

AMENDED IN SENATE AUGUST 16, 2016

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 Section 53328.1 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

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

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. Existing law authorizes a community facilities district formed pursuant to an alternative procedure under which the district initially consists solely of territory proposed for annexation to the community facilities district in the 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.

This bill would incorporate changes to Section 53328.1 of the Government Code proposed by both this bill and AB 2693, which would become operative only if both bills are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

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 53328.1 of the Government Code is
2 amended to read:

3 53328.1. (a) As an alternate and independent procedure for
4 forming a community facilities district, the legislative body may
5 form a community facilities district that initially consists solely
6 of territory proposed for annexation to the community facilities
7 district in the future, with the condition that a parcel or parcels
8 within that territory may be annexed to the community facilities
9 district and subjected to the special tax only with the unanimous
10 approval of the owner or owners of the parcel or parcels at the
11 time that the parcel or parcels are annexed. In that case, the
12 legislative body shall follow the procedures set forth in this article
13 for the formation of a community facilities district, with the
14 following exceptions:

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

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

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

26 (2) The legislative body shall not be obligated to specify in the
27 resolution of intention the conditions under which the obligation
28 to pay the specified special tax may be prepaid and permanently
29 satisfied. Instead, a prepayment provision may be included in the
30 unanimous approval of the owner or owners of each parcel or

1 parcels at the time that the parcel or parcels are annexed to the
2 community facilities district.

3 (3) In lieu of approval pursuant to an election held in accordance
4 with the procedures set forth in Sections 53326, 53327, 53327.5,
5 and 53328, the appropriations limit for the community facilities
6 district, the applicable rate of the special tax and the method of
7 apportionment and manner of collection of that tax, and the
8 authorization to incur bonded indebtedness for the community
9 facilities district shall be specified and be approved by the
10 unanimous approval of the owner or owners of each parcel or
11 parcels at the time that the parcel or parcels are annexed to the
12 community facilities district. No additional hearings or procedures
13 are required, and the unanimous approval shall be deemed to
14 constitute a unanimous vote in favor of the appropriations limit
15 for the community facilities district, the authorization to levy the
16 special tax on the parcel or parcels, and the authorization to incur
17 bonded indebtedness for the community facilities district.

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

37 (5) The legislative body shall not record a notice of special tax
38 lien against any parcel or parcels in the community facilities district
39 until the owner or owners of the parcel or parcels have given their
40 unanimous approval of the parcel's or parcels' annexation to the

1 community facilities district, at which time the notice of special
2 tax lien shall be recorded against the parcel or parcels as set forth
3 in Section 53328.3.

4 (b) Notwithstanding the provisions of Section 53340, after
5 adoption of the resolution of formation for a community facilities
6 district described in subdivision (a), the legislative body may, by
7 ordinance, provide for the levy of the special taxes on parcels that
8 will annex to the community facilities district at the rate or rates
9 to be approved unanimously by the owner or owners of each parcel
10 or parcels to be annexed to the community facilities district and
11 for apportionment and collection of the special taxes in the manner
12 specified in the resolution of formation. No further ordinance shall
13 be required even though no parcels may then have annexed to the
14 community facilities district.

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

32 (d) A community facilities district formed pursuant to this
33 section may only finance facilities pursuant to ~~subdivisions~~
34 *subdivision (i) or (l)* of Section 53313.5.

35 (e) In connection with formation of a community facilities
36 district and annexation of a parcel or parcels to the community
37 facilities district pursuant to this section, and the conduct of an
38 election on the proposition to authorize bonded indebtedness
39 pursuant to the alternate procedures set forth in Section 53355.5,
40 the local agency may, without additional hearings or procedures,

1 designate a parcel or parcels as an improvement area within the
2 community facilities district. After the designation of a parcel or
3 parcels as an improvement area, all proceedings for approval of
4 the appropriations limit, the rate and method of apportionment and
5 manner of collection of special tax and the authorization to incur
6 bonded indebtedness for the parcel or parcels shall apply only to
7 the improvement area.

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

22 *SEC. 1.5. Section 53328.1 of the Government Code is amended*
23 *to read:*

24 53328.1. (a) As an alternate and independent procedure for
25 forming a community facilities district, the legislative body may
26 form a community facilities district that initially consists solely
27 of territory proposed for annexation to the community facilities
28 district in the future, with the condition that a parcel or parcels
29 within that territory may be annexed to the community facilities
30 district and subjected to the special tax only with the unanimous
31 approval of the owner or owners of the parcel or parcels at the
32 time that the parcel or parcels are annexed. In that case, the
33 legislative body shall follow the procedures set forth in this article
34 for the formation of a community facilities district, with the
35 following exceptions:

36 (1) The legislative body shall not be obligated to specify the
37 rate or rates of special tax in the resolution of intention or the
38 resolution of formation, provided that both of the following are
39 met:

1 (A) The resolution of intention and the resolution of formation
2 include a statement that the rate shall be established in an amount
3 required to finance or refinance the authorized improvements and
4 to pay the district’s administrative expenses.

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

8 (2) The legislative body shall not be obligated to specify in the
9 resolution of intention the conditions under which the obligation
10 to pay the specified special tax may be prepaid and permanently
11 satisfied. Instead, a prepayment provision may be included in the
12 unanimous approval of the owner or owners of each parcel or
13 parcels at the time that the parcel or parcels are annexed to the
14 community facilities district.

15 (3) In lieu of approval pursuant to an election held in accordance
16 with the procedures set forth in Sections 53326, 53327, 53327.5,
17 and 53328, the appropriations limit for the community facilities
18 district, the applicable rate of the special tax and the method of
19 apportionment and manner of collection of that tax, and the
20 authorization to incur bonded indebtedness for the community
21 facilities district shall be specified and be approved by the
22 unanimous approval of the owner or owners of each parcel or
23 parcels at the time that the parcel or parcels are annexed to the
24 community facilities district. No additional hearings or procedures
25 are required, and the unanimous approval shall be deemed to
26 constitute a unanimous vote in favor of the appropriations limit
27 for the community facilities district, the authorization to levy the
28 special tax on the parcel or parcels, and the authorization to incur
29 bonded indebtedness for the community facilities district.

30 (4) Notwithstanding Section 53324, this paragraph establishes
31 the applicable protest provisions in the event a local agency forms
32 a community facilities district pursuant to the procedures set forth
33 in this section. If 50 percent or more of the registered voters, or
34 six registered voters, whichever is more, residing within the
35 territory proposed to be annexed to the community facilities district
36 in the future, or if the owners of one-half or more of the area of
37 land proposed to be annexed in the future and not exempt from
38 the special tax, file written protests against establishment of the
39 community facilities district, and protests are not withdrawn so as
40 to reduce the protests to less than a majority, no further proceedings

1 to form the community facilities district shall be undertaken for a
2 period of one year from the date of decision of the legislative body
3 on the issues discussed at the hearing. If the majority protests of
4 the registered voters or of the landowners are only against the
5 furnishing of a specified type or types of facilities or services
6 within the district, or against levying a specified special tax, those
7 types of facilities or services or the specified special tax shall be
8 eliminated from the resolution of formation.

9 (5) The legislative body shall not record a notice of special tax
10 lien against any parcel or parcels in the community facilities district
11 until the owner or owners of the parcel or parcels have given their
12 unanimous approval of the parcel's or parcels' annexation to the
13 community facilities district, at which time the notice of special
14 tax lien shall be recorded against the parcel or parcels as set forth
15 in Section 53328.3.

16 (b) Notwithstanding the provisions of Section 53340, after
17 adoption of the resolution of formation for a community facilities
18 district described in subdivision (a), the legislative body may, by
19 ordinance, provide for the levy of the special taxes on parcels that
20 will annex to the community facilities district at the rate or rates
21 to be approved unanimously by the owner or owners of each parcel
22 or parcels to be annexed to the community facilities district and
23 for apportionment and collection of the special taxes in the manner
24 specified in the resolution of formation. No further ordinance shall
25 be required even though no parcels may then have annexed to the
26 community facilities district.

27 (c) The local agency may bring an action to determine the
28 validity of any special taxes levied pursuant to this chapter and
29 authorized pursuant to the procedures set forth in this section
30 pursuant to Chapter 9 (commencing with Section 860) of Title 10
31 of Part 2 of the Code of Civil Procedure. Notwithstanding Section
32 53359, if an action is brought by an interested person pursuant to
33 Section 863 of the Code of Civil Procedure to determine the
34 validity of any special taxes levied against a parcel pursuant to
35 this chapter and authorized pursuant to the procedures set forth in
36 this section, the action shall be brought pursuant to Chapter 9
37 (commencing with Section 860) of Title 10 of Part 2 of the Code
38 of Civil Procedure, but shall, notwithstanding the time limits
39 specified in Section 860 of the Code of Civil Procedure, be
40 commenced within 15 days after the date on which the notice of

1 special tax lien is recorded against the parcel. Any appeal from a
 2 judgment in any action or proceeding described in this subdivision
 3 shall be commenced within 30 days after entry of judgment.

4 (d) A community facilities district formed pursuant to this
 5 section may only finance facilities pursuant to subdivision (i) or
 6 (l) of Section 53313.5.

7 (e) (1) *The legislative body shall comply with the requirements*
 8 *specified in Sections 5898.16 and 5898.17 of the Streets and*
 9 *Highways Code prior to the annexation of a parcel or parcels to*
 10 *a community facilities district formed pursuant to this section.*

11 (2) *A parcel or parcels shall not be annexed to a community*
 12 *facilities district formed pursuant to this section unless the parcel*
 13 *complies with the conditions specified in subdivision (a) of Section*
 14 *26063 of the Public Resources Code and in subdivision (b) of*
 15 *Section 10081 of Title 4 of the California Code of Regulations.*

16 (e)

17 (f) In connection with formation of a community facilities
 18 district and annexation of a parcel or parcels to the community
 19 facilities district pursuant to this section, and the conduct of an
 20 election on the proposition to authorize bonded indebtedness
 21 pursuant to the alternate procedures set forth in Section 53355.5,
 22 the local agency may, without additional hearings or procedures,
 23 designate a parcel or parcels as an improvement area within the
 24 community facilities district. After the designation of a parcel or
 25 parcels as an improvement area, all proceedings for approval of
 26 the appropriations limit, the rate and method of apportionment and
 27 manner of collection of special tax and the authorization to incur
 28 bonded indebtedness for the parcel or parcels shall apply only to
 29 the improvement area.

30 (f)

31 (g) In connection with a community facilities district formed
 32 under this section, as an alternate and independent procedure for
 33 making the changes described in Section 53330.7, the changes
 34 may be made with the unanimous approval of the owner or owners
 35 of the parcel or parcels that will be affected by the change and
 36 with the written consent of the local agency. No additional hearings
 37 or procedures are required, and the unanimous approval shall be
 38 deemed to constitute a unanimous vote in favor of the proposed
 39 changes. If the proceeds of a special tax are being used to retire
 40 any debt incurred pursuant to this chapter and the unanimous

1 approval relates to the reduction of the special tax rate, the
2 unanimous approval shall recite that the reduction or termination
3 of the special tax will not interfere with the timely retirement of
4 that debt.

5 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
6 *Section 53328.1 of the Government Code proposed by both this*
7 *bill and Assembly Bill 2693. It shall only become operative if (1)*
8 *both bills are enacted and become effective on or before January*
9 *1, 2017, (2) each bill amends Section 53328.1 of the Government*
10 *Code, and (3) this bill is enacted after Assembly Bill 2693, in which*
11 *case Section 1 of this bill shall not become operative.*

O