

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 321

Introduced by Senator Benoit

February 25, 2009

An act to amend Section 53753 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 321, as amended, Benoit. Local government: assessments: election requirements.

(1) Articles XIII C and XIII D of the California Constitution generally require 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. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments, fees, and charges by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution.

This bill would prescribe other requirements relating to the ballot envelope, the tabulation of ballots, and the preservation of ballots to the public as disclosable public records. By creating new requirements

for property assessments conducted by counties and cities, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 53753 of the Government Code is
2 amended to read:

3 53753. (a) The notice, protest, and hearing requirements
4 imposed by this section supersede any statutory provisions
5 applicable to the levy of a new or increased assessment that is in
6 existence on the effective date of this section, whether or not that
7 provision is in conflict with this article. Any agency that complies
8 with the notice, protest, and hearing requirements of this section
9 shall not be required to comply with any other statutory notice,
10 protest, and hearing requirements that would otherwise be
11 applicable to the levy of a new or increased assessment, with the
12 exception of Division 4.5 (commencing with Section 3100) of the
13 Streets and Highways Code. If the requirements of that division
14 apply to the levy of a new or increased assessment, the levying
15 agency shall comply with the notice, protest, and hearing
16 requirements imposed by this section as well as with the
17 requirements of that division.

18 (b) Prior to levying a new or increased assessment, or an existing
19 assessment that is subject to the procedures and approval process
20 set forth in Section 4 of Article XIII D of the California
21 Constitution, an agency shall give notice by mail to the record
22 owner of each identified parcel. Each notice shall include the total
23 amount of the proposed assessment chargeable to the entire district,
24 the amount chargeable to the record owner's parcel, the duration
25 of the payments, the reason for the assessment and the basis upon
26 which the amount of the proposed assessment was calculated, and
27 the date, time, and location of a public hearing on the proposed
28 assessment. Each notice shall also include, in a conspicuous place

1 thereon, a summary of the procedures for the completion, return,
2 and tabulation of the assessment ballots required pursuant to
3 subdivision (c), including a statement that the assessment shall not
4 be imposed if the ballots submitted in opposition to the assessment
5 exceed the ballots submitted in favor of the assessment, with ballots
6 weighted according to the proportional financial obligation of the
7 affected property. An agency shall give notice by mail at least 45
8 days prior to the date of the public hearing upon the proposed
9 assessment. On the face of the envelope mailed to the record owner,
10 in which the notice and ballot are enclosed, there shall appear in
11 substantially the following form in no smaller than 16-point bold
12 type: “OFFICIAL BALLOT ENCLOSED.” *An agency may*
13 *additionally place the phrase “OFFICIAL BALLOT ENCLOSED”*
14 *on the face of the envelope mailed to the recorded owner, in which*
15 *the notice and ballot are enclosed, in a language or languages*
16 *other than English.*

17 (c) Each notice given pursuant to subdivision (b) shall contain
18 an assessment ballot that includes the agency’s address for receipt
19 of the ballot and a place where the person returning the assessment
20 ballot may indicate his or her name, a reasonable identification of
21 the parcel, and his or her support or opposition to the proposed
22 assessment. Each assessment ballot shall be in a form that conceals
23 its contents once it is sealed by the person submitting the
24 assessment ballot. Each assessment ballot shall be signed and either
25 mailed or otherwise delivered to the address indicated on the
26 assessment ballot. Regardless of the method of delivery, all
27 assessment ballots shall be received at the address indicated, or
28 the site of the public testimony, in order to be included in the
29 tabulation of a majority protest pursuant to subdivision (e).
30 Assessment ballots shall remain sealed until the tabulation of
31 ballots pursuant to subdivision (e) commences, provided that an
32 assessment ballot may be submitted, or changed, or withdrawn by
33 the person who submitted the ballot prior to the conclusion of the
34 public testimony on the proposed assessment at the hearing
35 required pursuant to subdivision (d). An agency may provide an
36 envelope for the return of the assessment ballot, provided that if
37 the return envelope is opened by the agency prior to the tabulation
38 of ballots pursuant to subdivision (e), the enclosed assessment
39 ballot shall remain sealed as provided in this section.

1 (d) At the time, date, and place stated in the notice mailed
2 pursuant to subdivision (b), the agency shall conduct a public
3 hearing upon the proposed assessment. At the public hearing, the
4 agency shall consider all objections or protests, if any, to the
5 proposed assessment. At the public hearing, any person shall be
6 permitted to present written or oral testimony. The public hearing
7 may be continued from time to time.

8 (e) (1) At the conclusion of the public hearing conducted
9 pursuant to subdivision (d), an impartial person designated by the
10 agency who does not have a vested interest in the outcome of the
11 proposed assessment shall tabulate the assessment ballots
12 submitted, and not withdrawn, in support of or opposition to the
13 proposed assessment. For the purposes of this section, an impartial
14 person includes, but is not limited to, the clerk of the agency. If
15 the agency uses agency personnel for the ballot tabulation, or if
16 the agency contracts with a vendor for the ballot tabulation and
17 the vendor or its affiliates participated in the research, design,
18 engineering, public education, or promotion of the assessment, the
19 ballots shall be unsealed and tabulated in public view at the
20 conclusion of the hearing so as to permit all interested persons to
21 meaningfully monitor the accuracy of the tabulation process.

22 (2) The governing body of the agency may, if necessary,
23 continue the tabulation at a different time or location accessible
24 to the public, provided the governing body announces the time
25 and location at the hearing. The impartial person may use
26 technological methods of tabulating the assessment ballots,
27 including, but not limited to, punchcard or optically readable
28 (bar-coded) assessment ballots. During and after the tabulation,
29 the assessment ballots and the information used to determine the
30 weight of each ballot shall be treated as disclosable public records,
31 as defined in Section 6252, and equally available for inspection
32 by the proponents and the opponents of the proposed assessment.
33 The ballots shall be preserved for a minimum of two years, after
34 which they may be destroyed as provided in Sections 26202, 34090,
35 and 60201.

36 (3) In the event that more than one of the record owners of an
37 identified parcel submits an assessment ballot, the amount of the
38 proposed assessment to be imposed upon the identified parcel shall
39 be allocated to each ballot submitted in proportion to the respective
40 record ownership interests or, if the ownership interests are not

1 shown on the record, as established to the satisfaction of the agency
2 by documentation provided by those record owners.

3 (4) A majority protest exists if the assessment ballots submitted,
4 and not withdrawn, in opposition to the proposed assessment
5 exceed the assessment ballots submitted, and not withdrawn, in
6 its favor, weighting those assessment ballots by the amount of the
7 proposed assessment to be imposed upon the identified parcel for
8 which each assessment ballot was submitted.

9 (5) If there is a majority protest against the imposition of a new
10 assessment, or the extension of an existing assessment, or an
11 increase in an existing assessment, the agency shall not impose,
12 extend, or increase the assessment.

13 (6) The majority protest proceedings described in this
14 subdivision shall not constitute an election or voting for purposes
15 of Article II of the California Constitution or of the Elections Code.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.