

Introduced by Senator Vargas

January 4, 2012

An act to add Chapter 9 (commencing with Section 51299) to Part 1 of Division 1 of Title 5 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 949, as introduced, Vargas. Cities: community benefit districts.

Existing law authorizes cities and counties to establish various districts and other entities to provide improvements and other benefits within their jurisdiction. Existing law, the Property and Business Improvement District Law of 1994, authorizes cities and counties, and joint exercise of powers agencies comprised of cities and counties, to establish property and business improvement districts for the purpose of financing certain improvements on real property located within the district.

This bill would authorize a local agency to form a community benefit district by complying with specified procedures and requirements, to be operated by a nonprofit management company, and to levy an assessment for the support of the district.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9 (commencing with Section 51299) is
2 added to Part 1 of Division 1 of Title 5 of the Government Code,
3 to read:

CHAPTER 9. COMMUNITY BENEFIT DISTRICTS

1
2
3 51299. As used in this chapter the following terms shall have
4 the following meanings:
5 (a) “Activities” means activities that benefit real property located
6 within a commercial, retail, or mixed-use, industrial, or residential
7 district or neighborhood within the district, and includes, but is
8 not limited to, all of the following:
9 (1) Promotion of public events and programs that benefit real
10 property in the district.
11 (2) Furnishing of music in any public place within the district.
12 (3) Promotion of district or neighborhood identity within the
13 district.
14 (4) Marketing, planning, zoning, and economic development,
15 including business retention and recruitment.
16 (5) Providing security, sanitation, graffiti removal, street and
17 sidewalk cleaning, parking, and other services supplemental to
18 those normally provided by the local agency.
19 (b) “Improvement” means the acquisition, construction,
20 installation, or maintenance of any tangible property with an
21 estimated useful life of five years or more, including, but not
22 limited to, the following:
23 (1) Parking facilities.
24 (2) Benches.
25 (3) Booths.
26 (4) Kiosks.
27 (5) Display cases.
28 (6) Pedestrian shelters and signs.
29 (7) Trash receptacles and public restrooms.
30 (8) Lighting and heating facilities.
31 (9) Decorations.
32 (10) Fountains.
33 (11) Planting areas.
34 (12) Minor modifications of existing streets, facilities, or
35 equipment, or any combination thereof, to enhance security of
36 persons and property within the district.
37 (13) Ramps, sidewalks, plazas, town centers, or pedestrian malls.
38 (14) Rehabilitation or removal of existing public structures.

1 (15) Installation or planting of landscaping, the installation or
2 construction of statuary, fountains, and other ornamental structures
3 and facilities.

4 (16) Installation or construction of any facilities that are
5 appurtenant to any of the foregoing or that are necessary or
6 convenient for the maintenance or servicing thereof, including,
7 but not limited to, grading, clearing, removal of debris, the
8 installation or construction of curbs, gutters, walls, sidewalks or
9 paving, or water, irrigation, drainage or electrical facilities.

10 (c) “Legislative body” means a city council or board of
11 supervisors.

12 (d) “Local agency” means a city, county, or city and county.

13 (e) “Maintain” or “maintenance” means the furnishing of
14 services and materials for the ordinary and usual maintenance,
15 operation, and servicing of any improvement, including the
16 following:

17 (1) Repair, removal, or replacement of any part of the
18 improvement.

19 (2) Providing for the life, growth, health, and beauty of
20 landscaping, including cultivation, irrigation, trimming, spraying,
21 fertilization, or treating for disease or injury.

22 (3) The removal of trimmings, rubbish, debris, and other solid
23 waste.

24 (4) The cleaning, sandblasting, and painting of walls and other
25 improvements to remove or cover graffiti.

26 (f) “Nonprofit management corporation” means a private
27 nonprofit entity that is under contract with a city or county to
28 administer or implement activities and improvements specified in
29 the community benefit district plan.

30 51299.1. (a) A local agency may establish a community benefit
31 district by complying with the procedures established in this
32 chapter.

33 (b) A community benefit district may be used to order
34 improvements, maintenance, or activities, or any combination
35 thereof, in specifically defined commercial, retail, mixed-use,
36 industrial, or residential districts or neighborhoods of a local
37 agency. The local agency shall determine and declare the property
38 owners to be benefited by the improvement, maintenance, or
39 activities, or any combination thereof, and assess the cost and
40 expenses of the improvements, maintenance, and activities,

1 including all expenses incurred incidentally, upon the lots or parcels
2 of real property in proportion to the estimated benefits to be
3 received.

4 51299.2. (a) Upon the receipt of a written petition prepared
5 pursuant to Section 51299.3, and a community benefit district plan
6 prepared pursuant to Section 51299.4, the city clerk or county clerk
7 shall prepare a report pursuant to Section 51299.5, and submit that
8 report to the legislative body for its consideration.

9 (b) The legislative body may approve, correct, or modify the
10 report in any respect, or may direct the city clerk or county clerk
11 to make changes to the report. If the legislative body approves of
12 the report, or approves the report as modified and corrected, the
13 legislative body may pass an ordinance of intention to establish
14 the district pursuant to Section 51299.6.

15 (c) If the legislative body passes an ordinance of intention
16 pursuant to subdivision (b), that legislative body shall notify the
17 affected property owners at least 45 days prior to the public hearing
18 pursuant to Sections 51299.7 and 51299.8, and hold a public
19 hearing on the matter consistent with the procedures of Section
20 53753.

21 (d) If the legislative body complies with subdivision (c), and
22 there is no majority protest as described in Section 53753, then
23 the legislative body may adopt an ordinance establishing a
24 community benefit district and levying an assessment pursuant to
25 Section 51299.9.

26 51299.3. The written petition shall be signed by the property
27 owners in the proposed district who support the establishment of
28 the district and who will pay more than 30 percent of the
29 assessments proposed to be levied. The amount of assessment
30 attributable to property owned by the same property owner that is
31 in excess of 20 percent of the amount of all assessments proposed
32 to be levied shall not be included in determining whether the
33 petition is signed by property owners who will pay more than 30
34 percent of the total amount of assessments proposed to be levied.

35 51299.4. The property owners in the proposed district who
36 support the establishment of the district shall prepare a community
37 benefit district plan that shall contain all of the following:

38 (a) A map of the district in sufficient detail to locate each parcel
39 of property within the district.

40 (b) The name of the proposed district.

1 (c) A description of the boundaries of the district, including the
2 boundaries of any benefit zones, proposed for the establishment
3 or extension of the district in a manner sufficient to identify the
4 lands included. Under no circumstances shall the boundaries of a
5 proposed district overlap with the boundaries of another existing
6 district created pursuant to this chapter. Nothing in this chapter
7 prohibits the boundaries of a district created pursuant to this chapter
8 from overlapping with other types of assessment districts.

9 (d) The improvements and activities proposed for each year of
10 operation of the district and their maximum cost.

11 (e) The total annual amount proposed to be expended for
12 improvements, maintenance, and operations.

13 (f) The proposed source or sources of financing, including the
14 proposed method and basis of levying the assessment in sufficient
15 detail to allow each property owner to calculate the amount of the
16 assessment to be levied against his or her property, including a
17 statement setting forth the requirement to provide completion
18 bonds for any improvements that are proposed to be constructed.

19 (g) The time and manner of collecting the assessments.

20 (h) Any proposed rules and regulations to be applicable to the
21 district.

22 (i) A statement, placed in a conspicuous place in the community
23 benefit district plan, stating that assessments for the maintenance
24 of improvements constructed by the district, if any, shall continue
25 to be levied on each parcel of land within the district for a period
26 of time equal to the useful life of the improvement, as determined
27 by the city clerk or county clerk, regardless of whether the district
28 is disestablished or the term of the original levy has expired.

29 (j) The name of the nonprofit management corporation that will
30 administer the district on behalf of the property owners.

31 51299.5. (a) Before the city council or board of supervisors
32 may take any action on the ordinance of intention, the city clerk
33 or county clerk shall prepare and file a report in writing proposing
34 that the proceeding be commenced as requested in the petition,
35 designating the plans and specifications of the proposed
36 maintenance, improvements, and activities for the proposed district,
37 and estimating the cost and expenses of the work for each year
38 during which the proposed work will be done.

39 (b) The report shall include a certified engineer's report stating
40 that the establishment of the district is consistent with the

1 provisions of Article XIII D of the California Constitution in that
 2 each lot or parcel within the district to be assessed is being assessed
 3 in proportion to the estimated benefit to be received, and containing
 4 a diagram showing the boundaries of the proposed assessment
 5 district and each lot or parcel of land within the district proposed
 6 to be assessed.

7 51299.6. (a) The ordinance of intention shall briefly describe
 8 the proposed improvements, state the period of time, which shall
 9 not exceed 20 years, for which the proposed improvements are to
 10 be made, and contain a description of the district that will benefit
 11 from the improvements and that will pay the costs and expenses
 12 of the improvements.

13 (b) In addition to the requirements of subdivision (a), the
 14 ordinance of intention shall also do all of the following:

15 (1) State that a district is proposed to be established pursuant
 16 to this chapter and describe the boundaries of the proposed district
 17 and the boundaries of each separate benefit zone to be established
 18 within the district. The boundaries may be described by reference
 19 to the map and description contained in the preliminary report of
 20 the city clerk or county clerk on file in the office of the city clerk
 21 or county clerk.

22 (2) State the name of the proposed district.

23 (3) State the type or types of improvements and activities
 24 proposed to be funded by the levy of assessments on property
 25 owners within the district, including any improvements to be
 26 acquired.

27 (4) State the amount of the proposed assessment for the entire
 28 district, the duration of the payments, the reason for the assessment,
 29 and the basis upon which the proposed assessment was calculated.

30 (5) State the date, time, and location of a public hearing on the
 31 proposed assessment.

32 (6) Include a ballot as described in Section 53753.

33 (7) State, in a conspicuous place, a summary of the procedures
 34 applicable to the completion, return, and tabulation of the ballots,
 35 including a disclosure statement that the existence of a majority
 36 protest will result in the assessment not being imposed.

37 (8) State that at the public hearing the testimony of all interested
 38 persons for or against the establishment of the district, the
 39 boundaries of the district, or the furnishing of specified types of
 40 improvements or activities will be heard.

1 (9) Refer to the preliminary report of the city clerk or clerk of
2 the board of supervisors on file in the office of the city clerk or
3 clerk of the board of supervisors.

4 (10) State the manner of collection of the assessment.

5 51299.7. (a) In addition to the notice and protest procedures
6 established pursuant to Section 53753, a legislative body shall mail
7 a complete copy of the ordinance of intention by first-class mail
8 to each property owner in the proposed district, and to each
9 neighborhood council known by the legislative body to be located
10 within the proposed district, no later than 45 days before the public
11 hearing.

12 (b) In addition to a first-class mailed notice sent pursuant to
13 subdivision (a), the legislative body shall publish the ordinance of
14 intention in a newspaper of general circulation in the local agency
15 once at least seven days before the public hearing.

16 51299.8. Following the adoption of the ordinance of intention
17 pursuant to subdivision (c) of Section 51299.2, the city clerk or
18 county clerk shall prepare a notice and map describing the
19 assessment district pursuant to Division 4.5 (commencing with
20 Section 3100) of the Streets and Highways Code, and file a copy
21 of that map with the county recorder of each county in which all
22 or any part of the proposed district is to be located.

23 Following the adoption of the ordinance establishing the district
24 pursuant to subdivision (d) of Section 51299.2, the city clerk or
25 county clerk shall record a map of the newly created district
26 pursuant to Division 4.5 (commencing with Section 3100) of the
27 Streets and Highways Code. All the provisions of that division
28 apply to the district established pursuant to this chapter.

29 51299.9. (a) The ordinance establishing the district shall
30 contain all of the following:

- 31 (1) A summary of the community benefit district plan.
- 32 (2) The number, date of adoption, and title of the ordinance of
33 intention.
- 34 (3) The time and place where the public hearing was held
35 concerning the establishment of the district or the levying of a new
36 assessment.
- 37 (4) A determination regarding any protests received.
- 38 (5) A statement that a district has been established.
- 39 (6) A statement that the improvements and activities to be
40 provided to the district will be funded by the levy of assessments.

1 The revenue from the levy of assessments within a district shall
2 not be used to provide improvements or activities outside the
3 district or for any purpose other than the purposes specified in the
4 ordinance of intention, as approved, or as modified and approved,
5 by the legislative body at the hearing concerning the establishment
6 of the district.

7 (7) A finding that the property within the district will be
8 specially benefited by the improvements and activities funded by
9 the assessment to be levied.

10 (8) A statement, if applicable, that a completion bond will be
11 required for any improvements constructed by the district and that
12 a continuing assessment in an amount sufficient to maintain the
13 improvement throughout its useful life, as determined by the local
14 agency, will be levied on each parcel within the district regardless
15 of whether the district is disestablished or the term of the original
16 levy has expired.

17 (b) The adoption of the ordinance establishing the district and
18 levying the assessment pursuant to subdivision (d) of Section
19 51299.2, and recordation of the notice and map pursuant to Section
20 51299.8, shall constitute the levy of an assessment in each of the
21 fiscal years referred to in the community benefit district plan.

22 51299.10. The validity of an assessment levied under the
23 provisions of this chapter shall not be contested in any action or
24 proceeding unless the action to contest is commenced within 30
25 days after the time the assessment is levied, and any appeal from
26 a final judgment in the action or proceeding shall be perfected
27 within 30 days after entry of the judgment.

28 51299.11. (a) The legislative body shall contract with a
29 nonprofit management corporation to manage the district on a
30 day-to-day basis. The contract shall be for a minimum period of
31 one year, with the option to renew.

32 (b) The nonprofit management corporation shall comply with
33 the following requirements:

34 (1) The board of the nonprofit management corporation shall
35 be composed of the property owners of the district.

36 (2) A nonprofit management corporation is a private entity and
37 may not be considered a public entity for any purpose, nor may
38 its board members or staff be considered to be public officials for
39 any purpose. Notwithstanding this paragraph, a nonprofit
40 management corporation shall comply with the Ralph M. Brown

1 Act (Chapter 9 (commencing with Section 54950) of Part 1 of
2 Division 2 of Title 5 of the Government Code), at all times when
3 matters within the subject matter of the district are heard, discussed,
4 or deliberated, and with the California Public Records Act (Chapter
5 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
6 the Government Code), for all documents relating to activities of
7 the district.

8 51299.12. The legislative body may advance funds for the first
9 quarter of a new district so that the district may commence work
10 prior to the initial collection of the assessments. The funds
11 advanced may not exceed one-quarter of the assessment for the
12 first year. The funds advanced shall then be deducted from the
13 first year's disbursement.

14 51299.13. The collection of assessments levied pursuant to
15 this chapter shall be made at the time and in the manner set forth
16 by the legislative body in the ordinance of intention. The
17 assessment may be collected at the same time and in the same
18 manner as for the ad valorem property tax, and may provide for
19 the same lien priority and penalties for delinquent payment.

20 51299.14. (a) The nonprofit management corporation shall
21 prepare an annual report that shall explain the results of the
22 improvements and activities funded by the district.

23 (b) The report shall be filed with the city clerk or county clerk
24 and shall refer to the district by name, specify the fiscal year to
25 which the report applies, and, with respect to that fiscal year, shall
26 contain all of the following information:

27 (1) Any proposed changes in the boundaries of the district or
28 in any benefit zones within the district.

29 (2) The improvements and activities to be provided for that
30 fiscal year.

31 (3) An estimate of the cost of providing the improvements and
32 the activities for that fiscal year.

33 (4) The method and basis of levying the assessment in sufficient
34 detail to allow each real property owner to estimate the amount of
35 the assessment to be levied against his or her property for that
36 fiscal year.

37 (5) The amount of any surplus or deficit revenues to be carried
38 over from a previous fiscal year.

39 (6) The amount of any contributions to be made from sources
40 other than assessments levied pursuant to this chapter.

1 (c) The legislative body may approve the report as filed by the
2 nonprofit management corporation or may modify any particular
3 contained in the report and approve it as modified. Any
4 modification shall be made pursuant to Section 51299.16. The
5 legislative body shall not approve a change on the basis and in the
6 method of levying assessments that would impair an authorized
7 or executed contract to be paid from the revenues derived from
8 the levy of assessments.

9 51299.15. A community benefit district, the improvements or
10 activities provided by the community benefit district, and any
11 assessment levied to support the community benefit district
12 pursuant to this chapter shall not extend beyond 20 years after the
13 date of the creation of the district by the local agency.

14 51299.16. (a) A legislative body may modify a community
15 benefit district plan in accordance with the procedures established
16 by this section.

17 (b) The nonprofit management corporation may, at any time,
18 request that the legislative body modify the community benefit
19 district plan. Upon the written request of the nonprofit management
20 corporation, the legislative body may adopt an ordinance of
21 intention to modify the community district plan. The ordinance of
22 intention shall state the proposed modifications to the community
23 benefit district plan. The legislative body shall notify the affected
24 property owners of the proposed modifications at least 45 days
25 prior to the public hearing pursuant to Sections 51299.7 and
26 51299.8, and hold a public hearing on the matter consistent with
27 the procedures of Section 53753.

28 (c) If the legislative body complies with subdivision (b), and
29 there is no majority protest as described in Section 53753, then
30 the legislative body may adopt an ordinance modifying the
31 community benefit district plan in accordance with the ordinance
32 of intention.

33 (d) Any subsequent modification of the ordinance shall be
34 reflected in subsequent notices and maps recorded pursuant to
35 Division 4.5 (commencing with Section 3100) of the Streets and
36 Highways Code.

37 51299.17. (a) A legislative body may disestablish a district
38 established pursuant to the provisions of this chapter where there
39 is no indebtedness, outstanding and unpaid, incurred to accomplish

1 any of the purposes of the district, in either of the following
2 circumstances:

3 (1) The legislative body finds there has been misappropriation
4 of funds, malfeasance, or a violation of law in connection with the
5 management of the district.

6 (2) The property owners in the district who pay 30 percent or
7 more of the assessment levied file a written petition with the local
8 agency requesting to disestablish the district. During the operation
9 of the district, there shall be a 30-day period each year in which
10 assesses may request disestablishment of the district. The first
11 period shall begin one year after the date of establishment of the
12 district and shall continue for 30 days. The next 30-day period
13 shall begin two years after the date of the establishment of the
14 district. Each successive year of operation of the district shall have
15 such a 30-day period.

16 (b) (1) If a valid ground to disestablish the district exists
17 pursuant to subdivision (a), the legislative body may disestablish
18 the district by adopting an ordinance of intention to disestablish
19 the district. The ordinance of intention shall state the reason for
20 the disestablishment, the time and place of the public hearing, and
21 contain a proposal to dispose of any assets acquired with the
22 revenues of the assessments levied within the property and business
23 improvement district.

24 (2) The legislative body shall notify the affected property owners
25 of the disestablishment as provided in Section 51299.7, and shall
26 hold a public hearing on the disestablishment no less than 30 days
27 and no more than 60 days after the adoption of the ordinance of
28 intention in accordance with the procedures in Section 53753.

29 (3) After holding a public hearing, the legislative body may
30 adopt an ordinance to disestablish the district.

31 (c) (1) Upon the disestablishment of the district, any remaining
32 revenues derived from the levy of assessments, or any revenues
33 derived from the sale of assets acquired with the revenues, shall
34 be refunded to the owners of the property located and operating
35 within the district in which assessments were levied by applying
36 the same method and basis that was used to calculate the
37 assessments levied in the fiscal year in which the district was
38 disestablished, other than amounts needed to maintain any
39 improvements constructed by the district.

1 (2) If the disestablishment occurs before an assessment is levied
2 for the fiscal year, the method and basis that was used to calculate
3 the assessment levied in the immediate prior fiscal year shall be
4 used to calculate the amount of refund.

5 (3) In the event that the district has constructed any
6 improvements, an amount of assessment equal to the amount
7 needed to maintain the improvements through its useful life, as
8 determined by the legislative body, shall continue to be levied
9 upon each parcel in the district after disestablishment of the district.

10 (d) The legislative body shall publish a notice of the
11 disestablishment of a district once in a newspaper of general
12 circulation in the local agency, not later than 15 days after the
13 ordinance disestablishing the district is adopted.