

Revised October 13, 2003

MEMORANDUM

TO: CALAFCO

FROM: Clark A. Alsop
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Sophie A. Akins

RE: CALAFCO: Current Methods in Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 for Extinguishment of Special Districts

This memorandum is intended to provide an overview of the typical methods for extinguishing special districts. Of course, the procedures and processes for consolidations, dissolutions, mergers and the establishment of subsidiary districts may take various forms not delineated herein. Each LAFCO should work with its legal counsel in order to ensure that the appropriate procedures are followed.

QUESTIONS PRESENTED

1. What are the various ways a special district may be extinguished under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code § 56000 et seq.)¹ (the "Act")?
2. What restrictions are on these processes to extinguish special districts, if any?

SHORT ANSWERS

1. Districts may be eliminated through:
 - A. Consolidation,
 - B. Dissolution;
 - C. Merger;
 - D. Establishment of a Subsidiary District.
2. The following are limitations specific to the processes listed above to eliminate districts:
 - A. Consolidation: Districts may only consolidate if they are formed under the same principal acts. That is, only a municipal water district may be consolidated with a municipal water district, not an irrigation district even though an irrigation district may provide many of the same services as a municipal water district.

¹ All further citations are to the Government Code unless otherwise specified.

- B. Dissolution: Dissolutions could be subject to court challenge should LAFCO designate another district to "step into the shoes," either entirely or for certain functions, of the dissolved district.
- C. Merger: A City must consent to a merger regardless of whether LAFCO initiated the merger proceedings or whether the voters approved the merger.
- D. Establishment of a Subsidiary District: A subsidiary district may only be established if it meets certain statutorily mandated requirements related to the amount of district territory and the number of district voters also located within the city's boundaries.

DISCUSSION

A. CONSOLIDATION

1. Brief History

In 1986, the State Legislature amended the Act to include, in part, a definition for the term "consolidation." Although the Act has since then been amended numerous times, the definition of a "consolidation" has remained constant. Under the Act, a "consolidation" is defined as "the uniting or joining of two or more . . . districts into a single new successor district. In the case of consolidation of special districts, all of those districts shall have been formed pursuant to the same principal act." (§ 56030.) Since July 1, 1994, LAFCO's have had the power to initiate proposals to consolidate districts. (§ 56375(a).) Before 1994, only districts or petitioners could initiate a consolidation proceeding.

2. LAFCO-Initiated Consolidation

LAFCO may only initiate a consolidation if it is consistent with a recommendation or conclusion of a study prepared pursuant to Sections 56378, 56425, or 56430 and LAFCO makes the determinations specified in Section 56881(b). (§ 56375(a).) Sections 56378, 56425 and 56430 require LAFCO to study existing agencies and make determinations regarding spheres of influence and conduct service reviews of the municipal services provided in the area for review.

Section 56881(b) requires LAFCO to make both of the following determinations with regard to the proposed consolidation:

- (b) (1) Public service costs of a proposal that the LAFCO is authorizing are likely to be less than or substantially similar to the costs of alternate means of providing the service.
- (2) Promotes public access and accountability for community services needs and financial resources.

Although not required, where LAFCO initiates a consolidation, LAFCO is "encouraged" by Section 56853(c) to utilize a reorganization committee to review the proposal to consolidate. Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal to consolidate.

a. Protest/Election/Certificate of Completion

LAFCO is not required to place the consolidation before the voters, unless written protests have been filed in accordance with Section 57113's requirements. (§ 56854(a)(3).) Section 57113(a) requires that LAFCO submit a consolidation to the voters if LAFCO receives a petition prior to the conclusion of the protest hearing signed by the following:

- (1) (A) At least 10 percent of the number of landowners within any affected district within the affected territory who own at least 10 percent of the assessed value of land within the territory. . . .
- (B) At least 10 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory. . . .
- (2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 10 percent of the number of landowners within any affected district within the affected territory, owning at least 10 percent of the assessed value of land within the territory. . . .

(§ 57113(a)(1) and (2) (emphasis added).)

If a sufficient protest is made, LAFCO is required to submit the consolidation to the voters. LAFCO's resolution must designate the territory in which the elections will be held,² provide the question to be submitted to the voters, specify any consolidation terms and conditions, and state the vote required to confirm the consolidation. (§§ 57118, 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the consolidation, LAFCO must adopt a certificate of termination of proceedings. (§ 57201.) However, if the majority of the voters vote for a consolidation of the districts, LAFCO must execute a certificate of completion confirming the order of consolidation. (§ 57177.5(a).) If no election is required to be held, the LAFCO Executive Officer must still execute a certificate of completion and make the requisite filings. (§ 57200.)

² The affected districts in which no election is held are deemed to have consented to the proposal.

b. Effect of Consolidation

After the LAFCO Executive Officer files the requisite certificate of completion, the consolidated district succeeds to all the "powers, rights, duties, obligations, functions, and properties of the predecessor districts" which consolidated to form a new district. (§ 57500.)³ Included in these rights and duties, a consolidated district becomes liable for all debts of the predecessor districts. (§ 57502.) The consolidated district "steps into the shoes" of the predecessor districts because it is as if the "consolidated district had been originally formed under the principal act." (§ 57500.)

c. Effective Date

Finally, the consolidation's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the consolidation. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the consolidation is effective on the day the consolidation is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

3. District-Initiated Consolidation

a. Initiated by One District

The legislative body of a district wishing to consolidate with another district formed under the same principal act must submit a Resolution of Application to the LAFCO Executive Officer of the principal county. (§ 56658(a).) The Application must contain the components set forth in Appendix "B" to this Memorandum, which include, in part, a Resolution of Application (see Appendix "C") and a Plan for Providing Services (see Appendix "D").

Before the hearing, the Executive Officer must prepare a report on the Application, including his or her recommendation on the Application and give a copy of the report to every affected district, agency, and city. (§ 56665.) At the hearing, LAFCO hears and receives written and oral protests and evidence as well as the Executive Officer's report and the Plan for Providing Services. (§ 56666.) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal to consolidate. LAFCO may also impose terms and conditions pursuant to Sections 56885.5 and 56886.

i. Protest/Election/Certificate of Completion

An election must be held where an affected city or agency has not objected by resolution but a written protest is received that meets the voter/landowner petition requirements of Section 57081(b). (§ 56854(a)(1).) Section 57081 sets forth the following protest threshold:

- (b) (1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

³ *But see*, Section 57301 regarding effect of Section 57500 et seq. when specific terms and conditions are imposed by LAFCO pursuant to Section 56886.

- (A) At least 25 percent of the number of landowners within the territory subject to the consolidation or reorganization who own at least 25 percent of the assessed value of land within the territory.
 - (B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, the territory.
- (2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within the territory subject to the consolidation or reorganization, owning at least 25 percent of the assessed value of land within the territory.

(Id.) If an affected city or district files a resolution of objection, then an election must be held in each affected district if a written protest is received that voter/landowner petition thresholds of Section 57114(a)(1) - (2) and (b), which provides:

- (a) (1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:
 - (A) At least 25 percent of the number of landowners within any affected district within the affected territory who own at least 25 percent of the assessed value of land within the territory.
 - (B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.
 - (2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within any affected district within the affected territory, owning at least 25 percent of the assessed value of land within the territory of that district.
- (b) If a petition that meets the requirements of this section has been filed, the commission shall approve the proposal subject to confirmation by the voters of each district that has filed such a petition.

(Id. (emphasis added).)

If LAFCO is required to submit a consolidation to the voters pursuant to Section 57081, the election will be held within the territory of each district ordered to be consolidated. (§ 57118(a).) If on the other hand, LAFCO is required to submit a consolidation to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.⁴ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any consolidation terms and conditions, and state the vote required to confirm the consolidation. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the consolidation, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote for a consolidation of the districts, the LAFCO Executive Officer must execute a certificate of completion confirming the order of consolidation. (§ 57177.5(a).) If no election is required to be held, LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

ii. Effect of Consolidation

After the LAFCO Executive Officer files the certificate of completion, the consolidated district succeeds to all the "powers, rights, duties, obligations, functions, and properties of the predecessor districts" which consolidated to form a new district. (§ 57500.)⁵ Included in these rights and duties, a consolidated district becomes liable for all debts of the predecessor districts. (§ 57502.) The consolidated district "steps into the shoes" of the predecessor districts because it is as if the "consolidated district had been originally formed under the principal act." (§ 57500.)

iii. Effective Date

Finally, the consolidation's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the consolidation. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the consolidation is effective on the day the consolidation is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

b. Initiated by Two or More Districts

Consolidation may also be initiated by the legislative bodies of two or more special districts. In order to start the consolidation process, the districts must adopt a Resolution of Application to consolidate the districts. (§ 56853(a).) The Application must contain the components set forth in Appendix "B" to this Memorandum, which include, in part, a Resolution of Application (see Appendix "C") and a Plan for Providing Services (see Appendix "D"). LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

⁴ See, Footnote 2.

⁵ See, Footnote 3.

LAFCO may change the terms of the consolidation set forth in the districts' proposal. (§ 56853(b).) However, after modifying any of the material terms of the consolidation proposal, LAFCO must provide mailed written notice of the change to the districts and cannot move forward on the consolidation for thirty (30) days following that mailing without the districts' written consent. (§ 56853(b).) During this thirty (30) day time period, either district may file with the LAFCO's Executive Officer a written demand for LAFCO to make determinations only after notice and hearing on the proposals. If no written demand is made by either district, LAFCO may make those determinations without notice or a hearing. However, LAFCO cannot make any changes that would delete or add districts to the proposed consolidation without the written consent of the applicant districts. (§ 56853(d).)

i. Protest/Election/Certificate of Completion

Upon receiving the proposals to consolidate from the districts, LAFCO must approve, or conditionally approve, the consolidation unless LAFCO receives a petition from the statutorily-mandated number of landowners/votes to submit the consolidation to an election as described below. (§ 56853(a).) Moreover, if a conflicting proposal is submitted to LAFCO within 60 days of the submission of the proposal to consolidate, then LAFCO cannot approve the proposal to consolidate until it considers the conflicting proposal. (§ 56657.)

An election must be held where an affected city or agency has not objected by resolution but a written protest is received that meets the voter/landowner petition requirements of Section 57081(b). (§ 56854(a)(1).) If an affected city or district files a resolution of objection, then an election must be held if a written protest that has been signed meeting the threshold level set forth in Section 57114(a). These thresholds are set forth in Section A(3), above.

If LAFCO is required to submit a consolidation to the voters pursuant to Section 57081, the election will be held within the territory of each district ordered by to be consolidated. (§ 57118(a).) If on the other hand, LAFCO is required to submit a consolidation to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.⁶ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any consolidation terms and conditions, and state the vote required to confirm the consolidation. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the consolidation, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote for a consolidation of the districts, the LAFCO Executive Officer must execute a certificate of completion confirming the order of consolidation. (§ 57177.5(a).) If no election is required to be held, LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

⁶ See, Footnote 2.

ii. Effect of Consolidation

After the LAFCO Executive Officer files the requisite certificate of completion, the consolidated district succeeds to all the "powers, rights, duties, obligations, functions, and properties of the predecessor districts" which consolidated to form a new district. (§ 57500.)⁷ Included in these rights and duties, a consolidated district becomes liable for all debts of the predecessor districts. (§ 57502.) The consolidated district "steps into the shoes" of the predecessor districts because it is as if the "consolidated district had been originally formed under the principal act." (§ 57500.)

iii. Effective Date

Finally, the consolidation's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the consolidation. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the consolidation is effective on the day the consolidation is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

4. Petition-Initiated Consolidation

Special districts may be consolidated by petition signed by the requisite number of registered voters or landowners, depending upon the specifics of the district's statutory authorization. Prior to circulating any petition, however, the proponents for change of organization must file a notice of intention to circulate a petition with LAFCO. (§ 56700.4(a).) After a notice of intention to circulate the petition is filed, the petition may be circulated for the appropriate signatures. (§ 56700.4(b).) For a consolidation, voters or landowners must sign a petition as follows:

- (a) For registered voter districts, by not less than 5 percent of the registered voters within each of the several districts.
- (b) For landowner-voter districts, by landowner-voters within each of the several district constituting not less than 5 percent of the number of landowner-voters owning land within each of the several districts owning land within each of the several districts, and who also own not less than 5 percent of the assessed value of land within each of the several districts.

(§ 56865.)

The petitioners must submit an Application for consolidation to the LAFCO Executive Officer of the principal county. (§ 56658(a).) Like a Resolution of Application filed by districts wishing to consolidate, the Application must contain those elements set forth in Appendix "B" to this Memorandum. Additionally, the petition must contain all of the requirements delineated in Section 56700 attached to this Memorandum as Appendix "C." Once a petition is qualified by the Executive Officer, the Executive Officer issues a certificate of filing to the applicant. (§ 56658(e)-(i).) Within 90 days of issuing the certificate of filing, the Executive Officer must set a hearing. (§ 56658.)

⁷ See, Footnote 3.

Before LAFCO may take action on a proposal to consolidate, LAFCO must hold a public hearing on the proposal. (§ 56662(b).) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal to consolidate. LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

i. Protest Election/Certificate of Completion

LAFCO is still not required to place the consolidation before the voters, unless written protests have been filed meeting Section 57081, if an affected city or district has not objected by resolution to the proposal, or Section 57114, if an affected city or district has objected by resolution to the proposal. (§ 56854(a)(1) and (2).) These threshold limits are delineated in Section A(3), above.

If LAFCO is required to submit a consolidation to the voters pursuant to Section 57081, the election will be held within the territory of each district ordered by to be consolidated. (§ 57118(a).) If on the other hand, LAFCO is required to submit a consolidation to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.⁸ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any consolidation terms and conditions, and state the vote required to confirm the consolidation. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the consolidation, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote to consolidate the districts, LAFCO must execute a certificate of completion confirming the order of consolidation. (§ 57177.5(a).) If no election is required to be held, the LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

ii. Effect of Consolidation

After the LAFCO Executive Officer files the requisite certificate of completion, the consolidated district succeeds to all the "powers, rights, duties, obligations, functions, and properties of the predecessor districts" which consolidated to form a new district. (§ 57500.)⁹ Included in these rights and duties, a consolidated district becomes liable for all debts of the predecessor districts. (§ 57502.) The consolidated district "steps into the shoes" of the predecessor districts because it is as if the "consolidated district had been originally formed under the principal act." (§ 57500.)

iii. Effective Date

Finally, the consolidation's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the consolidation. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the consolidation is effective on the day the consolidation is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

⁸ See, Footnote 2.

⁹ See, Footnote 3.

5. Limitations on Consolidation

Only districts formed under the same principal act may be consolidated into a single district. For instance, two municipal water districts may consolidate. However, an irrigation district and a municipal water district cannot consolidate even though they may share many of the same powers and duties. The requirement that both districts be formed pursuant to the same act may be, in part, because of the mandates in Sections 56859 and 56860 that the proceedings to form a new district must conform to principal act of the district to be formed. Section 56859 provides:

Proceedings for the formation of a district shall be conducted as authorized in the principal act of the district to be formed and Section 56100.

(§ 56859.) Section 56100 specifies that for the purposes of reorganization, LAFCO serves as the conducting authority and that the reorganization provisions of the Act prevail over any conflicting laws in the principal act of the district. A special district dissolution may be appropriate if the conditions for a consolidation of two special districts are not present.

We believe LAFCO may affect the "consolidation" of two districts formed under different principal acts, by approving a reorganization which includes the dissolution of one district and the annexation of that territory to the other district. This interpretation is discussed below in Section B(5) of this Memorandum, and could, because the Act does not expressly provide for this process, be subject to challenge in court.

B. DISSOLUTION

1. Brief History

As a result of the Gotch Amendment (AB 1335) to the Cortese-Knox Local Government Reorganization Act of 1985, proposals to dissolve a special district may be initiated by LAFCO itself. (§ 56000.) The purpose of the Gotch Amendment was to consolidate overlapping districts into a more coherent system of local government or dissolve districts that have outlived their purpose. However, by 2000, five years after the passage of the Gotch Amendment, only one LAFCO-initiated proposal had led to the dissolution of a special district. (Little Hoover Commission, Special Districts: Relics of the Past or Resources for the Future? 9 (2000).)

At present, the procedures for a dissolution may be commenced by the district, by petition or LAFCO itself. The Act defines the term "dissolution" as:

The dissolution, disincorporation, extinguishment, and termination of the existence of a district and the cessation of all its corporate powers, except as the commission may otherwise provide pursuant to Section 56886 or for the purpose of winding up the affairs of the district.

(§ 56035.)

2. LAFCO-Initiated Dissolution

A dissolution may be initiated by LAFCO if it is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378, 56425, or 56430 and LAFCO makes the determinations specified in Section 56881(b). (§ 56375(a).) Sections 56378, 56425 and 56430 require LAFCO to study existing agencies and make determinations regarding spheres of influence and conduct service reviews of the municipal services provided in the area for review.

Section 56881(b) requires LAFCO to make both of the following determinations with regard to the proposed dissolution:

- (b) (1) Public service costs of a proposal that LAFCO is authorizing are likely to be less than or substantially similar to the costs of alternate means of providing the service.
- (2) Promotes public access and accountability for community services needs and financial resources.

Before LAFCO may dissolve a district, LAFCO must hold a public hearing on the dissolution proposal. (§ 56662(b).) Section 56668 requires the LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal to dissolve.

a. Protest/Election/Certificate of Completion

LAFCO is not required to place the dissolution before the voters, unless written protests have been filed in accordance with Section 57113's requirements. (§ 56854(a)(3).) Section 57113 requires that LAFCO to submit a dissolution to the voters if LAFCO receives a petition prior to the conclusion of the protest hearing signed by the following:

- (1) (A) At least 10 percent of the number of landowners within any affected district within the affected territory who own at least 10 percent of the assessed value of land within the territory. . . .
- (B) At least 10 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory. . . .
- (2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 10 percent of the number of landowners within any affected district within the affected territory, owning at least 10 percent of the assessed value of land within the territory. . . .

If a sufficient protest is made, LAFCO is required to submit the dissolution to the voters. LAFCO's resolution must designate the territory in which the elections will be held, (which in the case of a district dissolution is the territory of the district ordered to be dissolved), provide the question to be submitted to the voters, specify any dissolution terms and conditions, and state the vote required to confirm the dissolution. (§§ 57115 & 57118.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the dissolution, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote for the dissolution of a district, LAFCO must execute a certificate of completion confirming the order of dissolution. (§ 57177.5 (a).) If no election is required to be held, the LAFCO Executive Officer must still execute a certificate of completion and make the requisite filings. (§ 57200.)

b. Effect of Dissolution

After the LAFCO Executive Officer files the requisite certificate of completion, the dissolved district is extinguished and all of its corporate powers cease except to wind up the affairs of the district or as required by a term and condition imposed on the dissolution by LAFCO. (§ 57450.)¹⁰ A city or county will become the successor agency for the district depending on which one contains the greatest assessed value of all taxable property within the territory of the dissolved district. (§ 57451.) A successor agency collects the dissolved district's assets and is empowered to wind up the business of the district; ensuring that all debts are paid, distributing assets and all other lawful purposes for the benefit of the lands, inhabitants and taxpayers within the territory of the dissolved district, as far as practicable. (§ 57452.)

Whether this authority permits a successor agency to "step into the shoes" of the former district and assume its corporate powers over the district's territory is less clear. This is further discussed below as a limitation on the power to dissolve.

c. Effective Date

Finally, the dissolution's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the dissolution. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the dissolution is effective on the day the dissolution is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

3. District- Initiated Dissolution

The legislative body of a district may begin the process to dissolve the district by adopting a Resolution of Application. (§ 56853(a).) The Application must contain the components set forth in Appendix "B" to this Memorandum, which include, in part, a Resolution of Application (see Appendix "C") and a Plan for Providing Services (see Appendix "D"). At least 20 days before adopting the resolution, however, the district may give mailed notice to the LAFCO and any affected districts and counties. (§ 56654.)

¹⁰ See, Footnote 3.

Before the hearing, the Executive Officer must prepare a report on the Application, including his or her recommendation on the Application and give a copy of the report to every affected district, agency, and city. (§ 56665.) At the hearing, LAFCO hears and receives written and oral protests and evidence as well as the Executive Officer's report and the Plan for Providing Services. (§ 56666.) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal to dissolve. LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

a. Protest/Election/Certificate of Completion

LAFCO is still not required to place the dissolution before the voters, unless written protests have been filed meeting Section 57081, if an affected city or district has not objected by resolution to the proposal, or Section 57114, if an affected city or district has objected by resolution to the proposal. (§ 56854(a)(1) and (2).) These threshold limits are delineated in Section A(3), above.

If LAFCO is required to submit a dissolution to the voters pursuant to Section 57081, the election will be held within the territory of the district ordered to be dissolved. (§ 57118(a).) If on the other hand, LAFCO is required to submit a dissolution to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.¹¹ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any dissolution terms and conditions, and state the vote required to confirm the dissolution. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the dissolution, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote for the dissolution of a district, LAFCO must execute a certificate of completion confirming the order of dissolution. (§ 57177.5(a).) If no election is required to be held, the LAFCO Executive Officer must still execute a certificate of completion and make the requisite filings. (§ 57200.)

b. Effect of Dissolution

After the LAFCO Executive Officer files the requisite certificate of completion, the dissolved district is extinguished and all of its corporate powers cease except to wind up the affairs of the district or as required by a term and condition imposed on the dissolution by LAFCO. (§ 57450.)¹² A city or county will become the successor agency for the district depending on which one contains the greatest assessed value of all taxable property within the territory of the dissolved district. (§ 57451.) A successor agency collects the dissolved district's assets and is empowered to wind up the business of the district; ensuring that all debts are paid, distributing assets and all other lawful purposes for the benefit of the lands, inhabitants and taxpayers within the territory of the dissolved district, as far as practicable. (§ 57452.)

Whether this authority permits a successor agency to "step into the shoes" of the former district and assume its corporate powers over the district's territory is less clear. This is further discussed below as a limitation on the power to dissolve.

¹¹ See, Footnote 2.

¹² See, Footnote 2.

c. Effective Date

Finally, the dissolution's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the dissolution. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the dissolution is effective on the day the dissolution is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

4. Petition-Initiated Dissolution

Special districts may be dissolved by petition signed by the requisite number of registered voters or landowners, which are set forth in Section 56870. Prior to circulating any petition, however, the proponent for change of organization must file a notice of intention to circulate a petition with LAFCO. (§ 56700.4(a).) After a notice of intention to circulate the petition is filed, the petition may be circulated for the appropriate signatures. (§ 56700.4(b).) Except as provided in Section 56871,¹³ petitions for the dissolution of a district must be signed by:

¹³ Section 56871 sets forth the petition requirements for the dissolution of districts in existence for at least three years that have not exercised their corporate powers if one or more of the following conditions have existed or now exist:

- (a) That during the three-year period preceding the date of the first signature upon the petition any of the following events have not occurred:
 - (1) There has not been a duly selected and acting quorum of the board of directors of the district.
 - (2) The board of directors has not furnished or provided services or facilities of substantial benefit to residents, landowners, or property within the district.
 - (3) The board of directors has not levied or fixed and collected any taxes, assessments, service charges, rentals, or rates or expended the proceeds of those levies or collections for district purposes.
- (b) That during the one-year period preceding the date of the first signature upon the petition a quorum of the duly selected and acting board of directors has not met for the purpose of transacting district business.
- (c) That, upon the date of the first signature upon the petition, the district had no assets, other than money in the form of cash, investments, or deposits.

- (a) For resident voter districts, by either of the following:
 - (1) Not less than 10 percent of the registered voters within the district.
 - (2) Not less than 10 percent of the number of landowners within the district who also own not less than 10 percent of the assessed value of land within the district.
- (b) For landowner-voter districts, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

(§ 56870.)

Once a petition is qualified by the Executive Officer, the Executive Officer issues a certificate of filing to the applicant. (56658(e)-(i).) Within 90 days of issuing the certificate of filing, the Executive Officer must set a hearing. (§ 56658.) Within 35 days of the hearing, LAFCO must adopt a resolution making determinations approving or disapproving the proposal, with or without terms and conditions. (§ 56880.) If a conflicting proposal is submitted to LAFCO within 60 days of the submission of the proposal to dissolve, then LAFCO cannot approve the proposal to dissolve until it considers the conflicting proposal. (§ 56657.)

a. Protest/Election/Certificate of Completion

An election must be held where an affected city or agency has not objected by resolution but a written protest is received that meets the voter/landowner petition requirements of Section 57081(b). (§ 56854(a)(1).) If an affected city or district files a resolution of objection, then an election must be held if a written protest that has been signed meeting the threshold level set forth in Section 57114(a). These thresholds are set forth in Section 3(A), above.

If LAFCO is required to submit a dissolution to the voters pursuant to Section 57081, the election will be held within the territory of each district ordered by to be dissolved. (§ 57118(a).) If on the other hand, LAFCO is required to submit a dissolution to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.¹⁴ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any dissolution terms and conditions, and state the vote required to confirm the dissolution. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the dissolution, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote for the dissolution, the LAFCO Executive Officer must execute a certificate of completion confirming the order of dissolution. (§ 57177.5(a).) If no election is required to be held, LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

¹⁴ See, Footnote 3.

b. Effect of Dissolution

After the LAFCO Executive Officer files the requisite certificate of completion, the dissolved district is extinguished and all of its corporate powers cease except to wind up the affairs of the district or as required by a term and condition imposed on the dissolution by LAFCO. (§ 57450.)¹⁵ A city or county will become the successor agency for the district depending on which one contains the greatest assessed value of all taxable property within the territory of the dissolved district. (§ 57451.) A successor agency collects the dissolved district's assets and is empowered to wind up the business of the district; ensuring that all debts are paid, distributing assets and all other lawful purposes for the benefit of the lands, inhabitants and taxpayers within the territory of the dissolved district, as far as practicable. (§ 57452.)

Whether this authority permits a successor agency to "step into the shoes" of the former district and assume its corporate powers over the district's territory is less clear. This is further discussed below as a limitation on the power to dissolve.

c. Effective Date

Finally, the dissolution's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the dissolution. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the dissolution is effective on the day the dissolution is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

5. Limitations on Dissolutions

A proposal to dissolve a district may be subject to challenge should LAFCO choose another district to somewhat "step into the shoes" of the dissolved district. In a dissolution attempted in Orange County, the District to be Dissolved challenged LAFCO's ability to do so. The District to be Dissolved argued that a "dissolution" of a district "must eventually result in the complete extinguishment of the corporate powers of the dissolved district, the winding up of the district's affairs, and the distribution of its assets." Further, the District to be Dissolved argued that the successor agency (the agency charged with winding up the affairs of the dissolved agency) can not "step into the shoes" to continue to exercise the corporate powers of the dissolved agency.

While we know that one court has agreed with the position of the District to be Dissolved regarding the interpretation of the effect of a dissolution, a strong argument can be made that the Act's provisions expressly allow for LAFCO to "select" a successor to "step into the shoes" of the dissolved district. For example, LAFCO can impose a condition on a dissolution that will grant one agency all of the remaining assets of the dissolved district. (§ 56886 (h) and (i).) When LAFCO imposes such a condition, the agency granted all of the dissolved district's remaining assets becomes the "successor" agency pursuant to Section 57451. Specifically, Section 57451 (d) provides that:

If the terms and conditions provide that all of the remaining assets of a dissolved district shall be distributed to a single existing district, the single existing district is the successor district.

¹⁵ See, Footnote 2.

These two provisions, when read together, imply that the successor district, in some instances, may "step into the shoes" of the dissolved district. For example, if one of the remaining assets of a dissolved district is that district's water distribution facilities, including pipelines and water treatment facilities it would be unimaginable that the Act intends those assets to remain idle and not be put to use for the purpose of distributing water by the successor district. The provisions of Section 57463 support this provision. Section 57463 provides that after all debts are paid, that any assets remaining may be used for any lawful purpose of the public agency to which the assets have been distributed for the benefit of the lands, inhabitants and taxpayers within the territory of the dissolved district, as far as practicable. Applying the intent of Section 57463 to the water distribution facilities example would allow the public agency to which the assets have been distributed to continue to use the water distribution facilities. In essence, the agency receiving the dissolved district's remaining assets, which may be the successor agency, steps into the shoes of the dissolved district.

C. MERGER

1. Brief History

Prior to 1965, the state of the law in California was that the inclusion of the entire territory of a special district within the boundaries of a city, resulted in the automatic merger of the special district into the city, thereby extinguishing the special district. The rationale behind this doctrine--dubbed the "Doctrine of Automatic Merger" was the avoidance the "duplication of functions -- otherwise two distinct governmental bodies claiming to exercise the same authority, powers and franchises simultaneously over the same territory would 'produce intolerable confusion, if not constant conflict.'" (City of Downey v. Downey Water Dist. (1962) 202 Cal.App.2d 786, 792 (citations omitted).)

In 1965, the Legislature enacted the District Reorganization Act of 1965, effective September 17, 1965 (Stats 1965 ch 2043 §§ 2), adding Government Code section 56400 as follows:

The Legislature hereby declares that the doctrine of automatic merger of a district with a city or the merger by operation of law of a district with a city shall have and be given no further force or effect. The existence of a district shall not be extinguished or terminated as a result of the entire territory of such district being heretofore or hereafter included within a city unless such district be merged with such city as a result of proceedings taken pursuant to this division.

This very language is now part of the Act and is set forth in Section 56116 verbatim.

A merger, now can only be affected as a result of proceedings taken pursuant to the Act. The term "merger" for purposes of the Act is defined as:

The extinguishment, termination, and cessation of the existence of a district of limited powers by the merger of that district with a city as a result of proceedings taken pursuant to this division.

(§ 56056.)

2. LAFCO-Initiated Merger

LAFCO may initiate a merger of a district with a city if it is consistent with a recommendation or conclusion of a study prepared pursuant to Sections 56378, 56425, or 56430 and the LAFCO makes the determinations specified in Section 56881(b). (§ 56375(a).) Sections 56378, 56425 and 56430 require LAFCO to study existing agencies and make determinations regarding spheres of influence and conduct service reviews of the municipal services provided in the area for review. Section 56881(b) requires LAFCO to make all of the following determinations with regard to the proposed merger:

- (b) (1) Public service costs of a proposal that the LAFCO is authorizing are likely to be less than or substantially similar to the costs of alternate means of providing the service.
- (2) Promotes public access and accountability for community services needs and financial resources.

Before the LAFCO may take action on a proposal to merger, LAFCO must hold a public hearing on the proposal. (§ 56662(b).) Section 56668 requires the LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating a merger proposal.

It is interesting to note that all proposals for merger except for proposals for the merger of an existing subsidiary district also must consider the establishment of a subsidiary district as well.¹⁶

a. Protest/Election/Certificate of Completion

LAFCO is not required to place a merger before the voters where the legislative body of the city and the district's board have by resolution consented to the merger. (§ 57107(b).) Notwithstanding Section 57107, an election must be held where written protests have been filed in accordance with Section 57113. (§ 56854(a)(3).) Section 57113 requires LAFCO to submit a merger to the voters if LAFCO receives a petition prior to the conclusion of the protest hearing signed by the following:

- (1) (A) At least 10 percent of the number of landowners within any affected district within the affected territory who own at least 10 percent of the assessed value of land within the territory. . . .

¹⁶ Section 56118 specifically provides: "Except for a proposal for the merger of a then existing subsidiary district, any proposal for a merger or establishment of a subsidiary district authorized by this division shall contain a request in the alternative, requesting either a merger or the establishment of a subsidiary district, as may be determined during the course of the proceedings. Any proposal requesting only merger shall be deemed to also include a request for the establishment of a subsidiary district and any proposal requesting only the establishment of a subsidiary district shall be deemed to also include a request for merger."

- (B) At least 10 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory. . . .
- (2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 10 percent of the number of landowners within any affected district within the affected territory, owning at least 10 percent of the assessed value of land within the territory. . . .

If required to submit a merger to the voters, the election will be held within the "entire territory of each district ordered to be merged with. . . or both within the district and within the entire territory of the city outside the boundaries of the district." (§ 57118.)¹⁷ LAFCO's resolution must also provide the question to be submitted to the voters, specify any merger terms and conditions, and state the vote required to confirm the merger. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the merger, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) In addition, no new proposal for a merger or establishment of a subsidiary district involving the same district may be filed within two years of the date of the certificate of termination of proceedings. (§ 57112 (a).) LAFCO may waive this prohibition if it finds the prohibition is detrimental to the public interest. (§ 57112 (b).) However, if the majority of the voters vote

¹⁷ Note, however, that prior to the conclusion of the protest hearing by the commission ordering the district to be merged with or established as a subsidiary district of a city:

a petition may be filed with the executive officer referring, by date of adoption, to the commission's resolution making determinations and requesting that any election upon that question be called, held, and conducted only within that district. Any petition so filed shall be immediately examined and certified by the executive officer by the same method and in the same manner as provided in Sections 56707 to 56711, inclusive, for the examination of petitions by the executive officer. The commission shall forward the proposal to the affected city, and the affected city shall call, hold, and conduct any election upon the question of a merger or the establishment of a subsidiary district only within the district to be merged or established as a subsidiary district, if the executive officer certifies that any petition so filed was signed by either of the following:

- (a) In the case of a registered voter district, by not less than 10 percent of the registered voters of the district.
- (b) In the case of a landowner-voter district, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

for a merger, LAFCO Executive Officer must execute a certificate of completion confirming the order of merger. (§ 57177.5(a).) If no election is required to be held, LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

Regardless of any election results, LAFCO cannot order a merger without the consent of the affected city. (§ 56854(b).)

b. Effect of Merger

On the effective date of the merger, the district ceases to exist and all district funds and all district property is vested in the city. (§§ 57525 & 57526.)¹⁸ The city becomes liable on all debts of the merged district. (§ 57531.) The city must use district funds and property to pay outstanding bonds and other obligations of the merged district. (§ 57528.) If any debts are to be paid from taxes levied on property in the district, the city council will collect those taxes as they become due as provided for under the principal act of the merged district. (§ 57529.) All funds that are unencumbered by debt may be used for any lawful purpose by the city, however, the city, "so far as practicable" shall use those funds to benefit the land and inhabitants within the former merged district area. (§57533.)

c. Effective Date

Finally, the merger's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the merger. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the merger is effective on the day the merger is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

3. District/City-Initiated Merger

a. District or City-Initiated Merger

The legislative body of a district or city wishing to merge with a city or district must submit a Resolution of Application to the LAFCO Executive Officer of the principal county. (§ 56658(a).) The Application must contain the components set forth in Appendix "B" to this Memorandum, which include, in part, a Resolution of Application (see Appendix "C") and a Plan for Providing Services (see Appendix "D").

Within 30 days of receiving the Application, the Executive Officer must determine if it is complete and acceptable for filing. (§ 56658(d).) If no determination is made within this time frame and the appropriate fees have been paid, then the Application shall be deemed to have been accepted for filing. (§ 56658(f).) An Executive Officer must accept an Application for filing if it is in the form prescribed by LAFCO and it contains all the information required in Appendix "C." (§ 56658(f).) Within 90 days of accepting a proposal for filing, the Executive Officer must set a hearing date. (§ 56658(i).)

Before the hearing, the Executive Officer must prepare a report on the Application, including his or her recommendation on the Application and give a copy of the report to every affected district, agency, and city. (§ 56665.) At the hearing, LAFCO hears and receives written and oral protests and evidence as

¹⁸ See, Footnote 3.

well as the Executive Officer's report and the Plan for Providing Services. (§ 56666.) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the merger proposal. LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

i. Protest/Election/Certificate of Completion

LAFCO is not required to place a merger before the voters where the legislative body of the city and the district's board have by resolution consented to the merger. (§ 57107(b).) Notwithstanding Section 57107, LAFCO is required to place the merger before the voters if written protests have been filed meeting Section 57081, if an affected city or district has not objected by resolution to the proposal, or Section 57114, if an affected city or district has objected by resolution to the proposal. (§ 56854(a)(1) and (2).) These threshold limits are delineated in Section A(3), above.

If LAFCO is required to submit a merger to the voters pursuant to Section 57081, the election will be held within the territory of each district ordered by to be merged. (§ 57118(a).) If on the other hand, LAFCO is required to submit a merger to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.¹⁹ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any terms and conditions, and state the vote required to confirm the merger. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the merger, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) In addition, no new proposal for a merger or establishment of a subsidiary district involving the same district may be filed within two years of the date of the certificate of termination of proceedings. (§ 57112 (a).) LAFCO may waive this prohibition if it finds the prohibition is detrimental to the public interest. (57112 (b).) However, if the majority of the voters vote for the merger, the LAFCO Executive Officer must execute a certificate of completion confirming the order of merger. (§ 57177.5(a).) If no election is required to be held, the LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

Regardless of any election results, LAFCO cannot order a merger without the consent of the affected city. (§ 56854(b).)

ii. Effect of Merger

On the effective date of the merger, the district ceases to exist and all district funds and all district property is vested in the city. (§§ 57525 & 57526.)²⁰ The city becomes liable on all debts of the merged district. (§ 57531.) The city must use district funds and property to pay outstanding bonds and other obligations of the merged district. (§ 57528.) If any debts are to be paid from taxes levied on property in the district, the city council will collect those taxes as they become due as provided for under the principal act of the merged district. (§ 57529.) All funds that are unencumbered by debt may be used for any lawful

¹⁹ The affected districts in which no election is held are deemed to have consented to the proposal. Further, if a specific protest is filed under Section 57108, the election shall be held only within the district to be merged or established as a subsidiary district. *See*, Footnote 15.

²⁰ *See*, Footnote 2.

purpose by the city, however, the city, "so far as practicable" shall use those funds to benefit the land and inhabitants within the former merged district area. (§57533.)

iii. Effective Date

Finally, the merger's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the merger. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the merger is effective on the day the merger is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

4. Petition-Initiated Merger

A district of limited powers which overlaps a city may be merged into a city by petition signed by the requisite number of registered voters or landowners, depending upon the specifics of the district's statutory authorization. Prior to circulating any petition, however, the proponents for change of organization must file a notice of intention to circulate a petition with LAFCO. (§ 56700.4(a).) After a notice of intention to circulate the petition is filed, the petition may be circulated for the appropriate signatures. (§ 56700.4(b).) For a merger, voters or landowners must sign a petition as follows:

- (a) For a resident voter district, by either of the following:
 - (1) Five percent of the registered voters of the district.
 - (2) Five percent of the registered voters residing within the territory of the city outside the boundaries of the district.
- (b) For a landowner-voter district, by either of the following:
 - (1) Five percent of the number of landowner-voters within the district who also own not less than 5 percent of assessed value of land within the district.
 - (2) Five percent of the registered voters residing within the territory of the city outside the boundaries of the district.

(§ 56866.)

The petitioners must submit an Application for merger to the LAFCO Executive Officer of the principal county. (§ 56658(a).) The Application must contain those elements set forth in Appendix "B" to this Memorandum. Additionally, the petition must contain all of the requirements delineated in Section 56700 attached to this Memorandum as Appendix "C." Once a petition is qualified by the Executive Officer, the Executive Officer issues a certificate of filing to the applicant. (§ 56658(e)-(i).) Within 90 days of issuing the certificate of filing, the Executive Officer must set a hearing. (§ 56658.)

Before LAFCO may take action on a merger proposal, LAFCO must hold a public hearing on the proposal or report and recommendation of a reorganization committee. (§ 56662(b).) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal. LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

i. Protest/Election/Certificate of Completion

LAFCO is not required to place a merger before the voters where the legislative body of the city and the district's board have by resolution consented to the merger. (§ 57107(b).) Notwithstanding Section 57107, LAFCO is required to place the merger before the voters if written protests have been filed meeting Section 57081, if an affected city or district has not objected by resolution to the proposal, or Section 57114, if an affected city or district has objected by resolution to the proposal. (§ 56854(a)(1) and (2).) These threshold limits are delineated in Section A(3), above.

If LAFCO is required to submit a merger to the voters pursuant to Section 57081, the election will be held within the territory of each district ordered by to be merged. (§ 57118(a).) If on the other hand, LAFCO is required to submit a merger to the voters pursuant to Section 57114, the election will be held separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.²¹ (§ 57118(f).) LAFCO's resolution must provide the question to be submitted to the voters, specify any merger terms and conditions, and state the vote required to confirm the merger. (§ 57115.) The election procedures and requirements are set forth in Section 57125 et seq.

If an election is held and the majority of voters vote against the merger, LAFCO must adopt a certificate of termination of proceedings. (§ 57179.) However, if the majority of the voters vote for the merger, LAFCO Executive Officer must execute a certificate of completion confirming the order of merger. (§ 57177.5(a).) If no election is required to be held, the LAFCO must still execute a certificate of completion and make the requisite filings. (§ 57200.)

Regardless of any election results, LAFCO cannot order a merger without the consent of the affected city. (§ 56854(b).)

ii. Effect of Merger

On the effective date of the merger, the district ceases to exist and all district funds and all district property is vested in the city. (§§ 57525 & 57526.)²² The city becomes liable on all debts of the merged district. (§ 57531.) The city must use district funds and property to pay outstanding bonds and other obligations of the merged district. (§ 57528.) If any debts are to be paid from taxes levied on property in the district, the city council will collect those taxes as they become due as provided for under the principal act of the merged district. (§ 57529.) All funds that are unencumbered by debt may be used for any lawful

²¹ The affected districts in which no election is held are deemed to have consented to the proposal. Further, if a specific protest is filed under Section 57108, the election shall be held only within the district to be merged or established as a subsidiary district. *See*, footnote 15.

²² *See*, Footnote 2.

purpose by the city, however, the city, "so far as practicable" shall use those funds to benefit the land and inhabitants within the former merged district area. (§57533.)

iii. Effective Date

Finally, the merger's effective date is the date set forth in LAFCO's resolution so long as it is not earlier than the date the certificate of completion is executed or later than 9 months after an election in which the majority of voters vote for the merger. (§ 57202(a).) If LAFCO's resolution does not establish an effective date, the merger is effective on the day the merger is recorded by the county recorder, or if there are two counties involved, on the last date of recordation. (§ 57202(c).)

6. Limitations on Merger

The affected city must consent to the merger. (§ 56854 (b).)

D. ESTABLISHMENT OF A SUBSIDIARY DISTRICT

1. A Brief History

The procedures for establishment of a subsidiary district were established by the legislature in 1965 by the adoption of the District Reorganization Act of 1965, effective September 17, 1965 (Stats 1965 ch 2043 §§ 2), which added Government Code section 56073, 56401, 56405.

For purposes of the current version of the Act, the term "subsidiary district" is a district of limited powers in which a city council is designated as, and empowered to act as, the ex officio board of directors of the district. (§ 56078.) A subsidiary district may be established if upon the date of the commission's order, the commission determines that either of the following situations exist:

- (a) The entire territory of the district is included within the boundaries of a city.
- (b) A portion or portions of the territory of the district are included within the boundaries of a city and that portion or portions meet both of the following requirements.
 - (1) Represents 70 percent or more of the area of land within the district. . . .
 - (2) Contains 70 percent or more of the number of registered voters who reside within the district as shown on the voters' register in the office of the county clerk or registrar of voters. (§ 57105.)

2. LAFCO-Initiated Establishment of a Subsidiary District

LAFCO may initiate the establishment of a subsidiary district if it is consistent with a recommendation or conclusion of a study prepared pursuant to Sections 56378, 56425, or 56430 and LAFCO makes the determinations specified in Section 56881(b). (§ 56375(a).) Sections 56378, 56425 and 56430 require LAFCO to study existing agencies and make determinations regarding spheres of influence and conduct service reviews of the municipal services provided in the area for review. Section 56881(b) requires LAFCO to make all of the following determinations with regard to the proposed establishment of a subsidiary district:

- (b) (1) Public service costs of a proposal that the LAFCO is authorizing are likely to be less than or substantially similar to the costs of alternate means of providing the service.
- (2) Promotes public access and accountability for community services needs and financial resources.

Before LAFCO may take action on a proposal for the establishment of a subsidiary district, LAFCO must hold a public hearing on the proposal. (§ 56662(b).) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal for the establishment of a subsidiary district.

It is interesting to note that all proposals for merger except for proposals for the merger of an existing subsidiary district also must consider the establishment of a subsidiary district as well.²³

a. Protest/Election/Certificate of Completion

The protest and election procedures and the requirements for a certificate of completion for the establishment of a subsidiary district initiated by LAFCO are the same as the procedures applicable to LAFCO initiated mergers, as more particularly described in Section C(2), above.

b. Effect of the Establishment of a Subsidiary District

On or after the effective date of the establishment of a subsidiary district, the city council shall be designated as, and empowered to act as, ex officio the board of directors of the district. The district shall continue in existence with all of the powers, rights, duties, obligations, and functions provided for by the principal act, except for any provisions relating to the selection or removal of the members of the board of directors of the district. (§57534.) If a court determines that holding office both as a member of city council

²³ Section 56118 specifically provides: "Except for a proposal for the merger of a then existing subsidiary district, any proposal for a merger or establishment of a subsidiary district authorized by this division shall contain a request in the alternative, requesting either a merger or the establishment of a subsidiary district, as may be determined during the course of the proceedings. Any proposal requesting only merger shall be deemed to also include a request for the establishment of a subsidiary district and any proposal requesting only the establishment of a subsidiary district shall be deemed to also include a request for merger."

and as a member of the board of directors is incompatible, the court may order that person to vacate the board of director position but not the position on city council. (§57535.) The court must order the position on the board of directors to be filled in accordance with the principal act of the subsidiary district. (§57535.)

c. Effective Date of the Establishment of a Subsidiary District

The effective date for the establishment of a subsidiary district is the same as the effective date for a merger, as more particularly described in Section C(2), above.

3. District-Initiated Establishment of a Subsidiary District

The legislative body of a district wishing to establish itself as a subsidiary district may submit a Resolution of Application to the LAFCO Executive Officer of the principal county. (§56658(a).) The Application must contain the components set forth in Appendix "B" to this Memorandum, which include, in part, a Resolution of Application (see Appendix "C") and a Plan for Providing Services (see Appendix "D").

Before the hearing the Executive Officer must prepare a report on the Application including his or her recommendation on the Application and give a copy of the report to every affected district, agency, and city. (§ 56665.) At the hearing, LAFCO hears and receives written and oral protests and evidence as well as the Executive Officer's report and the Plan for Providing Services. (§ 56666.) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating the proposal. LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

a. Protest/Election/Certificate of Completion

The protest and election procedures and the requirements for a certificate of completion for the establishment of a subsidiary district initiated by a district are the same as the procedures applicable to district-initiated mergers, as more particularly described in Section C(3), above.

b. Effect of the Establishment of a Subsidiary District

On or after the effective date of the establishment of a subsidiary district, the city council shall be designated as, and empowered to act as, ex officio the board of directors of the district. The district shall continue in existence with all of the powers, rights, duties, obligations, and functions provided for by the principal act, except for any provisions relating to the selection or removal of the members of the board of directors of the district. (§57534.) If a court determines that holding office both as a member of city council and as a member of the board of directors is incompatible, the court may order that person to vacate the board of director position but not the position on city council. (§57535.) The court must order the position on the board of directors to be filled in accordance with the principal act of the subsidiary district. (§57535.)

c. Effective Date of the Establishment of a Subsidiary District

The effective date for the establishment of a subsidiary district is the same as the effective date for a merger, as more particularly described in Section C(3), above.

4. City-Initiated Establishment of a Subsidiary District

The legislative body of a city wishing to establish a subsidiary district may submit a Resolution of Application to the LAFCO Executive Officer of the principal county. (§56658(a).) The Application must contain the components set forth in Appendix "B" to this Memorandum, which include, in part, a Resolution of Application (see Appendix "C") and a Plan for Providing Services (see Appendix "D").

Section 56861 requires LAFCO to provide notice to subject districts within 10 days of receiving such a proposal. Subject districts may then either 1) consent to the proposal or 2) adopt a resolution of intent to submit an alternative proposal. If a subject district files a resolution of intention to file an alternative proposal, the executive officer may not take further action on the original proposal for 70 days. (§ 56862.) If the subject district fails to submit an alternative proposal during that 70 day period is deemed to have consented to the original proposal. (Id.) If the subject district submits a timely alternative proposal, the executive officer will analyze and report on both the original proposal and the alternative proposal so that "both proposals may be considered simultaneously at a single hearing." (Id.)

Before LAFCO may take action on a proposal for the establishment of a subsidiary district, the LAFCO must hold a public hearing on the proposal. (§ 56662(b).) Section 56668 requires the LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating a proposal for the establishment of a subsidiary district. LAFCO may also impose terms and conditions pursuant to Sections 56885.5 and 56886.

a. Protest/Election/Certificate of Completion

The protest and election procedures and the requirements for a certificate of completion for the establishment of a subsidiary district initiated by a city are the same as the procedures applicable to city initiated mergers, as more particularly described in Section C(3), above.

b. Effect of the Establishment of a Subsidiary District

On or after the effective date of the establishment of a subsidiary district, the city council shall be designated as, and empowered to act as, ex officio the board of directors of the district. The district shall continue in existence with all of the powers, rights, duties, obligations, and functions provided for by the principal act, except for any provisions relating to the selection or removal of the members of the board of directors of the district. (§57534.) If a court determines that holding office both as a member of city council and as a member of the board of directors is incompatible, the court may order that person to vacate the board of director position but not the position on city council. (§57535.) The court must order the position on the board of directors to be filled in accordance with the principal act of the subsidiary district. (§57535.)

c. Effective Date of the Establishment of a Subsidiary District

The effective date for the establishment of a subsidiary district is the same as the effective date for a merger, as more particularly described in Section C(3), above.

5. Petition-Initiated Establishment of a Subsidiary District

A proposal to establish a district of limited powers as a subsidiary district of a city may be initiated by petition. Section 56886 requires that the petition be signed as follows:

- (a) For a resident voter district, by either of the following:
 - (1) Five percent of the registered voters of the district.
 - (2) Five percent of the registered voters residing within the territory of the city outside the boundaries of the district.
- (b) For a landowner-voter district, by either of the following:
 - (1) Five percent of the number of landowner-voters within the district who also own not less than 5 percent of assessed value of land within the district.
 - (2) Five percent of the registered voters residing within the territory of the city outside the boundaries of the district.

Section 56861 requires LAFCO to provide notice to subject districts within 10 days of receiving such a proposal. Subject districts may then either 1) consent to the proposal or 2) adopt a resolution of intent to submit an alternative proposal. If a subject district files a resolution of intention to file an alternative proposal, the executive officer may not take further action on the original proposal for 70 days. (§ 56862.) If the subject district fails to submit an alternative proposal during that 70 day period, it is deemed to have consented to the original proposal. (Id.) If the subject district submits a timely alternative proposal, the executive officer will analyze and report on both the original proposal and the alternative proposal so that "both proposals may be considered simultaneously at a single hearing." (Id.)

Before LAFCO may take action on a proposal for the establishment of a subsidiary district, LAFCO must hold a public hearing on the proposal. (§ 56662(b).) Section 56668 requires LAFCO to consider the factors set forth in Appendix "A" to this Memorandum in evaluating a proposal for the establishment of a subsidiary district. LAFCO may also impose terms and conditions pursuant to Section 56885.5 and 56886.

a. Protest/Election/Certificate of Completion

The procedures for protest, election and the requirements for the certificate of completion are the same as a petition-initiated merger, as more particularly described in Section C(4), above.

b. Effect of the Establishment of a Subsidiary District

On or after the effective date of the establishment of a subsidiary district, the city council shall be designated as, and empowered to act as, ex officio the board of directors of the district. The district

shall continue in existence with all of the powers, rights, duties, obligations, and functions provided for by the principal act, except for any provisions relating to the selection or removal of the members of the board of directors of the district. (§57534.) If a court determines that holding office both as a member of city council and as a member of the board of directors is incompatible, the court may order that person to vacate the board of director position but not the position on city council. (§57535.) The court must order the position on the board of directors to be filled in accordance with the principal act of the subsidiary district. (§57535.)

c. Effective Date of the Establishment of a Subsidiary District

The effective date for the establishment of a subsidiary district is the same as the effective date for a merger, as more particularly described in Section C(4), above.

6. Limitations on the Establishment of a Subsidiary District

Aside from the requirements related to the amount of district territory and the number of district voters that are located within the city's boundaries percentage, a proposal for the establishment of a subsidiary district cannot go forward without the consent of the city. (§ 56854(b).)

APPENDIX "A"
Factors

Section 56668.

Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

- (a) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.
- (b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.
- (c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.
- (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- (g) Consistency with city or county general and specific plans.
- (h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.
- (i) The comments of any affected local agency.
- (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for such services following the proposed boundary change.

APPENDIX "A" (continued)

- (k) Timely availability of water supplies adequate for projected needs including, but not limited to, the projected needs as specified in section 65352.5.
- (l) The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.
- (m) Any information or comments from the land owner or owners.
- (n) Any information relating to existing land use designations.

Section 56668.3.

- (a) If the proposed change of organization or reorganization includes a city detachment or district annexation, except a special reorganization, and the proceeding has not been terminated based upon receipt of a resolution requesting termination pursuant to either Section 56751 or Section 56857, factors to be considered by the commission shall include all of the following:
 - (1) Whether the proposed annexation will be for the interest of landowners or present or future inhabitants within the district and within the territory proposed to be annexed to the district.
 - (2) The commission's resolution making determinations.
 - (3) Any factors which may be considered by the commission as provided in Section 56668.
 - (4) Any resolution objecting to the action which may be filed by an affected agency.
 - (5) Any other matters which the commission deems material.
- (b) The commission must give great weight to any resolution objecting to the action which is filed by a city or a district. The commission's consideration shall be based only on financial or service related concerns expressed in the protest. Except for findings regarding the value of written protests, the commission is not required to make any express findings concerning any other factors considered by the commission.

Section 56668.5.

The commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis. This section does not grant any new powers or authority to the commission or any other body to establish regional growth goals and policies independent of the powers granted by other laws.

APPENDIX "B"
Contents of a Proposal Application

Each application must include the following information:

- a. A petition or resolution of application initiating the proposal;
- b. A statement of the nature of each proposal;
- c. A map and description acceptable to the executive officer of the boundaries of the subject territory for each proposed change of organization or reorganization;
- d. Any data and information as may be required by any regulation at the Commission;
- e. Any additional data and information as may be required by the executive officer pertaining to any of the matters or factors which may be considered by the Commission;
- f. The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the report by the executive officer and who are to be given mailed notice of the hearing.

(§56652.)

APPENDIX "C"
Contents of a Resolution or Petition of Application

A resolution of application must include the following:

- a. State the proposal is made [pursuant to Part 3 of Division 3 of the Act [(§56650 et seq.)];
- b. State the nature of the proposal and list all proposed changes of organization;
- c. Set forth a description of the boundaries of the affected territory accompanied by a map showing the boundaries;
- d. Set forth any proposed terms and conditions;
- e. State the reason or reasons for the proposal;
- f. State whether the petition is signed by registered voters or owners of land.
- g. Designate not to exceed three persons as chief petitioners, setting forth their names and mailing addresses.
- h. Request that the proceedings be taken for the proposal [pursuant to Part 3 of Division 3 of the Act (§56650 et seq.)]; and
- i. State whether the proposal is consistent with the sphere of influence of any affected city or affected district.

(§§ 56654 and 56700.)

APPENDIX "D"
Plan for Providing Services

Local agencies submitting a resolution of application for a change of organization must submit a plan for providing services which must include the following:

- b. . . .
1. An enumeration and description of the services to be extended to the affected territory;
 2. The level and range of those services;
 3. An indication of when those services can feasibly be extended to the affected territory;
 4. An indication of any improvement or upgrading of structures, roads, sewer or water facility, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed;
 5. Information with respect to how those services would be financed.

(§56653(b).)