

Date of Hearing: June 8, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 938 (Hertzberg) – As Amended April 4, 2022

**SENATE VOTE:** 38-0

**SUBJECT:** The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000: protest proceedings: procedural consolidation.

**SUMMARY:** Makes numerous changes to the protest provisions in local agency formation commission (LAFCO) law. Specifically, **this bill:**

- 1) Specifies that a LAFCO may initiate a proposal for the dissolution of a special district that is eligible for a protest threshold of 25% if the following conditions are satisfied:
  - a) At a public hearing for which a notice has been published and posted, the LAFCO approves, adopts, or accepts a municipal service review (MSR) that includes a finding, based on a preponderance of the evidence, that one or more of the following conditions is met:
    - i) The district has one or more documented chronic service provision deficiencies that substantially deviate from industry or trade association standards or other government regulations and its board or management is not actively engaged in efforts to remediate the documented service deficiencies.
    - ii) The district spent public funds in an unlawful or reckless manner inconsistent with the principal act or other statute governing the district and has not taken any action to prevent similar future spending.
    - iii) The district has shown willful neglect by failing to consistently adhere to the California Public Records Act and other public disclosure laws to which the agency is subject.
    - iv) The district has failed to meet the minimum number of times required in its principal act in the prior calendar year and has taken no action to remediate the failures to ensure future meetings are conducted on a timely basis.
    - v) The district has consistently failed to perform audits in the prior three years, or failed to meet specified financial requirements over the prior five years as an alternative to performing an audit.
    - vi) The district's recent annual audits show chronic issues with the district's fiscal controls and the district has taken no action to remediate the issues.
  - b) At a public hearing for which notice has been published and posted, the LAFCO adopts a resolution of intent to initiate dissolution based on one or more of the required findings in a) above. The resolution shall provide a remediation period of not less than 12 months during which the district may take steps to remedy the specified deficiencies and also

specify a date upon which the district shall provide the LAFCO a mid-point report on such remediation efforts at a regularly scheduled LAFCO meeting.

- c) At the conclusion of the remediation period, at a public hearing for which notice has been published and posted, the LAFCO shall take one of the following actions:
  - i) If the LAFCO finds the district has adequately remedied the deficiencies, the LAFCO shall rescind the notice of intent to initiate dissolution and no further action is required.
  - ii) If the LAFCO finds the district has failed to remedy the deficiencies, the LAFCO may adopt a resolution to dissolve the district making specified determinations.
- 2) Provides that any public noticed required pursuant to 1) above shall be published and posted in accordance with existing law.
- 3) Specifies that the public hearings required pursuant to 1) above may be combined into a single public hearing for which notice has been published and posted.
- 4) Provides that the LAFCO's power to initiate dissolution of a district pursuant to 1) above is separate from and in addition to the LAFCO's power to initiate dissolution as specified.
- 5) Specifies that, where the proceeding is for the dissolution of a district initiated by the LAFCO pursuant to 1) above, the date of the hearing shall be at least 60 days, but no more than 90 days, from the date the notice is given.
- 6) Consolidates protest thresholds in a single chapter in LAFCO law, repeals obsolete provisions, and makes conforming changes.

**EXISTING LAW:**

- 1) Establishes a LAFCO within each county to control the boundaries of local agencies in that county.
- 2) Requires LAFCOs to adopt spheres of influence (SOI) for local agencies every five years based on information contained in a MSR.
- 3) Requires most boundary changes to be approved by voters if 25% of the voters or landowners representing 25% of the assessed value of land in the area of a proposed boundary change submit written protests to LAFCO.
- 4) Provides that where a LAFCO initiates a boundary change (rather than by petition or a local agency application), an election is generally required if 10% of voters or landowners submit written protests.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary.** This bill specifies that a LAFCO may initiate a proposal for the dissolution of a special district subject to a protest threshold of 25% if specified conditions are met. The LAFCO must first adopt a MSR that includes certain findings. Second, the LAFCO must adopt a resolution of intent to initiate dissolution based on one or more of the required findings at a noticed public hearing, which may be combined with the hearing at which the findings are made. The resolution must allow the district at least 12 months to remediate its deficiencies and must specify a date for the district to report on its remediation efforts at a regularly scheduled LAFCO meeting.

At the conclusion of the remediation period, the LAFCO must hold a noticed public hearing and rescind the notice of intent to initiate dissolution if it finds the district has adequately remedied the deficiencies at a noticed public hearing. If the LAFCO finds that the district has failed to remedy the deficiencies, it can adopt a resolution to dissolve the district by making the determinations required for LAFCO-initiated boundary changes in existing law.

Lastly, this bill consolidates protest thresholds in a single chapter in LAFCO law, repeals obsolete provisions, and makes conforming changes. The California Association of LAFCOs (CALAFCO) is the sponsor of this bill.

- 2) **Author's Statement.** According to the author, "LAFCOs are extraordinarily important government entities, responsible for encouraging the orderly formation and development of local agencies, discouraging urban sprawl, and preserving agricultural land and open space land. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (AB 2838, Hertzberg) enacted landmark changes to the duties and authorities of LAFCOs in an effort to ensure they can better meet their important statutory obligations. Now, over 20 years later, a Little Hoover Commission report found improvements are needed to strengthen LAFCO oversight of special districts. SB 938 is the result of a three-year long, collaborative effort to provide LAFCOs with the tools they need to carry out their obligation to provide orderly and functioning local government services."
- 3) **LAFCOs.** The Cortese-Knox-Hertzberg Act (CKH Act) creates a LAFCO in each county to control the boundaries of cities, county service areas, and most special districts. The courts repeatedly refer to LAFCOs as the Legislature's watchdog over boundary changes. Controlling boundaries means LAFCOs influence the timing and location of development, because they generally determine the type of services that are available to support development—and those that are not. The Legislature created LAFCOs to discourage urban sprawl, preserve open space and prime agricultural lands, encourage the orderly formation and development of local agencies, and to ensure the efficient provision of government services. LAFCOs must adopt written policies to further these goals.

Local governments, in almost all cases, can only exercise their powers and provide services where LAFCO allows them to: within their boundaries (which are set by LAFCO), within their SOI but outside their boundaries (with authorization by LAFCO), and outside their SOI to address a major threat to public health if the extension is consistent with LAFCO's policies. LAFCOs are charged with ensuring that services are effectively and efficiently delivered to all communities throughout the state.

- 4) **SOIs and MSRs.** LAFCOs' boundary decisions must generally be consistent with SOIs that LAFCOs adopt to show the future boundaries and service areas of the cities and special districts. LAFCOs must update these SOIs every five years. When adopting the SOI, the LAFCO must consider and prepare a written statement with respect to:
- a) Present and planned land uses in the area, including agricultural and open-space lands.
  - b) Present and probable need for public facilities and services in the area.
  - c) Present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.
  - d) Existence of any social or economic communities of interest in the area if the LAFCO determines that they are relevant to the agency.

Before LAFCOs can adopt their SOIs, they must prepare MSRs. MSRs are comprehensive studies to determine the adequacy of governmental services being provided by the local agencies under LAFCO jurisdiction and must include the following:

- a) Growth and population projections for the affected area.
- b) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the SOI.
- c) Present and planned capacity and adequacy of public facilities, adequacy of public services and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the SOI.
- d) Financial ability of agencies to provide services.
- e) Status of, and opportunities for, shared facilities.
- f) Accountability for community service needs, including governmental structure and operational efficiencies.
- g) Any other matter related to effective or efficient service delivery, as required by LAFCO policy.

An MSR may also assess various alternatives for improving efficiency and affordability of infrastructure and services in the area in and around a SOI. LAFCO law also allows LAFCOs to perform special studies of existing government agencies to determine their maximum service area and service capacities.

- 5) **Boundary Changes.** Most boundary changes begin when a city or special district applies to LAFCO, or when registered voters or landowners file petitions with a LAFCO. In 1993, the Legislature allowed LAFCOs to initiate some special district boundary changes: consolidations, dissolutions, mergers, subsidiary districts, or reorganizations [AB 1335 (Gotch), Chapter 1307, Statutes of 1993]. Boundary changes, including dissolutions, require

four (sometimes five) steps:

- a) First, there must be a completed application to LAFCO, including a petition or resolution, an environmental review document, an agreement on how property taxes will be transferred, and a plan for services that describes what services will be provided at what level and how those services will be financed.
  - b) Second, LAFCO must hold a noticed public hearing, take testimony, and may approve the proposed reorganization. The LAFCO may impose terms and conditions that spell out what happens to the assets and liabilities of affected local agencies. If the LAFCO disapproves, the proposed reorganization stops.
  - c) Third, the LAFCO must hold another public hearing to count written protests in order to determine whether an election is needed, as described below. In nearly all cases, if a majority of voters or landowners protest, the reorganization stops.
  - d) Fourth, if an election is required, it occurs among the affected voters, requiring majority voter approval.
  - e) Finally, LAFCO files formal documents to complete the reorganization.
- 6) **LAFCO Protest Thresholds.** In most cases LAFCO law requires a boundary change to be approved by voters at an election if 25% of the voters in a district, or voters representing 25% of the assessed value of land, submit written protests. Specific protest thresholds and procedures depend on factors including the specific action that the LAFCO is proposing to take, whether the territory that is the subject of a LAFCO action is inhabited, the percent of registered voters or landowners submitting protests, and the objection of the applicable local agencies. One departure from the 25% threshold occurs when a LAFCO initiates a boundary change such as a dissolution or consolidation. Generally, for LAFCO-initiated actions, only 10% of voters or landowners need to protest.
- 7) **Little Hoover Commission Report.** In August 2017, the Little Hoover Commission (LHC) published a report called *Special Districts: Improving Oversight and Transparency* to look at how California's independent special districts provide vital services ranging from fire protection to healthcare, cemeteries to sewers. It wanted to better understand if California taxpayers were well-served through this additional layer of specialized bureaucracy and to analyze whether consolidation or dissolution of some special districts could lead to improved efficiency in governance and operations.

The report addressed many issues and provided a number of recommendations, including Recommendation 6, which said, "The Legislature should convene an advisory committee to review the protest process for consolidations and dissolutions of special districts and to develop legislation to simplify and create consistency in the process." The recommendation further provided that, "Complicated and inconsistent processes potentially impact a LAFCO's ability to initiate a dissolution or consolidation of a district. If 10 percent of district constituents protest a LAFCO's proposed special district consolidation, a public vote is required. If a special district initiates the consolidation, then a public vote is required if 25 percent of the affected constituents protest. Additionally, the LAFCO must pay for all costs for studies and elections if it initiates a consolidation proposal, whereas the district pays these

costs if it proposes or requests the consolidation. Various participants in the Commission’s public process cautioned against setting yet another arbitrary threshold and advised the issue warranted further study before proposing legislative changes. They called for more consistency in the process.”

- 8) **Protest Threshold Working Group.** According to the CALAFCO, “SB 938 represents a collaborative three-year effort to clean up, consolidate, and clarify existing statutory provisions associated with consolidations and dissolutions, as well as codify the conditions under which a Local Agency Formation Commission (LAFCo) may initiate dissolution of a district at the 25% protest threshold.

“The statutes related to protest provisions and the disparate protest thresholds established for LAFCo-initiated actions (10%) and all other initiated actions (25%) make addressing necessary and appropriate special district consolidations and dissolutions considerably more difficult when initiated by a LAFCo. Further, they serve as a deterrent for LAFCo to initiate action, even if meaningful efficiencies in the provision of public services could be achieved or if a district is failing to meet its statutory requirements. A statewide study conducted by CALAFCO in 2018 found that the 10% protest threshold was the second-most common deterrent for LAFCos initiating action (the first being the lack of funding).

“In response to a recommendation made in the 2017 Little Hoover Commission report after a year-long study (*Special Districts: Improving Oversight and Transparency*), CALAFCO initiated a working group of stakeholders in early 2019 to examine the protest process for consolidations and dissolutions of special districts. After three years of work (delayed due to the pandemic), the working group came to consensus on the redraft of existing protest statutes (representative of SB 938 as introduced) and a new process that allows LAFCos to initiate dissolution of a district at the 25% protest threshold under specific circumstances (as amended into SB 938).

“The overarching goal of these changes is to ensure that LAFCos have the tools they need to carry out their statutory obligations to ensure orderly and functioning local government services and to create greater consistency in the statute. The specific circumstances under which a dissolution may be initiated are more than reasonable and the subsequent process includes three noticed public hearings, a minimum 12-month remediation period, and a 60-day protest period, all of which are extremely practical. Additionally, the proposed process for LAFCo-initiated actions at the 25% protest threshold applies only to dissolutions, making the scope of use exceptionally narrow.

“The 18-member working group consisted of a broad group of stakeholder representatives from CALAFCO (including Executive Officers and legal counsel), the California Special Districts Association (CSDA) (including board members and staff from water, resource conservation and fire protection districts, as well as legal counsel), a shared CALAFCO-CSDA Board member, and representatives from the League of California Cities, California State Association of Counties (CSAC), and the Senate Governance and Finance and Assembly Local Government Committees.”

- 9) **Policy Consideration.** The new process authorized by SB 938 only applies to dissolutions and not consolidations or other reorganizations. Accordingly, if the LAFCO must take other associated actions, in many cases those actions would still be subject to the 10% protest

threshold. To improve the effective service delivery in a local area, other actions may provide similar benefits as dissolution of a district. For instance, consolidating a well-performing district with a neighboring district that provides like services, but may be performing poorly, could also serve as a viable solution. The Committee may wish to consider if protest thresholds for other LAFCO initiated actions should be increased using similar procedures proposed to be established by this bill.

10) **Technical Amendments.** To correct a number of cross references in the bill, the author has agreed to accept the following technical amendments:

- a) **57077.1(b)(1).** Strike 57093 and insert 57092
- b) **57077.1(b)(2).** Strike 57094 and insert 57093
- c) **57077.2(b)(1).** Strike 57093 and insert 57092
- d) **57077.2(b)(2).** Strike 57093 and insert 57092
- e) **57077.2(b)(3).** Strike 57094 and insert 57093
- f) **57077.3(b)(1).** Strike 57093 and insert 57092
- g) **57077.3(b)(2).** Strike 57093 and insert 57092
- h) **57077.3(b)(3).** Strike 57094 and insert 57093
- i) **57077.4(b).** Strike 57094 and insert 57093
- j) **57077.5(b)(1).** Strike 57093 and insert 57092
- k) **57077.5(b)(2).** Strike 57094 and insert 57093

11) **Arguments in Support.** According to the California Special Districts Association, “While the vast majority of special districts excel in the provision of essential services to the communities and regions they serve, SB 938 will empower LAFCOs with an important new tool to remediate conditions that must be addressed in concert with the residents who depend upon, own, oversee, and govern their special district local governments.

“SB 938 also simplifies the statutes related to the conducting authority for LAFCOs to effectuate the various reorganizations of special districts, significantly reducing the voluminous cross-referenced statutes and combining them within a smaller subset of provisions. These changes will provide additional clarity for LAFCOs and the public with regard to the proper protocols and procedures involved in carrying out the reorganization proceedings referenced throughout CKH.

“Notably, SB 938 creates a new voter protest threshold for LAFCO-initiated dissolutions of special districts that meet specified criteria. The bill would create specific conditions under which a LAFCO may initiate dissolution of a special district with a 25 percent protest threshold (rather than the preexisting 10 percent threshold)...

“The provisions of this bill were fundamentally developed through a thorough, inclusive, multi-year working group process that was responsive to a key remaining Little Hoover Commission recommendation in its 2017 report ‘*Special Districts: Improving Oversight & Transparency.*’ For these reasons, CSDA is proud to have participated in this process and applauds the author for carrying this important legislation that builds upon the author’s tremendous legacy of work in the Government Code.”

- 12) **Arguments in Opposition.** An individual in opposition writes, “Please discontinue the process to push aspects of this legislation forward, the well known proposed/pending amendment(s) that would change the long established Special Districts dissolution protest threshold from the current Ten percent (10%) to a much higher Twenty five percent (25%). Would not serve the Residents of the Great State of California, and would ONLY serve those Special Districts that under perform and or serve No further need to exist at taxpayer's expense.”

## REGISTERED SUPPORT / OPPOSITION:

### Support

CALAFCO [SPONSOR]  
 Alameda LAFCO  
 Association of California Water Agencies  
 Butte LAFCO  
 Calaveras LAFCO  
 California Municipal Utilities Association  
 California Special Districts Association  
 California State Association of Counties  
 Colusa LAFCO  
 Contra Costa LAFCO  
 El Dorado LAFCO  
 Fresno LAFCO  
 Humboldt LAFCO  
 Imperial LAFCO  
 Irvine Ranch Water District  
 Lake LAFCO  
 Los Angeles LAFCO  
 Marin LAFCO  
 Mendocino LAFCO  
 Merced LAFCO  
 Modoc LAFCO  
 Mono LAFCO  
 Monterey LAFCO  
 Napa LAFCO  
 Nevada LAFCO  
 Orange LAFCO  
 Placer LAFCO  
 Riverside LAFCO  
 Rural County Representatives of California  
 Sacramento LAFCO



San Bernardino LAFCO  
San Diego LAFCO  
San Luis Obispo LAFCO  
San Mateo LAFCO  
Santa Barbara LAFCO  
Santa Clara LAFCO  
Santa Cruz LAFCO  
Siskiyou LAFCO  
Solano LAFCO  
Sonoma LAFCO  
Stanislaus LAFCO  
Sutter LAFCO  
Upper San Gabriel Valley Municipal Water District  
Urban Counties of California  
Ventura LAFCO  
Yolo LAFCO  
Yuba LAFCO

**Opposition**

One Individual

**Analysis Prepared by:** Jimmy MacDonald / L. GOV. / (916) 319-3958