



## SACOG Board of Directors

Item #09-6-10  
Consent

June 10, 2009

### Support SB 279 (Hancock) – Energy Efficiency Financing

**Issue:** What position, if any, should SACOG take on SB 279 (Hancock), which would provide cities, counties, and special districts with a method for financing energy efficiency and renewable energy improvements?

**Recommendation:** The Government Relations & Public Affairs Committee recommends that the Board take a position of support for SB 279 as it would provide a flexible tool for local jurisdictions throughout the region to fund energy improvements, and help achieve the state's emissions reduction goals set in AB 32.

**Committee Action/Discussion:** Through the Climate & Air Quality Committee and the Government Relations & Public Affairs Committee, SACOG sought means to provide education and encouragement for local member jurisdictions participating in energy conservation activities. Senate Bill 279 was the subject of an information item in the Climate & Air Quality Committee in which the committee expressed interest in supporting the bill and continuing the discussion around regional opportunities for collaboration in the implementation of Assembly Bill 811 (Chaptered 2008). The Government Relations & Public Affairs Committee recommended the Board support Senate Bill 279 to improve funding flexibility for implementation of AB811.

SB 279 would create a voluntary special tax for financing energy efficiency and renewable energy improvements on publicly or privately owned properties. Programs would cover the purchase and installation of permanent fixtures, which includes solar panels, energy efficient water heaters, energy efficient HVAC, attic and wall insulation and other improvements. In contrast, AB 811 (Chaptered 2008) relies on special assessments and would create a special district to levy taxes. The special district, or Community Facilities District (CFD), would be formed by any governing body. It would allow property owners the option to be annexed into the district. This is different from AB 811, which is subject to Proposition 218 and requires an election. Opting into the district under SB 279 would give permission for bonded indebtedness. Therefore, property would not be annexed until a financing agreement has been made, removing the need for an election. Once purchase and installation is complete, a priority lien would be placed on the property.

Senate and Assembly analysis of the bill state SB 279 gives more flexibility to who can implement financing, and how districts and programs can be formed as compared to AB 811. Analysis from other jurisdictions looking to initiate similar programs show SB 279 as having less legal risk with property liens, and smaller start-up costs with no need for Proposition 218 elections. The bill passed from the Senate on April 28, and is currently in the Assembly Committee on Local Government. Cities of Berkeley, Davis, Morgan Hill, Saratoga, and Solana Beach, the Association of Bay Area Governments, American Federation of State, County, and Municipal Employees, Akeena Solar, Ecology Action, and Sungevity have all supported the bill. There is currently no opposition listed. The language and an analysis of the bill are attached.

Approved by:

Mike McKeever  
Executive Director

MM:RS:RP:sb

Attachments

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AMENDED IN ASSEMBLY MAY 27, 2009

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 279**

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**Introduced by Senator Hancock**

February 24, 2009

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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,

1 the proceeds of bonds issued pursuant to this chapter shall not be  
2 used to pay these insurance costs.

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

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

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

1 pursuant to the property owner’s legal right to do so, the written  
2 consent of the other public agency is required. In addition, tax  
3 revenues of a district may be used to make lease or debt service  
4 payments on any lease, lease-purchase contract, or certificate of  
5 participation used to finance facilities authorized to be financed  
6 by the district.

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

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

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

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

1 resolution of intention to establish a community facilities district  
2 adopted within seven years of the date on which the county or area  
3 is designated as a disaster area by the President or by the Governor  
4 or on which the Governor proclaims for the area the existence of  
5 a state of emergency.

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

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

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

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

1 legislative body finds that the buildings or structures to be worked  
2 on pursuant to this subdivision suffer from soil deterioration.

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

13 (l) A district may also finance and refinance the acquisition,  
14 installation, and improvement of energy efficiency and renewable  
15 energy improvements that are affixed, as specified in Section 660  
16 of the Civil Code, to or on real property and in buildings, whether  
17 the real property or buildings are privately or publicly owned.  
18 Energy efficiency and renewable energy improvements financed  
19 by a district may only be installed on a privately owned building  
20 and on privately owned real property with the prior written consent  
21 of the owner or owners of the building or real property. *This*  
22 *chapter shall not be used to finance installation of energy efficiency*  
23 *and renewable energy improvements on a privately owned building*  
24 *or on privately owned real property in connection with the initial*  
25 *construction of a residential building.*

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

34 SEC. 2. Section 53324 of the Government Code is amended  
35 to read:

36 53324. (a) If 50 percent or more of the registered voters, or  
37 six registered voters, whichever is more, residing within the  
38 territory proposed to be included in the district, or the owners of  
39 one-half or more of the area of the land in the territory proposed  
40 to be included in the district and not exempt from the special tax,

1 file written protests against the establishment of the district, and  
2 protests are not withdrawn so as to reduce the value of the protests  
3 to less than a majority, no further proceedings to create the  
4 specified community facilities district or to authorize the specified  
5 special tax shall be taken for a period of one year from the date of  
6 the decision of the legislative body.

7 If the majority protests of the registered voters or of the  
8 landowners are only against the furnishing of a specified type or  
9 types of facilities or services within the district, or against levying  
10 a specified special tax, those types of facilities or services or the  
11 specified special tax shall be eliminated from the resolution of  
12 formation.

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

15 SEC. 3. Section 53328.1 is added to the Government Code, to  
16 read:

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

29 (1) The legislative body shall not be obligated to specify the  
30 rate or rates of special tax in the resolution of intention or the  
31 resolution of formation, provided that the rate of special tax  
32 applicable to a parcel or parcels shall be specified in the unanimous  
33 approval described in this section relating to the parcel or parcels.

34 (2) In lieu of approval pursuant to an election held in accordance  
35 with the procedures set forth in Sections 53326, 53327, 53327.5,  
36 and 53328, the appropriations limit for the community facilities  
37 district, the applicable rate of the special tax and the method of  
38 apportionment and manner of collection of that tax, and the  
39 authorization to incur bonded indebtedness for the community  
40 facilities district shall be specified and be approved by the

1 unanimous approval of the owner or owners of each parcel or  
2 parcels at the time that the parcel or parcels are annexed to the  
3 community facilities district. No additional hearings or procedures  
4 are required, and the unanimous approval shall be deemed to  
5 constitute a unanimous vote in favor of the appropriations limit  
6 for the community facilities district, the authorization to levy the  
7 special tax on the parcel or parcels, and the authorization to incur  
8 bonded indebtedness for the community facilities district.

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

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

35 (b) Notwithstanding the provisions of Section 53340, after  
36 adoption of the resolution of formation for a community facilities  
37 district described in subdivision (a), the legislative body may, by  
38 ordinance, provide for the levy of the special taxes on parcels that  
39 will annex to the community facilities district at the rate or rates  
40 to be approved unanimously by the owner or owners of each parcel

1 or parcels to be annexed to the community facilities district and  
2 for apportionment and collection of the special taxes in the manner  
3 specified in the resolution of formation. No further ordinance shall  
4 be required even though no parcels may then have annexed to the  
5 community facilities district.

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

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

27 SEC. 4. Section 53329.6 is added to the Government Code, to  
28 read:

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

38 SEC. 5. Section 53355.5 is added to the Government Code, to  
39 read:

1 53355.5. (a) As an alternate and independent procedure for  
2 conducting an election on the proposition to authorize bonded  
3 indebtedness for a community facilities district formed pursuant  
4 to Section 53328.1, and in lieu of the procedure set forth in Sections  
5 53353.5, 53354, and 53355, the proposition to authorize bonded  
6 indebtedness may be approved by the owner or owners of a parcel  
7 or parcels of property at the time that the parcel or parcels are  
8 annexed to the community facilities district pursuant to the  
9 unanimous approval described in Section 53328.1. In that event,  
10 no additional hearings or procedures shall be required, and  
11 unanimous approval shall be deemed to constitute a unanimous  
12 vote in favor of the proposition.

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

30 SEC. 6. Section 53355.7 is added to the Government Code, to  
31 read:

32 53355.7. The refusal by a person to undertake or cause to be  
33 undertaken an act relating to Chapter 2.5 (commencing with  
34 Section 53311) of Part 1 of Division 2 of Title 5, including  
35 formation of, or annexation to, a community facilities district,  
36 voting to levy a special tax, or authorizing another to vote to levy  
37 a special tax, shall not be a factor when considering the approval  
38 of a legislative or adjudicative act, or both, including, but not  
39 limited to, the planning, use, or development of real property or  
40 any change in governmental organization or reorganization, as

1 defined by Section 56021 or 56037, if the purpose of the  
2 community facilities district is to finance energy efficiency and  
3 renewable energy improvements.

4 SEC. 7. The Legislature finds and declares that global warming  
5 poses a serious threat to the economic well-being, public health,  
6 natural resources, and the environment of the state, and that action  
7 taken by the state to reduce emissions of greenhouse gases will  
8 have far reaching effects by encouraging other states, the federal  
9 government, and other countries to act. California has a tradition  
10 of environmental leadership and wishes to be at the forefront of  
11 national and international efforts to reduce emissions of greenhouse  
12 gases. In furtherance of these efforts to reduce emissions of  
13 greenhouse gases, the Legislature declares that a public purpose  
14 will be served by providing the legislative body of a local agency  
15 with the authority to use special taxes pursuant to the Mello-Roos  
16 Community Facilities Act of 1982 to finance the installation of  
17 energy efficiency and renewable energy improvements that are  
18 affixed, as specified in Section 660 of the Civil Code, to residential,  
19 commercial, industrial, or other property.