

**Malibu Unification Negotiations Committee
Meeting Minutes**

**Tuesday, July 26, 2016
Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA**

I. Call to Order / Roll Call

- *The committee called the meeting to order at 7:03 p.m. with the following committee members present:*

Tom Larmore

Laura Rosenthal

Debbie Mulvaney

Makan Delrahim

Paul Silvern

- *Committee member Manel Sweetmore was absent.*

II. Approve Meeting Minutes

- *Mr. Silvern provided minor corrections to the minutes of July 14, 2016 and July 21, 2016.*
- *By consensus, the committee approved the corrected minutes of the July 14, 2016 and July 21, 2016 meetings.*

III. Worksession on Topic 2, Allocation of Bond Debt and Authorization to Issue New Bonds, with participation (by speakerphone) from John Lemmo, Partner, Procopio

- *For this item, the committee had copies of: (1) a memorandum from Mr. Lemmo, dated July 21, 2016, that responded to the committee's legal/financial questions posed to Procopio regarding the reorganization of SMMUSD and general obligation bonds; and (2) a September 22, 2014 memo from Ms. Marguerite Mary Leoni, Nielsen Merksamer Parrinello Gross & Leoni LLP, to Mr. Craig Foster, Advocates for Malibu Public Schools (AMPS), that responded to questions pertaining to the formation of a Malibu Unified School District (MUSD).*
- *Mr. Lemmo provided an overview of the information contained in his July 21 memo. He explained that, from a legal standpoint, there are numerous options for allocating SMMUSD's issued bond debt and issuing future bonds that have been authorized but not yet issued. In particular, he drew the committee's attention to the possibility and potential benefits of forming a Joint Powers Authority (JPA).*
- *Mr. Lemmo advised that special State legislation is likely the most efficient and straightforward route to take with respect to multiple issues that need to be addressed with the SMMUSD reorganization, including the allocation of existing bonded indebtedness and the authority to issue future bonds that have been authorized but not yet issued.*
- *The committee engaged in a Q&A session with Mr. Lemmo and discussion about a range of bond-related issues.*

Specific issues raised and discussed about a JPA included:

- *How the effects of separation on the bond ratings of each district (SMUSD and MUSD) would likely be unfavorable because their assessed values as separate districts would be lower than when the two districts are combined. A benefit of forming a JPA is that a JPA would likely be viewed more favorably in the bond market, but how much of a difference would depend on how the JPA is structured.*
- *A JPA could be structured to only deal with the refinancing of existing debt, and a JPA could be tasked with conducting re-assessments of property values under existing statutory authority.*
- *When evaluating the formation of a JPA, things to take into consideration include the interests of the individual districts, and how future actions of one district in the bond market might affect the other's ratings in the bond market.*
- *Jointly refinancing existing debt in a JPA would have some impact (yet to be determined) on the ability of an individual district to finance its own future debt.*
- *A JPA would keep the finances of the two districts intertwined, potentially for decades into the future. It was pointed out, however, that a JPA can always be dissolved, and would not necessarily have to remain for the full 30-year term of a bond.*

Other topics raised and discussed included:

- *Special legislation that would authorize the reorganization would come prior to the public vote(s) for approval of the separation.*
- *The data provided in SSC's draft report, which showed property values in Santa Monica projected to rise more than those in Malibu over the next 10-15 years, is an argument for debt allocations based on relative assessed values that would be re-calculated over time.*
- *The "appropriate time" for a "special disclosure" of the reorganization terms to existing bondholders would be either when the State Board of Education approves a reorganization plan or when special State legislation approves the separation.*
- *Because the previous votes on existing bonds (BB and ES) met the 55% approval requirement, the separation would not make the districts vulnerable to a taxpayer lawsuit related to those bonds.*

The committee agreed that, in considering the various options, the challenge is to find the right balance among the independence of the two separate districts, the financial benefits of joint financing, and the equitable treatment of both districts.

As a follow-up to the discussion with Mr. Lemmo, the committee asked Ms. Orlansky to contact Ms. Jan Maez, CFO of SMMUSD, about arranging a committee session with Mr. Tony Hsieh, a bond/financial advisor who has worked with SMMUSD. Issues to discuss with Mr. Hsieh would include the financial implications to both SMUSD and MUSD of forming a JPA, and SSC's forecast of assessed values in the near-term and longer-term future.

- IV. Committee Discussion/Action on SSC's Phase 2 Assignments
- *By consensus, the committee agreed to postpone this item until August 2, citing Mr. Sweetmore's participation in the discussion as critical.*
 - *Mr. Delrahim stated he would be unavailable on August 2, and it was confirmed that Mr. Delrahim would still have the opportunity to weigh in on the committee's decisions on the scope of SSC's Phase 2 work.*
- V. Public Comments
- *This item was deferred until after Item No. VI.*
- VI. Agenda Planning for Upcoming Meetings:
- *August 2 – Committee discussion/action on SSC Phase 2 Assignments (postponed from 7/26); and discussion with Tony Hsieh (if it can be arranged through Ms. Jan Maez, CFO) on the financial aspects of the bond-related issues discussed with Mr. Lemmo.*
 - *August 9 – Discussion with Mr. Lemmo, Procopio, on the environmental liability issues the committee has asked him to address. It was noted that Mr. Lemmo may not be ready by August 9; the committee is still waiting for a cost estimate from Mr. Lemmo, which he will provide after connecting with Pillsbury (SMMUSD's legal counsel).*
 - *An additional item to schedule for August 9 is a committee discussion on the committee's own process and time frame for moving ahead with decision-making.*
- V. Public Comments (reopened)
- *Eric Billingsley, Malibu Surfside News, asked several questions to clarify SMMUSD's current bond rating and the committee's mission from the Board of Education.*
- VII. Adjournment
- *The committee adjourned the meeting at 8:45 p.m.*

Upcoming Meeting Dates and Locations:

- *August 2 at District Offices – Mr. Delrahim will be absent.*
- *August 9 at Malibu City Hall – Ms. Mulvaney will be absent, but may participate by phone.*
- *August 16 at District Offices – Mr. Silvern will be absent.*
- *Scheduling of additional meetings*

MEMORANDUM

AUSTIN
DEL MAR HEIGHTS
PHOENIX
SAN DIEGO
SILICON VALLEY

TO: Malibu Unification Negotiation Committee
Santa Monica-Malibu Unified School District

FILE NO: 123956-01

FROM: John C. Lemmo

DATE: July 21, 2016

RE: Reorganization of Santa Monica-Malibu Unified School District:
Questions Regarding General Obligation Bond Allocation

This Memorandum addresses requested legal and financial considerations regarding general obligation bonds, whether issued by the District and currently outstanding, or unissued but authorized by vote of at least 55% within the District as a whole and within the two districts that would result from reorganization of the District. This Memorandum is intended to supplement and not repeat the Nielsen Merksamer analysis of existing statutory provisions regarding allocations to be made with respect to bonds.

You have asked four related questions for guidance. The questions are repeated below, followed by our responses.

1, What are alternative methods of allocating SMMUSD's issued bond debt?

It is important to first note that any reorganization that affects property securing outstanding bonds would be subject to immediate mandatory disclosure to the bond market and could affect the credit ratings on the bonds and consequent market prices and values of bonds held by investors. Any method of allocation should consider this factor, with appropriate evaluation from a financial consultant and possibly the bond rating agencies directly. The terms of reorganization should be disclosed as soon as feasible to mitigate any effect of uncertainty on the market price for bonds traded in the secondary market.

Without regard to special "fairness" allocations relating to specific facility location or use, there are at least four alternative bases for allocations relative to assessed property value, and all may affect existing bond investors and bond credit ratings:

- a. Allocation based upon relative assessed values on the most recent assessment rolls as of the effective date of reorganization. This is the simplest method. However, it may not equitably allocate debt over time as assessed values may rise and fall unevenly.

- b. Allocation based upon relative assessed values re-determined year-by-year for the remaining duration of each bond issue. This method is likely the most equitable, but also includes annual calculation work (additional cost).
- c. Allocation based upon relative assessed values on the most recent assessment rolls as of the date of each bond issue. This method would tend to allocate based upon outdated values that may conflict with more current information available to bond investors.
- d. Allocation based upon relative assessed values on the most recent assessment rolls as of the date of each voter authorization. This method would tend to allocate based upon outdated values that may conflict with more current information available to bond investors.

2. What are alternative methods of allocating the authority to issue future bonds that have been authorized but not yet issued?

The method of allocation of assessed property values and the fluctuation in values and tax delinquencies may affect the credit rating and consequent cost of borrowing under authorized bonds to be issued in the future. The fairness of any method of allocation may likewise reflect the value and service areas of specific projects to be financed with unissued bonds.

As discussed in the Nielsen Merksamer memo, the Education Code does not directly address allocation of voter-approved authority for future bonds in your situation, where an existing district reorganizes into two. In your situation, there appear to be three alternatives:

- a. Include allocation of bonding authority in the reorganization petition itself. The petition could allocate the authority based upon relative assessed values at time of election or reorganization. This method is vulnerable to a taxpayer challenge (lawsuit), and should therefore be judicially validated after reorganization. If there is an opponent, it could take significant time to resolve, and has risk of being set aside by court as invalid.
- b. Special legislation. This is a much safer and surer approach, with some legislative precedent. For example, the Wiseburn and Centinela districts successfully utilized special legislation with regard to indebtedness and revenue limit, as discussed in the Nielsen Merksamer memo. The special legislation would be processed concurrently with the reorganization petition.
- c. Joint Powers Authority. An alternative option would be the formation of a joint powers authority that would control issuance of bonds remaining under existing voter authorization. Through the new JPA entity, the two districts could use all or part of the remaining combined voter authorization for the issuance of specific series of bonds to be secured by assessed property value allocations specific to the value and service areas of the projects. The allocation could be relative to prevailing assessed values at the time of each bond issue. Each district could have equal voting representation in the JPA to help ensure equitable allocation. The JPA's power to issue new-money bonds could terminate upon full use of existing bonding authority,

but otherwise the JPA could continue in order to maximize the ability of both districts to obtain more favorable ratings for future bond measures or to refinance outstanding debt of the JPA or of either or both resulting districts on more favorable market terms.

3. How would reorganization affect the future bonding capacity of a separate SMUSD and MUSD?

Each district would have its capacity affected (reduced) by the allocation of debt and authorization discussed above. A more significant consideration is that the two smaller districts would each likely obtain less favorable treatment from the rating agencies than the current, larger SMMUSD. The rating differences would reflect factors beyond relative assessed property values, such as diversity of land use and ownership or local geologic hazards.

4. Are there additional issues related to bonds/debt that the Committee should address as part of their package of recommendations to the Board of Education regarding the financial aspects of separation?

Restrictive financial covenants. One potential aspect of reorganization could involve one or more restrictive financial covenants applicable to property remaining encumbered by existing or future bond issues. Either or both resulting districts might agree to not encumber such property further unless certain conditions are satisfied, such as any new property encumbrance secured on a parity basis with outstanding bonds may be conditioned on reaffirmation of credit ratings on outstanding bonds. If reaffirmation were not possible, then subordinated bonds could be issued (but the cost of borrowing under subordinated bonds would be higher due to greater exposure to the impact of property value fluctuations and tax delinquencies, some of which might be mitigated with debt service reserve funds.)

New Voter Authorizations. Obviously, each resulting district may seek its own new voter authorization for bonds. However, to the extent the property to be taxed for bonds issued under the new authorization already secures the payment of existing bonds outstanding, similar considerations may arise warranting restrictive financial covenants. So if the JPA option is pursued, the JPA might continue to function not only until existing voter authorizations are exhausted, but also until all bonds outstanding as of the effective date of reorganization are retired.

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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.