

PROPOSAL NO.: LAFCO 3070

HEARING DATE: SEPTEMBER 19, 2007

RESOLUTION NO. 2969

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 3070 AND APPROVING THE REORGANIZATION TO INCLUDE FORMATION OF THE PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT, DETACHMENT FROM COUNTY SERVICE AREA 56 AND DISSOLUTION OF COUNTY SERVICE AREA 9, COUNTY SERVICE AREA 56 IMPROVEMENT ZONE F-1, AND COUNTY SERVICE AREA 70 IMPROVEMENT ZONES L AND P-4. (The formation area encompasses approximately 128 square miles (81,920 +/- acres) generally north of the San Bernardino National Forest boundary, east of the Los Angeles County Line, south of Rancho Road, and west of a combination of section lines, the City of Adelanto boundary and sphere of influence, the City of Victorville sphere of influence boundary and the City of Hesperia sphere of influence boundary. The proposed formation includes all of Townships 4 and 5 North of Range 7 West and portions of Township 5 North, Range 6 West, Township 4 North, Range 6 West, and Township 3 North, Range 6 West, all of the San Bernardino Meridian.).

On motion of Commissioner _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, an application for the proposed reorganization in the County of San Bernardino was filed with the Executive Officer of this Local Agency Formation Commission (hereinafter referred to as "the Commission") in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.), and the Executive Officer has examined the application and executed her certificate in accordance with law, determining and certifying that the filings are sufficient; and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, the public hearing by this Commission was held upon the date and at the time and place specified in the notice of public hearing and in an order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written protests;

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the Commission considered all plans and proposed changes of organization, objections and evidence which were made, presented, or filed; it received evidence as to whether the territory is inhabited or uninhabited, improved or unimproved; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the application, in evidence presented at the hearing; and

WHEREAS, the Commission determines to modify the proposal to include the dissolution of County Service Area 70 Improvement Zone P-4 in order to clarify the service boundary for the provision of park and recreation services;

NOW, THEREFORE, BE IT RESOLVED, that the Commission does hereby determine, find, resolve, and order as follows:

DETERMINATIONS:

SECTION 1. The proposal is approved subject to the terms and conditions hereinafter specified:

CONDITIONS:

Condition No. 1. The boundaries of this change of organization are approved as set forth in Exhibits "A", "A-1", "B", "B-1", "C", "D", and "E" attached;

Condition No. 2. The following distinctive short-form designation shall be used through this proceeding: LAFCO 3070;

Condition No. 3. The effective date of this reorganization shall be the date of issuance of the Certificate of Completion;

Condition No. 4. The Phelan Piñon Hills Community Services District shall be the successor agency and shall function under and carry out all authorized duties and responsibilities assigned to a community services district as outlined in Government Code Section 61000 et seq., Community Services District Law, and other applicable laws. Upon the Effective Date of this reorganization, the legal existence of County Service Area 9, County Service Area 56 Improvement Zone F-1, County Service Area 70 Improvement Zone L and County Service Area 70 Improvement Zone P-4 shall cease to exist, except as otherwise required by law, and the Phelan Piñon Hills Community Services District, as Successor District, shall succeed to all the rights, duties, responsibilities, properties (both real and personal), contracts, equipment, assets, liabilities, obligations, functions, executory provisions, entitlements, permits and approvals of the extinguished agencies;

Condition No. 5. The Board of Directors of the Phelan Piñon Hills CSD shall consist of five (5) members, elected at-large, pursuant to the provisions of Government Code Section 61020;

Condition No. 6. The Phelan Piñon Hills CSD shall be authorized the following functions and services as active powers:

Water -- Supply water for any beneficial use as outlined in the Municipal Water District Law of 1911 (commencing with Section 71000) of the Water Code (§61100(a)).

Streetlighting -- Acquire, construct, improve, maintain and operate streetlighting and landscaping on public property, public right-of-way, and public easements (§61100(g)).

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Recreation and Parks -- Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to, parks and open space, in the same manner as a recreation and park district formed pursuant to the Recreation and Park District Law (commencing with Section 5780) of the Public Resources Code (§61100f).

Condition No. 7. If this proposal is approved by the electorate at the February 5, 2008 presidential primary election, the County Board of Supervisors, through its County Special District Department, shall continue to provide for the administration of services and functions performed by the dissolving and detaching entities for a transition period identified as commencing upon the effective date of the reorganization until June 30, 2008. Nothing in this condition precludes a future Board of Directors of the Phelan Piñon Hills CSD from contracting for an extended period of time for the provision of administration, maintenance, operation, billing, and etc. services through the County Special Districts Department.

As outlined in the Transition Plan presented by the County Special Districts Department, set forth in Exhibit "E" to this resolution, the Phelan Piñon Hills CSD Board of Directors shall be required to sign the Interim General Manager Agreement at its first regular meeting to allow for fulfillment of Government Code Section 61050 and setting forth the payment structure for services rendered. In addition, the Operation and Maintenance Agreement with the County Special Districts Department for the period from the effective date of the reorganization until June 30, 2008 shall be signed within ten (10) days following the first regular meeting of the Board of Directors of the Phelan Piñon Hills CSD to assure continuity of services and elimination of questions of liability or risk to the County for continued provision of the administration and operation of the services to the area;

Condition No. 8. The Phelan Piñon Hills CSD shall succeed to all water and capacity rights and interests of CSA 70 Improvement Zone L, whether wholly or partially owned or held by the district, and shall succeed to the priorities of use or rights of use of water or capacity rights in any public improvements or facilities or any other property, whether real or personal, to which CSA 70 Zone L is entitled to upon the effective date of this reorganization. The Successor District shall specifically succeed to all rights and interests held or claimed by CSA 70 Zone L under the Judgment entered (including all documents constituting the Physical Solution, as from time to time existing) in City of Barstow, etc. et al. v. City of Adelanto, etc. et al., and Related Cross Actions, Riverside County Superior Court Case No. 208568 (the "Mojave Basin Area Adjudication"), including those from time to time set forth in Table B-1, to the Judgment.

The Successor District shall also specifically succeed to all rights and interests held or claimed by CSA 70 Zone L under all agreements and memoranda of understanding with the Department of the Interior, the Bureau of Land Management, the United States Geological Survey, the California Department of Fish and Game, the California Water Quality Control Board and the Regional Water Quality Control Board for the Lahontan Region, the California Department of Health Services, the Mojave Water Agency, the County of San Bernardino, the City of Adelanto, the City of Hesperia, the City of Victorville, the Town of Apple Valley, the Apple Valley Ranchos Water Company, the Southern California Logistics Airport Authority, the Victor Valley Wastewater Reclamation Authority, the Snowline Joint Unified School District, the High Desert Power Project (or any of its related entities), Southern California Edison, and any other public agency or private entity with which CSA 70 Zone L has an agreement or memorandum of understanding. The Successor District shall also assume all joint use flow agreements and maintenance agreements. [§56886(j) (r)];

Condition No. 9. The Phelan Piñon Hills CSD, as the Successor District, shall accept all system facilities transferred from the dissolving or detaching agencies in "as is" condition without any payment or repair obligation from the assets of any of the dissolving or detaching agencies (Government Code Section 56886(h)). All material and incidental liabilities, including, but not limited to, accounts payables, contract obligations and customer deposits, held by the dissolving entities shall be transferred to the Successor

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District upon the effective date of the reorganization (Government Code Section 56886(h)). All assets, including, but not limited to, cash reserves, buildings and other real property, water production equipment (pumps, storage tanks etc.), transmission lines and rights-of-way, rolling stock, tools, and office furniture, fixtures and equipment, all lands, buildings, real and personal property and appurtenances held by the dissolving entities shall be transferred to the Successor District upon the effective date of the reorganization (Government Code Section 56886(h)). Additional requirements for transfer are defined below:

1. The Phelan Piñon Hills CSD shall receive a share of the pooled equipment and equipment reserve funds for the County Special Districts Department, Water and Sanitation Division, representing 17.2% of the values assigned as of July 13, 2007, representing a total value of \$403,980. The Board of Directors is entitled to receive this amount in equipment, in cash, or in a combination of equipment and cash subject to the following limitations:
 - a. If the method for receipt of the assigned value is determined by the Board of Directors to be received in cash only, said payments shall be spread over a three- to five-year time period subject to negotiations between the County Board of Supervisors and Board of Directors for the Successor District;
 - b. If the method for receipt of the assigned value is determined by the Board of Directors to be received in a combination of cash and equipment, and the cash balance exceeds \$200,000, said cash payment shall be spread over a three-year period subject to negotiations with the County and Board of Directors; or
 - c. If the method for receipt of the assigned value is determined by the Board of Directors to be received in equipment only or a combination of cash and equipment and the cash balance is less than \$200,000 said payment shall occur as expeditiously as possible, but not later than 60-days following the determination by the Board of Directors.
2. The property owned by County Service Area 56 Improvement Zone F-1, identified as APN 3067-051-06, is a joint use facility including a fire station, community center and park. Ownership of said property shall be transferred to the Phelan Piñon Hills CSD upon the effective date of the reorganization with the stipulation that the fire station occupying a portion of the property shall be leased back to the San Bernardino County Fire Protection District for the sum of \$1.00 per year subject to a fifteen (15) year lease agreement to be entered into between the Successor District and the County for the benefit of the San Bernardino County Fire Protection District (or District);

Condition No. 10. The fire functions, contracts, equipment, assets and liabilities currently a part of County Service Area 56 Improvement Zone F-1 are intended to be transferred to the San Bernardino County Fire Protection District through consideration of LAFCO 3000 (County Fire Reorganization). If LAFCO 3000 is not completed upon the effective date of this reorganization, the fire functions, including property tax revenues, as stipulated in Condition Nos. 12 and 13 below, associated with CSA 56 and CSA 56 Improvement Zone F-1 shall be transferred temporarily to County Service Area 70 (fire administration) to allow for continued operation and protection of identified revenues. A condition of approval shall also be included in LAFCO 3000 identifying this situation;

Condition No. 11. All property tax revenues attributable to County Service Area 9 and County Service Area 70 Improvement Zone L, prior to calculations required by Section 96.1 of the Revenue and Taxation Code, including delinquent taxes, and any and all other collections or assets of the Districts to be dissolved, shall accrue and be transferred to the Successor District, the Phelan Piñon Hills CSD, pursuant to the provisions of Government Code Section 56810;

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Condition No. 12. Property tax revenues attributable to the park and recreation functions of County Service Area 56 Improvement Zone F-1, including delinquent taxes and any and all other collections or assets, shall be transferred to the successor District, the Phelan Piñon Hills CSD, pursuant to the provisions of Government Code Section 56810 subject to the following terms:

1. Fire protection revenues currently a part of the property tax allocation for County Service Area 56 Improvement Zone F-1, determined to be \$191,749 for Fiscal Year 06-07 shall be transferred to the San Bernardino County Fire Protection District as a function of LAFCO 3000. However, if LAFCO 3000 is not completed upon the effective date of LAFCO 3070, the fire functions, including property tax revenues, associated with CSA 56 Improvement Zone F-1 shall be transferred temporarily to County Service Area 70 to allow for continued operation and protection of identified revenues. A condition of approval shall also be included in LAFCO 3000 identifying this situation.
2. Park and recreation revenues currently a part of the property tax allocation of County Service Area 56 Improvement Zone F-1 estimated to be \$42,091 for Fiscal Year 06-07 shall be increased by \$33,314 through a transfer of property tax revenues from County Service Area 56 under the provision of Section 99.02 of the Revenue and Taxation Code. The total property tax transfer pursuant to Government Code Section 56810 shall be \$75,405;

Condition No. 13. The property tax revenues attributable to County Service Area 56 within the area proposed to be detached as a function of this reorganization shall be allocated, pursuant to Government Code Section 56810, as follows:

1. Fire protection revenues currently a part of the property tax allocation of County Service Area 56, determined to be \$575,482 for Fiscal Year 06-07 shall be increased by \$50,944 to a total of \$626,426, and shall be distributed to the San Bernardino County Fire Protection District as a function of the review of LAFCO 3000. However, if LAFCO 3000 is not completed upon the effective date of this reorganization, the fire functions, including property tax revenues, associated with CSA 56 within the reorganization shall be transferred temporarily to County Service Area 70 to allow for continued operation and protection of identified revenues. A condition of approval shall also be included in LAFCO 3000 identifying this situation.
2. The distribution of revenues for park functions within the Tax Rate Areas which comprise the CSA 56 territory within the Wrightwood community shall distribute their revenues identified for Fiscal Year 06-07 as \$740,631 for fire protection and \$101,889 for park purposes to secure the funding previously received from the Pinon Hills portion of CSA 56. This adjustment, associated with LAFCO 3000, shall fulfill the Mitigation Measure approved by the Commission on May 16, 2007 through adoption of the Mitigated Negative Declaration for LAFCO 3070.

Condition No. 14. All previously authorized charges, fees, assessments, and/or taxes of County Service Area 70 Improvement Zone L, County Service Area 9, and County Service Area 56 Improvement Zone F-1 in effect upon the effective date of this reorganization shall be continued and assumed by the Phelan Piñon Hills CSD, as the successor agency, in the same manner as provided in the original authorization pursuant to the provisions of Government Code Section 56886(t) and as may be modified by Condition Nos. 11, 12 and 13 above;

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Condition No. 15. Until duly revised by the Phelan Piñon Hills CSD, and unless otherwise expressly provided herein or legally required, all ordinances, resolutions, rules and regulations, policies, procedures, and practices existing on the effective date of this reorganization shall govern the activities and affairs of the Successor District. The Board of Directors of the Phelan Piñon Hills CSD, the Successor District, shall expeditiously review and ratify the ordinances, resolutions, policies, procedures and practices adopted hereby, making such revisions as it shall deem appropriate;

Condition No. 16. Upon the effective date of this reorganization, any funds currently deposited for the benefit of County Service Area 70 Improvement Zone L, County Service Area 9, and County Service Area 56 Improvement Zone F-1 which have been impressed with a public trust, use or purpose shall be transferred to the Phelan Piñon Hills CSD, as the successor agency, and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462;

Condition No. 17. Pursuant to the provisions of Government Code Section 56811, the provisional appropriation limit of the Phelan Piñon Hills CSD shall be set at \$1,203,876. The permanent appropriation limit shall be established at the first district election held following the first full fiscal year of operation and shall not be considered to be a change in the appropriation limit of the district pursuant to Article XIII B of the California Constitution;

Condition No. 18. All streetlights currently the responsibility of County Service Area 9 shall be transferred to the Phelan Piñon Hills CSD upon successful formation of the District. The County Special Districts Department shall prepare the appropriate documentation to transfer the lights; LAFCO staff shall verify the date, and forward the signed authorization form requesting Southern California Edison to transfer the specific lights to the Phelan Piñon Hills CSD accounts upon successful completion of LAFCO 3070.

Condition No. 19. Pursuant to the provisions of Government Code Section 56885.5(a)(4), the County Board of Supervisors, as the governing body of County Service Area 70 Improvement Zone L, County Service Area 9 and County Service Area 56 Improvement Zone F-1, is prohibited from taking the following actions unless an emergency situation exists as defined in Section 54956.5:

1. Approving any increase in compensation or benefits for members of the governing body, its officers, or the executive officer of the agency;
2. Appropriating, encumbering, expending or otherwise obligating, any revenues of the agencies beyond that provided in the current budget at the time the reorganization is approved by the Commission. The Commission identifies that the budget to be utilized in this condition shall be the final budget for Fiscal Year 2007-08 adopted by the County Board of Supervisors on June 26, 2007;

Condition No. 20. Pursuant to Government Code Section 56886.1, public utilities, as defined in Section 216 of the Public Utilities Code, have ninety (90) days following the recording of the Certificate of Completion to make the necessary changes to impacted utility customer accounts;

Condition No. 21. The protest period for the reorganization under LAFCO 3070 shall be the statutory minimum of fifteen (15) calendar days.

Condition No. 22. The County of San Bernardino, applicant, shall indemnify, defend, and hold harmless the Commission from any legal expense, legal action, or judgment arising out of the commission's approval of this proposal, including any reimbursement of legal fees and costs incurred by the Commission.

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SECTION 2. The following determinations are made in conformance with Government Code Sections 61014 and 56301:

1. Pursuant to the requirements of Government Code Section 61014, the Commission determines, based upon existing information, that the Phelan Pinon Hills Community Services District has sufficient revenues to carry out its purposes of providing water service, park and recreation service and streetlighting to the existing service areas of the districts to be dissolved, has the ability to provide for planning for the extension of those services for the future, and will have a reasonable reserve during the first three fiscal years following formation.
2. The Commission determines, pursuant to Government Code Section 56301, that existing agencies cannot provide the range and level of services contemplated to be provided by the Phelan Pinon Hills Services District in a more efficient and accountable manner.

SECTION 3. FINDINGS. The following findings are noted in conformance with Commission policy and State law:

1. The Registrar of Voters Office has determined that the reorganization study area is legally inhabited, containing 8,936 registered voters as of September 27, 2006.
2. The reorganization including formation conflicts with a very small portion of the sphere of influence of the City Adelanto, in the northeastern portion of the proposed District. It is anticipated that this area will ultimately be removed from the City of Adelanto sphere of influence and the City has indicated no objection on the basis that the territory is currently receiving service from CSA 70 Zone L, an entity to be dissolved and transferred to the Phelan Piñon Hills CSD, and service cannot be easily transferred to the City.
3. The County Assessor has determined that the value of land and improvements within the study area is \$1,246,053,176 as of October 5, 2006.
4. Notice of the original hearing was advertised as required by State law through publication in The Sun and the Daily Press, newspapers of general circulation in the area. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those individuals and agencies wishing mailed notice.
5. In compliance with Commission policy and Government Code Section 56157, the Notice of Hearing for the original hearing on this proposal was provided by publication of an eighth-page (1/8 page) legal ad in The Sun, a newspaper of general circulation, and the Daily Press, a local newspaper. Comments from landowners and any affected local agency have been reviewed and considered by the Commission in making its determination. Opposition has been received and considered by the Commission in making its determination.
6. The proposed reorganization including formation does not conflict with the established County General Plan and the Phelan Community Plan for the area and has no direct impact on such land use designations.
7. The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has prepared an environmental assessment and Mitigated Negative Declaration for the reorganization pursuant to the provisions of the California Environmental Quality Act (CEQA),

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which indicate that approval of the reorganization, as modified, will not have a significant adverse impact on the environment. The Commission certifies that it reviewed and considered the Mitigated Negative Declaration and environmental effects as outlined in the Initial Study on May 16, 2007, prior to reaching a decision on the project and finds the information substantiating the Mitigated Negative Declaration adequate for its use in making a decision as a CEQA lead agency.

The Commission hereby adopts the Mitigated Negative Declaration and the related California Department of Fish and Game De Minimis Impact Finding. The Commission determines that it does intend to adopt mitigation measures for the project. The Commission directed its Clerk to file a Notice of Determination within five (5) working days of its decision on May 16, 2007.

8. The local agencies currently serving the area are:

County of San Bernardino
Mojave Water Agency
Mojave Desert Resource Conservation District
County Service Area 9 (park and recreation, streetlights, road maintenance – Phelan community)
County Service Area 38 (fire protection – Phelan community)
County Service Area 56 (fire protection, park and recreation – Wrightwood community)
CSA 56 Improvement Zone F-1 (fire protection and park and recreation – Piñon Hills Community)
County Service Area 60 (Apple Valley Airport)
County Service Area 70 (multi-function agency)
County Service Area 70 Improvement Zone G (road maintenance -- Oak Springs)
County Service Area 70 Improvement Zone L (water service – Phelan and Piñon Hills communities)
County Service Area 70 Improvement Zone P-4 (regional park and recreation for the Phelan community)
County Service Area 70 Improvement Zones R-32 (road maintenance), R-38 (road maintenance) and R-39 (road maintenance for Highland Estates – Phelan)

The affected agencies are CSA 70 Zone L, CSA 70 Zone P-4, CSA 9, and CSA 56 Zone F-1 to be dissolved and CSA 56 to be detached as a function of this reorganization. The other agencies are not affected by this reorganization as they are regional in nature or identified for service to a specific area.

9. The County of San Bernardino, as the proponent for LAFCO 3070, has submitted a Feasibility Study which addresses the issues required in a plan for the provision of services as required by Government Code Section 56653. This document, including its amendments and supplements, shows that the Community Service District has sufficient revenues to provide its active range of services (water, park and recreation and streetlighting) upon formation. The Feasibility Study and its supplemental information have been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668. The Commission finds that such Study and its supplemental data conform to those adopted standards and requirements.

10. The reorganization area can benefit from the availability and extension of services, as

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11. This proposal complies with Commission and State policies that indicate the preference for the creation of multi-purpose agencies to serve growing communities. This position is taken on the basis that areas proposed for development can be planned, funded, services extended and maintenance funding put in place for the full range of service needs as identified by adopted community and general plans.

12. The maps and legal descriptions, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's office.

SECTION 4. The Executive Officer is hereby authorized and directed to mail certified copies of this resolution in the manner provided by Section 56882 of the Government Code, noting that its approval is subject to the confirmation of the registered voters within the affected territory.

SECTION 5. The reason for the reorganization, as specified in the Resolution Initiating the Proposal, is that the residents of the communities of Phelan and Piñon Hills have expressed the desire for local control and input into the decision-making process for the delivery of services including water, park and recreation, and streetlighting.

SECTION 6. Upon formation, the Phelan Piñon Hills Community Services District shall utilize the regular County Assessment Roll and such shall be identified in the final resolution confirming the formation.

SECTION 7. The Executive Officer, on behalf of the Local Agency Formation Commission, in compliance with this resolution and State law (Part 4, commencing with Government Code Section 57000), hereby requests that the County of San Bernardino Board of Supervisors direct the County Elections Official to conduct the necessary election, setting the matter for consideration on the November 7, 2006 general election, pursuant to Government Code Sections 57077 and 57100 et seq.

SECTION 8. The question to be submitted to the voters shall read as follows:

"Shall the order adopted on September 19, 2007, by the Local Agency Formation Commission for the County of San Bernardino ordering the reorganization to include formation of the Phelan Piñon Hills Community Services District, Detachment from County Service Area 56 and the Dissolution of County Service Area 9, County Service Area 56 Improvement Zone F-1, and County Service Area 70 Improvement Zones L and P-4, known as LAFCO 3070, be approved subject to the terms and conditions as more particularly described in the order?"

SECTION 9. The election shall be held within the territory of the reorganization, as described in Exhibit "A".

SECTION 10. The election to be held shall include a call for election of a five-member board of directors to be elected at-large pursuant to the provisions of the Uniform Election Law, Part 4 (commencing with Section 10500) of the Elections Code.

SECTION 11. A simple majority of ballots cast in favor of the measure is required to confirm the order for the reorganization to include formation.

SECTION 12. Upon completion of the canvass of ballots cast at the election, as required pursuant to

