

AMENDED IN SENATE AUGUST 19, 2016
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

1 satisfied. Instead, a prepayment provision may be included in the
2 unanimous approval of the owner or owners of each parcel or
3 parcels at the time that the parcel or parcels are annexed to the
4 community facilities district.

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

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29 community facilities district, and protests are not withdrawn so as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

39 (5) The legislative body shall not record a notice of special tax
40 lien against any parcel or parcels in the community facilities district

1 until the owner or owners of the parcel or parcels have given their
2 unanimous approval of the parcel's or parcels' annexation to the
3 community facilities district, at which time the notice of special
4 tax lien shall be recorded against the parcel or parcels as set forth
5 in Section 53328.3.

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

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

34 (d) A community facilities district formed pursuant to this
35 section may only finance facilities pursuant to subdivision (i) or
36 (l) of Section 53313.5.

37 (e) In connection with formation of a community facilities
38 district and annexation of a parcel or parcels to the community
39 facilities district pursuant to this section, and the conduct of an
40 election on the proposition to authorize bonded indebtedness

1 pursuant to the alternate procedures set forth in Section 53355.5,
2 the local agency may, without additional hearings or procedures,
3 designate a parcel or parcels as an improvement area within the
4 community facilities district. After the designation of a parcel or
5 parcels as an improvement area, all proceedings for approval of
6 the appropriations limit, the rate and method of apportionment and
7 manner of collection of special tax and the authorization to incur
8 bonded indebtedness for the parcel or parcels shall apply only to
9 the improvement area.

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

24 SEC. 1.5. Section 53328.1 of the Government Code is amended
25 to read:

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

38 (1) The legislative body shall not be obligated to specify the
39 rate or rates of special tax in the resolution of intention or the

1 resolution of formation, provided that both of the following are
2 met:

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

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

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

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

32 (4) Notwithstanding Section 53324, this paragraph establishes
33 the applicable protest provisions in the event a local agency forms
34 a community facilities district pursuant to the procedures set forth
35 in this section. If 50 percent or more of the registered voters, or
36 six registered voters, whichever is more, residing within the
37 territory proposed to be annexed to the community facilities district
38 in the future, or if the owners of one-half or more of the area of
39 land proposed to be annexed in the future and not exempt from
40 the special tax, file written protests against establishment of the

1 community facilities district, and protests are not withdrawn so as
2 to reduce the protests to less than a majority, no further proceedings
3 to form the community facilities district shall be undertaken for a
4 period of one year from the date of decision of the legislative body
5 on the issues discussed at the hearing. If the majority protests of
6 the registered voters or of the landowners are only against the
7 furnishing of a specified type or types of facilities or services
8 within the district, or against levying a specified special tax, those
9 types of facilities or services or the specified special tax shall be
10 eliminated from the resolution of formation.

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

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

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

1 specified in Section 860 of the Code of Civil Procedure, be
2 commenced within 15 days after the date on which the notice of
3 special tax lien is recorded against the parcel. Any appeal from a
4 judgment in any action or proceeding described in this subdivision
5 shall be commenced within 30 days after entry of judgment.

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

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

13 (2) A parcel or parcels shall not be annexed to a community
14 facilities district formed pursuant to this section *if the parcel owner*
15 *or owners are seeking financing for improvement on a residential*
16 *property with four or fewer units, unless the parcel complies with*
17 *the conditions specified in paragraphs (1) to (5), inclusive, and*
18 *paragraph (8), and, in addition, for properties with energy*
19 *efficiency improvements specified under subdivision (l) of Section*
20 *53313.5, paragraph (7), of subdivision (a) of Section 26063 of the*
21 ~~Public Resources Code and in subdivision (b) of Section 10081~~
22 ~~of Title 4 of the California Code of Regulations. Code.~~

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

36 (g) In connection with a community facilities district formed
37 under this section, as an alternate and independent procedure for
38 making the changes described in Section 53330.7, the changes
39 may be made with the unanimous approval of the owner or owners
40 of the parcel or parcels that will be affected by the change and

1 with the written consent of the local agency. No additional hearings
2 or procedures are required, and the unanimous approval shall be
3 deemed to constitute a unanimous vote in favor of the proposed
4 changes. If the proceeds of a special tax are being used to retire
5 any debt incurred pursuant to this chapter and the unanimous
6 approval relates to the reduction of the special tax rate, the
7 unanimous approval shall recite that the reduction or termination
8 of the special tax will not interfere with the timely retirement of
9 that debt.

10 SEC. 2. Section 1.5 of this bill incorporates amendments to
11 Section 53328.1 of the Government Code proposed by both this
12 bill and Assembly Bill 2693. It shall only become operative if (1)
13 both bills are enacted and become effective on or before January
14 1, 2017, (2) each bill amends Section 53328.1 of the Government
15 Code, and (3) this bill is enacted after Assembly Bill 2693, in
16 which case Section 1 of this bill shall not become operative.

O