

WHITE PAPER

**The Good, the Bad and
the Confusing:
Current Protest Requirements
under the Cortese-Knox-Hertzberg Local
Government Reorganization Act of 2000**

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Prepared as a service to CALAFCO members

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SEPTEMBER 25, 2009

MEMORANDUM

TO: CALAFCO

FROM: Clark A. Alsop
Paula C. P. de Sousa

RE: CALAFCO:

The Good, the Bad and the Confusing: Current Protest Requirements under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

This Memorandum is intended to provide an inventory of the current protest procedures under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“Act”), and highlight provisions in the Act rendered obsolete by later adopted amendments to the Act. The hope is that this Memorandum will prompt further dialogue with LAFCOs throughout California to identify potential areas for streamlining the protest provision labyrinth. We caution that some of the Act’s statutory procedures are subject to more than one interpretation. As a result, we advise each LAFCO to work with its legal counsel in order to ensure that the appropriate protest standards are applied.

DISCUSSION

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code section 56000 et seq., (the “Act”) was adopted by the Legislature to further the policy of the State, to “encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state.” (Gov. Code § 56001.) To that end, each LAFCO is charged with “discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing governmental services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.” LAFCOs are charged with processing changes of organizations in light of the above.

Generally, the Act sets out requirements for single changes of organization (annexations, detachments, dissolutions, disincorporations, consolidations, incorporations, formations, mergers or the establishment of a subsidiary district, and proposals for the exercise of new or different functions or classes of services) and reorganizations, which are two or more single changes of organization included in a single proposal. In almost all instances, a protest hearing is required.

I. PROTEST REQUIREMENTS FOR ANNEXATIONS, DETACHMENTS AND ACTIVATION OR DIVESTITURE OF POWER TO EXERCISE A NEW OR DIFFERENT FUNCTION OR CLASS OF SERVICES

An annexation is defined as “the annexation, inclusion, attachment or addition of territory to a city or a district.” (Gov. Code § 56017.) A detachment is defined as “the detachment, deannexation, exclusion, deletion or removal from a city or district of any portion of the territory of that city or district.” (Gov. Code § 56033.) Proposals by special districts to provide or cease providing particular functions or classes of services, are governed by Government Code section 56824.19 et seq. The Act generally applies the same protest thresholds to annexations and detachments, and power activation or divestiture, including reorganizations comprised solely of these actions.

A. Protest Thresholds for Annexations, Detachments and/or Activation or Divestiture of Powers, for Registered Voter Districts or Cities.

For changes of organization or reorganizations consisting solely of annexations, detachments and/or activation or divestiture of powers, in registered voter districts or cities, the Commission “not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions” set out below “except as provided in subdivision (b) of Section 57002.”¹

- (a) In the case of inhabited territory, take one of the following actions:
 - (1) Terminate proceedings if a majority protest exists in accordance with Section 57078.
 - (2) Order the change of organization or reorganization subject to confirmation by the registered voters residing within the affected territory if written protests have been filed and not withdrawn by either of the following:
 - (A) At least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory.
 - (B) At least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory.

¹ The reference to Section 57002 (b) appears to be incorrect, as Section 57002 (b) sets out the timing requirements for holding a protest hearing for establishment of a subsidiary district. The reference should likely be to Section 57002 (c) which, prior to 1990, was numbered as subdivision (b). Section 57002 (c) currently provides:

If authorized by the commission pursuant to Section 56663, a change or organization may be approved without notice, hearing, and election.

The requirements of Section 56663 are more fully discussed in Section I (C).

- (3) Order the change of organization or reorganization without an election if written protests have been filed and not withdrawn by less than 25 percent of the registered voters or less than 25 percent of the number of owners of land owning less than 25 percent of the assessed value of land within the affected territory.
- (b) In the case of uninhabited territory, take either of the following actions:
 - (1) Terminate proceedings if a majority protest exists in accordance with Section 57078.
 - (2) Order the change of organization or reorganization if written protests have been filed and not withdrawn by owners of land who own less than 50 percent of the total assessed value of land within the affected territory.

(Gov. Code § 57075.) Section 57078 establishes the requirements for a “majority protest,” in pertinent part as follows:

- (a) In the case of uninhabited territory, landowners owning 50 percent or more of the assessed value of the land within the territory.
- (b) In the case of inhabited territory, 50 percent or more of the voters residing in the territory.

(Gov. Code § 57078(a) and (b).)

B. Protest Thresholds for Annexations, Detachments and/or Activation or Divestiture of Powers, for Landowner-Voter Districts.

For changes of organization or reorganizations consisting solely of annexations, detachments and/or activation or divestiture of powers, in landowner-voter districts “not more than 30 days after the conclusion of the hearing, the Commission must make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions, except as provided in subdivision (b) of Section 57002:²

- (a) Terminate proceedings if a majority protest exists in accordance with Section 57078.
- (b) Order the change of organization or reorganization subject to an election within the affected territory if written protests that have been filed and not withdrawn represent either of the following:

² See, footnote 1, above.

- (1) Twenty-five percent or more of the number of owners of land who also own 25 percent or more of the assessed value of land within the territory.
 - (2) Twenty-five percent or more of the voting power of landowner voters entitled to vote as a result of owning property within the territory.
- (c) Order the change of organization or reorganization without an election if written protests have been filed and not withdrawn by less than 25 percent of the number of owners of land who own less than 25 percent of the assessed value of land within the affected territory.

(Gov. Code § 57076.) Section 57078 establishes the requirements for a “majority protest” for purposes of landowner-voter districts, as follows:

- (c) In the case of a landowner-voter district, 50 percent or more of the voting power of the voters entitled to vote as a result of owning land within the district.

(Gov. Code § 57078(c).)

C. Exceptions to the Above Protest Thresholds

1. Island Annexations

Until January 1, 2014, the Commission is required to approve the annexation of unincorporated county islands, as defined in Section 56375.3, after notice and hearing, and waive protest proceedings.

2. Annexations and Detachments or both under 56663

For certain changes of organization or reorganizations, the Commission, pursuant to Section 56663, may waive protest proceedings entirely in certain instances. For uninhabited territory:³

- (c) . . . the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following apply:
- (1) All the owners of land within the affected territory have given their written consent to the change of organization or reorganization.
 - (2) No subject agency has submitted written opposition to a waiver of protest proceedings.

³ Uninhabited territory for purposes of the act is defined as territory within which there reside less than 12 registered voters. (*See*, Gov. Code § 56046.)

(Gov. Code § 56663(c).) For inhabited city and district annexations or detachments or both:

- (d) . . . the commission may waive protest proceedings pursuant to Part 4 commencing with Section 57000) entirely if both of the following conditions apply:
 - (1) The commission has provided written notice of commission proceedings to all registered voters and landowners within the affected territory and no written opposition from registered voters or landowners within the affected territory is received prior to the conclusion of the commission hearing. The written notice shall disclose to the registered voters and landowners that unless written opposition is received regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings.
 - (2) No subject agency has submitted written opposition to a waiver of protest proceedings.

(Gov. Code § 56663(d).)

3. Annexations and Detachments or both in Los Angeles County

Annexations to cities with more than 100,000 residents located in a county with a population of over 4,000,000⁴ people are subject to a slightly different protest threshold, requiring the subject Commission to take one of the following actions:

- (a) Terminate proceedings if written protests have been filed and not withdrawn by 50 percent or more of the registered voters within the affected territory.
- (b) Order the territory annexed subject to the confirmation by the voters on the question, and call a special election and submit to the voters residing within the affected territory the question of whether it shall be annexed to the city, if written protests have been filed and not withdrawn by either 15 percent or more of the registered voters within the territory, or 15 percent or more of the number of owners of land who also own not less than 15 percent of the total assessed value of land within the territory.
- (c) Order the territory annexed without an election if written protests have been filed and not withdrawn by less than 15 percent of the registered voters within the territory and less than 15 percent of the owners of land who own less than 15 percent of the total assessed value of land within the territory.

⁴ Los Angeles County is currently the only county in California with a population of over 4,000,000.

(Gov. Code § 57075.5.)

4. Annexations of Non-Contiguous Territories and Annexations of Two or More Distinct Communities

Protests for annexations of non-contiguous territory and two or more distinct communities, if any one community has more than 250 registered voters, must be accounted separately for that community, unless the annexation is an island annexation. (Gov. Code § 57078.5.)

5. Large Annexations

Under the following scenario, the Commission may, as a condition of the proposal, that an election be called, held and conducted within the territory of the city to which annexation is proposed, if change of organization or reorganization includes the annexation of:

inhabited territory to a city and the assessed value of land within the territory equals one-half or more of the assessed value of land within the city

OR

The number of registered voters residing within the territory equals one-half or more of the number of registered voters residing within the city.

(Gov. Code § 56737; *See also*, Gov. Code § 56759.) If the Commission so conditions an election, the Commission shall “require that an election be also called, held and conducted within the territory of the city to which annexation is proposed.

II. PROTEST REQUIREMENTS FOR CHANGES OF ORGANIZATION CONSISTING SOLELY OF DISSOLUTIONS, DISINCORPORATIONS, ESTABLISHMENT OF SUBSIDIARY DISTRICTS, CONSOLIDATIONS, OR MERGERS

The provisions of Section 57077, as they relate to changes of organization consisting of dissolutions, disincorporations, incorporations, establishment of a subsidiary district, consolidation,⁵ or merger, are less than straightforward. In sum, it appears that Section 57077 is trumped by the provisions of Section 56854 as it relates only to consolidations, dissolutions,⁶ mergers, the establishment of a subsidiary district or reorganizations including any of these changes, These provisions are set out in Section II (A) (1)-(3) below. This appears to render

⁵ Consolidations initiated pursuant to substantially similar resolutions of application by two or more local agencies, pursuant to Section 56853, are subject to the protest provisions of Section 57081. (Gov. Code §§ 56853 (a) and 57081.) The provisions of Section 57081 are set out in Section IV, below.

⁶ Note, however, that Section 57114 sets out the requirements for the “dissolution of one or more districts and the annexation of all or substantially of their territory to another district, when such a proposal is not initiated by the commission.” The requirements of 57114 are set out in Section V (A) below.

Section 57077 applicable to disincorporations and incorporations only. However, the language used in 57077 as specified below expressly references the provisions of Section 56854.

While typically a later enacted or amended statute (here, Section 57077) takes precedence over a previously adopted statute (Section 56854), the plain language of the statutes make harmonization of the statutes possible, albeit cumbersome. Whether this was the intent of the Legislature, is difficult to discern. On the one hand Section 56854 unequivocally provides that its provisions apply, notwithstanding the provisions of 57077 or 57107 (requiring mergers or establishment of subsidiary districts be subject to confirmation of the voters unless the legislative body of the city and the board of directors of the district have consented by resolution). On the other hand, the fact that the Legislature, since 2000, has on several occasions enacted amendments to Section 57077, and enacted no amendments to Section 56854, imply that the Legislature intended the both sections to be harmonized simply because amendments were made. The following is an attempt at a harmonization.

A. CHANGES OF ORGANIZATION CONSISTING SOLELY OF DISSOLUTIONS, DISINCORPORATIONS, ESTABLISHMENT OF A SUBSIDIARY DISTRICT, CONSOLIDATION OR MERGER

For changes of organization consisting solely of dissolutions, disincorporations, establishment of a subsidiary district, consolidation or merger, the protest provisions are set out in Section 57077, which requires the Commission to do one of the following:

- (a)(1) Order the change of organization subject to confirmation of the voters, or in the case of a landowner-voter district, subject to confirmation by the landowners, unless otherwise stated in the formation provisions of the enabling statute of the district or otherwise authorized pursuant to Section 56854.
- (2) Order the change of organization without election if it is a change of organization that meets the requirements of Section 56854, 57081, 57102, or 57107; otherwise, the commission shall take the action specified in paragraph (1).

(Gov. Code § 57077(a)(1) and (2).) For dissolutions only, to the extent the District may make the findings specified in Section 57102, it appears that no election is required. However, elections are required for the dissolution of a local hospital district. (Gov. Code § 57103.) Additionally, for mergers or establishment of a subsidiary district only, the Commission is required to order the change subject to an election unless the legislative body of the city and the board of directors of the subject district have consented to the change by resolution. (Gov. Code § 57107.) Section 56854 sets out various additional applicable protest thresholds as described below. The provisions of Section 57081 are also set out below.

1. Proposals not Initiated by the Commission Where There is No Objection by the Affected City or District.

For proposals for consolidation of districts, dissolution, merger or the establishment of a subsidiary district, or a reorganization including any of these changes of organization, the Commission shall order the change without an election unless one of the following protest thresholds is triggered, in which case an election will be held in each affected city or district:

- (a)(1) Where the proposal was not initiated by the commission, and where an affected city or district has not objected by resolution to the proposal, a written protest has been submitted that meets the requirements specified in subdivisions (b) and (c) of Section 57081.

(Gov. Code § 56854(a)(1).) Subdivisions (b) and (c) of Section 57081 provide as follows:

- (b) An election shall only be held if the commission finds either of the following:
- (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 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.
- (c) The petition shall be filed with the commission prior to the conclusion of the protest hearing.

(Gov. Code § 57081(b) and (c).)

2. Proposals not Initiated by the Commission Where an Affected City or District has Objected

Where such a proposal was not initiated by the Commission, and “where an affected city or district has objected by resolution to the proposal” an election is required as set forth above, if a “written protest has been submitted that meets the requirements specified in paragraphs (1) and (2) of subdivision (a) and subdivision (b) of Section 57114.” (Gov. Code § 56854 (a)(2).) Paragraphs (1) and (2) of subdivisions (a) and (b) of Section 57114 provide as follows:

- (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. The voter confirmation requirements set forth in subdivision (a) shall not apply to any proposal initiated by the commission under Section 56375 or where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors.

(Gov. Code § 57114(a) and (b).)

3. Proposals Initiated by the Commission

Where a proposal was initiated by the Commission, “and regardless of whether an affected city or district has objected to the proposal by resolution” an election is triggered if written protest meeting the requirements of Section 57113 has been submitted. (Gov. Code § 56854(a)(3).) Section 57113 provides as follows:

- (a) Notwithstanding Section 57081, 57102, 57107,⁷ 57108,⁸ or 57111, for any proposal that was initiated by the commission pursuant to subdivision (a) of Section 56375, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:
 - (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 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. However, if the number of landowners within an affected district is less than 300, the petition requesting the proposal to be submitted to the voters shall be signed by at least 25 percent of the landowners who own at least 25 percent of the assessed value of land within the territory of the affected district.
 - (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. However, if the number of voters entitled to vote within an affected district is less than 300, the petition requesting the proposal to be submitted to the voters shall be signed by at least 25 percent of the voters entitled to vote.
 - (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. However, if the number of voters entitled to vote within an affected district is less than 300,

⁷ Section 57107 pertains to resolutions ordering merger or establishment of a subsidiary district and is more fully discussed in Section II (A), above.

⁸ Section 57108 requires an election to be held for mergers or establishment of a subsidiary district if petitions were filed and 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 landowners who also own not less than 10 percent of the assessed value of land within the district.

the petition requesting the proposal to be submitted to the voters shall be signed by at least 25 percent of the voters entitled to vote.

- (b) The petition shall be filed with the commission prior to the conclusion of the protest hearing.

(Gov. Code § 57113.)

III. REORGANIZATIONS CONSISTING OF ONE OR MORE DISSOLUTIONS, INCORPORATIONS, FORMATIONS, DISINCORPORATIONS, ESTABLISHMENT OF SUBSIDIARY DISTRICTS, CONSOLIDATIONS AND/OR MERGERS.

The provisions of Section 57077, are ambiguous again as it relates to reorganizations consisting of one or more dissolutions, incorporations, formations, disincorporations, establishment of subsidiary districts, consolidations and/or mergers. In sum, Section 57077 is trumped by Section 56854, the provisions of which are set out in Section II (A)(1)-(3) above. Section 57077 provides as follows:

- (b) Where a reorganization consists of one or more dissolutions, incorporations, formations, disincorporations, mergers, establishments of subsidiary districts, consolidations, or any combination of those proposals, the commission shall do either of the following:
 - (1) Order the reorganization subject to confirmation of the voters, or in the case of landowner-voter districts, subject to confirmation by the landowners, unless otherwise authorized pursuant to Section 56854.
 - (2) Order the reorganization without election if it is a reorganization that meets the requirements of Section 56854, 57081, 57102, 57107, or 57111; otherwise, the commission shall take the action specified in paragraph (1).

(Gov. Code § 57077(b).) The provisions of Sections 56854, 57081, 57102 and 57107 are either set out in full or described in Section II above. Section 57111 provides an exception to the requirement to hold an election if the component changes of organization in a reorganization do not individually require a confirmation election.

IV. CONSOLIDATIONS INITIATED BY SUBSTANTIALLY SIMILAR RESOLUTIONS OF APPLICATION

If two or more local agencies adopt substantially similar resolutions of application “making proposals either for the consolidation of districts or for the reorganization of all or any part of the districts into a single local agency, the Commission shall approve, or conditionally approve the consolidation or reorganization without an election, except as otherwise provided in subdivisions (b) of Section 57081. Section 57081 (b) provides as follows:

- (b) An election shall only be held if the commission finds either of the following:
 - (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 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.

(Gov. Code § 57081(b).)

V. OTHER PROTEST PROVISIONS AND EXCEPTIONS

To make things even more confusing, the Act contains a few additional provisions setting protest thresholds for various changes of organization and reorganization that are either not captured in the above provisions, or as exceptions to the above provisions for certain narrow circumstances.

A. Dissolutions of one or More Districts and Annexation of all or Substantially of Their Territory to Another District

For proposals “for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, not initiated by the commission” an election is required in each district that has filed a petition as follows;

- (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.

(Gov. Code § 57114(a).) If the proposal was initiated by the Commission, no election is required where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors. (Gov. Code § 57114(b).)

B. Proposals for Merger or Establishment of a Subsidiary District

Elections for proposals for merger or establishment of a subsidiary district may be held only within the district to be merged or established as a subsidiary district, if a protest is received as follows:

- (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.

(Gov. Code § 57108(a) and (b).)

C. Proposals for Reorganizations Including Incorporation and Merger or Establishment of a Subsidiary District

Elections for a merger or establishment of a subsidiary district that are part of a reorganization that includes an incorporation must be held separately only within the subject district if a petition is filed and 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.

(Gov. Code § 57109(a) and (b).)

D. Dissolution of Newhall County Water District

A proposal for the dissolution of the Newhall County Water District is subject to a different petition standard. Such a proposal is subject to confirmation by the voters if a petition has been signed as follows:

- (a) Notwithstanding Sections 56854, 57111, and 57114, for any proposal involving the dissolution of the Newhall County Water District, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either:
 - (1) At least 10 percent of the number of voters entitled to vote as a result of residing within the district.
 - (2) At least 10 percent of the number of landowners within the district who own at least 10 percent of the assessed value of land within the district.

(Gov. Code § 57114.5(a).)

VI. RECOMMENDATIONS FOR REVISION OF PROTEST PROVISIONS

As is clear from the above description of current protest provisions in the Act, streamlining, consolidating and revising the protest provisions is warranted. Potential revisions could include the following:

Recommendation: Place all protest provisions in the same chapter and part of the Act.

Currently, protest provisions are set out in various chapters of the Act, not to mention different parts of the Act. For example, Section 56854 is not included in Part 4 of the Act, which pertains to conducting authority proceedings. Instead, Section 56854 is included in Article 2, (pertaining to reorganizations notwithstanding the fact that its provisions also apply to changes of organization), of Chapter 5 of Part 3 of the Act, (pertaining to “Commission Proceedings for a Change of Organization or Reorganization”). Similarly, some provisions applicable to protests are included in Chapter 5 of Part 4 of the Act (pertaining to “Resolution for Order Subject to Election”) rather than Chapter 4 of Part 4 of the Act (pertaining to “Resolution of Conducting Authority”) despite the fact that the statutes all for the most part, delineate the protest thresholds for various changes of organization or reorganizations.

Recommendation: Establish fewer protest thresholds.

The Act currently has various threshold that are triggered not only by the type of change involved, but also by the manner in which the change was initiated. While different thresholds for different types of proposals may be warranted, some consolidation of protest thresholds could provide more clarity.

Recommendation: Delete Cross-References and Exceptions that Render Existing Provisions Obsolete.

The Act suffers from too many internal cross-references or exceptions to other sections in the Act. This is pervasive throughout the Act, and is not limited to protest provisions. Unwinding these cross-references and exceptions would provide much needed clarity.

Recommendation: All protest thresholds should be written in consistent language.

While not a substantive issue, the current protest provisions are worded similarly, but not always consistently. Sometimes the protest thresholds are listed as numbers rather than words, and visa versa. For example, Section 57076 references a threshold of “twenty-five percent” and also a threshold of “25 percent.”

CONCLUSION

As expressed at the outset, this Memorandum is intended to provide a baseline inventory of the current protest procedures under the Act, as well as highlight provisions in the Act that could benefit from revision. As also expressed at the outset of this Memorandum, many of the Act’s statutory procedures can be subject to more than one interpretation. In order to ensure that any future legislation revising protest provisions meets the needs of LAFCOs throughout the State, we welcome comments, suggestions and thoughts not only on the content of this Memorandum, but also on possible future revisions to the protest provisions in the Act.