all, which have an ISO rating of nine. FLL's last ISO rating was completed in March 2004.

"Fallen Leaf Lake CSD struggles to operate a fire department with diminishing revenues. The loss of Aid to Fire (supplemental funds provided by El Dorado County) means the District loses approximately \$60,000 in operating funds. In order to compensate, the District has raised its special tax to the maximum level authorized by voters, which mitigates the loss of Aid to Fire funds but does not fully offset them. To complicate matters, the permanent population is small relative to the total number of landowners within FLL. This means that the Board of Directors has to deal with the political reality that a small number of voters can impose its will on a much larger number of residents if and when they authorize an increase in special taxes."

- 6) **Need for This Bill.** According to FLL CSD representatives, community members have always believed that they could register to vote on CSD matters and serve on its board. However, "In 2011, the El Dorado County District Attorney sent letters to the Fallen Leaf Lake community, advising them that they could no longer vote on Fallen Leaf Lake issues unless they were domiciled at the lake. That letter was followed by another letter, this from the Forest Service to all permittees, stating that anyone who voted would be deemed by the

Forest Service to be a full time permanent resident of Forest permit property in violation of the terms of their seasonal permit which prohibits permanent residency."

- 7) **Bill Summary.** This bill allows voters who are not residents of the FLL CDS to vote in district elections and run for, and serve on, the district's board if: (1) they own a real property interest within the district; or, (2) if they have been designated by the owner of a real property interest to cast the vote for that property.

The bill defines a "real property interest" to mean ownership within the district of a fee simple interest in real property, or ownership of a USFS permit for land within the district. Ownership of a real property interest would include: joint tenancy, tenancy in common, or any other multiple ownership; property interest held in the name of a trust; and, property interest held in the name of a corporation, company, or an estate.

This bill establishes a number of requirements on the elections official in conducting district elections, as well as requirements on the FLL CSD in assisting the elections official, and on legal representatives in providing specified information to the elections official. It also includes provisions addressing non-residents who own multiple parcels, prohibiting a parcel from having a designated voter and a resident voter, and prohibiting FLL CSD and any entity it controls from being allowed to designate a voter for itself if it owns property.

The bill prohibits resident voters from designating anyone else to vote at district elections, and requires elections for board members to be held on the last Tuesday of August of odd-numbered years, unless the elections official determines a different date would better serve the public interest.

This bill prohibits FLL CSD from providing any of the services or facilities set forth in CSD law, except fire protection, including medical response and emergency services, and parks and recreation services or facilities.

- 8) **Special Districts and Landowner Voting.** A number of court cases and legislative actions have addressed the issue of landowner voting and special districts in California. Among them include the following:

- a) ***Salyer Land Co. v. Tulare Water District.*** The California Constitution provides that the right to vote or serve in elected office may not be conditioned on a landownership qualification. However, in 1973, the U.S. Supreme Court ruled in *Salyer Land Co. v. Tulare Water District* that the California statute requiring a landownership qualification did not violate the Equal Protection Clause of the U.S. Constitution. The court ruled there was no violation because that particular district provided "none of the general public services ordinarily attributed to a governing body" and its activities disproportionately affected landowners.

The decision described "general public services" as "schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body. (The district contained) no *shops*, hospitals or *other facilities designed to improve the quality of life within the district boundaries*, and it does not have a *fire department*, police, buses, or trains." The court determined that the district disproportionately affected landowners largely because assessments against landowners were the *sole* means by



which the district expenses were paid. "All of the costs of district projects are assessed against land by assessors in proportion to the benefits received. Likewise, charges for services rendered are collectible from persons receiving their benefit in proportion to the services. When such persons are delinquent in payment, just as in the case of delinquency in payments of assessments, such charges become a lien on the land. In short, there is no way that the economic burden of district operations can fall on residents qua residents, and the operations of the districts primarily affect the *land* within their boundaries." (References omitted, emphasis added.)

- b) ***Choudhry v. Free***. The California Supreme Court, in *Choudhry v. Free* (1976) 17 Cal. 3d 660, declared unconstitutional a section of the Irrigation District Law requiring potential board candidates to be landowners. The court ruled that this section was unconstitutional as applied to the Imperial Irrigation District (IID) and its board of directors, the real parties in interest, because it deprived the district's board candidates and voters, including petitioner voters, of equal protection. The court rejected the argument that IID was a limited, special purpose district that disproportionately affected landowners like the water district in *Salyer*. The court ruled that IID exercised "pervasive powers...over all residents...whether or not they are landowners," citing IID's authority to provide a number of services, including *providing fire protection, constructing, maintaining and operating recreational facilities, and imposing charges in lieu of assessments for services rendered relating to recreation*.

The court specifically declined to extend its ruling in *Choudhry* to other irrigation districts (or to any other type of special district), and gave two reasons for restricting its ruling to apply only to IID. First, IID was singular at that time among irrigation districts in that it had more residents, land, and employees than any other irrigation district and it was providing retail water service. Second, neither respondents nor real parties in interest had opposed petitioners' claim that Water Code Section 21100 was unconstitutional, and numerous irrigation districts in the state that would have been affected by a finding of unconstitutionality did not have the opportunity to present their views or offer evidence regarding the characteristics and operation of irrigation districts in general.

- c) ***Bjornestad v. Hulse***. AB 3548 (Waters), Chapter 1652, Statutes of 1990, extended to resident voters of the Sierra Lakes County Water District the right to vote in district elections – a right previously reserved for landowners only. The bill also prohibited the district from exercising specified powers of county water districts relating to *fire protection, recreation, and sanitation*. A subsequent appellate court ruling, in *Bjornestad v. Hulse* (1991) 229 Cal.App.3d 1568, found that the landowner-only voting requirement was unconstitutional under the equal protection clause, concluding that the district did not constitute a special, limited purpose district as in *Salyer*, the activities of which disproportionately affected landowners. The court reasoned that the *services provided by the district affected residents as much as landowners in the district*, even though those services were largely financed by the landowners of the district.

The *Bjornestad* decision noted, "It is open to question whether the state can give nonresidents a vote equivalent to that of residents; we entertain no doubt that the state cannot enact a provision which gives absentee and corporate landowners the power to override the needs and interests of the residents." The court pointed out that Sierra's prior

powers over *fire and recreation service* were "vitaly important to residents as a group." The decision also specified that the "precedential value of this case is therefore limited given these unique characteristics and the case-by-case analysis required of the nature, purpose, and powers of each 'special law' governmental entity at issue."

- 9) **Concerns.** The El Dorado LAFCO, expressing concerns with this bill, writes, "...FLL has historically two main problems: finances (and) governance. FLL has three primary sources of revenue to finance fire services (recreational services are essentially self-sustaining). First is FLL's share of property taxes. At an average of 5.34%, this is one of the lowest shares in El Dorado County. As a result, FLL must also rely on special taxes, its second main source of funding. Most landowners pay an additional \$612.98 annually under a special tax approved by voters in 2014 (Stanford Sierra Conference Center pays more and about 15 parcels pay less). The third main source of revenue is Strike Team funds, which are compensatory monies paid by CalFIRE to local fire departments that send teams to assist with wildland fires around the state.

"FLL used to participate in a local program called Aid to Fire. This program was offered by the County of El Dorado to poor, rural fire districts. The County would transfer monies from its General Fund to participating fire districts to bring the latter's finances up to a certain level. The County discontinued Aid to Fire in 2009, resulting in a \$60,000 funding loss to FLL. A 2011 study estimated that FLL would have to raise its special taxes to \$944 to offset the Aid to Fire funds. Please note that this amount is significantly more than the maximum \$660 special tax amount authorized in 2014. As a result, FLL has relied more heavily on Strike Team revenues to fund fire services. While FLL has done well with this approach, reportedly establishing a healthy reserve, Strike Team revenues are an unstable, non-sustainable source of revenues. In our estimation, this is no way to fund a fire department in the long term.

"(As for governance issues, approximately five) of the 289 properties within FLL are listed in the Assessor's roll as qualifying for homeowner's exemption. Any other residential property would be a 'non-primary' residence, either a second home or a rental property. It would be reasonable to assume that if a residential property has not been granted a homeowner's exemption, it is not the owner's principal residence; that would make the occupant ineligible to register to vote at that FLL location. Further, a lot of these property owners only lease the land in which the residence sits upon since the USFS retains ownership of the actual land. In essence, this means that FLL has a very limited pool in which to draw people eligible to serve on its governing board and vote in its elections. El Dorado LAFCO recognizes this is a problem for FLL.

"While SB 561 attempts to address the governance problem, it leaves the finances problem unsolved. Over the years, El Dorado LAFCO has offered multiple approaches to FLL CSD to address both problems, none of which have been pursued seriously by the District's Board of Directors. Having said that, it should be clear that SB 561's approach to address the governance problem creates other complications down the road, including setting the precedent of creating a third class of voter (in addition to registered voter and landowner-voter) because of the uniqueness of property ownership on USFS land...It should be emphasized that the governance issue that FLL faces is not just a local oddity. There are multiple counties along the mountains and the coast that have districts with the quandary

of serving a substantial number of second and third homeowners (Placer County by itself has 13 districts). This issue needs to have a more comprehensive approach to ensure equity and that the goals of the Legislature are furthered."

10) **Policy Considerations.** The Committee may wish to consider the following policy issues:

- a) **Urgent Problem?** According to the sponsor, the impetus for this bill was a warning from the El Dorado County District Attorney and the USFS in 2011. Neither entity has taken any further action since that time, and it is unclear whether either intends to do so. The Committee may wish to consider if the nonresident voters in FLL CSD are in imminent danger of legal action against them and whether there is an urgent need to provide a remedy at present.
- b) **Precedent and Invitation to Litigate?** As noted above, case law on landowner-voting districts have examined districts that have restricted the franchise and the right to serve on governing bodies to landowners only, as well as districts that originated as landowner-voting and governing districts but were expanded to extend the franchise to resident voters. This bill proposes something new – a district that originated as a resident-voter/governing board district that would extend these rights not just to landowners, but to those who own structures in the district *but not the underlying land*. In addition, this would be the first time a CSD would allow non-residents to vote and serve on a CSD board. It is also the first instance of these rights being granted to non-residents who hold a USFS special use permit. There are also outstanding questions regarding whether fire and recreation services in the context of this bill would be considered "general public services" as they have been in prior case law. Courts have also specifically limited some of their prior decisions to the specific districts in question because of the unique nature of those districts. Given all of these factors, the Committee may wish to consider whether this bill would invite litigation, whether it shifts the risk of legal action from individual non-resident voters in the district to the district itself, and, if so, whether it wishes to approve legislation that poses these risks.
- c) **Appropriate Organizational Structure?** According to El Dorado LAFCO documents, the FLL CSD was originally formed for fire protection services only. A CSD, rather than a fire protection district, was requested "in order that the addition of a security guard fee could eventually be included. There is also a possibility that the district may at a later date want to exercise the option of providing sewer service." According to materials provided by the FLL CSD, among the documents submitted for consideration by the El Dorado LAFCO were several pages of undersigned property owners within the proposed district who supported the proposal. Of the 54 signatories, all but six listed addresses out of the district and, in some cases, out of the state. Both the FLL CSD and the El Dorado LAFCO have opined that a CSD may not have been the appropriate type of district to begin with, and it appears that a CSD may not now serve the needs of district residents, landowners, cabin owners and visitors. The district has asserted that all other alternatives have been thoroughly exhausted, but El Dorado LAFCO disagrees. The Committee may wish to consider if this district should continue as a CSD or whether alternatives merit further study.

- d) **Disputed or Unverifiable Information.** There remain outstanding questions on a number of issues affecting the FLL CSD. The actual number of residents has been reported as anywhere from nine to 100 people, and the financial condition of the district has also been debated. There are also outstanding questions as to whether the public access portions of the district are in jeopardy in the event the district is dissolved or reorganized into a different type of governmental or non-governmental entity. El Dorado LAFCO reports that it plans to conduct an MSR of fire service in the 2018-19 cycle that would include FLL CSD, but that it has no plans to conduct an updated MSR only for the district. The Committee may wish to consider if this bill should be approved absent confirmation of this information.

11) **Committee Amendments.** In order to address the concerns raised above, the Committee may wish to consider amending the bill to remove its current provisions and add the following:

- a) No later than August 1, 2019, the California State Auditor shall complete an audit of the Fallen Leaf Lake Community Services District that shall include, but not be limited to, the following: a determination of the district's number of residents; an analysis of the district's financial condition and ongoing financial viability; an assessment to determine if public access to Fallen Leaf Lake will be jeopardized if the district is dissolved or reorganized into a different entity; an evaluation of alternative governmental or non-governmental entities that may provide the services presently provided by the district; and, any other relevant information or analysis the Auditor deems necessary to provide a recommendation to the appropriate committees of the Legislature for the provision of services to the Fallen Leaf Lake community; and,
- b) Provide FLL CSD non-resident community members with immunity from prosecution for voting in district elections or serving as board members until January 1, 2021.

12) **Arguments in Support.** FLL CSD, sponsor of this measure, states "...as matters now stand, community members vote on Fallen Leaf specific issues at their peril. Furthermore, since state law requires that board members be registered voters in the district, it has become nearly impossible to recruit candidates to serve on the board..."

"It was not always that way. When the CSD was formed in 1982, the Fallen Leaf leaders who applied to LAFCO for the CSD charter signed documents in which they gave, as their primary place of residence, their winter addresses. State law would have permitted the CSD to become a landowner district had the applicants chosen to do so at the time of issuance; however, they did not do so despite the fact that it was common knowledge that their primary addresses were elsewhere. Undoubtedly the reason they set up the CSD as a registered voter district (as opposed to a landowner district) was because they believed in good faith that they could lawfully vote in the district so long as they did not vote anywhere else in the same election.

"For the next twenty-nine years, until 2011, many Fallen Leaf summer residents continued that pattern of voting either at their Fallen Leaf address when there were issues specific to the lake or at their winter address, but never at both places in the same election. The District Attorney agreed back in 2011 that there was no evidence of double voting or of improper intent which is why his letter was issued as a warning and not as a notice of intent to

prosecute. Since 2011 the community has sought to find a solution which would allow them to vote lawfully on purely Fallen Leaf related matters such as the election of board members, the renewal of the fire tax, and any other matter which might properly be handled through the election process. This bill is the only method we have found which solves the problem.

"In the final analysis, we must have a CSD. But, without a board, the CSD will necessarily fail. None of the nine permanent residents is interested in serving on the board, and since four of the board's five members are over 70 years old, it could face a quorum crisis sooner than later. If the CSD fails, then the fire department will also likely fail, both for lack of a secure tax based funding source and also since it would lose its governmental platform and become a private department which does not qualify to submit grants to federal or state agencies to upgrade its equipment, apparatus, and other necessities."

13) **Arguments in Opposition.** None on file.

14) **Double-Referral.** This bill is double-referred to the Elections and Redistricting Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Fallen Leaf Lake Community Services District [SPONSOR]  
American Rivers  
Fallen Leaf Lake Community Services District Fire Department  
Lake Tahoe Wildlife Care  
League to Save Lake Tahoe  
Stanford Sierra Camp and Conference Center  
Tahoe Resource Conservation District  
El Dorado County Supervisor Sue Novasel  
40 individuals

**Concerns**

El Dorado LAFCO

**Opposition**

None on file

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