

Name: Karry MacDonald
Title of Legislation Request: Amendment to Education Code §35756.5
Address: 2813 Santa Barbara Avenue, Cayucos, CA 93430
Email: karrymac@charter.net
Phone: (805) 995-3149/ cell (805) 235-5334
Date of Application: June 14, 2017

Problem/Deficiency

Existing Law:

Education Code §35756.5. In the case of the transfer of territory from one district to another, if the transfer is opposed by the governing boards of one or more of the districts affected with an average daily attendance of 900 or less, the territory in which the election is held shall include the entire territory of the districts opposing the transfer. Each district with an average daily attendance of 900 or less which is included in an election because of the objection of its governing board to the transfer shall bear the additional cost of holding the election in that portion of its territory not otherwise included in the election. When a majority of the votes cast in the school district opposing the transfer and a majority of the votes cast in the entire territory in which the election is held are in favor of the reorganization, the proposal carries.

Problem:

Education Code §35756.5 gives absolute veto power of an opposing school district with an ADA of 900 or less if it opposes the adjustment or annexation action of an adjoining school district which has an ADA of 900 or more.

A citizen petition initiated in 2012 to transfer Cayucos Elementary School District (CESD) high school territory to the neighboring San Luis Coastal Unified School District (SLCUSD) was opposed by Coast Unified School District (CUSD) which is the K-12 district in Cambria formed through a 1995 unification action which the community of Cayucos opted out of. In 2012, when the petition was heard by San Luis Obispo County Committee on School District Organization (SLOCCSDO), Coast had an ADA of 727. At the eleventh hour, the attorney for the SLO County Board of Education brought up Education Code §35756.5 before the SLOCCSDO, because CUSD, the opposing district, had an ADA under 900 which triggered this area of election statute. The SLOCCSDO denied the petition on the grounds that because Cambria voters within the CUSD high school territory outnumbered the Cayucos voters almost 3:1 they felt there was no possibility a majority of Cambria voters would pass the measure. The petitioner appealed the decision to the State Board where the appeal was denied a hearing because Cayucos, a component district, had no standing to transfer territory due to the fact that component districts have no high school territory to transfer.

Background and History of Facts Surrounding Request:

Education Code §35756.5 is a special interest law originally enacted in 1982 and sponsored by, and solely for the benefit of, the K-8 Rancho Santa Fe School District (RSFSD) in northern San Diego County. The Covenant of Rancho Santa Fe is considered one of the most exclusive rural communities in the nation. Abutting the boundaries of the Covenant are the Solana Beach, Encinitas Union and Cardiff School Districts, all of which are within the San Dieguito Union High School District. As the rural open areas surrounding Rancho Santa Fe became built-out with other upscale neighborhoods, Rancho Santa Fe became alarmed that their desirable, well-funded, exclusive school district might be subject to an annexation or unification action by one of the larger adjoining school districts. Because the voting population of RSFSD was no match if a larger-populated adjoining district sought an election to unify or annex their district within the larger district's territory boundary, even if every RSFSD voter opposed the proposed action, they would have likely lost because of their lack of voting numbers. To ensure that RSFSD would have the ultimate say in any action trying to annex or unify their territory with an adjoining district, they successfully lobbied their legislators to enact Education Code §35756.5.

While this statute has been effective in keeping RSFSD exclusive and immune to any annexation petitions, it has been disastrous for any attempt by CESD, with their ADA at approximately 200, to pursue reorganization.

Currently, members of the community and CESD are considering two distinct district reorganization options: (1) Self-unification as a K-12 unified high school school district or (2) Unifying with adjoining SLCUSD. Either option may require a transfer of territory by CUSD and will trigger Ed. Code 35756.5, with an expected opposition by CUSD and Cambria voters.

CUSD enjoys the receipt of property taxes and developer fees from Cayucos' residents, purportedly for use only at CUSD's high school, even though the number of Cayucos students attending high school in Cambria is historically under ten students total in the entire 9th-12th grades. Morro Bay High School, which is in SLCUSD and less than four miles from Cayucos, currently and historically is the destination of Cayucos high schoolers. With all three districts being Basic Aid, no funding follows the Cayucos high school students to SLCUSD. With either of the two proposed reorganization options, funding will follow Cayucos high school students to their school of attendance.

With the current Education Code §35756.5 language, CUSD is legally allowed to wield its veto "club" over the heads of the smaller Cayucos community, effectively holding the even smaller district of Cayucos hostage. According to the 2010 U.S. Census, Cambria's population was 6,032 with 3,637 registered voters; Cayucos' population for the same census year is 2,592 with 1,682 registered voters. To further demonstrate the lack of a level playing field when it comes to elections, Cayucos has been unsuccessful in electing a Cayucos representative of their choice on the Coast Unified School District Board since 1996, when that board's makeup became elected "at large."

Clear Assessment of Needs/Objectives Which Need to Be Corrected:

Addition of a sub-paragraph to current Education Code §35756.5, with language that gives a district with less than 900 ADA, and is smaller than an opposing district, even if that opposing district has less than 900 ADA, complete say over the direction its district takes. The area of election shall be confined to within the boundaries of the territory proposed for reorganization and include Cayucos, Cambria and the territory within San Luis Coastal School District. The majority of voters in Cayucos must pass the proposal for it to take effect.

Board of Supervisors of Sacramento County, et al. v. Local Agency Formation Commission (1992) 3 Cal. 4th 903 (the Local Agency Formation Commission, or “LAFCO” decision) set a precedent in establishing the area of election. LAFCO involved a petition to incorporate a portion of a county, and the county opposed the petition citing incorporation would result in financial impacts to the county. The area of election at issue was solely the voters in the area to be incorporated, and not to include the voters living outside the area to be incorporated.

The deciding court succinctly stated:

“To deny the incorporating voters the final say in their own desire for self-government would lessen political participation, not increase it.”
(LAFCO, *supra*, at pages 915, 916)

The interests of Cayucos’ voters to determine where their high school students attend high school and where their funding goes to finance their students’ high school education outweighs the interests of Cambria voters who have historically shown no interest in Cayucos other than the revenues Cayucos’ property owners and developers send to their district. By determining the area of election to be solely Cayucos Elementary School District voters, the State Board of Education would be following the precedent set by LAFCO, *supra*, as well as the following cases.

In 1994, the Second Appellate District Court in *Alhambra City and High School Districts v. California State Board of Education*, Appellate Court No. BS023586, addressed the situation of a SBE decision designating an area of election which excluded voters stating that the excluded voters did not have a fundamental interest, but rather simply a financial interest. The area of election per the SBE was the voters within the proposed new school district. Although Alhambra lacks value as a precedent, if the SBE was to follow this decision in deciding the area of election of the Cayucos Elementary School District Waiver request, then the area of election would be San Luis Coastal Unified School District and Cayucos.

Yet another appellate court decision which is essentially “on point” is the 1999 case, *Laguna v. State Board of Education*, Fourth Appellate District Court, DO 32295 (not to be published) which applied the LAFCO principles. In Laguna, two elementary school districts proposed a unification from a portion of Escondido Union High School District. The SBE set the area of election to the territory of the two elementary school districts, excluding voters in the remainder of the high school district. Laguna sued the board arguing strict scrutiny, but the court

upheld the board's decision:

"(T)he creation of a new school district, like the incorporation of a new city, is based upon the state's plenary power and does not sufficiently implicate the right to vote to require strict scrutiny."
(Laguna, *supra*, at pages 12 and 13)

Based on the Laguna decision, the area of the Cayucos Elementary School District, alone, should be the area of election.

In addition, a waiver of this Education Code has yet to be filed or heard at the State Board of Education. It is unclear how such waiver would be ruled upon. This uncertainty is chilling on pursuing a petition to allow Cayucos voters, including parents, the opportunity to effect any action involving reorganization.

Studies, Reports, Statistics and Facts:

All documented sources supporting the conclusion that there is a problem:

California. Legislature. Assembly. Assembly Committee on Education. SB 1186 (Morrow), School District Reorganization. Date of Hearing June 28, 2006.

Frowiss, Al. "Rancho Santa Fe's Thirty Years War." San Diego Union Tribune 23 June 2006.

San Luis Obispo County Committee on School District Organization. Decision. **Never received.**

Fiscal Impact:

Unknown, however it is reasonable to assume that with a smaller area of election the costs of an election would be less.

Prior, Similar, or Related Legislation:

In 2002, Assemblyman Wyland introduced AB 1792 to expand the ADA of 900 to 2500 - it appears to have been tabled? In 2006, Senator Morrow proposed SB 1186, again to expand the statutes ADA from 900 to 2500. We could find no final discussion on SB 1186 other than comments that Education Committee notes that to increase the ADA would have a "chilling effect on the consolidation of small school districts. Expanding its application to even more school districts in the state contradicts current state policy goals."

Is There An Immediate Need for This Legislation?

Yes. In the very near future, SLCUSD will in all likelihood deny the interdistrict transfers of Cayucos' high schoolers due to significant revenue loss because of the pending closure of Diablo Canyon Nuclear Power Plant. CESD is reviewing two options for reorganization, and the success of either option is critical if Cayucos voters have the ultimate voice and choice.

Have you contacted another Legislator?

No

Identify Individuals or Agencies Who Would Be Willing To Testify at Committee Hearings and Lobby Committee Members:

Karry MacDonald, Gretchen Ross, Eric Endersby, all Cayucos residents and parents.

Identify Individuals or Agencies Who Would Provide Letters or Resolutions of Support:

Cayucos Elementary School District Board
San Luis Coastal School Board and Administration
Karry MacDonald
Gretchen Ross
Eric Endersby
Various other Cayucos residents
San Luis Obispo County Board of Education (possibly)

Provide Information Regarding Possible Support or Opposition Expected from Various Interest Groups:

Support:

Cayucos Petitioners
Cayucos voters
San Luis Coastal Unified School District
Voters within the San Luis Coastal Unified School District
Cayucos Elementary School District Board - when the prior petition was on appeal at the State Board of Education this board directed attorney Marguerite Leone to file a waiver of this Ed. Code to be heard with the appeal. Because the petition was denied a hearing based on lack of standing of a component district to transfer territory it does not have legal control over no waiver was filed.

Opposition

Note: If a separate subparagraph is added to existing Ed. Code §35756.5, we do not expect Rancho Santa Fe HOA, or Rancho Santa Fe School District, to oppose as nothing will change for them.

Coast Unified School District has used and will use this Ed. Code to wield ultimate veto power over any actions Cayucos petitioners take.

** Small School District Organization originally supported the Ed. Code, but may have a different opinion when informed how it can be a double-edged sword to many of its smaller member districts.