

**Malibu Unification Negotiations Committee
Meeting Agenda**

Tuesday, June 21, 2016

7:00 - 9:00 p.m.

**SMMUSD District Office Conference Room
1651 16th St., Santa Monica, CA 90404**

- I. Call to Order / Roll Call
- II. Approve June 14, 2016 Meeting Minutes
- III. Follow-up Business from Previous Meetings
 - A. Status report on Procopio contract (Larmore/Delrahim)
 - B. Status report on School Services of California, Inc. contract (Silvern/Sweetmore)
 - C. Editing/sharing videotape of SSC's June 14, 2016 presentation on public school finance in California (Rosenthal)
 - D. MUNC's data request to the Board of Education (Orlansky)
 - E. Revised MUNC agenda planning (Orlansky)
 - F. Updated glossary (Orlansky)
- IV. Worksession on Topic 2: Allocation of Bond Debt and Authorization to Issue New Bonds

Note: Mr. John Lemmo, Partner, Procopio, will join the Committee by speakerphone for this agenda item.

- A. Educate all MUNC members on the issues and sub-issues identified for Topic 2
 - 1. Review Financial Oversight Committee's July 15, 2015 memo report to the Board of Education on Division of Assets and Liabilities (Larmore)
 - 2. Review State Education Code criteria and other background documents (Silvern)
 - 3. Identify any further background information needed
 - 4. Identify any Committee assignments for consultants
- B. For reference during the Committee's discussion, the issues identified on the Committee's Plan of Work for Topic 2 are:
 - 1. Determine method of allocating SMMUSD's indebtedness under issued and outstanding bonds.
 - 2. Establish a mechanism that would permit refinancing of SMMUSD's outstanding bonds.
 - 3. Establish mechanism for allocating authority to issue future bonds that have already been authorized. This issue includes analyzing legal issues associated with mechanisms considered, including the possibility of new State legislation.
 - 4. Determine whether there are any additional financial items related to bonds that need to be addressed. (Per the Board's December 17, 2015 action, the Committee will notify the Superintendent, the City Manager of Malibu, and the Board of Education, during monthly presentations, of any additional financial issues identified by the Committee.)
 - 5. Determine whether to include a procedure for revisiting any of the agreements reached on bond-related issues and, if so, what might be the appropriate procedures and triggering mechanism.

- V. Public Comments
- VI. Topics for Next Agenda: June 28 meeting
TBD based on discussion in Agenda Item III.E
- VII. Adjournment

Upcoming Meeting Dates and Locations:

June 28 at Malibu City Hall

July 5 at District Offices

July 14 at Malibu City Hall

July 19 at District Offices

July 26 at Malibu City Hall

MEMORANDUM

To: Board of Education, Santa Monica Malibu Unified School District

From: Financial Oversight Committee

Date: July 15, 2015

Subject: Proposed Action to Reorganize the Existing Santa Monica Malibu Unified School District by Forming a New Malibu Unified School District from Parts of the Existing District - Implications Relating to the Division of Assets and Liabilities

This Memorandum responds to one of the charges given by the Board to the Financial Oversight Committee (“FOC”) at our joint meeting in July, 2014. At that meeting, the Board requested that the FOC provide information regarding the financial implications of forming a new “Malibu Unified School District” (“MUSD”) from parts of the existing Santa Monica Malibu Unified School District (the “Existing District”). MUSD would consist of all geographic areas currently served by the Existing District which are outside the boundaries of the City of Santa Monica with the Existing District continuing to serve the City of Santa Monica under the name “Santa Monica Unified School District” (“SMUSD”).

The FOC divided this task between two subcommittees, one focusing on the division of assets and liabilities, which is addressed in this Memorandum, and the other looking at hypothetical operating budgets for the two districts which will be addressed in a separate memorandum.

Summary

The Board expressed particular interest in learning whether there were any financial issues sufficiently material to preclude support by the Board for the proposed unification - so-called “deal breakers.” Based on research and analysis carried out by this subcommittee and discussions by the full FOC, the FOC identified the existing claim and potential future claims against the District and certain of its officials arising from alleged toxic substances and remediation practices at certain Malibu schools as the only potential “deal breaker” within the context of the allocation of assets and liabilities. While we have some preliminary thoughts on how that issue might be satisfactorily resolved, advice from legal counsel will be necessary and we’ve had neither the time nor the resources to investigate their feasibility.

The California Education Code contains certain default provisions regarding the method to be used for allocating assets and liabilities. It also provides, however, that other methods may be used if found to be more equitable. Therefore, the suggested

allocations discussed in this Memorandum are based upon the FOC's conclusions regarding equitable allocations. In some instances we were unable to reach a solution absent more information; however, we are confident that mutually agreeable results can be reached through further analysis and discussion.

A. Division of Assets.

1. Land and Improvements.

In addition to existing school sites, the District owns (a) the land and the building in which the District offices are housed, (b) the land underneath the Doubletree Hotel and the adjacent office building, but not the buildings, (c) the land underneath a single-story multi-tenant building at 9th and Colorado, but not the building, (d) the site previously used for Madison School which is leased to Santa Monica College and the buildings on that site except for the Broad Stage and other buildings constructed by SMC, (e) the site and the buildings previously used for Washington School on 4th Street in Ocean Park and a children's center across the street, and (f) a few additional small parcels, some in Malibu and some in Santa Monica.

The Education Code provides that real property plus the improvements, FF&E, and books and supplies normally situated on that property are to be allocated to the district in which the property is located. The Subcommittee believes this to be a reasonable method of allocation so that, in essence, all real property owned by the District located outside the City of Santa Monica, as well as the associated improvements, etc. located on that property, would be allocated to MUSD with the balance being retained by SMUSD. We are not aware of any real property for which it would be inappropriate to make such an allocation.

2. Personal Property Other Than Cash. We did not have an inventory of personal property but believe that the only major items that are not associated with a particular school site or the District office, all of which would run with that property, are vehicles, primarily large and small buses. In general, the large buses and perhaps some small buses are housed in Malibu and are used almost exclusively in Malibu while most of the small buses are housed in Santa Monica and are used there. The FOC believes that the appropriate allocation should be based on how these buses are used so that, in essence, the ones housed in Malibu would probably be allocated to MUSD and the ones housed in Santa Monica would remain with the District. To the extent buses used in Malibu are currently maintained in Santa Monica, a new MUSD could enter into a maintenance agreement with SMUSD until it was prepared to provide its own maintenance facility.

3. Cash. The FOC believes that cash cannot be allocated using any single method because there are differing sources of money and different restrictions as to how it is permitted to be used. We discussed these issues by looking at the individual funds maintained by the District.

a. Major Governmental Funds.

(1) General Fund (Unrestricted). The easiest way to allocate cash in the unrestricted portion of the General Fund would be based on respective ADA for the last year of operation of the District. Such a method would, however, disregard the different funding sources which we believe are relevant in certain cases. Therefore, we believe that further discussions are needed regarding allocation of the cash in this Fund.

- LCFF Funding. The bulk of the unrestricted general fund money comes from local property taxes and the State. Malibu's share of property tax funding will be disproportionately higher than Santa Monica's share when compared to ADA allocations. However, due to supplemental grants under LCFF, it is likely that a disproportionate amount of State money is due to Santa Monica enrollment.

- City of Santa Monica. Through the joint use agreement and Prop. Y, the City of Santa Monica and its taxpayers are expected to contribute approximately \$16,000,000 to the General Fund during the next fiscal year. Therefore, it does not seem appropriate to allocate General Fund cash derived from these payments through use of ADA.

- Prop. R Parcel Tax. Prop. R is expected to generate approximately \$11,000,000 for the General Fund during the next fiscal year. There are two ways to look at these dollars. The first would be to assume that none of the cash in the unrestricted portion of the General Fund at the end of the year was derived from Prop. R because it is all legally required to be spent during the year. The other would assume all General Fund dollars are fungible and allocate accordingly, either based on ADA or another method, such as the respective number of parcels for which the owners did not take advantage of the senior exemption.

- Other Local Income. This catch-all category is expected to contribute approximately \$3,500,000 to the General Fund over each of the next few years. Much of this money comes from leases, such as the ground leases for the Doubletree Hotel and Madison School. These funds could be allocated based on ADA or allocated based upon the location of the property generating the income.

- SMMEF. Funds contributed by SMMEF will be spent during the fiscal year in which they were contributed. Therefore, as with Prop. R, cash in the unrestricted portion of the General Fund at the end of a fiscal year will not contain any of these dollars. Depending upon the principle used, these funds could either be disregarded or treated as a part of fungible cash and allocated. If they are to be allocated, it would seem inappropriate to allocate much, if any, to MUSD given the history of SMMEF's lack of success in raising contributions in Malibu.

(2) General Fund (Restricted). Funds in this account must be used for specific purposes, such as the acquisition of instructional material from lottery

proceeds. It is not clear whether these restrictions will impact the allocation method but, if not, ADA may be appropriate.

(3) Building Fund - \$45,800,000. This fund contains unspent bond proceeds from both BB and ES bonds which are restricted for use in accordance with the bond program. (Of course, it is likely the District will issue one or more additional series of ES bonds before any separation would become effective thereby generating more unspent proceeds.) The FOC believes that to the extent the proceeds have been earmarked for specific projects, the funds should be divided in that manner. To the extent that they have not been earmarked, another method, such as the 80%/20% contemplated in the Board's resolution authorizing the placing of the ES bonds on the ballot could be used with the split taking into account previous expenditures as well as the allocations of the earmarked funds.

We assume that if bond proceeds are transferred to MUSD, some Proposition 39 committee will be required to oversee the expenditures. We are unsure as to whether this would be a new committee created by MUSD or the existing committee.

(4) Bond Interest and Redemption Fund - \$40,498,000. This fund contains property tax receipts used to make payments on outstanding bonds as well as any accrued interest received at the time the bonds were sold. It is maintained by the county and should be allocated in a manner consistent with the bond indebtedness.

b. Non-Major Governmental Funds - Special Revenue Funds. These Funds are generally restricted for certain specific purposes and, to that extent, should be allocated based upon use rather than ADA.

(1) Adult Education Fund. This fund accounts for revenue received for adult education and can be used for only that purpose.

(2) Child Development Fund. This fund is legally restricted for child development programs and should be allocated based on use. Most of the child development programs are in Santa Monica with a minor element in Malibu.

(3) Cafeteria Special Revenue Fund. This fund is for operation of the food service programs. Since these programs exist in both SM and Malibu and provide service to all students, an allocation based on ADA may be appropriate.

(4) Deferred Maintenance Fund. This fund holds State and local contributions for deferred maintenance. Rather than ADA, the proper allocation may be based upon square footage of the improvements to be held by each district.

c. Non-Major Governmental Funds - Capital Project Funds.

(1) Capital Facilities Fund. This Fund holds proceeds from developer fees and is likely to be significantly higher than was the case on January 31, 2015, the date of the 2nd Interim Report, when it was approximately \$34,000. To some extent, the proceeds of the Fund have already been reserved to assist in the payment of construction costs for Measure BB projects and for the payment of costs associated with environmental remediation in Malibu; those allocations should be preserved. To the extent that the fund contains excess proceeds, we believe it should be allocated on a pro-rata basis measured by the location of the projects giving rise to the developer fee deposits rather than ADA.

(2) Special Reserve for Capital Outlay Projects. This Fund contains that portion of tax increment funds received by the District from the Santa Monica Redevelopment Agency which is required by law to be used for capital expenditures. This Fund has also been allocated to pay a portion of the cost of BB projects and should continue to be available for that purpose. To the extent there remain excess amounts in this Fund, they should remain with SMUSD given the fact that they are attributable to Santa Monica projects.

d. Proprietary Fund - Self Insurance Fund. The negative fund balance in this Fund (almost \$5,800,000 at the end of 2013- 2014) represents the difference between the OPEB liability discussed below and the \$3,000,000 which has been set aside by the District for future funding of those liabilities. Allocation of the \$3,000,000 in cash will depend upon the manner in which the Board responds to the FOC's recommendation that this \$3,000,000 be placed in a reserve account handled by CalPERS, as was recently done by the City of Santa Monica.

e. Fiduciary Funds. These are "agency" funds used to account for funds held by the District for the benefit of employees or student groups. Presumably, a portion would be transferred to MUSD for deposit into newly-created agency funds for the benefit of MUSD employees and students with the balance retained by SMUSD.

B. Division of Liabilities.

1. Bonds. This Section addresses indebtedness created by previously issued bonds, unspent proceeds of issued bonds, authorized but unissued bonds and future bonds not currently authorized.

In preparing this Memorandum, members of the Subcommittee (x) met with Tony Hsieh of Keygent, the District's bond advisor, (y) discussed relevant legal issues with attorneys Janet Mueller and Bill Tunick of the San Diego law firm of Dannis Woliver Kelley ("DWK"), the firm that represented Centinela Valley Union High School District in the Wiseburn unification, and which the FOC recommends be retained by the District, and (z) reviewed memoranda prepared by WestEd at the request of AMPS and Marguerite Leoni of the law firm of Nielsen Merksamer to Craig Foster, counsel to AMPS.

a. Issued Bonds.

(1) Status. As of June 30, 2014, the District had about \$315MM in total outstanding “general obligation” bonds: about \$68MM in pre-BB bonds and \$247MM in BB bonds. In August, 2014, the District issued \$30MM in bonds under Measure ES for a current total of about \$345MM less any principal payments that have been made. While these bonds are designated as “general obligation” bonds, the only source of payment is assessments against real property in the current District boundaries; they are not technically general obligations of the District payable from any other assets. Therefore, a separation would not affect bondholders - the bonds would continue to be paid based on assessments against property in Santa Monica and Malibu as if there had been no separation and bondholders would have no access to assets of either SMUSD or MUSD.

(2) Allocation of Indebtedness. Following a separation, SMUSD, as the continuation of the District, would be treated as having been the issuer of these bonds and, at least nominally, be fully liable for the aggregate outstanding debt. However, Section 35576(b) of the Education Code would require MUSD to be liable for a portion of that debt and Section 35576(c) requires the county to assess property in both Santa Monica and Malibu based upon the manner in which the bond indebtedness is allocated.

MUSD would be liable for that portion of the bond debt equal to the larger of (a) and (b) below or determined in accordance with Section 35738 described in (c) below:

(a) Section 35576(b)(1) uses the percentage of the aggregate assessed valuation of property in the District which is located in the MUSD area in the year immediately preceding the effective date of the separation. Currently, that percentage would be about 29.5%. (For ease of discussion, this Memorandum assumes a 30% share for Malibu recognizing that it will be whatever it is at the time.)

(b) Section 35576(b)(2) uses the portion of the outstanding bonded debt incurred for the acquisition or improvement of school property located within the boundaries of MUSD. Determining the MUSD portion on this basis presents practical difficulties, particularly with respect to expenditures made with pre-BB bond proceeds.

(c) Section 35738, permits allocation in any other manner which would provide “greater equity” taking into account “assessed valuation, number of pupils, property values, and other matters which the petitioners or county committee deems pertinent.”

The FOC recommends that the petition focus on method (a) - using respective percentages of assessed valuation on the effective date of the separation - because

attempting to apply method (b) is not practical and we didn't see any basis upon which to conclude that another allocation method would provide "greater equity."

There is a theoretical effect on property taxes in the respective districts compared to taxes absent a separation. If, for example, the bond debt were allocated 70% to SMUSD and 30% to MUSD, property in Santa Monica would be responsible for 70% of all future payments and property in Malibu 30% irrespective of changes in relative assessed valuations. If the relative assessed valuations were to change to 65% - 35%, Santa Monica property would still be responsible for 70% of the bond payments whereas such property would only be responsible for 65% in the absence of a separation. And, of course, were the shift to be in the other direction, say 75% - 25%, Malibu property would absorb a disproportionately higher percentage of the future payments.

(3) Impact on Bonding Capacity. The FOC considered whether the separation or the manner in which the outstanding bond debt is allocated would affect bonding capacity. Preliminarily, it is important to recognize that, as discussed below, Tony Hsieh believes that the restraint on the timing of new bond issues won't be the bonding capacity of SMUSD but the ability to keep the aggregate bond payments limited to \$30/\$100,000 of assessed valuation. However, if bonding capacity becomes an issue, separation and allocation might be significant.

(a) Separation. In the absence of separation, the bonding capacity of the District would be limited to 2.5% of the aggregate assessed valuation of all Santa Monica and Malibu property. Separation would limit each district to 2.5% of the assessed valuation of property in that district. To the extent that bond proceeds are needed in one district in a greater proportion than the ratios of assessed valuation, the district requiring more bond proceeds would be negatively affected by a separation.

(b) Allocation. Section 33574 provides that the bond debt liability assumed by MUSD would be considered a liability of MUSD for purposes of computing bonding capacity with, presumably, the liability retained by SMUSD affecting its capacity. Therefore, the manner in which the bond debt is allocated between the two districts may have some residual effect on bonding capacity of the two districts.

(4) Future Refinancing. From time to time, most recently on May 7, 2015, the Board has authorized the refinancing of outstanding bonds due to the movement of interest rates or other factors. The mechanism for taking similar action following a separation isn't clear to us. SMUSD probably wouldn't have the authority to issue new bonds for this purpose which were backed, in part, by Malibu property even though the bonds being paid did have that support. Therefore, special legislation may be required to either give SMUSD that authority or create some other vehicle for issuing the refunding bonds.

b. Authorized But Unissued ES Bonds.

At the moment, an additional \$355MM remains in bonding authority under Measure ES. This amount could be reduced by up to another \$45MM remaining from the Board's 2014 resolution under which \$30MM were issued in August and up to an additional \$60MM based on the Board's May 7 resolution. For purposes of this Memorandum, we have assumed the remaining \$45MM authorization will not be utilized but that the recently authorized \$60MM will be issued, thereby reducing the unissued amount to \$295MM. (Of course, this amount may be further reduced prior to separation to the extent additional bonds are authorized and issued.)

In the absence of separation, the District would have authority to authorize the issuance of additional ES bonds in the aggregate amount of \$295MM. At a time when the remaining authority was \$355MM, Tony Hsieh concluded that it should be possible to issue bonds in that aggregate amount through five more series, one every two years in the amount of \$71MM starting this year with all bonds being issued by 2023. Assuming the District issues the full \$60MM, this schedule might be adjusted somewhat but would probably permit the District to issue bonds in the aggregate amount of \$295MM by no later than 2025. According to Tony, the limiting factor is maintaining a maximum tax rate for all ES bonds of \$30/\$100,000 of assessed valuation, as promised to the voters in the ballot measure. Assuming the proceeds of these future bonds were split 80%/20% between Santa Monica and Malibu schools, Santa Monica schools would receive \$236MM and Malibu schools \$59MM over the remaining 10-year period. (Note that this is a simplistic assumption because (a) the 80%/20% split related to the entire \$385MM ES authorization and the assumption doesn't attempt to take into account the manner in which the issued bond proceeds have been, or will be split, and (b) there was nothing in the Board's resolution limiting Malibu's share to 20% - that number was only a minimum.)

In connection with a separation, the FOC considered two questions relating to potential future bonds:

- What happens to the bonding authority?
- What is the impact of the Board's original ES resolution stating that not less than 20% of the net bond proceeds are to be spent on projects benefiting schools in Malibu?

It is the FOC's understanding, based on discussions with DWK, that in the absence of special legislation directing a different result, SMUSD, as the continuing district, would probably retain the authority to issue the remaining bonds with any new bond debt being paid for through assessments solely against Santa Monica property. However, there is apparently no provision in the Education Code directly on point. Ms. Leoni noted in her memorandum that in the somewhat, but not identical, situation where an existing district is divided and the original district ceases to exist, Section 35577 requires the board of supervisors to allocate the bonding authority between the two new districts based upon respective assessed valuations. She points out, however, that

because a Malibu separation would not result in the District ceasing to exist, Section 35577 is not directly applicable. Therefore, in order to allocate the bonding authority between SMUSD and MUSD, Ms. Leoni and DWK both believe that special legislation would be necessary.

If separation occurs and SMUSD is to issue the remaining bonds, it would obviously give SMUSD more money than Santa Monica schools would receive in the absence of separation because none of the proceeds would need to be shared with MUSD - the full \$295MM rather than \$236MM. However, due to the 30% reduction in assessed valuation resulting from the loss of Malibu property, it will take considerably longer to issue bonds in the aggregate amount of \$236MM and even longer to realize the full \$295MM.

Alternatively, if separation occurs and special legislation gives MUSD the authority to issue some portion of the ES bonds backed solely by property Malibu, SMUSD would retain authority to issue bonds in the aggregate amount of about \$206.5MM (70% of the \$295MM total based on assessed valuation) and MUSD the remaining \$88.5MM (30%).

Neither solution leaves Santa Monica voters where they thought they were under Measure ES which was to have up to 80% of the ES bond proceeds available for Santa Monica schools with only 70% of the bonded indebtedness being paid for by Santa Monica property owners. The reasons for the mismatch are that there was (and is) a much greater perceived need for capital expenditures on Santa Monica schools, Santa Monica High School in particular, and the 80%/20% split roughly mirrors the pupil breakdown. The only way to achieve this result would be to have special legislation giving SMUSD the power to issue ES bonds backed by all property that was in the District prior to separation and requiring SMUSD to transfer a portion of the net bond proceeds to MUSD in amounts which would preserve the 20% allocation to Malibu schools. A similar structure was included as a part of the special legislation surrounding the Wiseburn/Centinela Valley separation.

Another unknown is the impact of separation on the AA credit rating of the District since it is possible that neither SMUSD nor MUSD could achieve that same level. Tony Hsieh advised us that a one-level drop in the rating would probably equate to a 15 basis point increase in the interest rate that would be required to be paid on new bond issues.

2. Certificates of Participation. These certificates were issued as a method to finance certain lease obligations in connection with property in Santa Monica. Two series are currently outstanding:

2001 Series C maturing 5/1/2025 - \$8,548,000
2010 Series B maturing 2/1/2024 - \$7,925,000

The FOC believes that the indebtedness under these instruments should remain with the District because it will continue to own that property.

3. Compensated Absences. This liability is primarily for untaken sick leave and, with respect to classified employees, untaken vacation leave. The FOC believes that allocation of this liability may be feasible based on which employees ultimately work for which district.

4. OPEB. The 2015 actuarial study concludes that the District's unfunded liability is around \$36,000,000, an increase of almost \$10,000,000 from that contained in the 2013 report. GASB 68 requires, beginning with the current fiscal year, that the unfunded liability be reported on the financial statements. As explained in connection with the Self-Insurance Fund above, the \$5,800,000 negative balance reflected in that Fund represents the difference between the amount the District should have been contributing annually in order to retire the unfunded liability over a 30-year period - \$8,800,000 - over the \$3,000,000 the District has set aside rather than utilizing the pay-as-you-go system. Because the District has contributed about \$3,000,000 to the Self-Insurance Fund, as reflected above, the net deficit is \$5,487,000. The allocation of this liability will require further discussion because it is a combination of obligations to current employees and retired employees.

C. Litigation.

The Subcommittee is aware of two pending lawsuits against the District and, in one case, against certain officers of the District.

1. School Lights. One pending lawsuit challenges the adequacy of the CEQA analysis relating to installation of lights at Malibu High School - we do not believe it seeks monetary damages against the District. Presumably, if there were a separation, MUSD would step into the District's position with respect to this litigation and the District, now being SMUSD, would be dismissed - SMUSD would no longer have any jurisdiction over installation of the lights. Presumably any funds earmarked for this project would be transferred to MUSD as a part of the allocation of assets. The trial court held in favor of the District but the plaintiffs have recently appealed.

Related to this lawsuit is an appeal of the City's approval of the project under the Coastal Act to the Coastal Commission; that appeal is also pending. If there were a separation, presumably MUSD would assume control of this appeal and SMUSD would no longer be involved.

2. Toxic Substances Control Act. A lawsuit has recently been filed against the District, Board members, Sandy and Jan associated with the disputed procedures followed by the District with respect to the investigation and remediation of PCBs in certain Malibu classrooms. The suit alleges failure to comply with the Toxic Substances Control Act and may have certain other allegations - the Subcommittee has not reviewed the Complaint.

It is the Subcommittee's position that any separation would need to be conditioned upon a release of any such claim to the extent that it might continue to apply to SMUSD, its Board members and officers. The Subcommittee believes that MUSD should be obligated to indemnify SMUSD for any exposure to future claims based upon any failure to properly remediate any existing conditions because responsibility to deal with the Malibu facilities would, following a separation, be under the sole jurisdiction of MUSD. However, we are not clear on what other exposure might remain to SMUSD, such as personal injury claims, and, if any, to what extent it is appropriate for MUSD to provide an indemnity and how a meaningful indemnity would be crafted. Clearly, this subject needs further legal analysis by competent counsel as to the nature of any continuing exposure to SMUSD, the proper allocation of responsibility, and the appropriate means to achieve that allocation.

EXCERPT

Feasibility Analysis of Proposed Santa Monica- Malibu Unified School District Reorganization

Ann Hern
07.16.2015

Criterion 3: Equitable Property and Facility Division

The proposal will result in an equitable division of property and facilities of the original district or districts.

- Education Code Section 35753(a)(3)

To determine whether an equitable division of property and facilities will occur, the Department will determine which of the criteria authorized in Education Code Section 35736 shall be applied. It shall also ascertain whether the affected school districts and the county office of education are prepared to appoint the committee described in Education Code Section 35565 to settle disputes arising from such division of property.

- California Code of Regulations, Title 5, Section 18573(a)(3)

When a school district is reorganized, both of the following shall apply:

(a) When the allocation of funds, property, and obligations is not fixed by terms, conditions, or recommendations as provided by law, the funds, property, and obligations of a former district, except for bonded indebtedness, shall be allocated as follows:

(1) The real property and personal property and fixtures normally situated thereat shall be the property of the district in which the real property is located.

(2) All other property, funds, and obligations, except bonded indebtedness, shall be divided pro rata among the districts in which the territory of the former district is included. The basis for the division and allocation shall be the assessed valuation of the part of the former district which is included within each of the districts.

(b) Any qualified special taxes may continue to be imposed pursuant to Section 50079.2 of the Government Code.

Education Code Section 35560

... In providing for this division, the plans and recommendations may consider the assessed valuation of each portion of the district, the revenue limit per pupil in each district, the number of children of school age residing in each portion of the district, the value and location of the school property, and such other matters as may be deemed pertinent and equitable.

- Education Code Section 35736

Any funds derived from the sale of the school bonds issued by the former district shall be used for the acquisition, construction, or improvement of school property only in the territory which comprised the former district or to discharge bonded indebtedness of the former district, except that if the bonded indebtedness is assumed by the new district, the funds may be used in any area of the new district for the purposes for which the bonds were originally voted for

- Education Code Section 35561

If a dispute arises between the governing boards of the districts concerning the division of funds, property, or obligations, a board of arbitrators shall be appointed which shall resolve the dispute...

- Education Code Section 35565

Description

Assessing this criterion requires consideration of the proposed reorganization's impact on the division of real and personal property and bonded indebtedness. If two new districts formed from the existing District, the real property and personal property and fixtures normally situated in the school sites within the new school district boundaries would belong to the resulting districts. All other property, funds, and obligations (except bonded indebtedness) must be divided pro rata between the impacted districts.

Education Code Section 35736 allows the County Committee to recommend, and the SBE to employ, a variety of methods to equitably divide the remaining property and funds—including assessed valuation, average daily attendance (ADA), value and location of property, or other equitable means.

Analysis

Since the passage of Proposition 13, a common method for dividing property is by ADA. Based on data from the District's 2014-15 CBEDS enrollment and attendance data, the proportional ADA allocation methodology would result in the transfer of approximately 16.7 percent of the assets and liabilities of the Santa Monica-Malibu Unified School District to the Malibu Unified School District and 83.3 percent to the Santa Monica Unified School District. Table 1 provides an overview of the financial impact reorganization would have upon the division of assets and liabilities based on the listed methods.

Table 1: Asset and Liability Distribution

2013-14 Unaudited Actuals	Basis of Division	Total	% Applied*	MUSD	% Applied	SMUSD
General Fund	ADA	\$ 27,277,414	16.70%	\$ 4,555,328	83.30%	\$ 22,722,086
Adult Education	ADA	\$ 318,904	16.70%	\$ 53,257	83.30%	\$ 265,647
Child Development	ADA	\$ 28,244	16.70%	\$ 4,717	83.30%	\$ 23,527
Cafeteria Special Revenue	ADA	\$ 51,883	16.70%	\$ 8,664	83.30%	\$ 43,219
Deferred Maintenance	ADA	\$ 131,941	16.70%	\$ 22,034	83.30%	\$ 109,907
Building Fund	ADA	\$ 65,647,802	16.70%	\$ 10,963,183	83.30%	\$ 54,684,619
Capital Facilities	ADA	\$ 8,861,921	16.70%	\$ 1,479,941	83.30%	\$ 7,381,980
Special Reserve for Capital Outlay	ADA	\$ 8,920,535	16.70%	\$ 1,489,729	83.30%	\$ 7,430,806
Bond Interest and Redemption	Assessed Valuation	\$ 33,773,115	33.60%	\$ 11,347,767	66.40%	\$ 22,425,348
GASB 45	ADA	\$ (5,494,232)	16.70%	\$ (917,537)	83.30%	\$ (4,576,695)
Total Assets		\$ 139,517,527		\$ 28,027,663		\$ 111,489,864
General Obligation Bonds**	Assessed Valuation	\$ 327,589,226	33.60%	\$ 110,069,980	66.40%	\$ 217,519,246
Compensated Absences	ADA	\$ 916,886	16.70%	\$ 153,120	83.30%	\$ 763,766
Post Employ. Benefits	ADA	\$ 8,786,641	16.70%	\$ 1,467,369	83.30%	\$ 7,319,272
COP Payable	ADA	\$ 16,902,731	16.70%	\$ 2,822,756	83.30%	\$ 14,079,975
Capital Leases	ADA	\$ 92,802	16.70%	\$ 15,498	83.30%	\$ 77,304
Total Liabilities		\$ 354,288,286		\$ 105,028,635		\$ 249,259,651

**The ADA percentage is an estimate and will need to be adjusted based on confirmation of interdistrict and intradistrict transfers and enrollment of the Santa Monica Alternative Schoolhouse.*

*** This amount does not include the issuance of \$30 million Measure ES bonds in August 2014.*

Source: 2013-14 Unaudited Actuals and 2013-14 External Audit

Property Tax Revenue

The distribution of property tax revenue as a result of school district reorganization is determined pursuant to Section 99 of the Revenue and Taxation Code. The county assessor is required to notify the county auditor of the assessed valuation of the territories. The county auditor then estimates the amount of property tax revenue generated in the territories and notifies the school districts' governing boards of this amount. The governing boards of the districts must negotiate property tax exchange within 60 days of receiving notification from the county auditor or the County Board of Education determines the exchange.

In almost all cases, the tax revenue generated by the territory within the new district's boundaries is transferred to the district receiving the territory. However, Section 99 of the Revenue and Taxation Code stipulates that the division of property tax revenues is subject to negotiation.

Bonded Indebtedness

In November 1998 and November 2006, voters approved general obligation bond measures, which authorized the District to issue and sell \$42 million and \$268 million, respectively, in general obligation bonds. Voters also approved Measure ES in November 2012, which authorized the District to issue and sell \$385 million in general obligation bonds. In addition to these three bond measures, the District issued Refunding Bonds in 1998 and 2006. Table 2 shows the dates, amounts, type of issuance, and outstanding principal amount for each of the District's bonds.

Table 2: Bonded Debt

Issue Date	Maturity Date	Original Issue	Bonds Outstanding (August 2014)
June 18, 1998	August 1, 2018	\$ 68,145,000	\$ 22,550,000
May 26, 1999	August 1, 2023	\$ 38,000,034	\$ 42,782,063
February 23, 2006	August 1, 2025	\$ 3,285,000	\$ 2,730,000
October 2, 2007	August 1, 2032	\$ 60,000,000	\$ 2,890,000
July 23, 2009	August 1, 2019	\$ 11,875,000	\$ 7,065,000
July 23, 2009	August 1, 2034	\$ 48,125,000	\$ 48,125,000
July 14, 2010	July 1, 2023	\$ 10,690,000	\$ 9,675,000
July 14, 2010	July 1, 2035	\$ 54,310,000	\$ 54,310,000
January 8, 2013	August 1, 2032	\$ 45,425,000	\$ 45,215,000
March 19, 2013	July 1, 2037	\$ 82,995,327	\$ 80,039,695
August 13, 2014	July 1, 2037	\$ 30,000,000	\$ 30,000,000
Total			\$ 345,381,758

Source: 2013-14 External Audit and Standard and District provided data

As shown in Table 2, as of August 2014, the District had nearly \$345.4 million in outstanding bond debt. Generally, outstanding bonded indebtedness is divided between the newly formed districts based on assessed valuation ratio. Based on this methodology and using the property values for the incorporated areas only, approximately 33.6 percent of the outstanding bonded indebtedness would transfer to the Malibu Unified School District and the remaining 66.4 percent would transfer to the Santa Monica Unified School District (see Table 3). Additionally, Education Code section 35738 gives authority to divide bonded indebtedness using methodologies other than assessed valuation and expenditures on acquisitions/improvement to facilities for the purpose of providing greater equity in the division.

The outstanding bond debt should be considered in relation to the net bonding capacity of the districts created by the proposed reorganization. Unified school districts are limited in their bonding capacity by Education Code 15270 which states that unified school districts may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located.

Table 3 reflects potential bonding capacity based on utilizing assessed value to allocate bonded indebtedness. As noted above, the assessed valuation allocation results in 33.6 percent of the current incorporated assessed value allocated to Malibu Unified School District and 66.4 percent to Santa Monica Unified School District. As there is no territory increase or decrease proposed in the reorganization, the assumption is that the assessed valuation amounts included in Table 3 will not materially change the bonding capacity of the new districts.

Table 3: Bonding Capacity

Bonding Capacity	Current Capacity	New Capacity	New Capacity
	SMMUSD	SMUSD	MUSD
Assessed Value	\$ 43,753,165,615	\$ 29,045,598,823	\$14,707,566,792
Bonding Capacity (AV x 2.5%)	\$ 1,093,829,140	\$ 726,139,971	\$ 367,689,170
Outstanding Bonds	\$ 345,381,758	\$ 239,349,558	\$ 106,032,200
Net Bonding Capacity	\$ 748,447,382	\$ 486,790,412	\$ 261,656,970

**Current District boundaries include un-incorporated areas of Los Angeles County; the value of properties contained in the un-incorporated area is included in Table 3.*

Sources: District’s 2013-14 External Audit Report and District provided data

Unspent Bond Proceeds

As noted in Table 1, the Building Fund reflects an ending fund balance of \$65.7 million as of June 30, 2014, with a recommended method of allocation of ADA. To the extent that bond funded projects are either currently underway or are planned in the near future; it is likely that the current balance will be expended by the time the reorganization process is complete. In the event that the SMUSD Board approves an additional series of Measure ES bonds, an allocation methodology other than the recommendation in Table 1 can be considered. Specifically, Education Code 35736 allows the County Committee to recommend, and the SBE to employ, a variety of methods to equitably divide the remaining property and funds—including assessed valuation, ADA, value and location or property, or other equitable means.

Litigation

The District has current and potential litigation that could affect future liabilities. The scope of this report does not offer any qualified analysis on litigation other than to recommend that further in-depth analysis and investigation be conducted by the District and AMPS and their legal councils to determine current and future responsibility for claims, settlements, and liabilities.

Other Considerations

Currently the District’s District Office, Maintenance and Operation base, are located in the city of Santa Monica. Additionally, there is a Transportation Yard in Santa Monica and a bus barn in Malibu. Should the reorganization occur, some of these sites would become the property of the Santa Monica Unified School District. This would require that the Malibu Unified School District find new accommodations for the displaced offices and service bases. Additionally, there are likely other facility needs that will result from programmatic needs related to the reorganization. This issue will be discussed in detail under Criterion 6.

Conclusion

There are no identified reasons to conclude that property will not be divided in an equitable manner should the reorganization be approved. Using ADA as the basis for dividing property seems reasonable and appropriate. However, the districts should use assessed valuation to divide

the Bond Interest and Redemption fund balance, property taxes, and potentially outstanding bond indebtedness.

Based on the Santa Monica-Malibu Unified School District Financial Oversight Committee February 2015 and July 2015 Memorandums, it appears that the Malibu Unification Bond Subcommittee (Subcommittee) would agree with the recommendation to use assessed valuation of property as the allocation method for bonded indebtedness and its impact on bonding capacity. Furthermore, the Subcommittee recommends that the petition specifically include these allocation methodologies.

To the extent that the Building Fund might have unexpended funds at the point the reorganization takes place, an allocation methodology other than ADA can be considered and included in the petition.

It appears based on the opinion offered from the law firm of Dannis Woliver Kelly, and the opinion from Marguerite Leoni of Nielsen Merksame Parrinell Gross and Leoni LLP, that the division of authorized but unissued bonding authority can be addressed with special legislation. Further discussion between the District and AMPS will need to occur to reach agreement on the allocation method.

Current and potential litigation needs further analysis in order to assess the impact of future liabilities for both districts.

If the reorganization is approved, the Malibu Unified School District will have to address options for housing certain centralized service facilities that include, but are not limited to, a District Office, Maintenance and Operations base.

There are numerous reasons to expect that all property and facilities would be divided equitably. AMPS and the Santa Monica-Malibu Unified School District Fiscal Oversight Committee are working closely to determine which mutually agreeable method/s will be used to divide property and facilities.

Sources Consulted

- 2013-14 Unaudited Actuals for Santa Monica-Malibu Unified School District
- 2013-14 External audits for Santa Monica-Malibu Unified School District
- Financial Oversight Committee; Malibu Unification Subcommittee February 2015 Memorandum and July 2015 Memorandum



TO: Craig Foster
Advocates for Malibu Public Schools

FROM: Marguerite Mary Leoni

DATE: September 22, 2014

RE: Questions Pertaining To Formation Of Malibu Unified
School District

This memorandum summarizes my research to date on several questions you proposed to me concerning various aspects of the potential unification of the Malibu portion of Santa Monica Malibu Unified School District (“SMMUSD”) to form Malibu Unified School District (“MUSD”).

1. Upon unification of the Malibu portion of SMMUSD, can the bonded debt¹ be divided in a manner that is different from that specified in the Education Code.

Yes. The Education Code specifies two methods for dividing bonded debt, but also allows different methods to achieve greater fairness. Education Code section 35576 provides:

(a) When territory is taken from one district and annexed to, or included in, another district or a new district by any procedure and the area transferred contains public school buildings or property, the district to which the territory is annexed shall take possession of the building and equipment on the day when the annexation becomes effective for all purposes. The territory transferred shall cease to be liable for the bonded indebtedness of the district of which it was formerly a part and shall automatically assume its proportionate share of the outstanding bonded indebtedness of any district of which it becomes a part.

¹ As we have previously discussed, your questions pertaining to the currently authorized bonds should also be reviewed by SMMUSD’s bond counsel, which I have recommended be done to ensure that there is nothing in the bonding agreements that might affect the conclusions stated in this memorandum.

(b) The acquiring district shall pay the original district the greatest of the amounts determined under provisions of paragraphs (1) or (2) or the amount determined pursuant to a method prescribed under Section 35738.

(1) The proportionate share of the outstanding bonded indebtedness of the original district, which proportionate share shall be in the ratio which the total assessed valuation of the transferring territory bears to the total assessed valuation of the original district in the year immediately preceding the date on which the annexation is effective for all purposes. This ratio shall be used each year until the bonded indebtedness for which the acquiring district is liable has been repaid.

(2) That portion of the outstanding bonded indebtedness of the original district which was incurred for the acquisition or improvement of school lots or buildings, or fixtures located therein, and situated in the territory transferred.

(c) The county board of supervisors shall compute for the reorganized district an annual tax rate for bond interest and redemption which will include the bond interest and redemption on the outstanding bonded indebtedness specified in paragraph (1) or (2) of subdivision (b) or the amount determined pursuant to a method prescribed under Section 35738. The county board of supervisors shall also compute tax rates for the annual charge and use charge prescribed by former Sections 1822.2 and 1825 as they read on July 1, 1970 when such charges were established prior to November 23, 1970. All such tax rates shall be levied in excess of any other ad valorem property tax authorized or required by law and shall not be included in the computation of the limitation specified in subdivision (a) of Section 1 of Article XIII A of the California Constitution.

(Ed. Code § 35576, emphasis added.)

Section 35738², referenced in Section 35576, states:

² All references are to the Education Code unless stated otherwise.

Plans and recommendations may include a method of dividing the bonded indebtedness other than the method specified in paragraphs (1) and (2) of subdivision (b) of Section 35576 for the purpose of providing greater equity in the division. Consideration may be given to the assessed valuation, number of pupils, property values, and other matters which the petitioners or county committee deems pertinent.

(Ed. Code § 35738, emphasis added; see *Co. of Shasta v. Co. of Trinity*, 106 Cal.App.3d 30, 36, interpreting former provisions and stating that “[t]he legislative power over school districts is plenary and upon the reorganization or unification of districts the Legislature may make provision for the division of property and apportionment of the debts of the old district”; 93 Ops. Cal. Atty. Gen. 117, discussing constitutionality of Education Code provisions for the reapportionment of outstanding bonded debt when districts are merged.)

2. Can the petition for formation of Malibu Unified School District specify how existing bonded indebtedness will be split between the new district and the remaining SMMUSD?

Yes. Education Code section 35703 states: “Any petition filed under this article may include any of the appropriate provisions specified in Article 3 (commencing with Section 35730).”

As noted above, the Education Code specifically provides in Article 3 (commencing with Section 35730), that the Plans and Recommendations of the county committee for the reorganization of a school district may include “a method of dividing the bonded indebtedness ...” that may be different from that provided in Section 35576. (§ 35738.) (See, e.g. 1997 Matter of the Unification Golden Valley Unified from the Territory of Madera Unified School District.)

3. Does the obligation of the newly formed MUSD to repay bonded debt incurred when it was a part of SMMUSD, constitute an ad valorem property tax on the properties that become part of the new district?

The Education Code does not use language to the effect that the portion of existing bonded debt apportioned for payment to the new district shall constitute an “ad valorem property tax” assessed against property in the new district. However, section 35576, quoted above, specifies: “All such tax rates [including that necessary to pay the bond interest and redemption on

the outstanding bonded indebtedness allocated to the new district in the reorganization process] shall be levied in excess of any other ad valorem property tax authorized or required by law” This language and its reference to “any other ad valorem property tax”, indicate that the obligation of the MUSD for payment of the bonded debt of the former SMMUSD is an ad valorem tax levied on the property in the new district and collected in the same manner as other property tax. (See also, § 35571: “When a school district is created, annexed, or abolished, or the boundaries thereof changed, the liability to taxation for the outstanding bonded indebtedness of the district or the territory affected thereby is as provided in this article. The authorities whose duty it is to levy taxes for the payment of principal and interest on the outstanding bonds shall levy the taxes upon the districts affected in such proportions as are provided in, or are determined under, the authority of this article,” emphasis added; see, also, *County of Shasta v. County of Trinity*, 106 Cal. App. 3d 30, 36-37 (1980) “With the revision of the Education Code in 1976 (see Stats. 1976, ch. 1010), the Legislature extensively changed the apportionment of indebtedness upon reorganization of school districts. (Ed. Code, §§ 4140, 4152.) Under the current provisions of the Education Code a district acquiring property from another district becomes liable for taxation for the proportionate indebtedness of the district from which the property is acquired. (See Ed. Code, §§ 4142, 4143, 4144, 4146, 4147.)”)

4. Can a petition for unification similarly specify how bonded indebtedness authorized by voters but not yet issued can be divided between the new district and the remaining part of the existing district?

The California Education Code does not address this question. While there appears to be some flexibility in statute (aided perhaps by the waiver process) for the inclusion of a provision in a reorganization petition specifying division of already authorized but unissued bonded indebtedness, because of the significant uncertainties, a surer route to achieving this goal would be through special legislation. For example, while factually distinguishable, recent legislation concerning the unification of Wiseburn School District (Ed. Code § 35580) suggests that special legislation would be the advisable route. Special legislation to address unique local circumstances is not unusual. There are numerous examples in the Education Code. The special legislation to facilitate the Wiseburn unification and the unification of the Santa Barbara districts, discussed below, are just two examples.

The Education Code does address two different scenarios with the result that the authorization to issue bonds is divided. Neither, however, fits the factual scenario of the formation of a new Malibu Unified. Section 35577 concerns the division of a district between two or more other districts so that the existing district "ceases to exist". In these circumstances the Code provides that "the board of supervisors shall, ... , make and enter an order in the minutes of its proceedings that the authorization to issue the unsold bonds be divided between the districts in the ratio which the assessed valuation of the territory transferred to the districts bears to the total assessed valuation of the former district. The bonds, if issued by any new district, shall be considered a liability of the new district for purposes of computing the bonding capacity of the new district when applying the State School Building Aid Law of 1952, Chapter 8 (commencing with Section 16000) of Part 10."

The second scenario addressed in Section 35578 is when a district is included "as a whole" in a new school district. In such a case, the unsold bonds "may be issued by the board of supervisors in the name of the new district and the proceeds derived upon the sale thereof shall be the funds of the new district. However, the proceeds derived upon the sale thereof shall be expended only for the purpose, or purposes, for which such bonds were authorized."

Neither of the above scenarios addresses the formation of a new unified district with the former district remaining in existence. In the case of the unification of Wiseburn School District from Centinela Valley Union High School District, with Centinela remaining in existence, special legislation concerning bonded debt, among other topics, was enacted to facilitate the unification. (SB 477; Ed. Code § 35580 et seq.) The legislation is complex. In pertinent part, the legislation provides for the following with regard to the bonded indebtedness and authorization to issue bonds existing prior to the unification:

(a) Any tax for repayment of bonds of the Wiseburn School District shall be levied on all taxable property of the Wiseburn Unified School District.

(b) Any tax for repayment of bonds issued by the Wiseburn Unified School District, including bonds authorized by the Wiseburn School District, shall be levied on all taxable property of the Wiseburn Unified School District.

(c) Commencing with the fiscal year that begins on the effective date of the reorganization of the Wiseburn School District by the formation of the Wiseburn Unified School District, any tax for repayment of voter approved bonds of the Centinela Valley Union High School District approved before January 1, 2012, shall be levied on both of the following:

(1) All taxable property located within the Centinela Valley Union High School District as the district exists following the effective date of reorganization pursuant to this section.

(2) All taxable property located within the Wiseburn Unified School District that was formerly part of the territory of the Centinela Valley Union High School District.

(d) In recognition of the authority for Centinela Valley Union High School District to continue levying property taxes on taxable property located within the Wiseburn Unified School District for repayment of bonds approved by voters before January 1, 2012, beginning on the effective date of reorganization of the Wiseburn School District by the formation of the Wiseburn Unified School District, the Centinela Valley Union High School District shall transfer to the Wiseburn Unified School District an amount equal to four million dollars (\$4,000,000) from the proceeds of the sale of bonds approved by voters on November 2, 2010, and issued after January 1, 2012. The transfer shall be made from the proceeds of the sale of the first series of bonds issued after January 1, 2012, unless the Centinela Valley Union High School District elects to allocate the transfers to more than one series of bonds, in which case the transfers shall aggregate to the amount of four million dollars (\$4,000,000). Proceeds transferred pursuant to this subdivision shall be expended by the Wiseburn Unified School District for purposes consistent with the original voter authorization for the bonds.

(Ed. Code § 35581, emphasis added.)

5. Does Measure R, SMMUSD's parcel tax, remain in place in the new unified district after the unification?

Probably not. In my experience, reorganization results in the departing parcels losing any obligation for the parcel tax of the original home district.

(Compare, *Citizens Assoc. of Sunset Beach v. Orange County LAFCo*, 209 Cal.App.4th 1183 (2012), rev. denied [annexed parcels automatically liable for parcel taxes] & Gov. Code §57330: “Any territory annexed to a city or district shall be subject to the levying or fixing and collection of any previously authorized taxes, benefit assessments, fees, or charges of the city or district.”.) I have again reviewed the Education Code and found nothing that clarifies the treatment of parcel taxes of the former district with regard to the departing parcels.

Because of this silence in the law regarding previously assessed parcel taxes when districts reorganize, special legislation was necessary to provide for the continuation in effect of taxes approved by the voters of the Santa Barbara Elementary School District, and the Santa Barbara High School District, upon their unification. Effective January 1, 2012, Education Code section 35560 was specifically amended to provide for the continued imposition of qualified special taxes after reorganization “pursuant to Section 50079.2 of the Government Code.” (Ed. Code § 35560(b).)

A qualified special tax is defined as “special taxes that apply uniformly to all taxpayers or all real property within the school district, except that “qualified special taxes” may include taxes that provide for an exemption from those taxes for [specified taxpayers].” (Gov. Code § 50079 (b)(1).) Government Code section 50079.2, however, is special legislation limited to Santa Barbara County. It provides:

Notwithstanding any other law, when any school district in the County of Santa Barbara is in any manner merged with one or more school districts so as to form a single district pursuant to subdivision (b) of Section 35542 of the Education Code, the district so formed may continue to impose any qualified special taxes imposed in any former district as defined by Section 35516 of the Education Code, provided that the revenues derived from those qualified special taxes remain segregated on a geographical basis conforming to the former boundaries of the school districts prior to unification.”

6. Can a parcel tax measure like Measure R be placed on the ballot only in the territory of the proposed new MUSD to become effective only if the unification is successful.

The statutes authorizing a school district to impose special taxes appear intended to permit districts also to place special taxes on the ballot on behalf of a new district in formation. The evolution of the controlling

statutes, however, have injected ambiguities into the law. Since special legislation is required to facilitate this unification, these ambiguities could be resolved in the special legislation.

- a. Action to place special tax on ballot by SMMUSD.

The WestEd Fiscal Analysis provided with regard to Criterion 9, “No Substantial Negative Impact on District Fiscal Management or Status”, as follows:

This report finds that should the [Santa Monica Malibu] District reorganize, the resulting Santa Monica Unified and Malibu Unified School Districts would be financially viable so long as each district’s management team adopt procedures to improve economies of scale and negotiate reasonable salary schedules with their employees that allow for long-term fiscal solvency. The continuation of the Measure R parcel tax is critical to deem the reorganization viable. For this reason, we recommend that legal counsel be consulted; and if necessary, special legislation be considered to delineate conditions for preserving the Measure R parcel tax revenue for the resulting districts. The continued level of uncertainty regarding state funding makes it difficult to fully evaluate this criterion; updates are likely necessary as the state’s fiscal condition becomes clearer.

(Emphasis added.)

Article XIII A, Section 4 of the California Constitution provides:

Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Proposition 62 was a statutory initiative that added a new article to the Government Code. Proposition 62 specified neither it, nor Proposition 13, authorized special districts to impose special taxes that were not authorized by law. In 1987, the Legislature provided that authorization to school districts in Government Code section 50079, which provides:

- (a) Subject to Section 4 of Article XIII A of the California Constitution, any school district may impose qualified special taxes

within the district pursuant to the procedures established in Article 3.5 (commencing with Section 50075) and any other applicable procedures provided by law.

(b)

(1) As used in this section, "qualified special taxes" means special taxes that apply uniformly to all taxpayers or all real property within the school district, except that "qualified special taxes" may include taxes that provide for an exemption from those taxes for all of the following taxpayers:

(A) Persons who are 65 years of age or older.

(B) Persons receiving Supplemental Security Income for a disability, regardless of age.

(C) Persons receiving Social Security Disability Insurance benefits, regardless of age, whose yearly income does not exceed 250 percent of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.

(2) "Qualified special taxes" do not include special taxes imposed on a particular class of property or taxpayers.

Subdivision (c) of Government Code section 50077, which is contained in Article 3.5 subdivision (c), provides that, in the context of the formation and reorganization of municipalities and special districts, the Board of the local agency may place on the ballot in the territory of the proposed new district a measure for the enactment of a special tax on behalf of the new district to be formed. Section 50077 provides, in full:

(a) Except as provided in Section 7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the voters of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax.

(b) The legislative body of a city, or district, may provide for the collection of the special tax in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the city, or district, or, by agreement with the county, by the county on behalf of the city, or district. If the special taxes are

collected by the county on behalf of the city, or district, the county may deduct its reasonable costs incurred for the service before remittal of the balance to the city.

(c) The legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district, a change of organization, a reorganization, a change of organization of a city, or a municipal reorganization, may propose by ordinance or resolution the adoption of a special tax in accordance with the provisions of subdivision (a) on behalf of an affected city or district.

(d) As used in this section "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(Emphasis added.) In 2000, section 50075.5 was added to Article 3.5 defining "local agency", the term appearing in subsection (c) of Section 50077, to include "special districts". Special district, in turn, is specifically defined to include a school district. (Gov. Code § 50077.5(b).)

According to its legislative history, Section 50077(c) was specifically enacted in 1982 to allow public agencies to place special tax measures on the ballot to support the financial viability of a proposed new city or district. (Cf., 6/30/82 Rpt. of Sen. Com. on Local Govt. re AB 3039 (Farr): "Some proposed new cities and special districts may not be financially feasible unless the voters impose special taxes to pay for new services or facilities. Existing law is not entirely clear on whether the question of imposing a special tax can be put on the same ballot as the city incorporation or district formation. Assembly Bill 3039 allows local officials to put the question of a special tax to the voters at the same time they vote on incorporation or formation. The bill does not change the existing requirement for 2/3 voter approval.")

Despite the intent of Section 50077(c), there is ambiguity in the statutory language as applied to school districts. Section 50077(c) authorizes "[t]he legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district," etc., to place such a tax measure on the ballot. There is no definition of the phrase, "conducting proceedings". Hence, while "local agency", is specifically defined to include a school district, a school district that is the subject of a petition for

reorganization, is not generally understood as “conducting” those proceedings. The County Committee, and the State Board of Education are the two entities empowered to approve school district reorganization, but they are not included in the term, “local agency”, and do not otherwise have taxing authority.

Furthermore, subdivision (c) of section 50077 was enacted simultaneously with amendments to District Organization Law of 1965 to permit an entity conducting proceedings for the formation or reorganization of a local agency to condition the approval on the enactment of benefit assessments or special taxes. School districts, however, have never been subject to the Government Code provisions concerning the formation and reorganization of public agencies. School districts are subject to the reorganization procedures in the Education Code. Hence, while school districts are authorized to enact special taxes in Section 50079 in accordance with Section 50075, et seq., it is unclear whether the authority in Section 50077, subdivision (c) was intended to apply in the case of the reorganization of school districts.³

Nevertheless, the intent of subdivision (c) of Section 50077 seems clear -- to facility the formation of local agencies by permitting the legislative body of a defined agency to propose the enactment of special taxes on behalf of the proposed new agency. One approach, consistent with the intent of Section 50077(c) would be for SMMUSD to place a contingent special tax measure on the ballot in the portion of the district that would eventually become MUSD, if the reorganization were successful. (See, also § 50077(a), which permits a school district to place a tax measure on the ballot in a “portion” of the district.) However, given the ambiguities, there

³ It is even unclear how section 50077, subdivision (c) now applies in the context of other local agency formations. At the time of enactment of subdivision (c) of Section 50077, one of various local agencies with taxing authority had the status of “conducting authority” depending on the type of reorganization as set forth in the District Reorganization Act of 1965, and later by the Cortese-Knox Local Government Reorganization Act of 1985. That has now changed. Proceedings for the formation of local agencies are conducted by the designated Local Agency Formation Commission. (Gov. Code § 56029.) A LAFCo is not within the statutory definition of “local agency”, and it does not have taxing authority. Under current law, upon receipt of the order of the LAFCo, the Board of Supervisors of the affected County, or the council of the affected City is required to place the necessary special tax measures on the ballot. (Gov. Code § 57000(d).) But the County or the City are no longer defined to be the “conducting authority”.

is risk that the authority of SMMUSD to do so could be challenged. Therefore, a safer approach would be to include clarifying provisions in the special legislation required to address the authorized but unissued bonds, discussed above. The special legislation would clarify the authority of SMMUSD, to place a special tax on the ballot identical to Measure R in the portion of SMMUSD that would become the new district.⁴

b. Conditional approval of the unification.

Since the goal is to have the unification of MUSD contingent upon the passage of the special tax, the special legislation should so specify to solve another ambiguity. While nothing in the Education Code prohibits the conditional approval of a unification, I am not aware of any such “conditional unification” ever being approved. This is a distinction from the formation of districts and cities under the LAFCo law, which specifically authorizes conditional approvals.

7. Can parcels in the newly formed MUSD continue to be included in the applicable bonding limits of the remaining SMUSD, and taxed as if the unification had not occurred.

Not under current law. You asked this question with reference to the special legislation applicable to the unification of the Wiseburn Unified School District, Education Code section 35582, and the Local Public

⁴ I do want to mention a new case, decided this month, that may cast additional doubt on Section 50077(c). *City of San Diego v. Shapiro*, 2014 Cal. App. LEXIS 697 (August 1, 2014), held that the term, “qualified electors of such district” in Article XIII A, section 4, meant all of the eligible voters of the jurisdiction. Hence, in proceedings for the formation of a community facilities district under the Mello-Roos Act, the City of San Diego could not limit the vote on the special tax only to the landowners in the district, even if only the landowners would pay the tax. Following the lead of this literal interpretation of Article XIII A, section 4, it could be argued that subdivision (c) of Section 50077 is invalid because only the legislative body of the local agency that would be subject to the tax can place the measure on the ballot (“special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district.) Special legislation discussed in the preceding section to clarify SMMUSD’s authority to place the special tax measure on the ballot pursuant to subdivision (c) of Section 50077, could not solve such a constitutional issue. Hence, the Measure R-continuation tax would need to be placed on the ballot by the board of the new district after its formation. The City of San Diego has recently requested that the California Supreme Court depublish the case so that it is not citable as legal authority.

Schools Funding Authority, a joint powers authority (“JPA”) formed by the predecessor districts, Wiseburn School District and Centinela Valley Union High School District. As we discussed, the circumstances of the unification of the Wiseburn Unified School District are significantly different from those of the proposal to form MUSD. In the Wiseburn unification, there were two predecessor districts, both with taxing authority, that formed the JPA. The purpose was, generally speaking, to issue bonded debt, including with regard to certain commercial property within the jurisdiction of both districts. Here there is a single district, SMMUSD. I am not now aware of any entity with appropriate jurisdiction and taxing authority to negotiate such a JPA to which MUSD would become a successor member in the same manner that Wiseburn Unified became the successor to Wiseburn School District as a member of that JPA. An AMPS member recently suggested that possibly the Los Angeles County Board of Education or the Los Angeles County Board of Supervisors could fulfill that roll. At this point, I have not researched those options, but will do so if you wish for me to pursue that research.

Impact of Malibu Separation On Existing and Future Bonds of Santa Monica-Malibu USD

	Earlier Bonds (1998 & Measure BB) \$310 million Issued (\$ 35576)	Issued \$30 million (\$ 35576)	Measure ES (2012) \$385 million Unissued \$355 million		Future Bonds		
			Default Ed. Code	Wiseburn-like Special Legislation	Default Ed. Code	Wiseburn-like JPA & Special Legislation	
Santa Monica	Issuing Authority	N/A (Fully issued)	N/A (Bond proceeds balance split in reorganization plan)	\$355 million	\$284 million 80% of unissued bonds (based on ADA)	Based on AV within Santa Monica (\$24.6 billion)	Based on AV within Santa Monica and Malibu (~\$35.9 billion)
	Repayment	70% of remaining payments*	70% of payments*	100% of payments	70% of payments (based on AV)	Paid by remaining property owners	Paid by property owners in Santa Monica and Malibu
Malibu	Issuing Authority	N/A (Fully issued)	N/A (Bond proceeds balance split in reorganization plan)	\$0 (SBE does not consider authorized but unissued bonds as "bonded indebtedness" subject to statute)	\$71 million 20% of unissued bonds (based on ADA)	Based on AV within Malibu (\$11.3 billion)	TBD
	Repayment	30% of remaining payments*	30% of payments*	\$0	30% of payments (based on AV)	Paid by property owners in new district	TBD

*The division of repayment is based on the greater of: (1) the proportion of AV; or (2) expenditures on acquisition/improvements to facilities in territory. Section 35738 also gives County Committee or State Board authority to divide for "greater equity."

