

ASSEMBLY BILL

No. 2618

**Introduced by Assembly Member John A. Pérez
(Coauthors: Assembly Members Dickinson and Ting)**

February 21, 2014

An act to amend Sections 36601, 36602, 36622, 36625, 36628.5, and 36632 of, to amend and renumber Sections 36606, 36611, 36612, 36613, 36614, and 36614.5 of, and to add Sections 36609.5, 36614.6, 36614.7, and 36615.5 to, the Streets and Highways Code, relating to benefit assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as introduced, John A. Pérez. Property and business improvement areas: benefit assessments.

The California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing.

The Property and Business Improvement District Law of 1994 authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose of making improvements and promoting activities of benefit to the properties and businesses within the district, and defines various terms for purposes of the act.

The act requires a management district plan to include, among other things, the name of the proposed district, a description of the boundaries of the district, and the total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

This bill would require a management district plan to additionally include, for districts that are property-based, the proportionate special benefit derived by each identified parcel, the sum of all special benefits to be provided to the properties located within the district, the sum of any general benefit being primarily provided to the public or any entity other than the properties located within the district, and a detailed engineer’s report, as specified.

This bill would define the term “special benefit” for purposes of that act to mean a particular and distinct benefit over and above general benefits, as defined, conferred on real property located in a property-based district, as defined, or the public at large, as specified.

The act additionally requires the city council to adopt a resolution of formation containing, among other things, a statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments and a finding that the property or businesses within the area of the district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

This bill would require, for a property-based district, a statement of the source of funding to pay for any general benefits, a finding that the property within the district will receive a special benefit, the sum of all special benefits to be provided to the properties within the district, and the sum of any general benefit being primarily provided to the public or any entity other than the properties located within the district.

The act authorizes a city council to levy assessments on businesses or on property owners, or a combination of the 2, and requires the city council to structure the assessments on whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

This bill would require any property-based assessment to be proportional to the special benefit conferred on the assessed property, and would prohibit the assessment from exceeding the reasonable cost of the proportional special benefit conferred, as specified.

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. Section 36601 of the Streets and Highways Code
- 2 is amended to read:

1 36601. The Legislature finds and declares all of the following:

2 (a) Businesses located and operating within the business districts
3 *in some* of this state's communities are economically
4 disadvantaged, are underutilized, and are unable to attract
5 customers due to inadequate facilities, services, and activities in
6 the business districts.

7 (b) It is in the public interest to promote the economic
8 revitalization and physical maintenance of the business districts
9 of its cities in order to create jobs, attract new businesses, and
10 prevent the erosion of the business districts.

11 (c) It is of particular local benefit to allow cities to fund business
12 related improvements, maintenance, and activities through the levy
13 of assessments upon the businesses or real property that *receive*
14 *certain* benefits from those improvements.

15 (d) Assessments levied for the purpose of providing
16 improvements and promoting activities that benefit real property
17 or businesses are not taxes for the general benefit of a city, but are
18 assessments for the improvements and activities which confer
19 special benefits upon the real property or businesses for which the
20 improvements and activities are provided.

21 (e) *Property and business improvement districts formed*
22 *throughout this state have provided many benefits to this state's*
23 *communities that have resulted in the following benefits:*

24 (1) *Crime reduction. A study by the Rand Corporation has*
25 *confirmed a 12-percent reduction in the incidence of robbery and*
26 *an 8-percent reduction in the total incidence of violent crimes*
27 *within the 30 districts studied.*

28 (2) *Job creation.*

29 (3) *Business attraction.*

30 (4) *Business retention.*

31 (5) *Economic growth.*

32 (6) *New investments.*

33 (f) *With the dissolution of redevelopment agencies throughout*
34 *the state, property and business improvement districts have become*
35 *an even more important tool with which communities may combat*
36 *blight, promote economic opportunities, and create a clean and*
37 *safe environment.*

38 (g) *Since the enactment of this act, the people of California have*
39 *adopted Proposition 218, which amended Article XIII D of the*
40 *constitution to place certain requirements and restrictions on the*

1 formation of, and activities, expenditures, and assessments by
2 property-based districts. Article XIII D of the constitution requires
3 that property-based districts may only levy assessments for special
4 benefits.

5 (h) Various courts have considered how special benefits should
6 be determined and assessed without guidance from the Legislature
7 in regard to how the Legislature intends for the Property and
8 Business Improvement District Law of 1994 to interact and comply
9 with the provisions of Article XIII D of the Constitution and how
10 special benefits are to be determined with regard to property-based
11 districts.

12 (1) The lack of legislative guidance appears to have created
13 uncertainty among various courts with regard to the determination
14 of special benefits, which could be perceived as providing an
15 unclear or inconsistent standard.

16 (2) It is of utmost importance that property-based districts
17 created under the this act have clarity regarding restrictions on
18 assessments they may levy and the proper determination of special
19 benefits. Legislative clarity with regard to this act will provide
20 districts with clear instructions and courts with legislative intent
21 regarding restrictions on property-based assessments, and the
22 manner in which special benefits should be determined.

23 (3) Of the appellate cases in which this act has been interpreted
24 *Dahms v. Downtown Pomona Property and Business Improvement*
25 *District* (2009) 174 Cal. App. 4th 708, most squarely relates to
26 property-based districts and its ruling provides clarity with regard
27 to how special benefits are determined and assessed with regard
28 to those districts.

29 (i) It is the intent of the Legislature that this act should reflect
30 the provisions of Article XIII D of the Constitution and the
31 guidance regarding the application of those provisions set forth
32 in *Dahms v. Downtown Pomona Property and Business*
33 *Improvement District* (2009) 174 Cal. App. 4th 708 including the
34 manner in which special benefits should be determined.

35 SEC. 2. Section 36602 of the Streets and Highways Code is
36 amended to read:

37 36602. The purpose of this part is to supplement previously
38 enacted provisions of law that authorize cities to levy assessments
39 within a *property and business improvement-area district*, to assure
40 that those assessments conform to all constitutional requirements

1 *and are determined and assessed in accordance with the guidance*
2 *set forth in Dahms v. Downtown Pomona Property and Business*
3 *Improvement District (2009) 174Cal. App.4th 708. This part does*
4 *not affect or limit any other provisions of law authorizing or*
5 *providing for the furnishing of improvements or activities or the*
6 *raising of revenue for these purposes.*

7 SEC. 3. Section 36606 of the Streets and Highways Code is
8 amended and renumbered to read:

9 ~~36606.~~

10 36606.5. “Assessment” means a levy *or charge* for the purpose
11 of acquiring, constructing, installing, or maintaining improvements
12 and promoting activities ~~which that will benefit the~~ *provide certain*
13 *benefits to* properties or businesses located within a property and
14 business improvement district.

15 SEC. 4. Section 36609.5 is added to the Streets and Highways
16 Code, to read:

17 36609.5. “General benefit” means any benefit being primarily
18 provided to the public or any entity other than the properties or
19 businesses located within the property-based district. A general
20 benefit does not include a collateral benefit that arises incidentally
21 from a special benefit conferred on the properties or businesses
22 located within the property-based district.

23 SEC. 5. Section 36611 of the Streets and Highways Code is
24 amended and renumbered to read:

25 ~~36611.~~

26 36614.5. “Property and business improvement district,” or
27 “district,” means a property and business improvement district
28 established pursuant to this part.

29 SEC. 6. Section 36612 of the Streets and Highways Code is
30 amended and renumbered to read:

31 ~~36612.~~

32 36614. “Property” means real property situated within a district.

33 SEC. 7. Section 36613 of the Streets and Highways Code is
34 amended and renumbered to read:

35 ~~36613.~~

36 36606. “Activities” means, but is not limited to, all of the
37 following:

38 (a) Promotion of public events which benefit businesses or real
39 property in the district.

40 (b) Furnishing of music in any public place within the district.

- 1 (c) Promotion of tourism within the district.
- 2 (d) Marketing and economic development, including retail
- 3 retention and recruitment.
- 4 (e) Providing security, sanitation, graffiti removal, street and
- 5 sidewalk cleaning, and other municipal services supplemental to
- 6 those normally provided by the municipality.
- 7 (f) Activities which benefit businesses and real property located
- 8 in the district.

9 SEC. 8. Section 36614 of the Streets and Highways Code is
 10 amended and renumbered to read:

11 ~~36614.~~
 12 36611. “Management district plan” or “plan” means a proposal
 13 as defined in Section 36622.

14 SEC. 9. Section 36614.5 of the Streets and Highways Code is
 15 amended and renumbered to read:

16 ~~36614.5.~~
 17 36612. “Owners’ association” means a private nonprofit entity
 18 that is under contract with a city to administer or implement
 19 activities and improvements specified in the management district
 20 plan. An owners’ association may be an existing nonprofit entity
 21 or a newly formed nonprofit entity. An owners’ association is a
 22 private entity and may not be considered a public entity for any
 23 purpose, nor may its board members or staff be considered to be
 24 public officials for any purpose. Notwithstanding this section, an
 25 owners’ association shall comply with the Ralph M. Brown Act
 26 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
 27 2 of Title 5 of the Government Code), at all times when matters
 28 within the subject matter of the district are heard, discussed, or
 29 deliberated, and with the California Public Records Act (Chapter
 30 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
 31 the Government Code), for all documents relating to activities of
 32 the district.

33 SEC. 10. Section 36614.6 is added to the Streets and Highways
 34 Code, to read:

35 36614.6. “Property-based assessment” means any levy or
 36 charge upon real property by a city.

37 SEC. 11. Section 36614.7 is added to the Streets and Highways
 38 Code, to read:

39 36614.7. “Property-based district” means any district supported
 40 in part by any property-based assessment.

1 SEC. 12. Section 36615.5 is added to the Streets and Highways
2 Code, to read:

3 36615.5. “Special benefit” means a particular and distinct
4 benefit over and above general benefits conferred on real property
5 located in a property-based district or to the public at large. General
6 enhancement of property value does not constitute “special
7 benefit.” To the extent a special benefit concomitantly produces
8 a collateral benefit for properties generally or for the public at
9 large, that collateral benefit is not a general benefit.

10 SEC. 13. Section 36622 of the Streets and Highways Code is
11 amended to read:

12 36622. The management district plan shall contain all of the
13 following:

14 (a) If the assessment will be levied on property, a map of the
15 district in sufficient detail to locate each parcel of property and, if
16 businesses are to be assessed, each business within the district. If
17 the assessment will be levied on businesses, a map that identifies
18 the district boundaries in sufficient detail to allow a business owner
19 to reasonably determine whether a business is located within the
20 district boundaries. If the assessment will be levied on property
21 and businesses, a map of the district in sufficient detail to locate
22 each parcel of property and to allow a business owner to reasonably
23 determine whether a business is located within the district
24 boundaries.

25 (b) The name of the proposed district.

26 (c) A description of the boundaries of the district, including the
27 boundaries of benefit zones, proposed for establishment or
28 extension in a manner sufficient to identify the affected lands and
29 businesses included. The boundaries of a proposed property
30 assessment district shall not overlap with the boundaries of another
31 existing property assessment district created pursuant to this part.
32 This part does not prohibit the boundaries of a district created
33 pursuant to this part to overlap with other assessment districts
34 established pursuant to other provisions of law, including, but not
35 limited to, the Parking and Business Improvement Area Law of
36 1989 (Part 6 (commencing with Section 36500)). This part does
37 not prohibit the boundaries of a business assessment district created
38 pursuant to this part to overlap with another business assessment
39 district created pursuant to this part. This part does not prohibit
40 the boundaries of a business assessment district created pursuant

1 to this part to overlap with a property assessment district created
2 pursuant to this part.

3 (d) The improvements and activities proposed for each year of
4 operation of the district and the maximum cost thereof. If the
5 improvements and activities proposed for each year of operation
6 are the same, a description of the first year's proposed
7 improvements and activities and a statement that the same
8 improvements and activities are proposed for subsequent years
9 shall satisfy the requirements of this subdivision.

10 (e) The total annual amount proposed to be expended for
11 improvements, maintenance and operations, and debt service in
12 each year of operation of the district. If the assessment is levied
13 on businesses, this amount may be estimated based upon the
14 assessment rate. If the total annual amount proposed to be expended
15 in each year of operation of the district is not significantly different,
16 the amount proposed to be expended in the initial year and a
17 statement that a similar amount applies to subsequent years shall
18 satisfy the requirements of this subdivision.

19 (f) The proposed source or sources of financing, including the
20 proposed method and basis of levying the assessment in sufficient
21 detail to allow each property or business owner to calculate the
22 amount of the assessment to be levied against his or her property
23 or business. The plan also shall state whether bonds will be issued
24 to finance improvements.

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

26 (h) The specific number of years in which assessments will be
27 levied. In a new district, the maximum number of years shall be
28 five. Upon renewal, a district shall have a term not to exceed 10
29 years. Notwithstanding these limitations, a district created pursuant
30 to this part to finance capital improvements with bonds may levy
31 assessments until the maximum maturity of the bonds. The
32 management district plan may set forth specific increases in
33 assessments for each year of operation of the district.

34 (i) The proposed time for implementation and completion of
35 the management district plan.

36 (j) Any proposed rules and regulations to be applicable to the
37 district.

38 (k) (1) A list of the properties or businesses to be assessed,
39 including the assessor's parcel numbers for properties to be
40 assessed, and a statement of the method or methods by which the

1 expenses of a district will be imposed upon benefited real property
2 or businesses, in proportion to the benefit received by the property
3 or business, to defray the cost thereof, including operation and
4 maintenance.

5 *(2) In a property-based district, the proportionate special benefit*
6 *derived by each identified parcel shall be determined in*
7 *relationship to the entirety of the capital cost of a public*
8 *improvement, the maintenance and operation expenses of a public*
9 *improvement, or the cost of the property related service being*
10 *provided. An assessment shall not be imposed on any parcel that*
11 *exceeds the reasonable cost of the proportional special benefit*
12 *conferred on that parcel. Only special benefits are assessable, and*
13 *a property-based district shall separate the general benefits from*
14 *the special benefits conferred on a parcel. Parcels within a*
15 *property-based district that are owned or used by any city, public*
16 *agency, the State of California, or the United States shall not be*
17 *exempt from assessment unless the governmental entity can*
18 *demonstrate by clear and convincing evidence that those publicly*
19 *owned parcels in fact receive no special benefit.*

20 *(l) In a property-based district, the sum of all special benefits*
21 *to be provided to the properties located within the property-based*
22 *district.*

23 *(m) In a property-based district, the sum of any general benefit*
24 *being primarily provided to the public or any entity other than the*
25 *properties located within the district. A general benefit does not*
26 *include any collateral benefit that arises incidentally from the*
27 *provision of a special benefit to properties located within the*
28 *property-based district, and the amount of those collateral benefits*
29 *need not be deducted from the sum of special benefits to be*
30 *provided to the properties located within the property-based*
31 *district.*

32 *(n) In a property-based district, a detailed engineer’s report*
33 *prepared by a registered professional engineer certified by the*
34 *State of California supporting all assessments contemplated by*
35 *the management district plan.*

36 ~~(t)~~

37 (3) Any other item or matter required to be incorporated therein
38 by the city council.

39 SEC. 14. Section 36625 of the Streets and Highways Code is
40 amended to read:

1 36625. (a) If the city council, following the public hearing,
2 decides to establish the proposed property and business
3 improvement district, the city council shall adopt a resolution of
4 formation that shall contain all of the following:

5 (1) A brief description of the proposed activities and
6 improvements, the amount of the proposed assessment, a statement
7 as to whether the assessment will be levied on property, businesses,
8 or both within the district, a statement about whether bonds will
9 be issued, and a description of the exterior boundaries of the
10 proposed district. The descriptions and statements do not need to
11 be detailed and shall be sufficient if they enable an owner to
12 generally identify the nature and extent of the improvements and
13 activities and the location and extent of the proposed district.

14 (2) The number, date of adoption, and title of the resolution of
15 intention.

16 (3) The time and place where the public hearing was held
17 concerning the establishment of the district.

18 (4) A determination regarding any protests received. The city
19 shall not establish the district or levy assessments if a majority
20 protest was received.

21 (5) A statement that the properties, businesses, or properties
22 and businesses in the district established by the resolution shall be
23 subject to any amendments to this part.

24 (6) A statement that the improvements and activities to be
25 provided in the district will be funded by the levy of the
26 assessments, *and, for a property-based district, to the extent that*
27 *general benefits are provided, the source of funding to pay for*
28 *those general benefits. The revenue from the levy of assessments*
29 *within a district shall not be used to provide improvements or*
30 *activities outside the district or for any purpose other than the*
31 *purposes specified in the resolution of intention, as modified by*
32 *the city council at the hearing concerning establishment of the*
33 *district.*

34 (7) A finding that the property or businesses within the area of
35 the property and business improvement district will be benefited
36 by the improvements and activities funded by the assessments
37 proposed to be levied, *and, for a property-based district, that*
38 *property within the district will receive a special benefit.*

39 (8) *In a property-based district, the sum of all special benefits*
40 *to be provided to the properties within the property-based district.*

1 (9) *In a property-based district, the sum of any general benefit*
 2 *being primarily provided to the public or any entity other than the*
 3 *properties located within the property-based district. General*
 4 *benefits do not include collateral benefits that arise incidentally*
 5 *from the provision of special benefits to the properties located*
 6 *within the property-based district, and the amount of those*
 7 *collateral benefits need not be deducted from the sum of special*
 8 *benefits to be provided to the properties located within the*
 9 *property-based district.*

10 (b) The adoption of the resolution of formation and, if required,
 11 recordation of the notice and map pursuant to Section 36627 shall
 12 constitute the levy of an assessment in each of the fiscal years
 13 referred to in the management district plan.

14 SEC. 15. Section 36628.5 of the Streets and Highways Code
 15 is amended to read:

16 36628.5. The city council may levy assessments on businesses
 17 or on property owners, or a combination of the two, pursuant to
 18 this part. The city council shall structure the assessments in
 19 whatever manner it determines corresponds with the distribution
 20 of benefits from the proposed improvements and activities,
 21 *provided that any property-based assessment is proportional to*
 22 *the special benefit conferred on the assessed property.*

23 SEC. 16. Section 36632 of the Streets and Highways Code is
 24 amended to read:

25 36632. (a) The assessments levied on real property pursuant
 26 to this part shall be levied ~~on the basis of the estimated~~
 27 *proportionally with the distribution of a special benefit to the real*
 28 *property, and shall not exceed the reasonable cost of the*
 29 *proportional special benefit conferred on the real property. Any*
 30 *additional costs of providing general benefits shall not be included*
 31 *in the amounts assessed. However, a general benefit does not*
 32 *include collateral benefits that arise incidentally from special*
 33 *benefits conferred on the properties or businesses located within*
 34 ~~the property and business improvement~~ *property-based district.*
 35 The city council may classify properties for purposes of
 36 determining the *special benefit provided to property* ~~of~~ *by the*
 37 *improvements and activities provided pursuant to this part.*

38 (b) Assessments levied on businesses pursuant to this part shall
 39 be levied on the basis of the estimated benefit to the businesses
 40 within the property and business improvement district. The city

1 council may classify businesses for purposes of determining the
2 benefit to the businesses of the improvements and activities
3 provided pursuant to this part.

4 (c) Properties zoned solely for residential use, or that are zoned
5 for agricultural use, are conclusively presumed not to benefit from
6 the improvements and service funded through these assessments,
7 and shall not be subject to any assessment pursuant to this part.

O