



Government Relations & Public Affairs Committee

April 30, 2009

Update on SB 279 (Hancock) – Energy Efficiency Financing

Issue: SB 279 provides jurisdictions with an alternative method for financing energy efficiency and renewable energy improvements.

Recommendation: None, this item is for information only.

Discussion: Senate Bill 279, proposed in February of 2009 as a follow up to Assembly Bill 1709, creates a voluntary special tax for financing energy efficiency and renewable energy improvements on public or privately owned properties. Several Jurisdictions around the region are examining the possibility of offering energy improvement funding programs, and SB 279 offers an alternative tool at the city, county or regional level. This method of financing, as opposed to AB 811 which relies on special assessments, creates a special district which levies taxes on the property. The Association of Bay Area Governments (ABAG) is looking into using SB279 as a regional funding mechanism. In the ABAG example, an established joint powers authority will form a district, as allowed under the Mello-Roos Act, for financing energy improvements.

Typically things financed through the proposed SB 279 programs include the purchase and installation of solar panels, energy efficient water heaters, energy efficient HVAC, attic and wall insulation, etc.

The bill passed from the Senate on April 28th, 2009 and is awaiting appointment to an Assembly committee.

The language of the bill is attached. A summary of the bill and efforts from around the state will be presented to the committee.

Approved by:

Mike McKeever
Executive Director

MM:RS:RF:pm

Attachment

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AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 279

Introduced by Senator Hancock

February 24, 2009

An act to amend Sections 53313.5 and 53324 of, and to add Sections 53328.1, 53329.6, 53355.5, and 53355.7 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 279, as amended, Hancock. Local government: community facilities districts.

(1) The Mello-Roos Community Facilities Act of 1982 authorizes a community facilities district to finance the purchase, construction, expansion, improvement, or rehabilitation of certain facilities, including, among others, child care facilities, undergrounding of water transmission and distribution facilities, and the cleanup of hazardous materials.

This bill would also authorize a community facilities district to finance and refinance the acquisition, installation, and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings, as specified.

(2) Existing law specifies the requirements for the establishment of a community facilities district, including, among other things, a petition, a hearing, establishment of the boundaries of the community facilities district, and an election on the question of establishment.

This bill would authorize a separate procedure for establishing a community facilities district where the district initially consists solely of territory proposed for annexation to the community facilities district in the future, as specified, and would provide an alternate procedure

for incurring bonded indebtedness for community facility districts established in this manner.

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.
- 28 (d) Child care facilities, including costs of insuring the facilities
- 29 against loss, liability insurance in connection with the operation
- 30 of the facility, and other insurance costs relating to the operation
- 31 of the facilities, but excluding all other operational costs. However,
- 32 the proceeds of bonds issued pursuant to this chapter shall not be
- 33 used to pay these insurance costs.

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

24 (f) The district may also finance the acquisition, improvement,
25 rehabilitation, or maintenance of any real or other tangible property,
26 whether privately or publicly owned, for flood and storm protection
27 services, including, but not limited to, storm drainage and treatment
28 systems and sandstorm protection systems.

29 (g) The district may also pay in full all amounts necessary to
30 eliminate any fixed special assessment liens or to pay, repay, or
31 defease any obligation to pay or any indebtedness secured by any
32 tax, fee, charge, or assessment levied within the area of a
33 community facilities district or may pay debt service on that
34 indebtedness. When the amount financed by the district is to pay
35 a tax, fee, charge, or assessment imposed by a public agency other
36 than the one conducting the proceedings, and if the amount
37 provided to the other public agency will not be entirely used to
38 pay off or prepay an assessment lien or special tax obligation
39 pursuant to the property owner’s legal right to do so, the written
40 consent of the other public agency is required. In addition, tax

1 revenues of a district may be used to make lease or debt service
2 payments on any lease, lease-purchase contract, or certificate of
3 participation used to finance facilities authorized to be financed
4 by the district.

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

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

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

25 (B) In addition, within any county or area designated by the
26 President of the United States or by the Governor as a disaster area
27 or for which the Governor has proclaimed the existence of a state
28 of emergency because of earthquake damage, a district may also
29 pay for any work deemed necessary to repair any damage to real
30 property directly or indirectly caused by the occurrence of an
31 earthquake cited in the President's or the Governor's designation
32 or proclamation, or by aftershocks associated with that earthquake,
33 including work to reconstruct, repair, shore up, or replace any
34 building damaged or destroyed by the earthquake, and specifically
35 including, but not limited to, work on any building damaged or
36 destroyed in the Loma Prieta earthquake that occurred on October
37 17, 1989, or by its aftershocks. Work may be financed pursuant
38 to this subparagraph only on property or buildings identified in a
39 resolution of intention to establish a community facilities district
40 adopted within seven years of the date on which the county or area

1 is designated as a disaster area by the President or by the Governor
2 or on which the Governor proclaims for the area the existence of
3 a state of emergency.

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

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

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

30 (2) Work on privately owned buildings and structures pursuant
31 to this subdivision, including reconstruction, repair, and abatement
32 of damage caused by soil deterioration, may only be financed by
33 a tax levy if all of the votes cast on the question of levying the tax
34 vote in favor of levying the tax. Any district created to finance the
35 work on privately owned buildings or structures, including
36 reconstruction, repair, and abatement of damage caused by soil
37 deterioration, shall consist only of lots or parcels on which the
38 legislative body finds that the buildings or structures to be worked
39 on pursuant to this subdivision suffer from soil deterioration.

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

11 (l) A district may also finance and refinance the acquisition,
12 installation, and improvement of energy efficiency and renewable
13 energy improvements that are affixed, *as specified in Section 660*
14 *of the Civil Code*, to or on real property and in buildings, whether
15 the real property or buildings are privately or publicly owned.
16 Energy efficiency and renewable energy improvements financed
17 by a district may only be installed on a privately owned building
18 and on privately owned real property ~~or~~ with the prior written
19 consent of the owner or owners of the building or real property.

20 (m) Any improvement on private property authorized to be
21 financed by this section shall constitute a “public facility” for
22 purposes of this chapter and a “public improvement” for purposes
23 of Part 1 (commencing with Section 3100) and Part 2 (commencing
24 with Section 3110) of Division 4.5 of the Streets and Highways
25 Code, whether the improvement is owned by a private entity, if
26 the legislative body has determined that the improvement provides
27 a public benefit, or the improvement is owned by a public agency.

28 SEC. 2. Section 53324 of the Government Code is amended
29 to read:

30 53324. (a) If 50 percent or more of the registered voters, or
31 six registered voters, whichever is more, residing within the
32 territory proposed to be included in the district, or the owners of
33 one-half or more of the area of the land in the territory proposed
34 to be included in the district and not exempt from the special tax,
35 file written protests against the establishment of the district, and
36 protests are not withdrawn so as to reduce the value of the protests
37 to less than a majority, no further proceedings to create the
38 specified community facilities district or to authorize the specified
39 special tax shall be taken for a period of one year from the date of
40 the decision of the legislative body.

1 If the majority protests of the registered voters or of the
2 landowners are only against the furnishing of a specified type or
3 types of facilities or services within the district, or against levying
4 a specified special tax, those types of facilities or services or the
5 specified special tax shall be eliminated from the resolution of
6 formation.

7 (b) This section does not apply to the formation of a district
8 pursuant to Section 53328.1.

9 SEC. 3. Section 53328.1 is added to the Government Code, to
10 read:

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

23 (1) The legislative body shall not be obligated to specify the
24 rate or rates of special tax in the resolution of intention or the
25 resolution of formation, provided that the rate of special tax
26 applicable to a parcel or parcels shall be specified in the unanimous
27 approval described in this section relating to the parcel or parcels.

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

1 special tax on the parcel or parcels, and the authorization to incur
2 bonded indebtedness for the community facilities district.

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

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

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

1 (c) The local agency may bring an action to determine the
2 validity of any special taxes levied pursuant to this chapter and
3 authorized pursuant to the procedures set forth in this section
4 pursuant to Chapter 9 (commencing with Section 860) of Division
5 5 of Title 10 of Part 2 of the Code of Civil Procedure.
6 Notwithstanding Section 53359, if an action is brought by an
7 interested person pursuant to Section 863 of the Code of Civil
8 Procedure to determine the validity of any special taxes levied
9 against a parcel pursuant to this chapter and authorized pursuant
10 to the procedures set forth in this section, the action shall be
11 brought pursuant to Chapter 9 (commencing with Section 860) of
12 Division 5 of Title 10 of Part 2 of the Code of Civil Procedure,
13 but shall, notwithstanding the time limits specified in Section 860
14 of the Code of Civil Procedure, be commenced within 15 days
15 after the date on which the notice of special tax lien is recorded
16 against the parcel. Any appeal from a judgment in any action or
17 proceeding described in this subdivision shall be commenced
18 within 30 days after entry of judgment.

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

22 SEC. 4. Section 53329.6 is added to the Government Code, to
23 read:

24 53329.6. In order to reduce the procedural burdens on local
25 agencies, this chapter establishes certain procedures by which one
26 or more property owners may vote in favor of special taxes, bonded
27 indebtedness, an appropriations limit, and annexation to a district
28 by unanimous approval. The Legislature hereby finds and declares
29 that any unanimous approval constitutes the vote of the qualified
30 elector in favor of the matters addressed in the unanimous approval
31 for purposes of the California Constitution, including, but not
32 limited to, ~~Articles 13A and 13C. XIII A and XIII C.~~

33 SEC. 5. Section 53355.5 is added to the Government Code, to
34 read:

35 53355.5. (a) As an alternate and independent procedure for
36 conducting an election on the proposition to authorize bonded
37 indebtedness for a community facilities district formed pursuant
38 to Section 53328.1, and in lieu of the procedure set forth in Sections
39 53353.5, 53354, and 53355, the proposition to authorize bonded
40 indebtedness may be approved by the owner or owners of a parcel

1 or parcels of property at the time that the parcel or parcels are
2 annexed to the community facilities district pursuant to the
3 unanimous approval described in Section 53328.1. In that event,
4 no additional hearings or procedures shall be required, and
5 unanimous approval shall be deemed to constitute a unanimous
6 vote in favor of the proposition.

7 (b) The local agency may bring an action, pursuant to Chapter
8 9 (commencing with Section 860) of Division 5 of Title 10 of Part
9 2 of the Code of Civil Procedure, to determine the validity of any
10 bonds issued pursuant to this chapter *and authorized pursuant to*
11 *the procedures set forth in this section*. Notwithstanding the
12 provisions of Section 53359, if an action is brought by an interested
13 person pursuant to Section 863 of the Code of Civil Procedure to
14 determine the validity of any bonds issued pursuant to this chapter
15 and authorized pursuant to the procedures set forth in this section,
16 the action shall be brought pursuant to Chapter 9 (commencing
17 with Section 860) of Division 5 of Title 10 of Part 2 of the Code
18 of Civil Procedure but shall, notwithstanding the time limits
19 specified in Section 860 of the Code of Civil Procedure, be
20 commenced within 30 days after the effective date of the resolution
21 described in Section 53351. Any appeal from a judgment in any
22 action or proceeding described in this subdivision shall be
23 commenced within 30 days after entry of judgment.

24 SEC. 6. Section 53355.7 is added to the Government Code, to
25 read:

26 53355.7. The refusal by a person to undertake or cause to be
27 undertaken an act relating to Chapter 2.5 (commencing with
28 Section 53311) of Part 1 of Division 2 of Title 5, including
29 formation of, or annexation to, a community facilities district,
30 voting to levy a special tax, or authorizing another to vote to levy
31 a special tax, shall not be a factor when considering the approval
32 of a legislative or adjudicative act, or both, including, but not
33 limited to, the planning, use, or development of real property or
34 any change in governmental organization or reorganization, as
35 defined by Section 56021 or 56037, if the purpose of the
36 community facilities district is to finance energy efficiency and
37 renewable energy improvements.

38 SEC. 7. The Legislature finds and declares that global warming
39 poses a serious threat to the economic well-being, public health,
40 natural resources, and the environment of the state, and that action

1 taken by the state to reduce emissions of greenhouse gases will
2 have far reaching effects by encouraging other states, the federal
3 government, and other countries to act. California has a tradition
4 of environmental leadership and wishes to be at the forefront of
5 national and international efforts to reduce emissions of greenhouse
6 gases. In furtherance of these efforts to reduce emissions of
7 greenhouse gases, the Legislature declares that a public purpose
8 will be served by providing the legislative body of a local agency
9 with the authority to use special taxes pursuant to the Mello-Roos
10 Community Facilities Act of 1982 to finance the installation of
11 energy efficiency and renewable energy improvements that are
12 affixed, as specified in Section 660 of the Civil Code, to residential,
13 commercial, industrial, or other property.

O