

**Introduced by Senator Hancock**February 16, 2010

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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 1048, as introduced, 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, water conservation, 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 facilities 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.
- 34 (e) The district may also finance the construction or
- 35 undergrounding of water transmission and distribution facilities,

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

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

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

1 participation used to finance *facilities* authorized *to be financed*  
2 *by the* district ~~facilities~~.

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

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

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

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

1 or on which the Governor proclaims for the area the existence of  
2 a state of emergency.

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

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

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

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

39 (k) A district may also finance the acquisition, improvement,  
40 rehabilitation, or maintenance of any real or other tangible property,

1 whether privately or publicly owned, for the purposes of removal  
2 or remedial action for the cleanup of any hazardous substance  
3 released or threatened to be released into the environment. As used  
4 in this subdivision, ~~the terms~~ “remedial action” and “removal”  
5 shall have the meaning set forth in Sections 25322 and 25323,  
6 respectively, of the Health and Safety Code, and ~~the term~~  
7 “hazardous substance” shall have the meaning set forth in Section  
8 25281 of the Health and Safety Code.

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

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

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

35 53324. (a) 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 included in the district, or the owners of  
38 one-half or more of the area of the land in the territory proposed  
39 to be included in the district and not exempt from the special tax,  
40 file written protests against the establishment of the district, and

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

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

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

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

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

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

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

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

39 (2) In lieu of approval pursuant to an election held in accordance  
40 with the procedures set forth in Sections 53326, 53327, 53327.5,

1 and 53328, the appropriations limit for the community facilities  
2 district, the applicable rate of the special tax and the method of  
3 apportionment and manner of collection of that tax, and the  
4 authorization to incur bonded indebtedness for the community  
5 facilities district shall be specified and be approved by the  
6 unanimous approval of the owner or owners of each parcel or  
7 parcels at the time that the parcel or parcels are annexed to the  
8 community facilities district. No additional hearings or procedures  
9 are required, and the unanimous approval shall be deemed to  
10 constitute a unanimous vote in favor of the appropriations limit  
11 for the community facilities district, the authorization to levy the  
12 special tax on the parcel or parcels, and the authorization to incur  
13 bonded indebtedness for the community facilities district.

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

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

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

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

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

32 SEC. 4. Section 53329.6 is added to the Government Code, to  
33 read:

34 53329.6. In order to reduce the procedural burdens on local  
35 agencies, this chapter establishes certain procedures by which one  
36 or more property owners may vote in favor of special taxes, bonded  
37 indebtedness, an appropriations limit, and annexation to a district  
38 by unanimous approval. The Legislature hereby finds and declares  
39 that any unanimous approval constitutes the vote of the qualified  
40 elector in favor of the matters addressed in the unanimous approval

1 for purposes of the California Constitution, including, but not  
2 limited to, Articles XIII A and XIII C.

3 SEC. 5. Section 53355.5 is added to the Government Code, to  
4 read:

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

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

34 SEC. 6. Section 53355.7 is added to the Government Code, to  
35 read:

36 53355.7. The refusal by a person to undertake or cause to be  
37 undertaken an act relating to Chapter 2.5 (commencing with  
38 Section 53311) of Part 1 of Division 2 of Title 5, including  
39 formation of, or annexation to, a community facilities district,  
40 voting to levy a special tax, or authorizing another to vote to levy

1 a special tax, shall not be a factor when considering the approval  
2 of a legislative or adjudicative act, or both, including, but not  
3 limited to, the planning, use, or development of real property or  
4 any change in governmental organization or reorganization, as  
5 defined by Section 56021 or 56037, if the purpose of the  
6 community facilities district is to finance energy efficiency, water  
7 conservation, and renewable energy improvements.

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

24 The Legislature further finds and declares that the growing  
25 population, climate change, and the need to protect and grow  
26 California's economy while protecting and restoring our fish and  
27 wildlife habitats make it essential that the state manage its water  
28 resources as efficiently as possible. Section 2 of Article X of the  
29 California Constitution declares: "It is hereby declared that because  
30 of the conditions prevailing in this State the general welfare  
31 requires that the water resources of the State be put to beneficial  
32 use to the fullest extent of which they are capable, and that the  
33 waste or unreasonable use or unreasonable method of use of water  
34 be prevented, and that the conservation of such waters is to be  
35 exercised with a view to the reasonable and beneficial use thereof  
36 in the interest of the people and for the public welfare." Governor  
37 Schwarzenegger, in his Executive Order S-06-08, proclaimed a  
38 condition of statewide drought and ordered implementation of  
39 additional actions to promote water conservation which will  
40 contribute to achieving long-term reductions in water use. Governor

1 Schwarzenegger has further called for a 20-percent per capita  
2 reduction in urban water use statewide by the year 2020. Reduced  
3 water use through conservation provides significant energy and  
4 environmental benefits, and can help protect water quality, improve  
5 streamflows, and reduce greenhouse gas emissions. There are many  
6 water conservation practices that produce significant energy and  
7 other resource savings that should be encouraged as a matter of  
8 state policy. The Legislature also declares that a public purpose  
9 will be served by providing the legislative body of a local agency  
10 with the authority to use special taxes pursuant to the Mello-Roos  
11 Community Facilities Act of 1982 to finance the installation of  
12 water conservation improvements that are attached to residential,  
13 commercial, industrial, or other property.

O