



# The Florida Senate

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Committee on Community Affairs

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## MERGER OF INDEPENDENT SPECIAL DISTRICTS

### Issue Description

Under Florida law, an independent special district created by a special act can only be dissolved or merged by the Legislature.<sup>1</sup> Pursuant to this statutory requirement, two independent special districts formed under individual special acts require a special act of the Legislature before they can merge. The unique structure and organization of independent special districts makes merger propositions a lengthy and expensive process. Currently, there are minimal statutory guidelines in Florida for special districts to follow during mergers or consolidations.

The purpose of this interim report is to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report will begin by reviewing current Florida law and the existing merger and consolidation laws in other states. The report will then discuss previous merger attempts that have failed in Florida and provide criteria for the Legislature to consider, should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge or consolidate prior to a Legislative Act.

### Background

#### Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.<sup>2</sup> Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.<sup>3</sup> A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.<sup>4</sup> A special district does not include:

- A school district,
- A community college district,
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- A municipal service taxing or benefit unit (MSTU/MSBU), or
- A political subdivision board of a municipality providing electrical service.<sup>5</sup>

Special districts have the same governing powers and restrictions as counties and municipalities.<sup>6</sup> Like other forms of local government, special districts operate through a governing board and can “enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services”.<sup>7</sup> Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.<sup>8</sup>

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<sup>1</sup> Section 189.4042, F.S.

<sup>2</sup> Ch. 189, F.S., *see* s. 189.401, F.S.

<sup>3</sup> Section 189.403(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Mizany, Kimia and April Manatt, WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).

<sup>7</sup> *Id.* (alteration to original) (citation omitted).

<sup>8</sup> Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.<sup>9</sup>

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.<sup>10</sup> Independent special districts may encompass more than one county.<sup>11</sup> The public policy behind special districts is to provide an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services”.<sup>12</sup>

The Special District Information Program (SDIP), administered by the Department of Community Affairs (DCA) is designed to collect, update, and share detailed information on Florida's special districts with more than 685 state and local agencies.<sup>13</sup> The Department also maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.<sup>14</sup> As of May 2010, there were approximately 1,624 special districts in the state of Florida: 615 dependent districts and 1,009 independent districts.<sup>15</sup> Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.<sup>16</sup>

Section 189.4042, F.S., specifies the requirements for the merger or dissolution of a special district. Pursuant to this section, the merger or dissolution of a special district “created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law”.<sup>17</sup>

Florida Statutes currently do not provide statutory guidelines to facilitate the merger or consolidation of independent special districts prior to a Legislative Act. However, s. 189.428, F.S., does offer an oversight review process that allows counties and municipalities to evaluate the degree of special district services and determine the need for adjustments, transitions or dissolution.<sup>18</sup> The oversight review process is performed in conjunction with the special district's public facilities report and the local governmental evaluation and appraisal report prescribed in ss. 189.415(2) and 163.3191, F.S.<sup>19</sup> Depending upon whether the independent special district is a single- or multi-county district, the oversight review may be conducted by the county or municipality where the special district is located, or by the government that created the special district.<sup>20</sup>

<sup>9</sup> Section 189.403 (2) (a)-(d), F.S.

<sup>10</sup> Section 189.403(3), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 189.402(3)-(4), F.S.

<sup>13</sup> Florida Department of Community Affairs, *Special Districts Information Program* (available online at <http://www.floridaspecialdistricts.org>) (last visited on Sept. 21, 2010).

<sup>14</sup> Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Community Affairs, *Official List of Special Districts Online*, (available online at <http://www.floridaspecialdistricts.org/OfficialList/index.cfm>) (last visited on August 11, 2010). Note: This list is updated on October 1 of each year.

<sup>15</sup> Gaskins, *supra* note 8. Note: This number is subject to change daily.

<sup>16</sup> Florida Department of Community Affairs, *Official List of Special Districts Online* (available online at <http://www.floridaspecialdistricts.org/OfficialList/index.cfm>) (last visited on August 11, 2010).

<sup>17</sup> Section 189.4042(2), F.S.

<sup>18</sup> *See* s. 189.428, F.S.

<sup>19</sup> Section 189.428(2), F.S.

<sup>20</sup> Section 189.428(3), F.S., Note: that dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to:

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the districts' existing contracts.<sup>21</sup>

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, dissolution or merger of the district.<sup>22</sup> If a legislative dissolution or merger is proposed in the final report, subsection (8) of s. 189.428, F.S., further provides that:

(8) . . . the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:

- (a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
- (b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
- (c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
- (d) Whether the proposed merger adequately provides for the assumption of all indebtedness.<sup>23</sup>

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.<sup>24</sup> This section does not apply to deepwater ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.<sup>25</sup>

## **Chapter 191, F.S., The Independent Special Fire Control District Act**

Statutory procedures for the creation, expansion, and merger of independent special fire control districts are addressed in s. 191.014, F.S. Under the provisions of this section, an independent special fire control district "may be modified, extended or enlarged upon the approval or ratification by the Legislature." In regards to fire district mergers, subsection (3) of s. 191.014, F.S., provides that:

The merger of a district with all or portions of other independent special districts or dependent fire control districts is effective only upon ratification by the Legislature. A district may not, solely by reason of a merger with another governmental entity, increase ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless approved by the electors of the district by referendum.<sup>26</sup>

<sup>21</sup> See s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.

<sup>22</sup> Section 189.428(7), F.S.

<sup>23</sup> Section 189.428(8), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).

<sup>26</sup> Section 191.014(3), F.S.

Exclusive of debt service bonds, s. 191.009, F.S., prohibits an independent special fire control district board from imposing ad valorem taxes for operating purposes above 3.75 mills, unless previously authorized by law and approved by referendum.<sup>27</sup>

## Mergers and Consolidations of Special Districts

Mergers and consolidations can be achieved in various forms and capacities, ranging from mutual aid agreements to formal mergers, and from incremental consolidations to immediate mergers.<sup>28</sup> The model and scope of any particular agreement depends upon the goals and aspirations of the districts involved. There is no “one-size-fits all” consolidation or merger format.<sup>29</sup>

The most common types of cooperative efforts between independent special districts include mutual or automatic aid agreements, consolidations, and mergers. Consolidations can also include administrative/operational consolidation, functional consolidation, partial consolidation, or full consolidation. These cooperative efforts are defined as follows:

- Mutual or Automatic Aid Agreements are defined as interlocal agreements between two or more districts whereby participants can request or provide automatic assistance (respectively) from the neighboring district. An example includes reciprocal assistance or first response agreements for fire rescue and emergencies.
- Administrative/Operational Consolidation includes the consolidation of the administrative or operational aspects of two or more districts, while remaining legal individual and separate districts. Operational tasks may include communications and information databases.
- Functional Consolidation involves the consolidation of one or more duties normally performed by one district, between two or more districts while remaining legal individual and separate districts. This may include joint human resources and training or bulk purchasing.
- Partial Consolidation occurs when two or more separate districts share certain resources or specific functions, but remain autonomous special districts. This may include sharing apparatus or system databases.
- Full Consolidation takes place when two or more separate districts combine all the administrative and operational components of each district into a single district with a single organizational structure.
- Merger occurs when two or more districts legally dissolve and combine to become an entirely new individual district.<sup>30</sup>

## Other States’ Merger and Consolidation Laws

The diverging merger and consolidation procedures enacted in other states can be used as a foundation for merger or consolidation legislation in Florida. “By doing so [the state can] enjoy the benefits of progress without the need to invent each step anew as we proceed.”<sup>31</sup> This report will focus on the different merger and consolidation procedures in three states: Arizona, California, and New York.<sup>32</sup>

<sup>27</sup> Section 191.009(1), F.S.

<sup>28</sup> Senate professional staff found a number of articles and literature reviews that discuss the effects and procedures for mergers and consolidations. However, this report will only focus on the types of cooperative efforts. For more general information on special district mergers, See Chief Jack W. Snook, and Chief Jeffery D. Johnson, COOPERATIVE SERVICE THROUGH CONSOLIDATIONS, MERGERS, AND CONTRACTS ... MAKING THE PIECES FIT (ESCG 1997).

<sup>29</sup> Drozd, Otto III, CONSOLIDATION/REGIONALIZATION OF THE HIALEAH FIRE DEPARTMENT: A PRAGMATIC EVALUATION ON SERVICE DELIVERY, 14 (June 2004).

<sup>30</sup> These definitions were provided from three separate pieces of literature by Otto Drozd and Jack Snook, and David Nichols. See Drozd, *supra* note 29, at 9-12. See also Snook, *supra* note 28, at 16-19. See also David Nichols, FUNCTIONAL CONSOLIDATION: IMPROVING THE DELIVERY OF FIRE AND EMERGENCY SERVICES IN SOUTH CENTRAL PENNSYLVANIA, at 13 (Nov. 2006).

<sup>31</sup> Colin A. Campbell Associates, Inc., FIRE DEPARTMENT CONSOLIDATION- WHY & HOW TO DO IT... RIGHT, 58 (VFIS Publication 1994) (alteration to original) (citation omitted).

<sup>32</sup> According to the professional staff of the Arizona and California State Legislatures, there does not appear to be any statewide data on the cost-savings generated from mergers and consolidations since these changes are conducted at the local level. The New York Attorney General’s office articulated that it is too early to determine the effects of the recent New York Government Reorganization and Citizen Empowerment Act, which became law on March 21, 2010.

## Arizona

Arizona's merger and consolidation statutes only apply to fire districts.<sup>33</sup> Pursuant to A.R.S. §§ 48-820 and 48-822, fire districts can merge or consolidate through one of two methods: by election or via non-election procedures.<sup>34</sup> With certain exceptions, "[t]he statutory procedures for fire district mergers and consolidations are essentially the same."<sup>35</sup> The report will first address the general non-election and election requirements, and then discuss the additional statutory requirements that apply specifically to the merger or consolidation of fire districts.

**Non-Election Method:** In order to qualify for a non-election merger or consolidation, the governing body of each fire district must "obtain written consent to the merger from any single taxpayer residing within each of the affected districts, who owns 30 percent or more of the net assessed valuation of the total net assessed valuation of the district".<sup>36</sup> Once the districts meet this requirement, the governing body of each fire district must adopt a resolution by majority vote and consider the merger or consolidation at a public hearing. During the public hearing, the district governing bodies listen to comments from the county board of supervisors and the public to determine if the proposed boundary change would promote the "public health, comfort, convenience, necessity or welfare".<sup>37</sup> If the governing bodies adopt the resolution by a three-fourths vote at the hearing, then the merger or consolidation is approved and recorded with the board of supervisors.<sup>38</sup>

**Election Method:** If the fire districts are *not* able to obtain the written consent from a taxpayer residing within each of the affected districts who owns 30 percent or more of the net assessed valuation of the total net assessed valuation of the district, then the merger or consolidation can only be accomplished through election.<sup>39</sup> Election orders for mergers and consolidation can only be called once every two years in conjunction with the general election and all election expenses must be reimbursed by the fire districts to the counties.<sup>40</sup> Under the election method, once a resolution for merger or consolidation has been approved by the governing bodies, the board of supervisors calls an order for election and provides property owners with written notice of a public hearing on the resolution.<sup>41</sup> The election ballot language must be formatted as a simple YES/NO vote, and must be approved by a majority of the votes cast in each affected district.<sup>42</sup>

**Special Requirements for Merger:** Once a fire district merger is approved at the public hearing or by election, the governing body of each fire district must call a joint meeting within 30 days to appoint a new governing board.<sup>43</sup> The new governing board must be composed of five members that currently serve on the governing bodies of each district, of which no more than three can have terms expiring that year or be from the same fire district board.<sup>44</sup> The newly appointed board must then elect a chairman and a clerk, and declare the districts merged by resolution.<sup>45</sup>

**Special Requirements for Consolidation:** After a resolution for consolidation is approved by a majority vote of the governing body of each district, the two fire districts must prepare an impact statement formulated by mutual agreement. The impact statement must be available for comment and governing body approval at the public hearing, and shall include the following information:

<sup>33</sup> ARIZ.REV.STAT. §48-820 (merger of fire districts) and §48-822 (consolidation of fire districts).

<sup>34</sup> *Id.*

<sup>35</sup> Ariz. H.R. Comm. on Gov't, HB 2432 (2010) Staff Analysis, 2 (March 5, 2010) (on file with the Florida Senate Committee on Community Affairs).

<sup>36</sup> Subsections (G) and (J), ARIZ.REV.STAT. §48-820. *See also* Paragraph (C)(15) and (E) of ARIZ.REV.STAT. §48-822.

<sup>37</sup> Subsection (F), ARIZ.REV.STAT. §48-820. *See also* Paragraph (C)(8) of ARIZ.REV.STAT. §48-822.

<sup>38</sup> *Id.* Note: ARIZ.REV.STAT. §48-822(C)(7)-(8), pertaining to the consolidation of fire districts does not specify the required governing board approval rate and only states that the governing body must determine that consolidation will "promote the public health, comfort, convenience, necessity or welfare".

<sup>39</sup> Subsection (G), ARIZ.REV.STAT. §48-820. *See also* Subsection (E) of ARIZ.REV.STAT. §48-822.

<sup>40</sup> Subsection (A), ARIZ.REV.STAT. §48-820. *See also* Subsection (A) of ARIZ.REV.STAT. §48-822.

<sup>41</sup> *Id.*

<sup>42</sup> Subsections (A)-(B), ARIZ.REV.STAT. §48-820. *See also* Subsections (A)-(B) of ARIZ.REV.STAT. §48-822.

<sup>43</sup> Subsection (H), ARIZ.REV.STAT. §48-820.

<sup>44</sup> *Id.*

<sup>45</sup> Subsection (I), ARIZ.REV.STAT. §48-820.

- A legal description of the boundaries of the proposed consolidated district,
- An estimate of the assessed valuation in the proposed district,
- An estimate in the change of property tax liability, and
- A list and explanation of benefits and injuries that will result from the proposed consolidated district.<sup>46</sup>

Unlike merged fire district governing boards, the governing board of a newly consolidated fire district is only composed of the governing members of the district into which consolidation was requested. “[T]he governing body of the fire district requesting consolidation is eliminated.”<sup>47</sup> The consolidated fire district governing board must consist of at least five members, unless the new district population is greater than 50,000 people, at which point two additional members may be appointed.<sup>48</sup>

### California

In California, local government consolidation procedures are governed by The Cortese-Knox-Hertzberg Local Government Reorganization Act.<sup>49</sup> Under the provisions of this Act, special district consolidations can be initiated three ways: initiation by the Local Agency Formation Commission (LAFCO); initiation by resolution; and initiation by petition.<sup>50</sup>

LAFCO<sup>51</sup> is an independent regulatory commission that was created by the California Legislature in 1963 to regulate and establish local government boundary changes.<sup>52</sup> Today, all 58 counties in California have their own LAFCO.<sup>53</sup> The membership of each individual LAFCO is generally composed of two county supervisors, two city council members or a mayor, one public member, two district commissioners if applicable,<sup>54</sup> and an executive officer that is responsible for preparing reports and recommendations for the commissioners.<sup>55</sup>

LAFCO can only initiate consolidation proceedings if it determines that the reorganization would be consistent with the results and recommendations of the local government’s existing governmental agencies, spheres of influence, and municipal services review.<sup>56</sup> A local government’s “spheres of influence” and “municipal service review” are planning documents developed and updated by LAFCO to estimate the local entity’s current and projected land use and services.<sup>57</sup> Prior to consolidation, LAFCO must also determine that the public service costs

<sup>46</sup> ARIZ.REV.STAT. §48-822(C)(2) a.-e.

<sup>47</sup> Ariz. H.R. Comm. on Gov’t, HB 2432 (2010) Staff Analysis, *supra* note 35, at 2. *See also* ARIZ.REV.STAT. §48-822(C)(10).

<sup>48</sup> ARIZ.REV.STAT. §48-822(C)(11).

<sup>49</sup> CAL. GOV’T CODE §56000. Note: This section will only discuss the consolidation of local government entities. “Merger” is defined differently in California, as “[t]he extinguishment, termination, and cessation of the existence of a district of limited powers by the merger of that district with a city.” *See* CAL. GOV’T CODE §56056.

<sup>50</sup> Best, Best & Krieger, *White Paper, The Metamorphosis of Special Districts: Current Methods for Consolidation, Dissolution, Subsidiary District Formation and Merger*, 2-10 (August 2008) (on file with the Senate Committee on Community Affairs).

<sup>51</sup> Hereinafter also referred to as “the commission”.

<sup>52</sup> Tami Bui and Bill Ihrke, *IT’S TIME TO DRAW THE LINE, A CITIZEN’S GUIDE TO LAFCOS: CALIFORNIA’S LOCAL AGENCY FORMATION COMMISSIONS*, 2<sup>nd</sup> ed., 6 -7 (May 2003) (stating that “LAFCOs regulate all city and most special district boundaries . . . [but] *do not* regulate boundaries for counties and certain local governments such as air pollution control and community college districts”) (citations omitted) (alteration to original) (on file with the Senate Committee on Community Affairs).

<sup>53</sup> *Id.* at 7. Pursuant to 2000 legislation, LAFCOs’ are now funded by county governments, of which each sector pays one third of LAFCO’s budget. *See id.* at 25.

<sup>54</sup> Note: Of the 58 LAFCOs in California, approximately half of them have special district representation, while the remaining 29 LAFCOs just have five commissioners. E-mail from Peter Detwiler, Staff Director of the California Senate Local Government Committee (Sept. 22 2010) (on file with the Senate Committee on Community Affairs).

<sup>55</sup> CAL. GOV’T CODE § 56325(a)-(d). Note: the statutes also provide special commission membership requirements for certain counties *see* §§ 56326- 56328.5. *See also* Tami Bui and Bill Ihrke, *supra* note 52, at 23.

<sup>56</sup> CAL. GOV’T CODE § 56375(a)(3). *See also* CAL. GOV’T CODE §§ 56378, 56425, and 56430.

<sup>57</sup> CAL. GOV’T CODE §§ 56076, and 56425. Statutes suggest that these studies be updated once every five years.

in the boundary change proposal are likely to be less or substantially similar to alternative service methods, and that consolidation would promote public access and accountability.<sup>58</sup>

Initiation by resolution occurs when the governing bodies of one or more special district(s) adopts a Resolution of Application and submits it to the county's LAFCO executive officer.<sup>59</sup> The voters or landowners of one or more special districts can also initiate consolidation proceedings through a Petition of Application that is signed by the requisite number of registered voters or landowners. Prior to circulating the petition, the proponent must file a Notice of Intention to Circulate the Petition with the county's LAFCO executive officer.<sup>60</sup> A petition for the consolidation of one or more special districts must contain the signatures of at least 5% of the registered voters within each district, or in the case of landowner-voter districts: 5% of the landowners-voters that own land in each district owning not less than 5% of the assessed value of land within each district.<sup>61</sup>

Consolidation Procedures: Special districts must undergo four, and sometimes five, procedures to consolidate. These steps include: (1) application with LAFCO, (2) LAFCO review and approval, (3) conducting authority proceedings (4) possible election (depending on the petition threshold), and (5) certificate of completion.<sup>62</sup>

*Application:* District governing board(s) or petitioners that wish to consolidate with one or more other special district(s) under the first two consolidation methods must begin by submitting an application for consolidation to the county's LAFCO executive officer.<sup>63</sup> Each application must contain:

- A petition or resolution of application initiating the proposal;
- A statement of the nature of each proposal;
- A map and description, acceptable to the executive officer, of the boundaries of the subject territory for each proposed change of organization or reorganization;
- Any data and information as may be required by any regulation of the commission;
- 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; and
- 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.<sup>64</sup>

Before LAFCO can consider an application for consolidation, the affected local agencies must adopt a mutual resolution agreeing to the exchange of property tax revenues.<sup>65</sup>

*Review and Approval:* The executive officer must examine the application and prepare recommendations for the commission.<sup>66</sup> LAFCO must then review the proposal and hear public testimony and debate.<sup>67</sup> After the commission hearing, LAFCO has 35 days to approve or disapprove the proposal, with or without conditions.<sup>68</sup> In making its decision, the commission must consider certain statutory factors relating to the individual districts' current local structure, land use designations, governmental services and per capita assessments.<sup>69</sup> Pursuant to the California Environmental Quality Act (CEQA), the commission is also required to "review the environmental effects of proposed boundary changes". If LAFCO determines that the boundary change may have a significant adverse environmental effect, LAFCO will also require an Environmental Impact Report (EIR).<sup>70</sup>

<sup>58</sup> CAL. GOV'T CODE § 56881(b)(1)-(2) (alteration to original) (citation omitted).

<sup>59</sup> CAL. GOV'T CODE §§ 56654(a), and 56658(a).

<sup>60</sup> CAL. GOV'T CODE § 56700.4(a).

<sup>61</sup> CAL. GOV'T CODE § 56865(a)-(b).

<sup>62</sup> Bui and Ihrke, *supra* note 52, at 18.

<sup>63</sup> CAL. GOV'T CODE § 56658(a) (2008). Note: this step does not apply in LAFCO-initiated consolidation proposals.

<sup>64</sup> CAL. GOV'T CODE § 56652(a)-(f).

<sup>65</sup> CAL. REV. & TAX. CODE § 99(b) (6). *See also* CAL. GOV'T CODE § 56810 (discussing the procedures for Property Tax Exchange).

<sup>66</sup> CAL. GOV'T CODE § 56665.

<sup>67</sup> CAL. GOV'T CODE § 56666.

<sup>68</sup> CAL. GOV'T CODE § 56880.

<sup>69</sup> *See* CAL. GOV'T CODE § 56668.

<sup>70</sup> Bui and Ihrke, *supra* note 52, at 20. *See also* CAL. PUB. RES. CODE § 2100, et seq.

*Conducting Authority Proceedings:* Once LAFCO approves the consolidation proposal, it holds a conducting authority proceeding to measure public protests.<sup>71</sup> During this time, any landowner or registered voter subject to the proposed boundary change is welcome to file a written protest against the consolidation.<sup>72</sup> “The number of protests [received at the conducting authority proceedings] determines whether or not the boundary change requires voter approval.”<sup>73</sup> After the protest proceedings are complete, LAFCO calculates the value of protests and issues a resolution that either:

- Allows the consolidation *without* an election, if less than 25% of the registered voters or landowners within the affected territory file a protest petition;<sup>74</sup>
- Allows the consolidation *subject to* an election, if the number of protests received at the conducting authority proceedings is between 25%-50% of the registered voters or landowners within the affected territory<sup>75</sup>; or
- Terminates the consolidation proposal, if 50% or more of the registered voters or landowners protest against the consolidation.<sup>76</sup>

*Possible Election:* If the conducting authority proceeding generates the statutorily mandated number of protests, then the commission is required to hold an election within the territory of each district ordered to be consolidated.<sup>77</sup> The election must be held in accordance to the general and local election provisions of the Election Code and must be favored by a majority of the votes cast in each district.<sup>78</sup>

*Certificate of Completion:* After all the necessary parties approve the consolidation proposal, LAFCO may file a certificate of completion. The certificate of completion must be prepared by the LAFCO executive officer and must include the name and boundary description of the new district along with any terms and conditions of the change or reorganization.<sup>79</sup> The effective date of the consolidation shall be as prescribed in the LAFCO resolution or if not provided, the date the certificate of completion is executed or recorded with the county recorder.<sup>80</sup>

*Expedited Consolidation Procedures:* California also provides expedited consolidation procedures for two or more local agencies that adopt substantially similar resolutions of application for consolidation.<sup>81</sup> In this instance, LAFCO is required to approve or conditionally approve the consolidation proposal without an election, unless it acquires a majority number of protests as specified above.<sup>82</sup>

### ***New York***

The “New N.Y. Government Reorganization and Citizen Empowerment Act” was recently adopted during the 2009 legislative session and came into effect on March 21, 2010.<sup>83</sup> The legislative intent of this Act is to reduce property tax burdens and simplify consolidation and dissolution procedures for local government entities.<sup>84</sup> The newly enacted reorganization procedures applies to “towns, villages, fire districts, fire protection districts, fire alarm districts, special improvement districts or other improvement districts, library districts, and other districts

<sup>71</sup> Bui and Ihrke, *supra* note 52, at 21. *See also* CAL. GOV’T CODE §57007. Note: §56663(c) states that these protest proceedings may be waived in uninhabited territories so long as all residing landowners provide written consent, and no subject agency has submitted written opposition.

<sup>72</sup> CAL. GOV’T CODE §57051.

<sup>73</sup> Bui and Ihrke, *supra* note 52, at 21.

<sup>74</sup> CAL. GOV’T CODE §57081, and 57078.

<sup>75</sup> *Id.* *See also* Bui and Ihrke, *supra* note 52, at 21.

<sup>76</sup> CAL. GOV’T CODE § 57078.

<sup>77</sup> CAL. GOV’T CODE § 57118(a).

<sup>78</sup> CAL. GOV’T CODE §§ 57125-57126. *See also* CAL. GOV’T CODE § 57177.5(a).

<sup>79</sup> CAL. GOV’T CODE § 57201.

<sup>80</sup> CAL. GOV’T CODE § 57202.

<sup>81</sup> CAL. GOV’T CODE § 56853(a).

<sup>82</sup> *Id.*, E-mail from Peter Detwiler, Staff Director of the California Senate Local Government Committee (Sept. 22 2010) (on file with the Senate Committee on Community Affairs).

<sup>83</sup> 2009 NY AB 8501(N.S.) and 2009 NY SB 5661(N.S.). *See also* N.Y. Gen. Mun. Law, Ch.24, Art. 17-A (2009).

<sup>84</sup> Nicholas Confessore, *Senate Passes Bill to Ease Government Consolidation*, The New York Times (June 4, 2009)

(available online at [http://www.nytimes.com/2009/06/04/nyregion/04consolidate.html?\\_r=1](http://www.nytimes.com/2009/06/04/nyregion/04consolidate.html?_r=1)) (last visited on September 16, 2010).



created by law.”<sup>85</sup> Under the new law, contiguous local government entities can initiate consolidation proceedings by a joint resolution of the governing body or bodies of the local government entities to be consolidated or through elector initiative.<sup>86</sup>

Joint Consolidation Agreement: The governing bodies of two or more contiguous special districts can commence a consolidation proceeding by a joint resolution of the governing body or bodies of the local government entities to be consolidated that endorses a proposed joint consolidation agreement.<sup>87</sup> The proposed joint consolidation agreement must include the name of the local governmental entities proposing to consolidate, as well as the proposed consolidated entity’s:

- Rights, duties and obligations;
- Territorial boundaries;
- Type and/or class;
- Governmental organization as it relates to elected/appointed officials and public employees;
- A transitional plan and schedule for elections and appointments of officials;
- A fiscal estimate of the costs and savings that may result from consolidation;
- Each entity’s assets, liabilities, and indebtedness and terms for the disposition thereof;
- Terms for the common administration and uniform enforcement of local laws, ordinances, resolutions, etc.;
- The effective date of the consolidation; and
- The time and place for the public hearing on the proposed joint consolidation agreement.<sup>88</sup>

The governing body of each affected district must provide sufficient notice of the proposed joint consolidation and hold a public hearing no less than 35 days and no more than 90 days after the consolidation proceedings have commenced, to provide interested parties a reasonable opportunity to comment on the resolution.<sup>89</sup> After the public hearing, the governing body or bodies of the local government entities to be consolidated may amend the proposed joint consolidation agreement and approve or decline to move forward with further consolidation proceedings.<sup>90</sup> If the governing bodies decide to amend the proposed agreement, the amendments must be re-publicized for comment.<sup>91</sup> If the governing bodies decide to approve the proposed amendment, then approval must occur within 180 days of the final hearing.<sup>92</sup> A joint consolidation agreement that proposes the consolidation of two or more towns or villages, or one or more towns and villages, is subject to a referendum following the procedures discussed below.<sup>93</sup>

Elector Initiative: The electors of two or more special districts can also initiate a consolidation proceeding by filing a petition with the clerk that contains the signatures of at least 10% of the electors or 5,000 electors, whichever is less, in each district to be consolidated.<sup>94</sup> In smaller entities with a population of 500 or fewer electors, the petition must contain the signatures of at least 20% of the electors.<sup>95</sup>

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<sup>85</sup> New York Department of State, Local Government Shared Services, THE NEW N.Y. GOVERNMENT REORGANIZATION AND CITIZEN EMPOWERMENT ACT, A SUMMARY OF THE PROCESS FOR CONSOLIDATION AND DISSOLUTION (June 2009) (stating that this Act does not apply to school districts, city districts and special purpose districts established by counties under local law). (available online at <http://www.dos.state.ny.us/lgss/pdfs/ConsolidationDissolutionLaw.pdf> ) (last visited on August 18, 2010).

<sup>86</sup> N.Y. Gen. Mun. Law § 751(2).

<sup>87</sup> N.Y. Gen. Mun. Law § 752.

<sup>88</sup> N.Y. Gen. Mun. Law §752(2)(a)-(m).

<sup>89</sup> N.Y. Gen. Mun. Law §754.

<sup>90</sup> N.Y. Gen. Mun. Law §754(3).

<sup>91</sup> Subsection (4) of N.Y. Gen. Mun. Law §754.

<sup>92</sup> *See id.*

<sup>93</sup> *See* N.Y. Gen. Mun. Law §§ 755, 756 and 758.

<sup>94</sup> N.Y. Gen. Mun. Law § 757(2).

<sup>95</sup> *Id.*

After the petition is filed, each local entity must hold a voter referendum no more than 20 days apart.<sup>96</sup> Similar to Arizona law, the referendum ballot must be drafted in a simple YES/NO format. In addition, the vote must be held at a special election, unless a general election is held within the time the referendum must be held, and cannot be initiated within four years of a failed consolidation referendum.<sup>97</sup> A majority of the electors voting in each district must vote in favor of the referendum in order to approve the consolidation.<sup>98</sup>

If the referendum passes, the governing bodies of each local entity must develop a proposed written plan implementing the voters' decision.<sup>99</sup> The plan must follow the same statutory format, notification, and public hearing requirements that are listed above for a joint consolidation agreement and must be approved within 60 days of the final hearing.<sup>100</sup> The consolidation shall take effect on the date specified in the plan, which must be at least 45 days after the governing bodies' final approval.<sup>101</sup>

Within those 45 days, citizens residing in the affected districts have the option to file a petition for a permissive referendum to decide whether the elector-initiated consolidated plan should take effect.<sup>102</sup> The petition must contain the signatures of at least 25% of the number of electors or 15,000 electors, whichever is less.<sup>103</sup> The governing body of the local government entity must within 30 days, enact a resolution calling for a referendum to be held, and a referendum on the petition must be held not less than 60 or more than 90 days later.<sup>104</sup> If the majority of the electors voting on the permissive referendum do not approve the adopted plan, then the elector-initiated consolidation plan fails.<sup>105</sup>

Governing bodies that fail to abide by the statute for elector-initiated consolidation proceedings can be compelled to do so by court-ordered consolidation or mediation.<sup>106</sup>

### **Attempted Special District Mergers in Florida**

“Consolidation in Florida is seen as a way to meet increased demand for services due to population growth and development.”<sup>107</sup> Mergers and consolidations have also become an attractive vehicle in Florida for independent special districts combating government funding limits, tax reforms and service duplications. Section 163.01, F.S., currently allows local governmental units, including special districts, to enter into interlocal agreements in order “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the need and development of local communities”.<sup>108</sup> Numerous consolidation and merger attempts in Florida have stemmed from such interlocal agreements; however, a majority of these efforts has succumbed to political and financial obstacles.

#### ***Cedar Hammock and Southern Manatee Fire Districts (Manatee County)***

The Cedar Hammock and Southern Manatee Fire Control Districts operated cooperatively under an interlocal agreement from 1995 to 2001.<sup>109</sup> As part of their cooperative agreement, both fire districts “shared a fire chief and administrative structure, and fire and emergency personnel were deployed within a single, combined

<sup>96</sup> N.Y. Gen. Mun. Law § 758(2).

<sup>97</sup> N.Y. Gen. Mun. Law §§ 758(1) and (4), § 759(4). Note: the referendum procedures in sections 758 and 759 also apply to joint consolidation agreements requiring a referendum under N.Y. Gen. Mun. Law §755.

<sup>98</sup> N.Y. Gen. Mun. Law § 759(3).

<sup>99</sup> N.Y. Gen. Mun. Law §760(1).

<sup>100</sup> N.Y. Gen. Mun. Law §§760, 761, and 762.

<sup>101</sup> N.Y. Gen. Mun. Law §763.

<sup>102</sup> N.Y. Gen. Mun. Law §763(2).

<sup>103</sup> N.Y. Gen. Mun. Law § 763(3).

<sup>104</sup> N.Y. Gen. Mun. Law §763(4)–(5).

<sup>105</sup> N.Y. Gen. Mun. Law § 763(8).

<sup>106</sup> N.Y. Gen. Mun. Law § 764.

<sup>107</sup> Drozd, *supra* note 29, at 11.

<sup>108</sup> Section 163.01(1)-(2), F.S., known as the “Florida Interlocal Cooperation Act of 1969”.

<sup>109</sup> Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature (OPPAGA), *Fire Department Coordination Beneficial; Merger Guidelines Would Be Helpful*, Report No. 01-67, at 5 (Dec. 2001) (available online at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0167rpt.pdf>) (last visited August 10, 2010).

jurisdiction”.<sup>110</sup> During that time, the districts reported an increase in the quality of protection service, higher insurance service office ratings, and \$1.8 million in cost savings from shared administrative services.<sup>111</sup>

In 2001, Cedar Hammock and Southern Manatee decided to continue their cooperative efforts and proposed legislation was filed to merge the two districts into a single district in Manatee County.<sup>112</sup> However, while awaiting the passage of the 2001 Legislative Act, Cedar Hammock and Southern Manatee abandoned their merger proposal due to new political disagreements.<sup>113</sup> According to a special report by the Florida Office of Program Policy Analysis and Government Accountability, conflicts between the two fire districts arose when Cedar Hammock began making unilateral decisions without the consultation of Southern Manatee.<sup>114</sup> Tensions were set in motion starting January 2001, when Cedar Hammock dismissed their long-term fire chief and provided promotions and salary increases for its employees.<sup>115</sup> Consequently, Southern Manatee withdrew its merger proposal and the interlocal agreement between the two districts was dissolved.<sup>116</sup>

In December of 2001, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a special report on fire district mergers in response to the failed merger attempt between the Cedar Hammock and Southern Manatee Fire Control Districts.<sup>117</sup> The OPPAGA report recommended that the state develop statutory guidelines that could be used by local communities to “plan . . . and implement cooperative agreements and mergers”.<sup>118</sup> Although Florida Statutes currently provide general statutes on district mergers, OPPAGA accentuated that “no law or administrative rule requires fire departments to evaluate the feasibility of mergers, develop merger plans, or implement pre-merger agreements.”<sup>119</sup> The OPPAGA report further recommended that the Department of Community Affairs and the Division of State Fire Marshal establish a task force that can provide assistance in formulating effective statutory guidelines.<sup>120</sup>

In the conclusion of their report, OPPAGA declared that “it is appropriate for the state to establish a mechanism to provide guidance to local communities to assist them in planning and in determining optimal approaches to achieving and maintaining cooperation.”<sup>121</sup>

### ***Bonita Springs, Estero, and San Carlos Park Fire Districts (Lee County)***

The fire chiefs of Bonita Springs, Estero, and San Carlos Park Fire Districts began discussing service improvement options in 2007, at which point they formed a committee composed of two members from each district to study the possibility of consolidation or merger.<sup>122</sup> Today these committees continue to meet quarterly to provide updates on how the districts can operate functionally.<sup>123</sup> In 2009, the fire districts hired the independent consulting firm TriData Division, to evaluate the benefits and shortfalls of consolidation.<sup>124</sup> The report

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> SB 2356/HB 921 (2001 Reg. Session).

<sup>114</sup> OPPAGA, *supra* note 142, at 5.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 4.

<sup>118</sup> *Id.* at 1 (citation omitted).

<sup>119</sup> *Id.* at 7. (citing ss. 191.014, 189.4042, and 189.4045, F.S.)

<sup>120</sup> Office of Program Policy Analysis and Gov’t Accountability (OPPAGA), *supra* note 109, at 7.

<sup>121</sup> *Id.* at 8.

<sup>122</sup> The information in this paragraph was obtained from the White Paper study conducted for the potential merger of the Bonita Springs, Estero, and San Carlos Fire Districts. See P.H. Kinsey Jr., Jeffrey Lindsey and Natale Ippolito, *White Paper: Merger and Consolidation of Bonita Springs, Estero, and San Carlos Park Fire Districts* (Jan.15, 2008) (on file with the Senate Committee on Community Affairs).

<sup>123</sup> Telephone interview with Fire Chief Nat Ippolito, San Carlos Fire Department, in Tallahassee, FL (August 23, 2010).

<sup>124</sup> TriData Division, SYSTEM PLANNING CORPORATION, FINAL COOPERATIVE SERVICES FEASIBILITY AND CONSOLIDATION STUDY, BONITA SPRINGS, ESTERO, AND SAN CARLOS PARK FIRE PROTECTION AND RESCUE SERVICE DISTRICTS (December 2009) (on file with the Senate Committee on Community Affairs).

recommended two consolidation methods: “an immediate full merger or a gradual consolidation with cooperative agreements slowly bringing the districts together.”<sup>125</sup>

According to fire district officials, Bonita Springs, Estero and San Carlos Park Fire Districts have already adopted functional consolidation methods, including but not limited to: closest unit response agreements, joint training and maintenance divisions, unified standard and operational protocols, and centralized information technology software and hardware.<sup>126</sup>

There are certain key issues that the fire districts still need to address prior to moving forward, including: who will serve on the new district governing board, how the tax base can be preserved, how personnel will be merged, and how to make human resources adjustments.<sup>127</sup> The disparate millage rates amongst the three fire districts, has also been an issue of prominent concern during governing board meetings.<sup>128</sup> The 2009 TriData Division report estimated that the consolidated district would need a millage rate of 1.9802 to maintain current revenue levels.<sup>129</sup> According to the Florida Department of Revenue, the participating district’s 2009 millage rates are 1.7950 for Bonita Springs Fire District, 2.0000 for Estero Fire District, and 2.5000 for San Carlos Park Fire District.<sup>130</sup> A full merger would therefore require increases in the current millage rates of at least one district: an unpopular notion for voters.<sup>131</sup>

Although a current fiscal analysis is not available, the 2009 report projected that consolidating the three fire districts could create a cost savings of up to \$4.18 million annually in salaries after attrition, and \$2.5 million in vehicle disposition.<sup>132</sup>

### ***Collier County Independent Special Fire Control Districts***

There are currently five independent special fire control districts in Collier County, including: the Big Corkscrew Island Fire Control and Rescue District, the East Naples Fire Control and Rescue District, the Immokalee Fire Control and Rescue District, the Golden Gate Fire Control and Rescue District, and the North Naples Fire Control and Rescue District.<sup>133</sup> At the time these independent special fire districts were created, “they met a local need for emergency [and] fire rescue protection . . . but [a]s the county became more urbanized”, services became duplicated and less efficient.<sup>134</sup>

These redundancies have compelled the fire districts of Collier County to explore the concept of merger and consolidation. The driving forces supporting consolidation of the five independent fire districts include rising local government costs, duplication of services, redundant administrative burdens, increasing tax rates, and the possibility of efficient alternatives.<sup>135</sup> Consolidation “has been explored at least four different times in Collier County’s recent past”; however, these efforts were derailed by legal, political, and cultural obstacles.<sup>136</sup> In a 2009

<sup>125</sup> Aaron Hale, *Poll Talk of Bonita Springs, Estero, San Carlos Park fire merger heats up*, NAPLESNEWS.COM (April 25, 2010) (available online at <http://www.naplesnews.com/news/2010/apr/25/talk-bonita-springs-estero-san-carlos-park-fire-me/>) (last visited on August 23, 2010) (citation omitted).

<sup>126</sup> Telephone interview with Fire Chief Nat Ippolito, San Carlos Fire Department, in Tallahassee, FL (August 23, 2010).

<sup>127</sup> TriData *supra* note 124, at 9-12.

<sup>128</sup> Telephone interview with Fire Chief Nat Ippolito, San Carlos Fire Department, in Tallahassee, FL (August 23, 2010). *See also* Hale, *supra* note 125.

<sup>129</sup> TriData *supra* note 124, at 59 (Table 13: Revenue Generation and Millage Rates) (Current Millage Rates: Bonita Springs 1.795, Estero 2.0, and San Carlos Park 2.5).

<sup>130</sup> Florida Department of Revenue Report, *2009 Single County Independent Special District Compliance with Millage Levy Calculation* (available online at <http://dor.myflorida.com/dor/property/trim/pdf/MillCapComp010110.pdf>) (last visited on August 23, 2010).

<sup>131</sup> Hale, *supra* note 125. *See also* TriData *supra* note 124, at 59 (Table 13: Revenue Generation and Millage Rates) (Current Millage Rates: Bonita Springs 1.795, Estero 2.0, and San Carlos Park 2.5).

<sup>132</sup> TriData *supra* note 124, at 61.

<sup>133</sup> Robert Metzger, ANALYSIS OF CONSOLIDATION OF INDEPENDENT FIRE DISTRICTS IN COLLIER COUNTY, FLORIDA, 22 (Summer 2009) (on file with the Senate Committee on Community Affairs).

<sup>134</sup> *Id.* at 5.

<sup>135</sup> *Id.* at 6.

<sup>136</sup> *Id.*

report titled the *Consolidation of Independent Fire Districts in Collier County*, researchers concluded that the following barriers still need to be addressed before consolidation can be considered: the fire districts' disparate millage rates,<sup>137</sup> lack of stakeholder support, constituent's misconception of immediate cost-savings, and the resolution of current collective bargaining units.<sup>138</sup>

In May 2010, Collier County commissioners voted to include a straw-ballot referendum in the county's November election that will ask voters if they support the consolidation or merger of the county's unincorporated fire districts.<sup>139</sup> The November vote will be non-binding and will consider the consolidation of the county's five independent and two dependent special fire districts.<sup>140</sup> In response to the county referendum, the East Naples Fire Control and Rescue District has decided to hold its own straw ballot on the consolidation of its fire district. The East Naples straw ballot will also take place in November, but only applies to registered voters residing within the district.<sup>141</sup>

## Findings and/or Conclusions

### The Benefits of Mergers and Consolidations

Successful special district mergers and consolidations can provide increased government efficiency and services at lower costs.<sup>142</sup> These cooperative efforts also provide greater career enhancement opportunities for employees through newly created positions and career specialization.<sup>143</sup> Furthermore, mergers and consolidations promote the sufficient use of scarce resources by allowing participating special districts to pool investment funds in order to provide better services and eliminate borrowing costs or bankruptcy potentials.<sup>144</sup>

Independent special districts that merge or consolidate can achieve long-term cost savings through:

- Joint training and human resource departments,
- Shared equipment and maintenance facilities,
- Common standard operating procedures,
- Central inventory, accounting, and distribution centers,
- Economies of scale through volume purchasing,
- The elimination of duplicated services, personnel, and facilities, and
- An expanded tax base.<sup>145</sup>

In addition to the cost-saving benefits listed above, the merger and consolidation of independent special fire control districts can also result in faster response times, shared apparatus and emergency facilities, and can potentially lower the department's Insurance Service Office (ISO) ratings.<sup>146</sup>

<sup>137</sup> *Id.* at 32 (providing that the 2007 individual fire district millage rates are as follows: Big Corkscrew Island: 1.8397 (cap of 2.0), East Naples: 1.5, Golden Gate 1.5 (as of 2010), Immokalee: 3.0, and North Naples: 1.0) (further stating that the merged new district would need to charge a millage rate of 1.169).

<sup>138</sup> *Id.* at 37-39 and 41-42.

<sup>139</sup> Aaron Hale, *Voters Will Have Voice in Fire District Consolidation in Collier County*, NAPLESNEWS.COM (May 25, 2010) (available online at <http://www.naplesnews.com/news/2010/may/25/voters-will-have-say-fire-district-consolidation-c/>) (last visited on August 10, 2010).

<sup>140</sup> *Id.* Note: According to the Collier County Code of Ordinances, these two dependent special fire districts are classified as Municipal Service Taxing or Benefit Units (MSTUs). See COLLIER COUNTY, FLA., CODE § 122-226(a) (Ochopee Fire Control District). See also COLLIER COUNTY, FLA., CODE § 122-606(a)-(b) (Isles of Capri Fire Services Taxing District).

<sup>141</sup> Naplesnews.com, Naples Daily News Editorial Board interview with Tom Cannon and East Naples Fire Control and Rescue District Fire Chief Douglas Dyer, *Election 2010: Fire District Consolidation Straw Vote* (Sept. 21, 2010) (available online at <http://www.naplesnews.com/videos/detail/fire-district-consolidation-vote-2010/>) (last visited on September 23, 2010).

<sup>142</sup> Drozd, *supra* note 29, at 10.

<sup>143</sup> *Id.* at 17. See also Colin A. Campbell Associates, Inc., *supra* note 31, at 4.

<sup>144</sup> Michael Curry, AN ANALYSIS OF A PROPOSED FOUR FIRE DISTRICT MERGER IN ADA COUNTY: STRATEGIC MANAGEMENT OF CHANGE, 10 (March 1999).

<sup>145</sup> This information was provided by Drozd, *supra* note 29, at 10 and 17. See also Colin A. Campbell Associates, Inc., *supra* note 31, at 5. See also P.H. Kinsey Jr., Jeffrey Lindsey and Natale Ippolito, *supra* note 122, at 6-9.

## Obstacles to Mergers and Consolidations

There are three main obstacles to mergers and consolidations:

- Political obstacles,
- Cultural obstacles, and
- Legal obstacles

Elected officials and employees have a personal stake in mergers and consolidations, since these cooperative efforts may result in job replacements and eliminations.<sup>147</sup> “It is difficult to imagine a situation where there are two people of equal rank and one person is willing to step down and allow the other person to step in.”<sup>148</sup> The fear of losing control and local autonomy can cause elected officials and special districts members to become territorial, creating political obstacles to merger or consolidation.<sup>149</sup> The lack of full and sincere support from important stakeholders and elected officials is a strong indicator that a merger or consolidation proposal will fail. States like California have eased these political tensions by allowing temporary expanded board memberships and separate advisory committees that help maintain local identities and control.<sup>150</sup>

Cultural obstacles can also hinder merger or consolidation proposals between two or more special districts. Conflicting objectives, morals, economics, or operational procedures create additional barriers to successful cooperative efforts.<sup>151</sup> Modifications and adjustments are anticipated in mergers and consolidations. To facilitate these changes, participating local entities should be compatible and maintain the same goals. Special districts can minimize cultural obstacles by conducting pre-feasibility studies prior to entering into merger or consolidation proposals.<sup>152</sup>

Special districts may also face legal obstacles due to disparate millage rates, existing labor service and retirement contracts, and state or local consolidation and merger restrictions.<sup>153</sup> Prior to initiating merger or consolidation proceedings, participating special districts have to look at state and local laws to see if they allow for mergers and consolidations, and if so, determine what legal procedures must be followed.<sup>154</sup> Uniting two or more labor contracts with different terms and agreements can be a complex political process for everyone involved. Contractual inconsistencies must be addressed and negotiated, with possible assistance from outside legal consultants and experts.<sup>155</sup> Finally, if the participating special districts have disparate millage rates, both parties need to address whether the new consolidated or merged special district’s millage rate will be assessed through subunits or through a uniform blended rate established by voter referendum.

To overcome the obstacles to consolidation, special districts “must learn how to manage perceived loss of control, address loss of community or organization identity, establish management of associated costs, determine the various funding options, and identify the new governing structure.”<sup>156</sup>

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<sup>146</sup> Drozd, *supra* note 29, at 17. Note: I.S.O. stands for Insurance Service Office, which is an independent organization that rates a community’s fire protection services to determine premiums for fire insurance, ranging from Class 1 to Class 10 based on the fire department, fire alarm and communication system, and water supply. See Brian Juntikka, FIRE CONSOLIDATION REALITIES REPORT: A REVIEW OF THE FACTS, 4<sup>th</sup> ed., 50, at 14-15 (March 19, 2007) (on file with the Senate Committee on Community Affairs).

<sup>147</sup> Curry, *supra* note 144, at 28 and 30-31.

<sup>148</sup> Snook, *supra* note 28, at 99.

<sup>149</sup> *Id.* at 97. See also Drozd, *supra* note 29, at 17.

<sup>150</sup> Telephone interview with Peter Detwiler, Staff Director of the California State Senate Local Government Standing Committee, in Tallahassee, FL (Aug. 4, 2010).

<sup>151</sup> Snook, *supra* note 28, at 18.

<sup>152</sup> *Id.* at 91.

<sup>153</sup> Colin A. Campbell Associates, Inc., *supra* note 31, at 43-44. See also Metzger, *supra* note 133, at 37. See also Curry, *supra* note 144, at 22-24.

<sup>154</sup> Curry, *supra* note 144, at 24.

<sup>155</sup> Snook, *supra* note 28, at 91 (stating, “the two most important professional services you can acquire during a merger or consolidation are an accountant or economist and legal counsel”).

<sup>156</sup> Metzger, *supra* note 133, at 18 (discussing disparate millage rates) citing Smith, C., Henschel, E., Lefebvre R., CONSOLIDATION AND SHARED SERVICES: A PROVEN METHOD FOR SAVING TAX DOLLARS, *Government Finance Review*, (Oct. 2008).

## Essential Components of Mergers and Consolidations

Special district mergers and consolidations should begin with a pre-feasibility study that provides a cost-benefit analysis and evaluates each district's: administrative structure, assets, liabilities, support services, contracts, and potential legal ramifications.<sup>157</sup> The results of this pre-merger study will determine whether it is politically and economically feasible for the participating independent special districts to merge or consolidate.<sup>158</sup>

A good merger or consolidation agreement is one that addresses:

- The pace and the duration of the agreement: whether it will be an incremental or immediate merger, how and when the merger or consolidation will go into effect, and the conditions for renewal, amendment, default and termination.
- The proposed organizational structure of the new district: how and when new district board members will be elected and how communication and administrative services will be provided.
- The services that will be provided: how certain services will be supplied after merger or consolidation, and how the district will deal with any increase in services and associated costs.
- Procedures for implementing personnel changes: how personnel adjustments will be made in regards to staff attrition and any changes in employee benefits, training and performance evaluations.
- A fiscal analysis: how costs and revenues will be calculated, and how debts and liabilities will be apportioned.
- A legal analysis: how the merger or consolidation will interact with state and local laws as well as existing labor and union contracts. If the participating districts have disparate millage rates, whether future millage rates will be assessed by subunits or through a uniform blended rate approved by voter referendum.
- A method for combining equipment and facilities: whether facilities and equipment will be combined or purchased, and whether individual district facilities will be shared or remain separate.<sup>159</sup>

## Options and/or Recommendations

Mergers and consolidations provide a mechanism for independent special districts to increase government efficiency while saving taxpayer money.<sup>160</sup> Independent special district mergers and consolidations can generate cost-savings through volume purchasing, standardized operating procedures, pooled investments, joint training, efficient personnel allocation, and cost avoidance.<sup>161</sup>

Senate professional staff recommends that the Legislature consider enacting guidelines to assist with the voluntary merger or consolidation of certain independent special districts.<sup>162</sup> These statutory guidelines would apply to both formal mergers and the different types of consolidation.<sup>163</sup>

If the Legislature chooses to enact new legislation in this area, Senate professional staff recommends that the Legislature consider the following criteria:

- The fiscal, legal, and administrative components that should be evaluated in pre-merger or consolidation feasibility studies;<sup>164</sup>
- How merger and consolidation proceedings can be initiated;
- What information must be included in a proposition or application for merger or consolidation;<sup>165</sup>

<sup>157</sup> Snook, *supra* note 28, at 60 and 65-73. *See also* Colin A. Campbell Associates, Inc., *supra* note 31, at 43-44.

<sup>158</sup> Snook, *supra* note 28, at 73-74.

<sup>159</sup> *See* Drozd, *supra* note 29, at 15-16. *See also* Colin A. Campbell Associates, Inc., *supra* note 31, at 50-52.

<sup>160</sup> Drozd, *supra* note 29, at 10.

<sup>161</sup> Nichols, *supra* note 30, at 1.

<sup>162</sup> *See* Office of Program Policy Analysis and Gov't Accountability (OPPAGA), *supra* note 109, at 7.

<sup>163</sup> *See* page 4 of this report for a description of the different types of consolidations.

<sup>164</sup> In determining the criteria for merger/consolidation pre-feasibility studies, the Legislature could utilize the statutory criteria provided in s. 189.428, F.S., for the oversight review process; s.165.041, F.S., for the proposed incorporation of a municipality, and the standards for incorporation, merger and dissolution of a municipality in s.165.061, F.S, as a basis.

- The necessary statutory thresholds to approve or petition an independent special district merger or consolidation (i.e. how many electors' signatures are needed and what percentage of voters must approve the merger/consolidation);<sup>166</sup>
- Due process requirements for merger or consolidation, including what constitutes sufficient notice, statutory timelines, required public hearings, and permitted testimonies or protests;
- How varying staff qualifications requirements, existing labor contracts, benefits, and pay levels can be standardized;<sup>167</sup>
- How administrative structures should be consolidated and how governing boards will work together until the merger or consolidation is finalized (i.e. whether statutes will allow for temporary expanded board memberships similar to California);<sup>168</sup>
- How each independent special district's assets, liabilities, and obligations will be distributed during and after the merger or consolidation;
- How the merger or consolidation will correlate with existing local laws and millage rates until the merger or consolidation is finalized.<sup>169</sup>; and
- How independent special districts that merge or consolidate prior to a subsequent Legislative act will meet the financial reporting requirements under chapter 189, F.S.<sup>170</sup>

In review of other states' merger and consolidation laws, the Legislature may want to begin with the format provided in Arizona by limiting the application of any enacted statutory guidelines to certain independent special districts, such as independent fire control districts.<sup>171</sup> If the statutory guidelines subsequently prove to be effective and generate sufficient cost savings for local governments, the Legislature could then consider expanding the scope of the merger and consolidation guidelines to include other independent special districts. The Legislature may also want to consider paralleling New York's legislation and only allow contiguous independent special districts to merge or consolidate.<sup>172</sup> Should the Legislature choose to forego state legislation in this area, and allow merger and consolidation procedures to be established at the local level instead, it could create local independent regulatory commissions similar to California's LAFCOs that can be used to supervise and facilitate independent special district mergers.<sup>173</sup>

As a final point, any enacted legislation should only apply to voluntary mergers and consolidations, and should prohibit a special district that consolidates or merges prior to Legislative Act from exceeding the powers originally granted to the individual special districts in their existing charters, until a formal subsequent act provides otherwise.

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<sup>165</sup> As illustrated in Arizona's consolidation law, this can include a map and legal description of the affected territorial boundaries, and estimated changes in assessed valuation or property tax liabilities. See ARIZ.REV.STAT. §48-822(C)(2) a.-e.

<sup>166</sup> Requiring a specified threshold in each special district would prevent larger special districts from overshadowing the votes of a smaller special district in a merger or consolidation proposal.

<sup>167</sup> Office of Program Policy Analysis and Gov't Accountability (OPPAGA), *supra* note 109, at 8.

<sup>168</sup> *Id.*

<sup>169</sup> See N.Y. Gen. Mun. Law § 769 (stating, "all current laws, ordinances, and rules shall remain in effect until new laws are adopted not later than two years after consolidation").

<sup>170</sup> Note: Special district reporting databases within the Department of Community Affairs and the Department of Financial Services currently do not have the ability to indicate the consolidation or merger of independent special districts operating under separate special acts, prior to a formal merger by the Legislature. To avoid inaccurate or misleading reports, any adopted legislation should require independent special districts that merge or consolidate prior to a Legislative Act, to file separate financial and administrative reports under ch. 189, F.S., until the districts are formally merged or consolidated. Interview with Jack Gaskins, Department of Community Affairs, Office of Special Districts, in Tallahassee, FL (Sept. 21, 2010); Phone interview with Debra White, Department of Community Affairs, Legislative Auditing Committee, in Tallahassee, FL (Sept. 21, 2010); and Phone interview with Justin Young, Department of Financial Services, Bureau of Local Government, in Tallahassee, FL (Sept. 21, 2010) (the latter stating possible concerns in reviewing the merged or consolidated special districts' prior financial records).

<sup>171</sup> See ARIZ.REV.STAT. §48-820 (merger of fire districts) and §48-822 (consolidation of fire districts).

<sup>172</sup> See N.Y. Gen. Mun. Law § 751.

<sup>173</sup> See CAL. GOV'T CODE § 56375(a)(2).