

Assembly Bill No. 2618

CHAPTER 796

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

[Approved by Governor September 29, 2016. Filed with
Secretary of State September 29, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, 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.

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

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

53328.1. (a) As an alternate and independent procedure for forming a community facilities district, the legislative body may form a community facilities district that initially consists solely of territory proposed for annexation to the community facilities district in the future, with the condition that a parcel or parcels within that territory may be annexed to the community facilities district and subjected to the special tax only with the unanimous approval of the owner or owners of the parcel or parcels at the time that the parcel or parcels are annexed. In that case, the legislative

body shall follow the procedures set forth in this article for the formation of a community facilities district, with the following exceptions:

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

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

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

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

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

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

tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

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

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

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

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

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

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

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

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

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

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

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

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

(3) In lieu of approval pursuant to an election held in accordance with the procedures set forth in Sections 53326, 53327, 53327.5, and 53328, the appropriations limit for the community facilities district, the applicable rate of the special tax and the method of apportionment and manner of collection of that tax, and the authorization to incur bonded indebtedness for the community facilities district shall be specified and be approved by the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed to the community facilities district.

No additional hearings or procedures are required, and the unanimous approval shall be deemed to constitute a unanimous vote in favor of the appropriations limit for the community facilities district, the authorization to levy the special tax on the parcel or parcels, and the authorization to incur bonded indebtedness for the community facilities district.

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

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

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

(c) The local agency may bring an action to determine the validity of any special taxes levied pursuant to this chapter and authorized pursuant to the procedures set forth in this section pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Notwithstanding Section 53359, if an action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure to determine the validity of any special taxes levied against a parcel pursuant to this chapter and authorized pursuant to the procedures set forth in this section, the action shall be brought pursuant to Chapter 9 (commencing with Section

860) of Title 10 of Part 2 of the Code of Civil Procedure, but shall, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be commenced within 15 days after the date on which the notice of special tax lien is recorded against the parcel. Any appeal from a judgment in any action or proceeding described in this subdivision shall be commenced within 30 days after entry of judgment.

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

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

(2) A parcel or parcels shall not be annexed to a community facilities district formed pursuant to this section if the parcel owner or owners are seeking financing for improvement on a residential property with four or fewer units, unless the parcel complies with the conditions specified in paragraphs (1) to (5), inclusive, and paragraph (8), and, in addition, for properties with energy efficiency improvements specified under subdivision (l) of Section 53313.5, paragraph (7), of subdivision (a) of Section 26063 of the Public Resources Code.

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

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

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 53328.1 of the Government Code proposed by both this bill and Assembly Bill 2693. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section

53328.1 of the Government Code, and (3) this bill is enacted after Assembly Bill 2693, in which case Section 1 of this bill shall not become operative.

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