

# Comment

## Merging and Dissolving Special Districts

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*Special district governments exist in every state, providing services ranging from protection against fire to protection against fire ants. These governments are easy to form, but often they are difficult to dissolve or consolidate. Nevertheless, in many states, the number of special district governments is declining. This Comment draws on statistical analyses and interviews with government officials to explain the cause of this decline. It also discusses how existing legal frameworks may be revised to facilitate the efficient consolidation and dissolution of special district governments.*

Introduction ..... 493  
I. The Origin and Rise of Special District Governments..... 495  
II. How and Why Do Special Districts Disappear? ..... 497  
III. Implications of the Decline: Merger Statutes ..... 499

### Introduction

The most recent Census of Governments (Census)—a twice-a-decade survey of the number of “governmental units”<sup>1</sup> in the country, the latest version of which was released in September 2013<sup>2</sup>—confirmed what many critics of big government would never doubt: the number of governments in the United

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1. In somewhat circular fashion, the Census defines a government as “an organized entity that, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit.” U.S. Census Bureau, *2012 Census of Governments, Individual State Descriptions: 2012*, U.S. DEP’T COM. at v (Sept. 2013), <http://www2.census.gov/govs/cog/2012isd.pdf>. The Census goes on to note that “[t]o be counted as a government, any entity must possess all three of the attributes reflected in the foregoing definition: existence as an organized entity, governmental character, and substantial autonomy.” *Id.*

2. *Id.*

States inched up from 89,527 in 2007 to 90,107 in 2012.<sup>3</sup> But buried in the new Census data was a surprising detail. In most individual states, the number of local governments either remained flat or declined.<sup>4</sup>

Why did this happen? Some of the shift is explained by long-standing factors, such as the ongoing consolidation of school districts.<sup>5</sup> But much of this recent trend is attributable to the declining growth of “special district” governments, a Census category that includes most units of local government that serve only one purpose, like water supply or fire protection.<sup>6</sup> These institutions, which are more numerous than any other kind of governmental unit in the country,<sup>7</sup> used to be the growth engine of American government. Between 1952 and 1997, the number of special district governments in the United States nearly tripled from 12,340 to 34,683—almost 500 new districts every year.<sup>8</sup> Over the last fifteen years, however, the growth of special districts has slowed to less than half that,<sup>9</sup> even as the nation’s population has grown by more than twenty million in every decade since 1950.<sup>10</sup> In several states, the number of special district governments is now falling fast.<sup>11</sup>

These trends are surprising and intriguing. After all, there might be good theoretical reasons to think the number of special district governments would continue to increase across the board. In economics, the well-known Tiebout Hypothesis suggests that diverse and fragmented local government creates

3. U.S. Census Bureau, *2012 Census of Governments*, U.S. DEP’T COM. tbl.1, <http://www.census.gov/govs/cog> (for all citations to tables in the *2012 Census of Governments*, select the appropriate table from dropdown menu titled “2012 Census of Governments Organization Tables: Final” and press “Go”) (last visited May 15, 2014).

4. *Id.*

5. *Id.* tbl.5.

6. The Census defines special district governments as “[a]ll organized local entities (other than counties, municipalities, townships, or school districts) authorized by state law to provide only one or a limited number of designated functions, and with sufficient administrative and fiscal autonomy to qualify as separate governments; known by a variety of titles, including districts, authorities, boards, and commissions.” U.S. Census Bureau, *Federal, State, & Local Governments: Definitions*, U.S. DEP’T COM., <http://www.census.gov/govs/definitions/index.html> (last visited May 15, 2014).

7. U.S. Census Bureau, *supra* note 3, tbl.2.

8. *Id.* tbl.5.

9. *Id.*

10. For population totals from the 1990 Census of Population and Housing and before, see U.S. Census Bureau, *Population, Housing Units, Area Measurements, and Density: 1790 to 1990*, U.S. DEP’T COM. (Aug. 26, 1993), <http://www.census.gov/population/www/censusdata/files/table-2.pdf>. For figures from 2000, see U.S. Census Bureau, *United States: 2000 Summary Population and Housing Characteristics*, U.S. DEP’T COM. 2 (Nov. 2002), <http://www.census.gov/prod/cen2000/phc-1-1-pt1.pdf>. For figures from 2010, see U.S. Census Bureau, *United States: 2010 Summary Population and Housing Characteristics*, U.S. DEP’T COM. 2 (Jan. 2013), <http://www.census.gov/prod/cen2010/cph-1-1.pdf>.

11. U.S. Census Bureau, *supra* note 3, tbl.5. Notice, for example, the trends for Georgia, Idaho, and New Jersey. This is not a universal trend, however: although Indiana lost 500 special districts over the last five years, Colorado added 500 in the same period. *Id.*

competitive pressures that benefit residents.<sup>12</sup> More recently, progressive legal scholars have touted special district governments as a key piece of American federalism, offering democratic minorities the chance to exercise custom-tailored local control.<sup>13</sup>

This Comment has two goals. The first is to shed some light on how and why the growth rate in the number of special districts is changing. I do so using unique evidence drawn from dozens of interviews and exchanges with practitioners and officials from most states. In explaining the recent trends, I pay particular attention to the most commonly reported cause of decline: special district governments are increasingly consolidating and dissolving for cost-saving reasons. The second goal is to elucidate the legal implications of this trend. Over the course of the twentieth century, as demand for special district governments exploded, most states codified a complicated array of statutes for *forming* special districts.<sup>14</sup> But most states still have no clear statutory process governing mergers and dissolutions for many types of special district governments; instead, the process is chaotic and ad hoc, and it often requires inefficient, case-by-case legislative action.<sup>15</sup> In a world of seemingly increased demand for merging and dissolving special districts, states should focus on creating simple statutory mechanisms for winding down these institutions.

This Comment is divided into three Parts. First, I briefly discuss the origins and features of special district governments. Second, I discuss the apparent trend toward consolidation. I conclude by discussing statutory implications.

## I. The Origin and Rise of Special District Governments

Special districts have their origin in the public corporations that were chartered by colonial governments in the seventeenth century.<sup>16</sup> Early American governments chartered these corporations to develop infrastructure that the nascent governments did not or could not provide—such as roads, bridges, and harbors.<sup>17</sup> As the colonial communities became more dense and interdependent, there was a need for regional services in decentralized

12. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418 (1956) (“The greater the number of communities and the greater the variance among them, the closer the consumer will come to fully realizing his preference position.”).

13. See Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 27 (2010) (“Special purpose institutions . . . provide minorities with a chance to exercise voice inside the system . . .”).

14. NANCY BURNS, *THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS* 53-54 (1994).

15. Nicholas G. Bauroth, *The Strange Case of the Disappearing Special Districts: Toward a Theory of Dissolution*, 40 AM. REV. PUB. ADMIN. 568, 574 (2010).

16. KATHRYN A. FOSTER, *THE POLITICAL ECONOMY OF SPECIAL-PURPOSE GOVERNMENT* 15 (1997).

17. *Id.*

metropolitan outskirts. This necessity first gave rise to a new breed of metropolitan district through a series of neighborhood collaborations in Philadelphia, which formed region-wide districts for health, policing, education, and other services. This basic model was soon borrowed and used in New York, Chicago, and elsewhere.<sup>18</sup>

Several forces have propelled the growth and shaped the direction of special districts since then. The first was a simple increase in demand. The rise of suburbs shifted the population away from urban centers that had been the focus of government service provision. But the new suburbanites still demanded urban-level services outside the city.<sup>19</sup> The number of special districts began to increase rapidly in the 1930s due to new state enabling laws and supportive policies from the Roosevelt administration,<sup>20</sup> and they continued to proliferate during the second round of suburbanization that followed the Second World War.<sup>21</sup> While many of these new communities had the option to incorporate new general purpose governments (such as municipalities and townships) or be annexed by existing ones, they instead chose to receive services from local special districts.<sup>22</sup>

Indeed, there is strong suggestive evidence that local demand plays a large role in determining where new special districts will emerge. First, special districts are more likely to be created in states with high population growth.<sup>23</sup> This suggests that new residents demand new services through special district governments. Second, special districts appear in states with growing per-capita incomes, which is also consistent with a demand-driven element.<sup>24</sup>

But local demand driven by demographics and income is not the only explanation for the rise of special district governments. Distributing services through special districts (rather than through general purpose governments) has allowed local officials to exploit various tax and regulatory loopholes. Perhaps the most significant of these loopholes is that special district governments can be used to skirt legal limits imposed on a general purpose government's ability to issue debt.<sup>25</sup> Regardless of their origins, though, special districts are now prevalent in every state, and they provide services that range from fire protection to fire ant protection.<sup>26</sup>

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18. *Id.*

19. *Id.* at 16.

20. See BURNS, *supra* note 14, at 53.

21. FOSTER, *supra* note 16, at 19.

22. *Id.*

23. See Barbara Coyle McCabe, *Special District Formation Among the States*, 32 ST. & LOC. GOV'T REV. 121, 125-26 (2000).

24. *Id.*

25. See BURNS, *supra* note 14, at 48.

26. Arkansas and Louisiana laws allow for the formation of "fire ant abatement districts." U.S. Census Bureau, *supra* note 1, at 17, 126.

## II. How and Why Do Special Districts Disappear?

Why has the growth of special district governments now slowed and, in many states, become negative? In an attempt to shed light on the Census data, I reached out to practitioners, government administrators, and local government experts in all fifty states with a standardized set of questions about the trend in each state.<sup>27</sup> I received responses from more than forty individuals in thirty states. While such feedback is undoubtedly anecdotal, the limited data on special district dissolution makes such qualitative evidence especially valuable. Because special districts provide a range of different services across states and because there are thousands of statutes governing these organizations, it is hard to make systematic quantitative comparisons between states.<sup>28</sup> This is especially true of special district dissolutions because the Census Bureau does not track them.<sup>29</sup>

By far the most common explanation survey respondents offered for the decline in special district growth was that special districts are being merged or consolidated to reduce costs. Almost all the officials I spoke with in states that experienced a decline in special districts mentioned cost reduction as a factor, and the ones that did not mention cost reduction expressed no opinion as to why the number of special districts had fallen.

One practitioner in Pennsylvania, which has the fifth highest number of special districts in the country,<sup>30</sup> reported that the state has “seen some definite cost saving from mergers,” which were born out of a sense that special districts “were too small to be run efficiently.” He explained that these mergers are “contributing to the trend” of special district decline in the state.<sup>31</sup> One

27. Much of this was to gather background information and evidence for a more general paper about single purpose governments (SPGs). See Henry Hansmann & Conor Clarke, *Single-Purpose Governments: The Dynamic Zone Between Public and Private Enterprise* (April 18, 2014) (unpublished manuscript) (on file with author). Furthermore, I don’t want to overstate the scientific features of this survey: I got in touch with a fairly diverse and unsystematic group of people who I had reason to believe might know about how special districts operated in the state. I asked a standard set of questions about (1) the trend of growth or decline in a given state; (2) the reasons SPGs were created; (3) the reasons they disappeared; (4) whether SPG functions were taken over by general purpose governments, or vice versa; (5) what the merger or consolidation process looks like; (6) whether and why attempts to form special districts ever fail; (7) whether SPGs could be formed without any oversight; (8) what manner of oversight is exercised; and (9) whether variation between statutes governing different types of districts was helpful. I also spoke with many people over the phone and asked a more free-flowing set of questions. This process occurred in two rounds: one in spring 2013 and one in fall 2013.

28. See Sara C. Galvan, *Wrestling with MUDs to Pin Down the Truth About Special Districts*, 75 *FORDHAM L. REV.* 3041, 3041 (2007) (observing that one obstacle to studying special districts is “the difficulty in determining a metric of assessment: [t]oo many different kinds of special districts exist, and the scope of districts changes constantly”).

29. See Baurath, *supra* note 15, at 569 (“Unfortunately, the U.S. Bureau of the Census does not monitor district dissolutions and few states track their districts from formation through dissolution. As a result, there is a tendency by researchers to discount its importance and regularity altogether.”).

30. U.S. Census Bureau, *supra* note 3, tbl.5.

31. Telephone Interview with Joseph M. Sullivan, Dir. of Educ. & Training, Pa. Mun. Auths. Assoc. (Oct. 7, 2013).

government official in West Virginia reported a “sense that the districts were inefficient, too small” and that if “they could go a little bit larger, they would find economies of scale.”<sup>32</sup> As an example, this official explains, “A lot of them didn’t have full time staff and office hours. It was inconvenient to the public.”<sup>33</sup>

New legislation also seems to be driving this trend. In Georgia, where the number of special district governments has dropped by more than ten percent since the 2007 Census,<sup>34</sup> one official reports that restructuring is “in part due to legislation that mandates higher levels of coordination between local governments.”<sup>35</sup> This law, known as the Service Delivery Strategy Act, is intended “to minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes” between them.<sup>36</sup> In Oregon, where the number of special districts has flattened after huge increases in the three decades prior to 2007,<sup>37</sup> state guidelines make clear that “[m]ergers and consolidations are designed to promote efficiency in providing governmental service” and are encouraged by state law.<sup>38</sup>

A trend toward consolidation and annexation for the sake of cost saving would be consistent with the experience of other areas of government. For example, school districts have experienced enormous consolidation over the last several decades—the number has declined steadily since the Census began counting them<sup>39</sup>—and there is some evidence indicating that consolidation is linked to reduced education costs.<sup>40</sup> It is also consistent with one side of the long-running debate over the costs and benefits of government fragmentation. While an important tradition in the public choice literature maintains that more fragmented government means more competition<sup>41</sup> and a closer fit between voter preferences and government services,<sup>42</sup> an equally strong tradition has maintained that fragmented governments fail to take advantage of economies of

32. Telephone Interview with Amy Swann, Div. Dir., Pub. Serv. Comm’n of W. Va. (Apr. 4, 2013).

33. *Id.*

34. See U.S. Census Bureau, *supra* note 3, tbl.5.

35. E-mail from Harry W. Hayes, Senior Pub. Serv. Assoc., Carl Vinson Inst. of Gov’t, to author (Oct. 9, 2013, 10:57 EDT) (on file with author).

36. GA. CODE ANN. § 36-70-20 (2012).

37. See U.S. Census Bureau, *supra* note 3, tbl.5.

38. *Special District Management and Policy Resource Guide*, OR. FIRE DISTRICT DIRECTORS ASS’N & SPECIAL DISTRICTS ASS’N OR. 185 (2009), <http://www.ofdda.com/PDF/2009%20DIRECTOR’S%20GUIDE.pdf>.

39. See U.S. Census Bureau, *supra* note 3, tbl.5.

40. See Marvin E. Dodson III & Thomas A. Garrett, *Inefficient Education Spending in Public School Districts: A Case for Consolidation?*, 22 CONTEMP. ECON. POL’Y 270, 271 (2004); William Duncombe & John Yinger, *Does School District Consolidation Cut Costs?*, 2 EDUC. FIN. & POL’Y 341, 345 (2007).

41. See Thomas J. Dilorenzo, *The Expenditure Effects of Restricting Competition in Local Public Service Industries: The Case of Special Districts*, 37 PUB. CHOICE 569, 570-71 (1981).

42. See Gordon Tullock, *Federalism: Problems of Scale*, 6 PUB. CHOICE 19, 21 (1969).

scale and sometimes produce a duplication of service providers in a single area.<sup>43</sup>

It is not entirely clear why the push for consolidation is happening *now*. One possibility is that the recent recession produced a sudden drop in demand for services provided by special districts, although that seems doubtful since the rate of growth began to taper off well before the mortgage market did. It could also be driven by long term population trends: as population density increases, it becomes easier to take advantage of economies of scale, a fact that seems to have been relevant to the dramatic decline in the number of school districts over the course of the twentieth century.<sup>44</sup> But my favored explanation is that special districts are a relatively new form of government still struggling to find an equilibrium: they exploded in popularity only in the middle of the twentieth century, but perhaps many of the communities they serve have now reached or passed their saturation points for services provided by these districts.

### III. Implications of the Decline: Merger Statutes

As the demand for special district governments grew over the course of the late nineteenth and early twentieth centuries, most states developed statutory schemes that allowed for the relatively easy incorporation of these entities.<sup>45</sup> These statutes meant that forming a local government no longer required a special legislative act. One recent count of enabling laws in California, for example, found 206 statutes that enabled 55 varieties of special districts, which in turn provided 30 different types of services.<sup>46</sup> While often numerous and complex, these statutes nonetheless streamlined the process of creating special districts.<sup>47</sup>

But these statutory schemes were designed for a world in which the number of special district governments was growing boundlessly across the country. Every single state in the nation has at least one statute that governs the formation of local governments,<sup>48</sup> but many states have *no* statutory guidance whatsoever on how to dissolve or merge certain types of special district governments.<sup>49</sup> This is not necessarily surprising, since one of the main reasons special district governments developed was as an alternative for suburbanites who wanted to *avoid* merging with neighboring urban general purpose

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43. See Suzanne M. Leland & Gary A. Johnson, *Consolidation as a Local Government Reform*, in CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 25, 29 (Jered B. Carr & Richard C. Feiock eds., 2004).

44. See, e.g., Lawrence W. Kenny & Amy B. Schmidt, *The Decline in the Number of School Districts in the U.S.: 1950-1980*, 79 PUB. CHOICE 1 (1994).

45. See BURNS, *supra* note 14, at 53-54.

46. FOSTER, *supra* note 16, at 11.

47. See BURNS, *supra* note 14, at 123.

48. See U.S. Census Bureau, *supra* note 1.

49. Bauroth, *supra* note 15, at 574.

governments.<sup>50</sup> But in a world where growth in the number of special districts is slowing, states need statutory schemes that contemplate merger and dissolution for these districts.

As it stands, there is a gap between states with and without merger statutes. For example, there are at least three different ways to merge or annex special districts in the state of Oregon: with petitions from two special districts that want to merge,<sup>51</sup> with petitions from a special district (or districts) and a city that proposes to annex the district,<sup>52</sup> or with a resolution of the boards of two or more districts.<sup>53</sup> In Rhode Island, by contrast, one official reported that “[t]he process is whatever the parties wish it to be—there are no state statutes governing the process.”<sup>54</sup> In Virginia, a former official could recall “no statutory provisions for the consolidation of special districts” and noted that “[c]onsolidation would require the legislature [to act] to allow the merger of two or more districts.”<sup>55</sup> Indeed, Virginia’s documents list numerous ways to *expand* special districts but none to merge most types of special districts.<sup>56</sup>

This problem is not limited to a few states. According to a 2009 study, all but six states have dissolution procedures that are “unclear or nonexistent” for at least one category of special district government.<sup>57</sup> Nor does the lack of clarity affect only districts that provide certain sorts of services. Just under a quarter of all statutes governing special districts do not have procedures for dissolving the entities they authorize, an omission that cuts across all types of special districts.<sup>58</sup>

These statutory differences matter. Just as the presence of enabling statutes is strongly correlated with the appearance of special districts,<sup>59</sup> it should come as no surprise that the presence of flexible rules for dissolution and consolidation is also positively correlated with the frequency of dissolution and changes to district boundaries.<sup>60</sup>

The lack of state dissolution and merger provisions is also at odds with how state law treats other kinds of organizations that are enabled by statute. For

50. FOSTER, *supra* note 16, at 19.

51. OR. REV. STAT. § 198.895(1) (2013).

52. OR. REV. STAT. § 198.895(3)-(4) (2013).

53. OR. REV. STAT. § 198.895(5) (2013).

54. E-mail from Dan Beardsley, Exec. Dir., R.I. League of Cities & Towns, to author (Sept. 30, 2013, 10:28 EDT) (on file with author).

55. E-mail from Ted McCormack, Former Assistant Dir., Va. Comm’n on Local Gov’t, to author (Oct. 7, 2013, 11:59 EDT) (on file with author).

56. See generally *Discretionary Authorities and Special Districts Available to Local Governments in Virginia*, COMMISSION ON LOC. GOV’T (April 2009), <http://www.dhcd.virginia.gov/CommissiononLocalGovernment/PDFs/Authorities.pdf> (describing the lack of consolidation authority possessed by the districts themselves).

57. Bauroth, *supra* note 15, at 574.

58. *Id.* at 575-76.

59. See FOSTER, *supra* note 16, at 220.

60. Bauroth, *supra* note 15, at 589 (“[T]he greater the freedom allowed by the state at the ‘chartering level,’ the more instances of local boundary change such as district disappearance.”).

example, state codes provide simple rules for both the formation and merger of business corporations.<sup>61</sup> While some of the motivations behind corporate merger laws do not apply to special districts (avoiding monopoly, for example), corporations and special districts share a common ancestor (as discussed in Part I) and a similar need for clear rules governing how organizations and their assets are combined.

Some of the problems created by this legal void might sound like simple inconvenience: in the absence of a statute that creates a formal process, a district or its residents can still effect a merger, annexation, or dissolution by petitioning the legislature for a special action. But in the context of forming and dissolving governments, these simple hurdles exacerbate a preexisting collective action problem. The benefits of forming or merging a government are widely shared (the whole community benefits from the new service or the savings from eliminating it), but the costs (petitions, legislation, and administrative work) burden only a small number of people.<sup>62</sup> Simple, general enabling statutes are the mechanism by which states reduce the impact of this collective action problem.

Kentucky's recent experience offers a particularly notable example of the set of problems that arise from the lack of ways to eliminate or merge undesirable special districts. At the end of 2012, in the wake of recent reports of scandals and excessive costs, the state auditor released a report on special district governments in the state.<sup>63</sup> (These scandals included a single fire department that had \$123,000 in questionable expenses, including \$839 spent on fireworks.<sup>64</sup>) The report noted that there was widespread confusion in the state about the number of special districts, the services they provided, and the authorities (if any) to which they were accountable, but there was no mechanism by which citizens could improve them. The report observed that state laws "identify the process to create various types of districts," but it concluded that these laws were "inconsistent or silent regarding the legal process to dissolve many different types of districts."<sup>65</sup> In particular, the report found that basic questions about how to wind up special districts "cannot be

61. See, e.g., DEL. CODE ANN. tit. 8, § 251 (2013) (providing Delaware's rules governing mergers).

62. See BURNS, *supra* note 14, at 17.

63. See Adam H. Edelen, *Ghost Government: A Report on Special Districts in Kentucky*, OFF. KY. AUDITOR PUB. ACCTS. (Nov. 14, 2012), <http://apps.auditor.ky.gov/public/theregistry/2012GhostGovernmentSpecialDistrictsReport.pdf>; Beth Musgrave, *Report: Special Taxing Districts in Ky. Collect \$1.5 Billion a Year with Little Oversight*, LEXINGTON HERALD-LEADER, Nov. 14, 2012, <http://www.kentucky.com/2012/11/14/2407554/report-special-taxing-districts.html>.

64. Melissa Maynard, *Cash-Strapped Governments Turn to Special Districts*, USA TODAY, Oct. 2, 2013, <http://www.usatoday.com/story/news/nation/2013/10/02/cash-strapped-governments-turn-to-special-districts/2907207>.

65. See Edelen, *supra* note 63, at 20.

conclusively answered because current law is vague or does not exist in many instances.”<sup>66</sup>

The process for consolidating a special district should be at least as easy as the process for forming one. In addition to the collective action problem described above, merger and dissolution present a further difficulty. Once a community creates a special district—with a staff and budget of its own—it creates an entrenched interest opposed to merger or dissolution efforts. These problems might explain why consolidation procedures are rarely used even in some of the states where they are available.<sup>67</sup> Indeed, even when there is widespread dissatisfaction with a district’s service or cost, opposition from the district itself can sometimes defeat a push to merge or dissolve it.<sup>68</sup> These issues, combined with the general collective action problem, present a strong justification for states to add clear, simple merger and dissolution provisions to their statutes—and perhaps even clever defaults beyond that. In Pennsylvania, for example, all municipal authorities need to take affirmative steps every fifty years to avoid dissolution.<sup>69</sup>

But the simplest rule for consolidation or dissolution would be one that mirrored the rule for incorporating the special district. While there are open questions about the appropriate rule for incorporating special districts,<sup>70</sup> there are several strong arguments for symmetry even without engaging the incorporation question. One reason is simplicity: if the rule for incorporation and dissolution is the same, there is only one rule to be learned. Second, this seems to be the most popular dissolution rule among statutes that include any dissolution provision,<sup>71</sup> and there is little evidence that it creates problems. A final and related point is that there is no particularly good reason for dissolution and incorporation rules to differ within a single jurisdiction; indeed, this disconnect seems to cut across geography and function with no apparent logic.<sup>72</sup> Simplification and unification would be desirable.

There are some good examples of statutes like this. Oregon’s statute, described above, offers residents great flexibility in how they merge and dissolve their local governments. It features simple procedures that broadly mirror—and that are in some respects less demanding than—the rules for

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66. *Id.*

67. *See, e.g., Galvan, supra note 28, at 3073 n.195* (noting that “[t]he author could find no evidence of any past consolidations” among municipal utility districts in Texas even though state law provides a mechanism for consolidation).

68. *See Maynard, supra note 64.*

69. *See 53 PA. CONS. STAT. ANN. § 5623* (West 2008).

70. *See Hansmann & Clarke, supra note 27.*

71. *See Bauroth, supra note 15, at 577* (“For a majority of district statutes, though, the dissolution process does indeed mirror the incorporation process.”).

72. *Id.* at 576-77. Note that increasing the ease of dissolution might seem to be at odds with frequently celebrated benefits of local government such as local experimentation and local control. But this might not be the case since costly and vague dissolution requirements may prevent the satisfaction of evolving local demand.

formation, and these procedures cut across all district types.<sup>73</sup> In other words, fire and water districts do not need to dissolve themselves differently from one another.

The suggestion that an increase in special district mergers demonstrates a need for merger statutes might seem paradoxical. After all, if mergers are on the rise, why do we need statutes to enable them? But state enabling statutes have a long history of responding to such changes in demand; indeed, the increased demand for special districts in the early twentieth century was one of the reasons states started passing special district enabling laws in the first place. At the same time, the state laws that regulate local government are not subject to the same evolutionary pressures that affect those governing, say, business corporations. Businesses can incorporate elsewhere in response to state statutory changes (so states must compete for their business), but when faced with inefficient special district government, it is much harder for families to do the same. The good news is they may not have to—if states align their laws with the changing times.

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73. Compare OR. REV. STAT. § 198.830 (2013) (describing formation), with OR. REV. STAT. § 198.895 (2013) (describing merger and consolidation), and OR. REV. STAT. § 198.920 (2013) (describing dissolution).

