

AMENDED IN ASSEMBLY MAY 2, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2618

Introduced by Assembly Member Nazarian

February 19, 2016

An act to amend ~~Sections 53313.5 and~~ *Section* 53328.1 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as amended, Nazarian. Community facilities districts: powers.

~~(1) The~~

The Mello-Roos Community Facilities Act of 1982 specifies the requirements for the establishment of a community facilities district, including, among other things, a petition, a hearing, the establishment of the boundaries of the community facilities district, and an election on the question. ~~A Existing law authorizes a community facilities district formed pursuant to that law is authorized to, among other things, finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements to or on real property and in buildings, as specified.~~

~~This bill would specify that for purposes of financing and refinancing these types of improvements, a community facilities district may utilize purchase power agreements.~~

~~(2) Existing law additionally authorizes to an alternative procedure for establishing a community facilities district under which the district initially consists solely of territory proposed for annexation to the~~

community facilities district in the ~~future~~, *future* and territory is annexed and subjected to special taxes only upon unanimous approval of the owners, to finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements.

This bill would authorize a community facilities district that is formed pursuant to the alternative procedure to additionally finance seismic retrofitting, 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 53313.5 of the Government Code is~~
2 ~~amended to read:~~

3 53313.5. ~~A community facilities district may also finance the~~
4 ~~purchase, construction, expansion, improvement, or rehabilitation~~
5 ~~of any real or other tangible property with an estimated useful life~~
6 ~~of five years or longer or may finance planning and design work~~
7 ~~that is directly related to the purchase, construction, expansion, or~~
8 ~~rehabilitation of any real or tangible property. The facilities need~~
9 ~~not be physically located within the district. A district may not~~
10 ~~lease out facilities that it has financed except pursuant to a lease~~
11 ~~agreement or annexation agreement entered into prior to January~~
12 ~~1, 1988. A district may only finance the purchase of facilities~~
13 ~~whose construction has been completed, as determined by the~~
14 ~~legislative body, before the resolution of formation to establish~~
15 ~~the district is adopted pursuant to Section 53325.1, except that a~~
16 ~~district may finance the purchase of facilities completed after the~~
17 ~~adoption of the resolution of formation if the facility was~~
18 ~~constructed as if it had been constructed under the direction and~~
19 ~~supervision, or under the authority of, the local agency that will~~
20 ~~own or operate the facility. For example, a community facilities~~
21 ~~district may finance facilities, including, but not limited to, the~~
22 ~~following:~~

- 23 (a) ~~Local park, recreation, parkway, and open-space facilities.~~
- 24 (b) ~~Elementary and secondary schoolsites and structures~~
25 ~~provided that the facilities meet the building area and cost standards~~
26 ~~established by the State Allocation Board.~~
- 27 (c) ~~Libraries.~~

1 ~~(d) Child care facilities, including costs of insuring the facilities~~
2 ~~against loss, liability insurance in connection with the operation~~
3 ~~of the facility, and other insurance costs relating to the operation~~
4 ~~of the facilities, but excluding all other operational costs. However,~~
5 ~~the proceeds of bonds issued pursuant to this chapter shall not be~~
6 ~~used to pay these insurance costs.~~

7 ~~(e) The district may also finance the construction or~~
8 ~~undergrounding of water transmission and distribution facilities,~~
9 ~~natural gas pipeline facilities, telephone lines, facilities for the~~
10 ~~transmission or distribution of electrical energy, and cable~~
11 ~~television lines to provide access to those services to customers~~
12 ~~who do not have access to those services or to mitigate existing~~
13 ~~visual blight. The district may enter into an agreement with a public~~
14 ~~utility to utilize those facilities to provide a particular service and~~
15 ~~for the conveyance of those facilities to the public utility. "Public~~
16 ~~utility" shall include all utilities, whether public and regulated by~~
17 ~~the Public Utilities Commission, or municipal. If the facilities are~~
18 ~~conveyed to the public utility, the agreement shall provide that the~~
19 ~~cost or a portion of the cost of the facilities that are the~~
20 ~~responsibility of the utility shall be refunded by the public utility~~
21 ~~to the district or improvement area thereof, to the extent that~~
22 ~~refunds are applicable pursuant to (1) the Public Utilities Code or~~
23 ~~rules of the Public Utilities Commission, as to utilities regulated~~
24 ~~by the commission, or (2) other laws regulating public utilities.~~
25 ~~Any reimbursement made to the district shall be utilized to reduce~~
26 ~~or minimize the special tax levied within the district or~~
27 ~~improvement area, or to construct or acquire additional facilities~~
28 ~~within the district or improvement area, as specified in the~~
29 ~~resolution of formation.~~

30 ~~(f) The district may also finance the acquisition, improvement,~~
31 ~~rehabilitation, or maintenance of any real or other tangible property,~~
32 ~~whether privately or publicly owned, for flood and storm protection~~
33 ~~services, including, but not limited to, storm drainage and treatment~~
34 ~~systems and sandstorm protection systems.~~

35 ~~(g) The district may also pay in full all amounts necessary to~~
36 ~~eliminate any fixed special assessment liens or to pay, repay, or~~
37 ~~defease any obligation to pay or any indebtedness secured by any~~
38 ~~tax, fee, charge, or assessment levied within the area of a~~
39 ~~community facilities district or may pay debt service on that~~
40 ~~indebtedness. When the amount financed by the district is to pay~~

1 a tax, fee, charge, or assessment imposed by a public agency other
2 than the one conducting the proceedings, and if the amount
3 provided to the other public agency will not be entirely used to
4 pay off or prepay an assessment lien or special tax obligation
5 pursuant to the property owner's legal right to do so, the written
6 consent of the other public agency is required. In addition, tax
7 revenues of a district may be used to make lease or debt service
8 payments on any lease, lease-purchase contract, or certificate of
9 participation used to finance facilities authorized to be financed
10 by the district.

11 (h) Any other governmental facilities that the legislative body
12 creating the community facilities district is authorized by law to
13 contribute revenue to, or construct, own, or operate. However, the
14 district shall not operate or maintain or, except as otherwise
15 provided in subdivisions (e) and (k), have any ownership interest
16 in any facilities for the transmission or distribution of natural gas,
17 telephone service, or electrical energy.

18 (i) (1) A district may also pay for the following:

19 (A) Work deemed necessary to bring buildings or real property,
20 including privately owned buildings or real property, into
21 compliance with seismic safety standards or regulations. Only
22 work certified as necessary to comply with seismic safety standards
23 or regulations by local building officials may be financed. No
24 project involving the dismantling of an existing building and its
25 replacement by a new building, nor the construction of a new or
26 substantially new building may be financed pursuant to this
27 subparagraph. Work on qualified historical buildings or structures
28 shall be done in accordance with the State Historical Building
29 Code (Part 2.7 (commencing with Section 18950) of Division 13
30 of the Health and Safety Code).

31 (B) In addition, within any county or area designated by the
32 President of the United States or by the Governor as a disaster area
33 or for which the Governor has proclaimed the existence of a state
34 of emergency because of earthquake damage, a district may also
35 pay for any work deemed necessary to repair any damage to real
36 property directly or indirectly caused by the occurrence of an
37 earthquake cited in the President's or the Governor's designation
38 or proclamation, or by aftershocks associated with that earthquake,
39 including work to reconstruct, repair, shore up, or replace any
40 building damaged or destroyed by the earthquake, and specifically

1 including, but not limited to, work on any building damaged or
2 destroyed in the Loma Prieta earthquake that occurred on October
3 17, 1989, or by its aftershocks. Work may be financed pursuant
4 to this subparagraph only on property or buildings identified in a
5 resolution of intention to establish a community facilities district
6 adopted within seven years of the date on which the county or area
7 is designated as a disaster area by the President or by the Governor
8 or on which the Governor proclaims for the area the existence of
9 a state of emergency.

10 (2) ~~Work on privately owned property, including reconstruction~~
11 ~~or replacement of privately owned buildings pursuant to~~
12 ~~subparagraph (B) of paragraph (1), may only be financed by a tax~~
13 ~~levy if all of the votes cast on the question of levying the tax, vote~~
14 ~~in favor of levying the tax, or with the prior written consent to the~~
15 ~~tax of the owners of all property that may be subject to the tax, in~~
16 ~~that case the prior written consent shall be deemed to constitute a~~
17 ~~vote in favor of the tax and any associated bond issue. Any district~~
18 ~~created to finance seismic safety work on privately owned~~
19 ~~buildings, including repair, reconstruction, or replacement of~~
20 ~~privately owned buildings pursuant to this subdivision, shall consist~~
21 ~~only of lots or parcels that the legislative body finds have buildings~~
22 ~~that were damaged or destroyed by the earthquake cited pursuant~~
23 ~~to subparagraph (B) of paragraph (1) or by the aftershocks of that~~
24 ~~earthquake.~~

25 (j) A district may also pay for the following:

26 (1) ~~Work deemed necessary to repair and abate damage caused~~
27 ~~to privately owned buildings and structures by soil deterioration.~~
28 ~~“Soil deterioration” means a chemical reaction by soils that causes~~
29 ~~structural damage or defects in construction materials including~~
30 ~~concrete, steel, and ductile or cast iron. Only work certified as~~
31 ~~necessary by local building officials may be financed. No project~~
32 ~~involving the dismantling of an existing building or structure and~~
33 ~~its replacement by a new building or structure, nor the construction~~
34 ~~of a new or substantially new building or structure may be financed~~
35 ~~pursuant to this paragraph.~~

36 (2) ~~Work on privately owned buildings and structures pursuant~~
37 ~~to this subdivision, including reconstruction, repair, and abatement~~
38 ~~of damage caused by soil deterioration, may only be financed by~~
39 ~~a tax levy if all of the votes cast on the question of levying the tax~~
40 ~~vote in favor of levying the tax. Any district created to finance the~~

1 work on privately owned buildings or structures, including
2 reconstruction, repair, and abatement of damage caused by soil
3 deterioration, shall consist only of lots or parcels on which the
4 legislative body finds that the buildings or structures to be worked
5 on pursuant to this subdivision suffer from soil deterioration.

6 (k) A district may also finance the acquisition, improvement,
7 rehabilitation, or maintenance of any real or other tangible property,
8 whether privately or publicly owned, for the purposes of removal
9 or remedial action for the cleanup of any hazardous substance
10 released or threatened to be released into the environment. As used
11 in this subdivision, “remedial action” and “removal” shall have
12 the meaning set forth in Sections 25322 and 25323, respectively,
13 of the Health and Safety Code, and “hazardous substance” shall
14 have the meaning set forth in Section 25281 of the Health and
15 Safety Code.

16 (l) (1) A district may also finance and refinance the acquisition,
17 installation, and improvement of energy efficiency, water
18 conservation, and renewable energy improvements that are affixed,
19 as specified in Section 660 of the Civil Code, to or on real property
20 and in buildings, whether the real property or buildings are
21 privately or publicly owned. Energy efficiency, water conservation,
22 and renewable energy improvements financed by a district may
23 only be installed on a privately owned building and on privately
24 owned real property with the prior written consent of the owner
25 or owners of the building or real property.

26 (2) This chapter shall not be used to finance installation of
27 energy efficiency, water conservation, and renewable energy
28 improvements on a privately owned building or on privately owned
29 real property in connection with the initial construction of a
30 residential building unless the initial construction is undertaken
31 by the intended owner or occupant.

32 (3) A district may use power purchase agreements for purposes
33 of financing and refinancing improvements pursuant to this
34 subdivision.

35 (m) Any improvement on private property authorized to be
36 financed by this section shall constitute a “public facility” for
37 purposes of this chapter and a “public improvement” for purposes
38 of Part 1 (commencing with Section 3100) and Part 2 (commencing
39 with Section 3110) of Division 4.5 of the Streets and Highways
40 Code, whether the improvement is owned by a private entity, if

1 ~~the legislative body has determined that the improvement provides~~
2 ~~a public benefit, or the improvement is owned by a public agency.~~

3 ~~SEC. 2.~~

4 *SECTION 1.* Section 53328.1 of the Government Code is
5 amended to read:

6 53328.1. (a) As an alternate and independent procedure for
7 forming a community facilities district, the legislative body may
8 form a community facilities district that initially consists solely
9 of territory proposed for annexation to the community facilities
10 district in the future, with the condition that a parcel or parcels
11 within that territory may be annexed to the community facilities
12 district and subjected to the special tax only with the unanimous
13 approval of the owner or owners of the parcel or parcels at the
14 time that the parcel or parcels are annexed. In that case, the
15 legislative body shall follow the procedures set forth in this article
16 for the formation of a community facilities district, with the
17 following exceptions:

18 (1) The legislative body shall not be obligated to specify the
19 rate or rates of special tax in the resolution of intention or the
20 resolution of formation, provided that both of the following are
21 met:

22 (A) The resolution of intention and the resolution of formation
23 include a statement that the rate shall be established in an amount
24 required to finance or refinance the authorized improvements and
25 to pay the district's administrative expenses.

26 (B) The maximum rate of special tax applicable to a parcel or
27 parcels shall be specified in the unanimous approval described in
28 this section relating to the parcel or parcels.

29 (2) The legislative body shall not be obligated to specify in the
30 resolution of intention the conditions under which the obligation
31 to pay the specified special tax may be prepaid and permanently
32 satisfied. Instead, a prepayment provision may be included in the
33 unanimous approval of the owner or owners of each parcel or
34 parcels at the time that the parcel or parcels are annexed to the
35 community facilities district.

36 (3) In lieu of approval pursuant to an election held in accordance
37 with the procedures set forth in Sections 53326, 53327, 53327.5,
38 and 53328, the appropriations limit for the community facilities
39 district, the applicable rate of the special tax and the method of
40 apportionment and manner of collection of that tax, and the

1 authorization to incur bonded indebtedness for the community
2 facilities district shall be specified and be approved by the
3 unanimous approval of the owner or owners of each parcel or
4 parcels at the time that the parcel or parcels are annexed to the
5 community facilities district. No additional hearings or procedures
6 are required, and the unanimous approval shall be deemed to
7 constitute a unanimous vote in favor of the appropriations limit
8 for the community facilities district, the authorization to levy the
9 special tax on the parcel or parcels, and the authorization to incur
10 bonded indebtedness for the community facilities district.

11 (4) Notwithstanding Section 53324, this paragraph establishes
12 the applicable protest provisions in the event a local agency forms
13 a community facilities district pursuant to the procedures set forth
14 in this section. If 50 percent or more of the registered voters, or
15 six registered voters, whichever is more, residing within the
16 territory proposed to be annexed to the community facilities district
17 in the future, or if the owners of one-half or more of the area of
18 land proposed to be annexed in the future and not exempt from
19 the special tax, file written protests against establishment of the
20 community facilities district, and protests are not withdrawn so as
21 to reduce the protests to less than a majority, no further proceedings
22 to form the community facilities district shall be undertaken for a
23 period of one year from the date of decision of the legislative body
24 on the issues discussed at the hearing. If the majority protests of
25 the registered voters or of the landowners are only against the
26 furnishing of a specified type or types of facilities or services
27 within the district, or against levying a specified special tax, those
28 types of facilities or services or the specified special tax shall be
29 eliminated from the resolution of formation.

30 (5) The legislative body shall not record a notice of special tax
31 lien against any parcel or parcels in the community facilities district
32 until the owner or owners of the parcel or parcels have given their
33 unanimous approval of the parcel's or parcels' annexation to the
34 community facilities district, at which time the notice of special
35 tax lien shall be recorded against the parcel or parcels as set forth
36 in Section 53328.3.

37 (b) Notwithstanding the provisions of Section 53340, after
38 adoption of the resolution of formation for a community facilities
39 district described in subdivision (a), the legislative body may, by
40 ordinance, provide for the levy of the special taxes on parcels that

1 will annex to the community facilities district at the rate or rates
2 to be approved unanimously by the owner or owners of each parcel
3 or parcels to be annexed to the community facilities district and
4 for apportionment and collection of the special taxes in the manner
5 specified in the resolution of formation. No further ordinance shall
6 be required even though no parcels may then have annexed to the
7 community facilities district.

8 (c) The local agency may bring an action to determine the
9 validity of any special taxes levied pursuant to this chapter and
10 authorized pursuant to the procedures set forth in this section
11 pursuant to Chapter 9 (commencing with Section 860) of Title 10
12 of Part 2 of the Code of Civil Procedure. Notwithstanding Section
13 53359, if an action is brought by an interested person pursuant to
14 Section 863 of the Code of Civil Procedure to determine the
15 validity of any special taxes levied against a parcel pursuant to
16 this chapter and authorized pursuant to the procedures set forth in
17 this section, the action shall be brought pursuant to Chapter 9
18 (commencing with Section 860) of Title 10 of Part 2 of the Code
19 of Civil Procedure, but shall, notwithstanding the time limits
20 specified in Section 860 of the Code of Civil Procedure, be
21 commenced within 15 days after the date on which the notice of
22 special tax lien is recorded against the parcel. Any appeal from a
23 judgment in any action or proceeding described in this subdivision
24 shall be commenced within 30 days after entry of judgment.

25 (d) A community facilities district formed pursuant to this
26 section may only finance facilities pursuant to subdivisions (i) or
27 (l) of Section 53313.5.

28 (e) In connection with formation of a community facilities
29 district and annexation of a parcel or parcels to the community
30 facilities district pursuant to this section, and the conduct of an
31 election on the proposition to authorize bonded indebtedness
32 pursuant to the alternate procedures set forth in Section 53355.5,
33 the local agency may, without additional hearings or procedures,
34 designate a parcel or parcels as an improvement area within the
35 community facilities district. After the designation of a parcel or
36 parcels as an improvement area, all proceedings for approval of
37 the appropriations limit, the rate and method of apportionment and
38 manner of collection of special tax and the authorization to incur
39 bonded indebtedness for the parcel or parcels shall apply only to
40 the improvement area.

1 (f) In connection with a community facilities district formed
2 under this section, as an alternate and independent procedure for
3 making the changes described in Section 53330.7, the changes
4 may be made with the unanimous approval of the owner or owners
5 of the parcel or parcels that will be affected by the change and
6 with the written consent of the local agency. No additional hearings
7 or procedures are required, and the unanimous approval shall be
8 deemed to constitute a unanimous vote in favor of the proposed
9 changes. If the proceeds of a special tax are being used to retire
10 any debt incurred pursuant to this chapter and the unanimous
11 approval relates to the reduction of the special tax rate, the
12 unanimous approval shall recite that the reduction or termination
13 of the special tax will not interfere with the timely retirement of
14 that debt.

O