

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2618

**Introduced by Assembly Member John A. Pérez
(Coauthors: Assembly Members Dickinson and Ting)**

February 21, 2014

An act to amend Sections 36601, 36602, 36603.5, 36622, 36625, 36628.5, and 36632 of, to amend and renumber Sections 36606, 36611, 36612, 36613, 36614, and 36614.5 of, and to add Sections 36609.5, 36614.6, 36614.7, and 36615.5 to, the Streets and Highways Code, relating to benefit assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as amended, John A. Pérez. Property and business improvement areas: benefit assessments.

The California Constitution generally requires 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.

The Property and Business Improvement District Law of 1994 authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose of making improvements and promoting activities of benefit to the properties and businesses within the district, and defines various terms for purposes of the act.

The act requires a management district plan to include, among other things, the name of the proposed district, a description of the boundaries of the district, and the total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

This bill would require a management district plan to additionally include, for districts that are property-based, the proportionate special benefit derived by each identified parcel, ~~the sum total amount of all special benefits to be provided to~~ *conferred on* the properties located within the *property-based* district, ~~the sum total amount of any general benefit being primarily provided to the public or any entity other than the properties located within the district,~~ and a detailed engineer's report, as specified.

This bill would define the term "special benefit" for purposes of that act to mean a particular and distinct benefit over and above general benefits, as defined, conferred on real property located in a property-based district, as defined, ~~or the public at large,~~ *or other real property*, as specified.

The act additionally requires the city council to adopt a resolution of formation containing, among other things, a statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments and a finding that the property or businesses within the area of the district will be benefited by the improvements, *maintenance*, and activities funded by the assessments proposed to be levied.

This bill would require, for a property-based district, a statement of the source of funding to pay for any general benefits, a finding that the property within the district will receive a special benefit, ~~the sum total amount of all special benefits to be provided to~~ *conferred on* the properties within the *property-based* district, and ~~the sum total amount of any general benefit being primarily provided to the public or any entity other than the properties located within the district~~ *benefit*.

The act authorizes a city council to levy assessments on businesses or on property owners, or a combination of the 2, and requires the city council to structure the assessments on whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

This bill would require any property-based assessment to be proportional to the special benefit conferred on the assessed property, and would prohibit the assessment from exceeding the reasonable cost of the proportional special benefit conferred, as specified.

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 36601 of the Streets and Highways Code
2 is amended to read:

3 36601. The Legislature finds and declares all of the following:

4 (a) Businesses located and operating within business districts
5 in some of this state's communities are economically
6 disadvantaged, are underutilized, and are unable to attract
7 customers due to inadequate facilities, services, and activities in
8 the business districts.

9 (b) It is in the public interest to promote the economic
10 revitalization and physical maintenance of the business districts
11 of its cities in order to create jobs, attract new businesses, and
12 prevent the erosion of the business districts.

13 (c) It is of particular local benefit to allow ~~cities~~ *business*
14 *districts* to fund business related improvements, maintenance, and
15 activities through the levy of assessments upon the businesses or
16 real property that receive certain benefits from those improvements.

17 (d) Assessments levied for the ~~purpose of providing~~
18 ~~improvements and promoting activities that~~ *special* benefit
19 *conferred upon* real property or businesses *in a business district*
20 are not taxes for the general benefit of a city, ~~but are assessments~~
21 ~~for the improvements and activities which confer special benefits~~
22 ~~upon the real property or businesses for which the improvements~~
23 ~~and activities are provided.~~ *even if there is some incidental benefit*
24 *to property or persons not assessed, from the improvements,*
25 *maintenance, or activities that confer the special benefit.*

26 (e) Property and business improvement districts formed
27 throughout this state have ~~provided many~~ *conferred special* benefits
28 ~~to this state's communities that have resulted in~~ *on properties and*
29 *businesses within their districts and have made assessed properties*
30 *and businesses more useful by providing* the following benefits:

31 (1) Crime reduction. A study by the Rand Corporation has
32 confirmed a 12-percent reduction in the incidence of robbery and
33 an 8-percent reduction in the total incidence of violent crimes
34 within the 30 districts studied.

35 (2) Job creation.

36 (3) Business attraction.

37 (4) Business retention.

38 (5) Economic growth.

1 (6) New investments.

2 (f) With the dissolution of redevelopment agencies throughout
 3 the state, property and business improvement districts have become
 4 ~~an even more important tool~~ *tools* with which ~~communities may~~
 5 *to* combat blight, promote economic opportunities, and create a
 6 clean and safe environment.

7 (g) Since the enactment of this act, the people of California have
 8 adopted Proposition 218, which amended Article XIII D of the
 9 ~~constitution~~ *Constitution* to place certain requirements and
 10 restrictions on the formation of, and activities, expenditures, and
 11 assessments by property-based districts. Article XIII D of the
 12 ~~constitution requires~~ *Constitution provides* that property-based
 13 districts may only levy assessments for special benefits.

14 ~~(h) Various courts have considered how special benefits should~~
 15 ~~be determined and assessed without guidance from the Legislature~~
 16 ~~in regard to how the Legislature intends for the Property and~~
 17 ~~Business Improvement District Law of 1994 to interact and comply~~
 18 ~~with the provisions of Article XIII D of the Constitution and how~~
 19 ~~special benefits are to be determined with regard to property-based~~
 20 ~~districts.~~

21 *(h) The act amending this section is intended to provide the*
 22 *Legislature’s guidance with regard to this act, its interaction with*
 23 *the provisions of Article XIII D of the Constitution, and the*
 24 *determination of special benefits in property-based districts.*

25 ~~(1) The lack of legislative guidance appears to have created~~ *has*
 26 ~~resulted in uncertainty among various courts with regard to the~~
 27 ~~determination of special benefits, which could be perceived as~~
 28 ~~providing an unclear or inconsistent standard. and inconsistent~~
 29 ~~application of this act, which discourages the use of assessments~~
 30 ~~to fund needed improvements, maintenance, and activities in~~
 31 ~~property-based districts, contributing to blight and other~~
 32 ~~underutilization of property.~~

33 *(2) Improvements, maintenance, or activities conferring special*
 34 *benefits upon property to be assessed also inevitably provide*
 35 *incidental, secondary, or collateral effects that benefit others not*
 36 *assessed. This incidental benefit is part of a special benefit and is*
 37 *not intended to generally benefit the public and, therefore, does*
 38 *not constitute a general benefit under Article XIII D of the*
 39 *Constitution.*

40 (2)

1 (3) It is of utmost importance that property-based districts
2 created under ~~the~~ this act have clarity regarding restrictions on
3 assessments they may levy and the proper determination of special
4 benefits. Legislative clarity with regard to this act will provide
5 districts with clear instructions and courts with legislative intent
6 regarding restrictions on property-based assessments, and the
7 manner in which special benefits should be determined.

8 ~~(3) Of the appellate cases in which this act has been interpreted~~
9 ~~Dahms v. Downtown Pomona Property and Business Improvement~~
10 ~~District (2009) 174 Cal. App. 4th 708, most squarely relates to~~
11 ~~property-based districts and its ruling provides clarity with regard~~
12 ~~to how special benefits are determined and assessed with regard~~
13 ~~to those districts.~~

14 (i) It is the intent of the Legislature that this act should reflect
15 the provisions of Article XIII D of the Constitution and the
16 guidance regarding the application of those provisions set forth in
17 ~~Dahms v. Downtown Pomona Property and Business Improvement~~
18 ~~District (2009) 174 Cal. App. 4th 708 including the manner in~~
19 ~~which special benefits should be determined.~~

20 SEC. 2. Section 36602 of the Streets and Highways Code is
21 amended to read:

22 36602. The purpose of this part is to supplement previously
23 enacted provisions of law that authorize cities to levy assessments
24 within a property and business improvement district, to ~~assure~~
25 *ensure* that those assessments conform to all constitutional
26 requirements and are determined and assessed in accordance with
27 the guidance set forth in ~~Dahms v. Downtown Pomona Property~~
28 ~~and Business Improvement District (2009) 174 Cal. App. 4th 708~~
29 *this act*. This part does not affect or limit any other provisions of
30 law authorizing or providing for the furnishing of improvements
31 or activities or the raising of revenue for these purposes.

32 SEC. 3. Section 36603.5 of the Streets and Highways Code is
33 amended to read:

34 36603.5. Any provision ~~in~~ of this part that conflicts with any
35 other provision of law shall prevail over the other provision of
36 law, *as to districts created under this part*.

37 ~~SEC. 3.~~

38 SEC. 4. Section 36606 of the Streets and Highways Code is
39 amended and renumbered to read:

1 36606.5. "Assessment" means a levy or charge for the purpose
2 of acquiring, constructing, installing, or maintaining improvements
3 and promoting activities that will provide certain benefits to
4 properties or businesses located within a property and business
5 improvement district.

6 ~~SEC. 4.~~

7 SEC. 5. Section 36609.5 is added to the Streets and Highways
8 Code, to read:

9 36609.5. "General benefit" means, for purposes of a
10 property-based district, any benefit being primarily provided to
11 the public at large or any entity person or property other than the
12 properties or businesses located within the property-based district.
13 A general benefit does not include a collateral benefit that arises
14 incidentally from a special benefit conferred on the properties or
15 businesses located within the property-based district "General
16 benefit" excludes all types and components of a "special benefit"
17 as defined in Section 36615.5.

18 ~~SEC. 5.~~

19 SEC. 6. Section 36611 of the Streets and Highways Code is
20 amended and renumbered to read:

21 36614.5. "Property and business improvement district," or
22 "district," means a property and business improvement district
23 established pursuant to this part.

24 ~~SEC. 6.~~

25 SEC. 7. Section 36612 of the Streets and Highways Code is
26 amended and renumbered to read:

27 36614. "Property" means real property situated within a district.

28 ~~SEC. 7.~~

29 SEC. 8. Section 36613 of the Streets and Highways Code is
30 amended and renumbered to read:

31 36606. "Activities" means, but is not limited to, all of the
32 following that benefit businesses or real property in the district:

- 33 (a) Promotion of public events which benefit businesses or real
34 property in the district. *events.*
- 35 (b) Furnishing of music in any public place within the district
36 *place.*
- 37 (c) Promotion of tourism within the district.
- 38 (d) Marketing and economic development, including retail
39 retention and recruitment.

1 (e) Providing security, sanitation, graffiti removal, street and
2 sidewalk cleaning, and other municipal services supplemental to
3 those normally provided by the municipality.

4 (f) ~~Activities which~~ *Other services that* benefit businesses and
5 real property located in the district.

6 ~~SEC. 8.~~

7 *SEC. 9.* Section 36614 of the Streets and Highways Code is
8 amended and renumbered to read:

9 36611. “Management district plan” or “plan” means a proposal
10 as defined in Section 36622.

11 ~~SEC. 9.~~

12 *SEC. 10.* Section 36614.5 of the Streets and Highways Code
13 is amended and renumbered to read:

14 36612. “Owners’ association” means a private nonprofit entity
15 that is under contract with a city to administer or implement
16 activities and improvements specified in the management district
17 plan. An owners’ association may be an existing nonprofit entity
18 or a newly formed nonprofit entity. An owners’ association is a
19 private entity and may not be considered a public entity for any
20 purpose, nor may its board members or staff be considered to be
21 public officials for any purpose. Notwithstanding this section, an
22 owners’ association shall comply with the Ralph M. Brown Act
23 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
24 2 of Title 5 of the Government Code), at all times when matters
25 within the subject matter of the district are heard, discussed, or
26 deliberated, and with the California Public Records Act (Chapter
27 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
28 the Government Code), for all ~~documents~~ *records* relating to
29 activities of the district.

30 ~~SEC. 10.~~

31 *SEC. 11.* Section 36614.6 is added to the Streets and Highways
32 Code, to read:

33 36614.6. “Property-based assessment” means any ~~levy or~~
34 ~~charge~~ *assessment made pursuant to this part upon real property*
35 *by a city property.*

36 ~~SEC. 11.~~

37 *SEC. 12.* Section 36614.7 is added to the Streets and Highways
38 Code, to read:

39 36614.7. “Property-based district” means any district ~~supported~~
40 ~~in part by any~~ *which a city levies a property-based assessment.*

1 ~~SEC. 12.~~

2 *SEC. 13.* Section 36615.5 is added to the Streets and Highways
3 Code, to read:

4 36615.5. “Special benefit” means, *for purposes of a*
5 *property-based district*, a particular and distinct benefit over and
6 above general benefits conferred on real property located in a
7 property-based district ~~or, to the public at large. General large, or~~
8 *to other real property from the improvements, maintenance, or*
9 *activities of a property-based district and the incidental secondary*
10 *or collateral benefit from those improvements, maintenance, or*
11 *activities. “Special benefit” excludes general enhancement of*
12 *property value does not constitute “special benefit.” To the extent*
13 ~~a special benefit concomitantly produces a collateral benefit for~~
14 ~~properties generally or for the public at large, that collateral benefit~~
15 ~~is not a general benefit and any “general benefit” as defined in~~
16 *Section 36609.5.*

17 ~~SEC. 13.~~

18 *SEC. 14.* Section 36622 of the Streets and Highways Code is
19 amended to read:

20 36622. The management district plan shall ~~contain~~ *include,*
21 *but is not limited to,* all of the following:

22 (a) If the assessment will be levied on property, a map of the
23 district in sufficient detail to locate each parcel of property and, if
24 businesses are to be assessed, each business within the district. If
25 the assessment will be levied on businesses, a map that identifies
26 the district boundaries in sufficient detail to allow a business owner
27 to reasonably determine whether a business is located within the
28 district boundaries. If the assessment will be levied on property
29 and businesses, a map of the district in sufficient detail to locate
30 each parcel of property and to allow a business owner to reasonably
31 determine whether a business is located within the district
32 boundaries.

33 (b) The name of the proposed district.

34 (c) A description of the boundaries of the district, including the
35 boundaries of benefit zones, proposed for establishment or
36 extension in a manner sufficient to identify the affected lands and
37 businesses included. The boundaries of a proposed property
38 assessment district shall not overlap with the boundaries of another
39 existing property assessment district created pursuant to this part.
40 This part does not prohibit the boundaries of a district created

1 pursuant to this part to overlap with other assessment districts
2 established pursuant to other provisions of law, including, but not
3 limited to, the Parking and Business Improvement Area Law of
4 1989 (Part 6 (commencing with Section 36500)). This part does
5 not prohibit the boundaries of a business assessment district created
6 pursuant to this part to overlap with another business assessment
7 district created pursuant to this part. This part does not prohibit
8 the boundaries of a business assessment district created pursuant
9 to this part to overlap with a property assessment district created
10 pursuant to this part.

11 (d) The improvements, *maintenance*, and activities proposed
12 for each year of operation of the district and the maximum cost
13 thereof. If the improvements, *maintenance*, and activities proposed
14 for each year of operation are the same, a description of the first
15 year's proposed improvements, *maintenance*, and activities and a
16 statement that the same improvements, *maintenance*, and activities
17 are proposed for subsequent years shall satisfy the requirements
18 of this subdivision.

19 (e) The total annual amount proposed to be expended for
20 improvements, maintenance ~~and operations~~, or *activities*, and debt
21 service in each year of operation of the district. If the assessment
22 is levied on businesses, this amount may be estimated based upon
23 the assessment rate. If the total annual amount proposed to be
24 expended in each year of operation of the district is not
25 significantly different, the amount proposed to be expended in the
26 initial year and a statement that a similar amount applies to
27 subsequent years shall satisfy the requirements of this subdivision.

28 (f) The proposed source or sources of financing, including the
29 proposed method and basis of levying the assessment in sufficient
30 detail to allow each property or business owner to calculate the
31 amount of the assessment to be levied against his or her property
32 or business. The plan also shall state whether bonds will be issued
33 to finance improvements.

34 (g) The time and manner of collecting the assessments.

35 (h) The specific number of years in which assessments will be
36 levied. In a new district, the maximum number of years shall be
37 five. Upon renewal, a district shall have a term not to exceed 10
38 years. Notwithstanding these limitations, a district created pursuant
39 to this part to finance capital improvements with bonds may levy
40 assessments until the maximum maturity of the bonds. The

1 management district plan may set forth specific increases in
 2 assessments for each year of operation of the district.

3 (i) The proposed time for implementation and completion of
 4 the management district plan.

5 (j) Any proposed rules and regulations to be applicable to the
 6 district.

7 (k) (1) A list of the properties or businesses to be assessed,
 8 including the assessor’s parcel numbers for properties to be
 9 assessed, and a statement of the method or methods by which the
 10 expenses of a district will be imposed upon benefited real property
 11 or businesses, in proportion to the benefit received by the property
 12 or business, to defray the cost thereof, including operation and
 13 maintenance.

14 (2) In a property-based district, the proportionate special benefit
 15 derived by each identified parcel shall be determined in relationship
 16 to the entirety of the capital cost of a public improvement, the
 17 maintenance and operation expenses of a public improvement, or
 18 the cost of the ~~property-related service being provided~~ *activities*.
 19 An assessment shall not be imposed on any parcel that exceeds
 20 the reasonable cost of the proportional special benefit conferred
 21 on that parcel. Only special benefits are assessable, and a
 22 property-based district shall separate the general benefits from the
 23 special benefits conferred on a parcel. Parcels within a
 24 property-based district that are owned or used by any city, public
 25 agency, the State of California, or the United States shall not be
 26 exempt from assessment unless the governmental entity can
 27 demonstrate by clear and convincing evidence that those publicly
 28 owned parcels in fact receive no special benefit.

29 (l) In a property-based district, the sum of all special benefits
 30 to be provided to the properties located within the property-based
 31 district.

32 (m) In a property-based district, the ~~sum total amount of any~~
 33 ~~general benefit being primarily provided to the public or any entity~~
 34 ~~other than the properties located within the district. A general~~
 35 ~~benefit does not include any collateral benefit that arises~~
 36 ~~incidentally from the provision of a special benefit to properties~~
 37 ~~located within the property-based district, and the amount of those~~
 38 ~~collateral benefits need not be deducted from the sum of special~~
 39 ~~benefits to be provided to the properties located within the~~

1 ~~property-based district.~~ *all special benefits to be conferred on the*
2 *properties in the property-based district.*

3 (n) *In a property-based district, the total amount of any general*
4 *benefit.*

5 ~~(n)~~

6 (o) *In a property-based district, a detailed engineer’s report*
7 *prepared by a registered professional engineer certified by the*
8 *State of California supporting all assessments contemplated by the*
9 *management district plan.*

10 ~~(3)~~

11 (p) *Any other item or matter required to be incorporated therein*
12 *by the city council.*

13 ~~SEC. 14.~~

14 *SEC. 15.* Section 36625 of the Streets and Highways Code is
15 amended to read:

16 36625. (a) *If the city council, following the public hearing,*
17 *decides to establish—~~the~~ a proposed property and business*
18 *improvement district, the city council shall adopt a resolution of*
19 *formation that shall—~~contain~~ include, but is not limited to, all of the*
20 *following:*

21 (1) *A brief description of the proposed—~~activities—~~and*
22 *improvements, maintenance, and activities, the amount of the*
23 *proposed assessment, a statement as to whether the assessment*
24 *will be levied on property, businesses, or both within the district,*
25 *a statement—~~about~~ on whether bonds will be issued, and a*
26 *description of the exterior boundaries of the proposed district. The*
27 *descriptions and statements—~~do not need to~~ not be detailed and shall*
28 *be sufficient if they enable an owner to generally identify the nature*
29 *and extent of the improvements, maintenance, and activities and*
30 *the location and extent of the proposed district.*

31 (2) *The number, date of adoption, and title of the resolution of*
32 *intention.*

33 (3) *The time and place where the public hearing was held*
34 *concerning the establishment of the district.*

35 (4) *A determination regarding any protests received. The city*
36 *shall not establish the district or levy assessments if a majority*
37 *protest was received.*

38 (5) *A statement that the properties, businesses, or properties*
39 *and businesses in the district established by the resolution shall be*
40 *subject to any amendments to this part.*

1 (6) A statement that the improvements, *maintenance*, and
2 activities to be ~~provided in~~ *conferred on* the district will be funded
3 by the levy of the assessments, and, for a property-based district,
4 to the extent that general benefits are provided, the ~~source of~~
5 funding to ~~pay source~~ for those general benefits. The revenue from
6 the levy of assessments within a district shall not be used to provide
7 improvements, *maintenance*, or activities outside the district or
8 for any purpose other than the purposes specified in the resolution
9 of intention, as modified by the city council at the hearing
10 concerning establishment of the district.

11 (7) A finding that the property or businesses within the area of
12 the property and business improvement district will be benefited
13 by the improvements, *maintenance*, and activities funded by the
14 assessments ~~proposed to be levied~~ *proposed assessments*, and, for
15 a property-based district, that property within the district will
16 receive a special benefit.

17 (8) In a property-based district, the ~~sum of all special benefits~~
18 ~~to be provided to~~ *total amount of all special benefits to be conferred*
19 *on* the properties within the property-based district.

20 (9) In a property-based district, the sum of any general benefit
21 being primarily provided to the public or any entity other than the
22 properties located within the property-based district. General
23 benefits do not include collateral benefits that arise incidentally
24 from the provision of special benefits to the properties located
25 within the property-based district, and the amount of those
26 collateral benefits need not be deducted from the sum of special
27 benefits to be provided to the properties located within the
28 property-based district. *benefit*.

29 (b) The adoption of the resolution of formation and, if required,
30 recordation of the notice and map pursuant to Section 36627 shall
31 constitute the levy of an assessment in each of the fiscal years
32 referred to in the management district plan.

33 ~~SEC. 15.~~

34 *SEC. 16.* Section 36628.5 of the Streets and Highways Code
35 is amended to read:

36 36628.5. The city council may levy assessments on businesses
37 or on property owners, or a combination of the two, pursuant to
38 this part. The city council shall structure the assessments in
39 whatever manner it determines corresponds with the distribution
40 of benefits from the proposed improvements, *maintenance*, and

1 activities, provided that any property-based assessment is
2 proportional to the special benefit conferred on the assessed
3 property.

4 ~~SEC. 16.~~

5 *SEC. 17.* Section 36632 of the Streets and Highways Code is
6 amended to read:

7 36632. (a) The assessments levied on real property pursuant
8 to this part shall be levied proportionally ~~with to the distribution~~
9 ~~of a special benefit to conferred on~~ the real property, and shall not
10 exceed the reasonable cost of the proportional special benefit
11 conferred on the real property. Any additional costs of providing
12 general benefits shall not be included in the amounts assessed.
13 ~~However, a general benefit does not include collateral benefits~~
14 ~~that arise incidentally from special benefits conferred on the~~
15 ~~properties or businesses located within the property-based district.~~
16 The city council may classify properties for purposes of
17 determining the special benefit ~~provided to~~ *conferred on* property
18 by the improvements, *maintenance*, and activities ~~provided~~
19 *conferred* pursuant to this part.

20 (b) Assessments levied on businesses pursuant to this part shall
21 be levied on the basis of the estimated benefit to the businesses
22 within the property and business improvement district. The city
23 council may classify businesses for purposes of determining the
24 benefit to the businesses of the improvements, *maintenance*, and
25 activities ~~provided~~ *conferred* pursuant to this part.

26 (c) Properties zoned ~~solely for residential use, or that are zoned~~
27 ~~for~~ agricultural use, are ~~conclusively~~ presumed not to *receive*
28 *special* benefit from the improvements, *maintenance*, and ~~service~~
29 *activities* funded through these assessments, and shall not be subject
30 to any assessment pursuant to this part.