

March 9, 2022

8a | Commission
Discussion**REGULAR MEMBERS****CHAIR**
Douglass Davert
Special District Member**VICE CHAIR**
Donald P. Wagner
County Member**IMMEDIATE PAST CHAIR**
Derek J. McGregor
Public Member**Lisa Bartlett**
County Member**Wendy Bucknum**
City Member**James Fisler**
Special District Member**Mike Posey**
City Member**ALTERNATES****Andrew Do**
County Member**Kathryn Freshley**
Special District Member**Peggy Huang**
City Member**Lou Penrose**
Public Member**STAFF****Carolyn Emery**
Executive Officer**Scott Smith**
General Counsel**TO:** Local Agency Formation Commission
of Orange County**FROM:** Executive Officer
Policy Analyst**SUBJECT:** Legislative Report - CALAFCO Sponsored Legislation for
Protest Provisions (Senate Bill 938)**BACKGROUND**

The following interim legislative report has been prepared to provide details on proposed legislation (Senate Bill 938), sponsored by the California Association of Local Agency Formation Commissions (CALAFCO), involving the protest provisions. Staff recommends that the Commission adopt a "Support" position on the bill as currently written. Additional details of CALAFCO's effort and SB 938 are highlighted in the next section of this report.

Protest Provisions Working Group

In 2017, the Little Hoover Commission (LHC) published a report entitled, "*Special Districts: Improving Oversight and Transparency.*" The report focused on the oversight provided by the 58 LAFCOs and included several recommendations. One of the recommendations embedded within a near 80-page report included a recommendation for the convening of an advisory committee to review the protest process for consolidations and dissolutions of special districts and develop legislation to simplify and create consistency in the process.

Since the publishing of the report, CALAFCO took the lead on addressing the recommendation of the LHC and convened a working group that has for the past three years been working collaboratively on the effort. More recently, the 18-member working group comprised of representatives of CALAFCO, LAFCOs from the four regions, California Special District Association (CSDA), California State Association of Counties (CSAC), the League of California Cities, and committee consultants of the California Legislature achieved consensus on the restructuring, removing and simplifying the reading of the provisions and amending the provisions for dissolutions initiated by LAFCO under specific circumstances. Additional

details of the working group effort are provided in SB 938 Fact Sheet referenced as **Attachment 1** to this report.

To further the final effort of the working group, CALAFCO has secured bill authors to introduce proposed legislation that would effect the changes to the provisions within the Cortese-Knox-Hertzberg Reorganization Act of 2000 (CKH Act). Additional details on the current bill language and expected amendments to the bill are highlighted in the next section of this report.

SB 938 (Hertzberg): The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000: protest proceedings: procedural consolidation.

On February 8, 2022, Senator Robert Hertzberg and co-author Assemblymember Chad Mayes introduced SB 938 to the Legislature. In line with the working group's effort, the intent of SB 938 is to restructure and simplify the existing statutory protest provisions and allow LAFCOs to initiate the dissolution of a special district at the 25 percent protest threshold under specific circumstances. At the publishing of the Commission's agenda, the bill in print only includes language involving the proposed consolidation and reorganization of the protest provisions to provide clarity and concise information without substantive changes.

As agreed by the working group, CALAFCO will be submitting amendments to the office of legislative counsel to modify the protest threshold from 10 percent to 25 percent for LAFCO initiated dissolutions of special districts. The amendments include specific conditions under which a LAFCO may initiate the dissolution of a special district with a 25 percent protest threshold. These conditions include the following:

- Determination for the dissolution must be documented in a Municipal Service Review and presented at a 21-day noticed public hearing.
- The subject special district must be granted a minimum of a 12-month remediation period and an opportunity to provide a progress report before the local LAFCO takes any action.
- A second 21-day public hearing must be held to determine if the identified issues are mitigated, resulting in the LAFCO either terminating the dissolution or moving forward under the current standard protest hearing process outlined in the CKH Act with a public notice hearing of 60 days.

The goal of the working group's proposed changes in the CKH Act is to ensure that LAFCOs have the tools to carry out the statutory obligations of orderly and functional local government services and create greater consistency in the statute. CALAFCO is holding discussions with CSDA, CSAC, and the League of CA Cities to obtain formal support on SB 938 and has requested that LAFCOs consider supporting the bill. A hearing of SB 938 by the Senate Governance and Finance Committee is expected to occur on March 31, 2022.

Staff is recommending that the Commission adopt a *"Support"* position on SB 938 as currently introduced (**Attachment 2**). The current language aligns with the Commission's legislative policy


involving the adoption of a support position on legislation that is consistent with LAFCO's authority and reflects good governance principles. Should SB 938 experience future amendments, staff will agendaize continued review of the bill by the Commission.


RECOMMENDED ACTION

Staff recommends that the Commission:

1. Adopt a "**SUPPORT**" position on SB 938.
2. Direct staff to send a position letter to the bill authors of SB 938.

Respectfully Submitted,



CAROLYN EMERY

LUIS TAPIA

Attachments:

1. SB 938 Fact Sheet (Hertzberg)
2. Senate Bill 938 (Hertzberg)



The Cortese-Knox-Hertzberg

Local Government Reorganization Act of 2000:

Protest Proceedings

FACT SHEET:
SB 938 (HERTZBERG)

BACKGROUND

LAFCos are independent regulatory commissions created by the Legislature to control the boundaries of cities, county service areas, and most special districts. The purpose of LAFCos includes the discouragement of urban sprawl, the preservation of agricultural and open space lands, and the encouragement of the orderly formation and development of local agencies. In an effort to better meet these obligations, the duties and authority of LAFCos were significantly modified by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (AB 2838, Hertzberg). Chief among the act's provisions is the authority for LAFCos to conduct Municipal Service Reviews, which, among other things, provide information to guide districts in performance improvement. These reviews can serve as a catalyst for LAFCos to initiate district consolidations or dissolutions.



In response to a recommendation made in the 2017 Little Hoover Commission report (Special Districts: Improving Oversight and Transparency), the California Association of Local Agency Formation Commissions (CALAFCO) initiated a working group of stakeholders in early 2019 to discuss the protest process for consolidations and dissolutions of special districts.

The statutes related to protest provisions and the disparate protest thresholds established for LAFCo-initiated actions (10 percent) and all other initiated actions (25 percent) 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.

The working group agreed on three main deliverables:



First was to review the protest provisions within the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (The Act) for relevance and to delete any obsolete provisions, which was accomplished through AB 1581 (2021).



The second deliverable was to redraft existing scattered protest code sections within The Act into a single code section to simplify the reading of the code section.



The final—and most challenging—deliverable was to examine the differing protest thresholds relating to LAFCo-initiated actions and all other initiated actions.



AFTER CONSIDERABLE NEGOTIATION, THE WORKING GROUP GAVE CONSENSUS ON THE FOLLOWING CHANGES TO CKH:



The redrafting of existing protest code sections into one main section to simplify the reading of the section, and to add minor, non-substantive clarifications;



Create specific circumstances under which a LAFCo may initiate dissolution of a district with a 25% protest threshold, with determinations documented in a Municipal Service Review and presented at a 21-day noticed public hearing;



Allow for a minimum 12-month remediation period for the district with a progress report provided by the district to the LAFCo halfway through the remediation period; and



A second 21-day noticed public hearing to determine if the identified issues have been mitigated, which would result in the LAFCo either terminating the dissolution or moving forward with the dissolution using 25% protest threshold under the standard protest hearing process already in statute, with a public notice period of 60 days.



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.

SUMMARY

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 LAFCo may initiate dissolution of a district at the 25 percent protest threshold.

CONTACT:

CALAFCO:
Pamela Miller
pmiller@calafco.org
916-442-6536

Jean Kinney Hurst
Hurst Brooks Espinosa, LLC
jkh@hbeadvocacy.com
916-803-4754

Senator Hertzberg:
Martin Bui
martin.bui@sen.ca.gov
916-651-4018

March 9, 2022

REGULAR MEMBERS

CHAIR

Douglass Davert

Special District Member

VICE CHAIR

Donald P. Wagner

County Member

IMMEDIATE PAST CHAIR

Derek J. McGregor

Public Member

Lisa Bartlett

County Member

Wendy Bucknum

City Member

James Fisler

Special District Member

Mike Posey

City Member

ALTERNATES**Andrew Do**

County Member

Kathryn Freshley

Special District Member

Peggy Huang

City Member

Lou Penrose

Public Member

STAFF**Carolyn Emery**

Executive Officer

Scott Smith

General Counsel

Senator Robert Hertzberg
California State Senate
10210 O Street, Room 8610
Sacramento, CA 95814

RE: *Support - The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000: Protest Proceedings: Procedural Consolidation (SB 938)*

Dear Senator Hertzberg:

The Local Agency Formation Commission of Orange County (OC LAFCO) is pleased to support Senate Bill 938, as currently introduced. SB 938 represents a collaborative three-year effort led by CALAFCO to clean up, consolidate, and clarify existing statutory provisions associated with consolidations and dissolutions. The Commission also understands there are pending amendments to the bill that would codify the conditions under which LAFCO may initiate dissolution of a district at the 25 percent protest threshold, and OC LAFCO looks forward to further review of any amendments to SB 938.

As introduced, the bill represents the redraft of existing protest statutes with some minor technical clarifications added. The pending amendments from CALAFCO allow LAFCOs to initiate the dissolution of a district at the 25 percent protest threshold under specific circumstances. Currently, statutes related to protest provisions and the disparate protest thresholds established for LAFCO-initiated actions (10 percent) and all other initiated actions (25 percent) 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.

The effort to address these issues is in response to a recommendation made in the 2017 Little Hoover Commission report after a year-long study ("Special Districts: Improving Oversight and Transparency") and the formation of a working group by CALAFCO of stakeholders in early 2019. The intent was to examine the protest process for consolidations and dissolutions of special districts, and after three years of work (delayed due to the pandemic), the working group came to a consensus on the redraft of

existing protest statutes represented in SB 938 as introduced. In addition, the working group agreed upon a new process that allows LAFCOs to initiate the dissolution of a district at the 25 percent protest threshold under specific circumstances (pending amendment into SB 939).

The overarching goal of these changes is to ensure that LAFCOs have the tools to carry out the statutory obligations to ensure orderly and functioning local government services and create greater consistency in the statute. The specific circumstances under which 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 percent protest threshold applies only to dissolutions, making the scope of use exceptionally narrow.

SB 938 makes much-needed and long-awaited improvements to the CKH Act through the restructure and clarification of existing protest provisions and the pending amendments, which would add a fair and appropriate process that offers LAFCOs additional tools necessary to effectively fulfill their statutory obligations.

OC LAFCO appreciates your effort in authoring this important legislation and for continuing your long support of LAFCOs work.

Respectfully,

Douglass Davert
Chair

cc: Members, Senate Governance and Finance Committee
Anton Favorini-Csorba, Consultant, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus
Rene LaRoche, Executive Director, California Association of Local Agency Formation Commissions