



CITY OF OAKLAND
CITY COUNCIL

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OFFICE OF THE CITY CLERK
OAKLAND

2009 SEP -3 PM 5:42

LEGISLATIVE ANALYST MEMORANDUM

To: Rules and Legislation Committee
From: Alice Glasner, Legislative Analyst
Date: September 17, 2008
Re: Resolution regarding Senate Bill 279

SUMMARY

Senate Bill 279 (Hancock) would allow cities and counties to use Mello-Roos Community Facilities Districts to finance investments for energy efficiency, water conservation, and renewable energy improvements. SB 279 would provide support for cities who are interested in providing financing options. This measure would authorize an alternative procedure for forming a Community Facilities District regardless of whether the buildings or property are privately or public owned. Property owners who voluntarily opt-in to this program to finance energy and water improvements will realize immediate savings on their utility bills while paying off their costs over time on their property tax bills.

BACKGROUND

The City of Oakland has long demonstrated interest in energy efficiency and conservation in general, as well as alternative energy sources and water conservation. Property improvements from weatherization to solar panel installation can result in reduced energy use, reduced greenhouse gas emissions, more efficient water use, and lowered utility bills. The principle barrier to individuals making related property improvements has been the front end costs of these building improvements or system upgrades. Senate Bill 279 proposes a means of long term financing. SB279 is modeled after the City of Berkeley's Financing Initiative for Renewable and Solar Technology (FIRST) and City and County of San Francisco's Clean Energy Loan Program.

Additionally, the legislation could result in increased demand for services in energy efficiency, home improvement, solar, landscaping, and other local businesses. Oakland businesses, workers, and job trainees could potentially benefit from new expenditures in this area. The City could benefit from increased tax revenue.

POLICY DISCUSSION

The bills discussed are consistent with the goals of many of the City's sustainability policies.

CONCLUSIONS/ RECOMMENDATIONS

City Council should actively support the bill with assistance from City lobbyists. A resolution, accompanied by a letter from City Council, should be forwarded to the governor as soon as possible.

CITY OF OAKLAND

BILL ANALYSIS



Date: September 17, 2009

Bill Number and Author:

SB 279 Hancock

DEPARTMENT INFORMATION

Contact: Alice Glasner
Department: City Council
Telephone: 238-4991

e-mail: aglasner@oaklandnet.com

RECOMMENDED POSITION:

Support bill and send letter advocating support to Governor Schwarzenegger.

Summary of the Bill

SB 279 would allow cities and counties to use Mello-Roos Community Facilities Districts to finance investments for energy efficiency, water conservation, and renewable energy improvements. SB 279 would provide support for cities who are interested in providing financing options to their residents. This measure would authorize an alternative procedure for forming a Community Facilities District regardless of whether the buildings or property are privately or public owned. Property owners who voluntarily opt-in to this program to finance energy and water improvements will realize immediate savings on their utility bills while paying off their costs over time on their property tax bills.

Positive Factors for Oakland

Oakland residents could benefit from this bill through savings on heating and electricity bills without paying for the efficiency investment up front. Many more people would be able to take advantage of efficiency and renewable energy upgrade than without this kind of legislation. Additionally, there would be a greater demand for water and energy systems locally, potentially generating new jobs and increasing the tax base. Increased energy and water efficiencies helps Oakland achieve some important sustainability goals while saving residents money.

Negative Factors for Oakland

Rules & Legislation Com

September 17, 2009

None known

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

Critical (top priority for City lobbyist, city position required ASAP)

Very Important (priority for City lobbyist, city position necessary)

Somewhat Important (City position desirable if time and resources are available)

Minimal or **None** (do not review with City Council, position not required)

Known support:

Akeena Solar

Alameda County Waste
Management Authority
American Federation
of State, County, and
Municipal
Employees
Association of Bay
Area Governments
Association of
California Water
Agencies
Bay Area Council
CA Building Industry
Association
CA Business
Properties
Association
California State
Association of
Counties
City and County of
San Francisco
City of Berkeley
City of Citrus
Heights
City of Davis
City of Morgan Hill
City of San Luis
Obispo

City of Santa Cruz
City of Saratoga
City of Solana Beac
City of Ventura
Community Environment
Council
County of Marin
County of San
Bernardino
County of San Mateo
County of Santa Cruz
County of Ventura
Ecology Action
Environmental
Entrepreneurs
Fieldman, Rolapp &
Associates
Friends of the Earth
Global Green
Joint Venture:
Silicon Valley
Network
Jones Hall Law Firm
Kyoto USA
Local Clean Energy
Alliance of the East
Bay

National Parks
Conservation
Association
Natural Resource
Defense Council
NBS Local Government
Solutions
Orrick, Herrington, &
Sutcliffe LLP
Paul Warmer
Sustainability
Consulting
PG&E
Planning and
Conservation League
Regional Asthma
Management and
Prevention
Ron Bishop,
Architect, Wildan
Group, Inc.
Ronald E. Lee,
Attorney at Law

Sacramento Area Council of Governments
Sacramento Municipal Utility District
San Francisco Public Utilities Commission
Sharp Solar Electricity

Sierra Club
South Bay Cities Council of Governments (Carson, El Segundo, Gardena, Hawthorne, Hermosa Beach, Inglewood, Lawndale, Lomita, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Torrance, and the Harbor City/San Pedro communities of the City of Los Angeles.)
Southern California Edison
Stone & Youngberg LLC
Stradling Yocca Carlson & Rauth
Sungevity
The Solar Alliance
United Solar
US Green Building Council (northern region)
Vote Solar
Wildan Group, Inc.

Known Opposition:

None known

Respectfully Submitted,

Alice Glasner,
Legislative Analyst

AMENDED IN ASSEMBLY JULY 6, 2009
AMENDED IN ASSEMBLY JUNE 23, 2009
AMENDED IN ASSEMBLY MAY 27, 2009
AMENDED IN SENATE APRIL 21, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 279

Introduced by Senator Hancock
(Coauthor: Assembly Member Silva)

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, 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 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.

1 (d) Child care facilities, including costs of insuring the facilities
2 against loss, liability insurance in connection with the operation
3 of the facility, and other insurance costs relating to the operation
4 of the facilities, but excluding all other operational costs. However,
5 the proceeds of bonds issued pursuant to this chapter shall not be
6 used to pay these insurance costs.

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

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

35 (g) The district may also pay in full all amounts necessary to
36 eliminate any fixed special assessment liens or to pay, repay, or
37 defease any obligation to pay or any indebtedness secured by any
38 tax, fee, charge, or assessment levied within the area of a
39 community facilities district or may pay debt service on that
40 indebtedness. When the amount financed by the district is to pay

1 a tax, fee, charge, or assessment imposed by a public agency other
2 than the one conducting the proceedings, and if the amount
3 provided to the other public agency will not be entirely used to
4 pay off or prepay an assessment lien or special tax obligation
5 pursuant to the property owner's legal right to do so, the written
6 consent of the other public agency is required. In addition, tax
7 revenues of a district may be used to make lease or debt service
8 payments on any lease, lease-purchase contract, or certificate of
9 participation used to finance facilities authorized to be financed
10 by the district.

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

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

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

31 (B) In addition, within any county or area designated by the
32 President of the United States or by the Governor as a disaster area
33 or for which the Governor has proclaimed the existence of a state
34 of emergency because of earthquake damage, a district may also
35 pay for any work deemed necessary to repair any damage to real
36 property directly or indirectly caused by the occurrence of an
37 earthquake cited in the President's or the Governor's designation
38 or proclamation, or by aftershocks associated with that earthquake,
39 including work to reconstruct, repair, shore up, or replace any
40 building damaged or destroyed by the earthquake, and specifically

1 including, but not limited to, work on any building damaged or
2 destroyed in the Loma Prieta earthquake that occurred on October
3 17, 1989, or by its aftershocks. Work may be financed pursuant
4 to this subparagraph only on property or buildings identified in a
5 resolution of intention to establish a community facilities district
6 adopted within seven years of the date on which the county or area
7 is designated as a disaster area by the President or by the Governor
8 or on which the Governor proclaims for the area the existence of
9 a state of emergency.

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

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

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

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

1 work on privately owned buildings or structures, including
2 reconstruction, repair, and abatement of damage caused by soil
3 deterioration, shall consist only of lots or parcels on which the
4 legislative body finds that the buildings or structures to be worked
5 on pursuant to this subdivision suffer from soil deterioration.

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

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

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

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

3 53324. (a) If 50 percent or more of the registered voters, or
4 six registered voters, whichever is more, residing within the
5 territory proposed to be included in the district, or the owners of
6 one-half or more of the area of the land in the territory proposed
7 to be included in the district and not exempt from the special tax,
8 file written protests against the establishment of the district, and
9 protests are not withdrawn so as to reduce the value of the protests
10 to less than a majority, no further proceedings to create the
11 specified community facilities district or to authorize the specified
12 special tax shall be taken for a period of one year from the date of
13 the decision of the legislative body.

14 If the majority protests of the registered voters or of the
15 landowners are only against the furnishing of a specified type or
16 types of facilities or services within the district, or against levying
17 a specified special tax, those types of facilities or services or the
18 specified special tax shall be eliminated from the resolution of
19 formation.

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

22 SEC. 3. Section 53328.1 is added to the Government Code, to
23 read:

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

36 (1) The legislative body shall not be obligated to specify the
37 rate or rates of special tax in the resolution of intention or the
38 resolution of formation, provided that ~~the~~ *both of the following*
39 *are met:*

1 (A) *The resolution of intention and the resolution of formation*
2 *include a statement that the rate shall be established in an amount*
3 *required to finance or refinance the authorized improvements and*
4 *to pay the district's administrative expenses.*

5 (B) *The maximum rate of special tax applicable to a parcel or*
6 *parcels shall be specified in the unanimous approval described in*
7 *this section relating to the parcel or parcels.*

8 (2) In lieu of approval pursuant to an election held in accordance
9 with the procedures set forth in Sections 53326, 53327, 53327.5,
10 and 53328, the appropriations limit for the community facilities
11 district, the applicable rate of the special tax and the method of
12 apportionment and manner of collection of that tax, and the
13 authorization to incur bonded indebtedness for the community
14 facilities district shall be specified and be approved by the
15 unanimous approval of the owner or owners of each parcel or
16 parcels at the time that the parcel or parcels are annexed to the
17 community facilities district. No additional hearings or procedures
18 are required, and the unanimous approval shall be deemed to
19 constitute a unanimous vote in favor of the appropriations limit
20 for the community facilities district, the authorization to levy the
21 special tax on the parcel or parcels, and the authorization to incur
22 bonded indebtedness for the community facilities district.

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

1 types of facilities or services or the specified special tax shall be
2 eliminated from the resolution of formation.

3 (4) The legislative body shall not record a notice of special tax
4 lien against any parcel or parcels in the community facilities district
5 until the owner or owners of the parcel or parcels have given their
6 unanimous approval of the parcel or parcels' annexation to the
7 community facilities district, at which time the notice of special
8 tax lien shall be recorded against the parcel or parcels as set forth
9 in Section 53328.3.

10 (b) Notwithstanding the provisions of Section 53340, after
11 adoption of the resolution of formation for a community facilities
12 district described in subdivision (a), the legislative body may, by
13 ordinance, provide for the levy of the special taxes on parcels that
14 will annex to the community facilities district at the rate or rates
15 to be approved unanimously by the owner or owners of each parcel
16 or parcels to be annexed to the community facilities district and
17 for apportionment and collection of the special taxes in the manner
18 specified in the resolution of formation. No further ordinance shall
19 be required even though no parcels may then have annexed to the
20 community facilities district.

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

38 (d) A community facilities district formed pursuant to this
39 section may only finance facilities pursuant to subdivision (l) of
40 Section 53313.5.

1 SEC. 4. Section 53329.6 is added to the Government Code, to
2 read:

3 53329.6. In order to reduce the procedural burdens on local
4 agencies, this chapter establishes certain procedures by which one
5 or more property owners may vote in favor of special taxes, bonded
6 indebtedness, an appropriations limit, and annexation to a district
7 by unanimous approval. The Legislature hereby finds and declares
8 that any unanimous approval constitutes the vote of the qualified
9 elector in favor of the matters addressed in the unanimous approval
10 for purposes of the California Constitution, including, but not
11 limited to, Articles XIII A and XIII C.

12 SEC. 5. Section 53355.5 is added to the Government Code, to
13 read:

14 53355.5. (a) As an alternate and independent procedure for
15 conducting an election on the proposition to authorize bonded
16 indebtedness for a community facilities district formed pursuant
17 to Section 53328.1, and in lieu of the procedure set forth in Sections
18 53353.5, 53354, and 53355, the proposition to authorize bonded
19 indebtedness may be approved by the owner or owners of a parcel
20 or parcels of property at the time that the parcel or parcels are
21 annexed to the community facilities district pursuant to the
22 unanimous approval described in Section 53328.1. In that event,
23 no additional hearings or procedures shall be required, and
24 unanimous approval shall be deemed to constitute a unanimous
25 vote in favor of the proposition.

26 (b) The local agency may bring an action, pursuant to Chapter
27 9 (commencing with Section 860) of Title 10 of Part 2 of the Code
28 of Civil Procedure, to determine the validity of any bonds issued
29 pursuant to this chapter and authorized pursuant to the procedures
30 set forth in this section. Notwithstanding the provisions of Section
31 53359, if an action is brought by an interested person pursuant to
32 Section 863 of the Code of Civil Procedure to determine the
33 validity of any bonds issued pursuant to this chapter and authorized
34 pursuant to the procedures set forth in this section, the action shall
35 be brought pursuant to Chapter 9 (commencing with Section 860)
36 of Title 10 of Part 2 of the Code of Civil Procedure but shall,
37 notwithstanding the time limits specified in Section 860 of the
38 Code of Civil Procedure, be commenced within 30 days after the
39 effective date of the resolution described in Section 53351. Any
40 appeal from a judgment in any action or proceeding described in

1 this subdivision shall be commenced within 30 days after entry of
2 judgment.

3 SEC. 6. Section 53355.7 is added to the Government Code, to
4 read:

5 53355.7. The refusal by a person to undertake or cause to be
6 undertaken an act relating to Chapter 2.5 (commencing with
7 Section 53311) of Part 1 of Division 2 of Title 5, including
8 formation of, or annexation to, a community facilities district,
9 voting to levy a special tax, or authorizing another to vote to levy
10 a special tax, shall not be a factor when considering the approval
11 of a legislative or adjudicative act, or both, including, but not
12 limited to, the planning, use, or development of real property or
13 any change in governmental organization or reorganization, as
14 defined by Section 56021 or 56037, if the purpose of the
15 community facilities district is to finance energy efficiency, water
16 conservation, and renewable energy improvements.

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

33 The Legislature further finds and declares that the growing
34 population, climate change, and the need to protect and grow
35 California's economy while protecting and restoring our fish and
36 wildlife habitats make it essential that the state manage its water
37 resources as efficiently as possible. Section 2 of Article X of the
38 California Constitution declares: "It is hereby declared that because
39 of the conditions prevailing in this State the general welfare
40 requires that the water resources of the State be put to beneficial

1 use to the fullest extent of which they are capable, and that the
2 waste or unreasonable use or unreasonable method of use of water
3 be prevented, and that the conservation of such waters is to be
4 exercised with a view to the reasonable and beneficial use thereof
5 in the interest of the people and for the public welfare.” Governor
6 Schwarzenegger, in his Executive Order S-06-08, proclaimed a
7 condition of statewide drought and ordered implementation of
8 additional actions to promote water conservation which will
9 contribute to achieving long-term reductions in water use. Governor
10 Schwarzenegger has further called for a 20-percent per capita
11 reduction in urban water use statewide by the year 2020. Reduced
12 water use through conservation provides significant energy and
13 environmental benefits, and can help protect water quality, improve
14 streamflows, and reduce greenhouse gas emissions. There are many
15 water conservation practices that produce significant energy and
16 other resource savings that should be encouraged as a matter of
17 state policy. The Legislature also 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 water conservation improvements that are attached to residential,
22 commercial, industrial, or other property.

BILL ANALYSIS

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|SENATE RULES COMMITTEE           |                               | SB 279|
|Office of Senate Floor Analyses  |                               |       |
|1020 N Street, Suite 524         |                               |       |
|(916) 651-1520                   | Fax: (916)                   |       |
|327-4478                         |                               |       |
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UNFINISHED BUSINESS

Bill No: SB 279
 Author: Hancock (D)
 Amended: 7/6/09
 Vote: 21

SENATE LOCAL GOVERNMENT COMMITTEE : 4-1, 4/15/09
 AYES: Wiggins, Cox, Kehoe, Wolk
 NOES: Aanestad

SENATE FLOOR : 26-13, 04/27/09
 AYES: Alquist, Calderon, Cedillo, Corbett, Cox,
 DeSaulnier, Ducheny, Florez, Hancock, Harman, Kehoe,
 Leno, Liu, Lowenthal, Maldonado, Negrete McLeod, Oropeza,
 Padilla, Pavley, Romero, Simitian, Steinberg, Wiggins,
 Wolk, Wright, Yee
 NOES: Aanestad, Ashburn, Benoit, Cogdill, Correa, Denham,
 Dutton, Hollingsworth, Huff, Runner, Strickland, Walters,
 Wyland

ASSEMBLY FLOOR : 58-19, 9/1/09 - See last page for vote

SUBJECT : Local government: community facilities
 districts

SOURCE : Author

DIGEST : This bill adds the acquisition, installation,
 and improvement of energy efficiency, water conservation,
 and renewable energy improvements to the types of
 facilities that a Community Facilities District (CFD) may
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SB 279

finance, or refinance, regardless of whether the buildings or property are privately or public owned. This bill requires that energy efficiency and renewable energy improvements financed by a CFD must be affixed to or on real property.

This bill authorizes an alternate procedure for forming a CFD that initially consists solely of territory proposed for annexation to the CFD in the future, with the condition that a parcel or parcels within that territory may be annexed to the CFD and subjected to the special tax only with the unanimous approval of the parcel owner or owners at the time of annexation.

Assembly Amendments (1) added water conservation to the provisions of the bill, (2) added legislative findings and declarations, and (3) added technical and clarifying language.

ANALYSIS : The Mello-Roos Community Facilities Act allows counties, cities, special districts, and school districts to levy special taxes (parcel taxes) to finance a wide variety of public works, including parks, recreation centers, schools, libraries, child care facilities, and utility infrastructure. A Mello-Roos Community Facilities District (CFD) issues bonds against these special taxes to finance the public works projects. Like all special taxes, Mello-Roos Act special taxes require 2/3-voter approval. If there are fewer than 12 registered voters, the affected landowners vote.

In addition to financing public or governmental capital facilities, Mello-Roos Act special taxes can fund a limited list of public services: police services, fire protection, recreation programs, library services, museum operations, park maintenance, flood protection, hazardous waste cleanup, street and road maintenance, lighting of parks, parkways, streets, roads, and open space, plowing and removal of snow, and graffiti management and removal.

The Mello-Roos Act is an important feature of the local fiscal landscape, providing local officials with a key tool for accumulating the public capital needed to pay for the public works projects that make new residential development

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possible. Since 1985, CFDs have issued over \$18 billion in long-term bonds, mostly for capital improvements. Without

access to Mello-Roos bond funding, many builders would have to pay higher development impact fees and raise housing prices.

Local officials want to be able to use Mello-Roos taxes to help finance renewable energy and energy efficiency improvements on private property. To simplify the process by which property owners can voluntarily use Mello-Roos financing, local officials want to be able to create CFDs that initially contain no parcels of land, but consist only of territory from which parcels may subsequently be annexed to the CFD with the unanimous approval of parcel owners.

Facilities . In addition to financing public works such as park, school, and library facilities, CFDs can pay for the following improvements on privately owned buildings or real property:

1. Work deemed necessary to bring buildings or real property into compliance with seismic safety standards and regulations.
2. The repair and abatement of damage to buildings caused by soil deterioration.
3. The removal or remediation of any hazardous substance on real or other tangible property.

This bill adds the acquisition, installation, and improvement of energy efficiency and renewable energy improvements to the types of facilities that a CFD may finance, or refinance, regardless of whether the buildings or property are privately or publicly owned. This bill requires that energy efficiency and renewable energy improvements financed by a CFD must be affixed to or on real property.

This bill permits energy efficiency, water conservation, and renewable energy improvements financed by a district to be installed on a privately owned building and on privately owned real property only with the prior written consent of the owner or owners of the building or real property. The bill specifies that these provisions shall not be used to finance installation of energy efficiency, water

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conservation, and renewable energy improvements on a privately owned building or property in connection with the initial construction of a residential building, unless the initial construction is undertaken by the intended owner or occupant.

CFDs can use tax revenues to make lease or debt-service

payments on any lease, lease-purchase contract, or certificate of participation used to finance authorized district facilities. This bill authorizes the use of tax revenues to make lease or debt-service payments on any lease, lease-purchase contract, or certificate of participation used to finance "facilities authorized to be financed by the district."

This bill declares that any improvement on private property authorized to be financed by a CFD constitutes a "public facility" for purposes of the Mello-Roos Act, and a "public improvement" for purposes of specified statutes, whether the improvement is owned by a private entity, if the legislative body has determined that the improvement provides a public benefit, or the improvement is owned by a public agency.

CFD formation and annexation . To initiate the formation of a CFD, a local agency's legislative body must adopt a resolution of intention to establish the district, which must:

1. Describe the district's boundaries.
2. Describe the facilities and services proposed to be financed.
3. State that a special tax, secured by a lien against real property, will be annually levied.
4. Specify, in detail, the rate, method of apportionment, and manner of collection of the special tax.
5. Fix a time and place for a public hearing.

After holding the hearing and considering protests, if the legislative body determines to establish the CFD, it must adopt a resolution of formation containing all of the information provided in the resolution of intention and, if a special tax is to be levied, some additional information about the tax levy.

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This bill authorizes an alternate procedure for forming a CFD that initially consists solely of territory proposed for annexation to the CFD in the future, with the condition that a parcel or parcels within that territory may be annexed to the CFD and subjected to the special tax only with the unanimous approval of the parcel owner or owners at the time of annexation.

Under this alternate CFD formation procedure, the resolution of intention or the resolution of formation need not specify the rate or rates of special tax, provided that

the rate of special tax applicable to a parcel or parcels will be specified in the unanimous approval provided by parcel owners when they annex to the CFD.

A majority protest to a proposed CFD halts formation proceedings for one year from the date of the protest decision. A majority protest occurs if 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the district, or if the owners of one-half or more of the area of the land in the territory proposed to be included in the district and not exempt from the special tax, file written protests against the establishment of the district. This bill provides that this definition of majority protest does not apply to the alternative CFD formation process. Instead, under this alternative CFD formation process, a majority protest occurs if 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be annexed to the CFD in the future, or the owners of one-half or more of the area of the land proposed to be annexed in the future and not exempt from the special tax, file written protests against the establishment of the district.

After the adoption of the resolution of formation, voters must approve the special tax levy, authorize indebtedness, and establish the CFD's appropriations limit. Under the alternate procedure established by this bill, the appropriations limit for the CFD, the applicable rate of the special tax and the method of apportionment and manner of collection of that tax, and the authorization to incur

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bonded indebtedness must be specified and be approved by the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels annex the CFD. The bill states that no additional hearings or procedures are required, and the unanimous approval shall be deemed to constitute a unanimous vote in favor of the appropriations limit for the CFD, the authorization to levy the special tax on the parcel or parcels, and the authorization to incur bonded indebtedness.

This bill prohibits a local legislative body from recording a notice of tax lien against any parcel or parcels within a CFD formed using the alternative process until the parcel owner or owners have given unanimous approval of the parcel or parcels' annexation to the CFD, at which time the special tax lien shall be recorded.

This bill states that, for CFDs created to finance energy efficiency and renewable energy improvements, the refusal of a person to undertake acts, including:

1. The formation of, or annexation to, a community facilities district,
2. Voting to levy a special tax, or,
3. Authorizing another to vote to levy a special tax.
4. Shall not be a factor when considering the approval of specified legislative or adjudicative acts, or both.

Special taxes . A resolution of intention to form a CFD must specify the rate, method of apportionment, and manner of collection of the special tax that is to be levied in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay. After a CFD has been created and authorized to levy special taxes, the legislative body may approve an ordinance to levy the special taxes at the rate, and in the manner, described in the resolution of intention.

Under the alternative CFD formation process authorized by this bill, a legislative body adopts an ordinance providing for the levy of the special taxes on parcels that will annex to the CFD at the rate or rates to be approved unanimously by the parcel owner or owners. The ordinance

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providing for the levy of special taxes must also provide for the apportionment and collection of special taxes in the manner specified in the resolution of formation. This bill specifies that no further ordinance shall be required even though no parcels may have annexed to the CFD.

A lawsuit to test the validity of a CFD's special taxes must be filed within 30 days after voters approve the special tax. This bill requires a validation lawsuit regarding the special taxes levied against a parcel by a CFD formed under the alternative process to be filed within 15 days after the notice of special tax lien is recorded against the parcel. This bill also authorizes the local agency to file a validation lawsuit to determine the validity of any CFD special taxes created through the alternative CFD formation process.

Bonds . For a CFD to issue bonds, the local legislative body must adopt a resolution proposing to incur bonded indebtedness, hold a hearing on the proposed debt authorization, and submit the proposition to voters. A 2/3 vote is required to approve the issuance of bonds by a CFD.

Under the alternative CFD formation process authorized by this bill, the parcel owners approve the proposition to authorize bonded indebtedness when their parcels annex to the CFD. This bill provides that no additional hearings or procedures are needed, and unanimous approval constitutes a unanimous vote in favor of the proposition to authorize bonded indebtedness.

A lawsuit to test the validity of a CFD's bonds must be filed within 30 days after voters approve the bonds. This bill requires that a validation lawsuit over bonds issued by a CFD formed under the alternative process must be filed within 30 days after the effective date of the local legislative body's resolution to approve bonded indebtedness. This bill also authorizes the local agency to file a lawsuit to determine the validity of any CFD bonds.

Comments

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Local assistance for energy improvements . In response to rising energy costs and concerns about climate change, local governments want to promote energy efficiency and renewable energy generation. The initial installation costs can deter property owners from installing solar panels, or making energy efficiency improvements. Using Mello-Roos taxes, counties and cities can help to finance these investments at low interest rates. Property owners who voluntarily agree to pay Mello-Ross special taxes to finance energy improvements will realize immediate savings on their utility bills while paying off their costs over time on their property tax bills. By lowering energy costs, reducing energy demand, and expanding generation from renewable energy sources, the voluntary Mello-Roos taxes authorized by this bill will benefit residents throughout California.

Related Legislation

This bill is similar to AB 811 (Levine), Chapter 159, Statutes of 2008, which let local governments use contractual benefit assessments to provide public financing for the installation of renewable energy and energy efficiency improvements on private property. Last year's Levine bill relied on special assessments; this year's Hancock bill uses special taxes. The Senate Local Government Committee passed AB 811 on a 4-1 vote. After

the Legislature passed the bill, Governor Schwarzenegger signed AB 811 into law.

Prior Legislation

This bill replicates AB 1709 (Hancock) of 2008, which the Senate Local Government Committee passed unanimously. Governor Schwarzenegger vetoed the bill, citing his concerns about the use of Mello-Roos taxes to finance energy efficiency improvements.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 9/2/09)

Akeena Solar

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Alameda County Waste Management Authority
American Federation of State, County, and Municipal
Employees
Association of Bay Area Governments
Association of California Water Agencies
Bay Area Council
CA Building Industry Association
CA Business Properties Association
California State Association of Counties
City and County of San Francisco
City of Berkeley
City of Citrus Heights
City of Davis
City of Morgan Hill
City of San Luis Obispo
City of Santa Cruz
City of Saratoga
City of Solana Beach
City of Ventura
Community Environment Council
County of Marin
County of San Bernardino
County of San Mateo
County of Santa Cruz
County of Ventura
Ecology Action
Environmental Entrepreneurs
Fieldman, Rolapp & Associates
Friends of the Earth
Global Green
Joint Venture: Silicon Valley Network
Jones Hall Law Firm

Kyoto USA
 Local Clean Energy Alliance of the East Bay
 National Parks Conservation Association
 Natural Resource Defense Council
 NBS Local Government Solutions
 Orrick, Herrington, & Sutcliffe LLP
 Paul Warmer Sustainability Consulting
 PG&E
 Planning and Conservation League
 Regional Asthma Management and Prevention
 Ron Bishop, Architect, Wildan Group, Inc.
 Ronald E. Lee, Attorney at Law

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Sacramento Area Council of Governments
 Sacramento Municipal Utility District
 San Francisco Public Utilities Commission
 Sharp Solar Electricity
 Sierra Club
 South Bay Cities Council of Governments (Carson, El Segundo, Gardena, Hawthorne, Hermosa Beach, Inglewood, Lawndale, Lomita, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Torrance, and the Harbor City/San Pedro communities of the City of Los Angeles.)
 Southern California Edison
 Stone & Youngberg LLC
 Stradling Yocca Carlson & Rauth
 Sungevity
 The Solar Alliance
 United Solar
 US Green Building Council (northern region)
 Vote Solar
 Wildan Group, Inc.

ASSEMBLY FLOOR :

AYES: Ammiano, Arambula, Beall, Bill Berryhill, Tom Berryhill, Blakeslee, Block, Blumenfield, Brownley, Caballero, Charles Calderon, Carter, Chesbro, Cook, Coto, Davis, De La Torre, De Leon, Emmerson, Eng, Evans, Feuer, Fletcher, Fong, Fuentes, Furutani, Hall, Hayashi, Hernandez, Hill, Huber, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, Nestande, Nielsen, John A. Perez, V. Manuel Perez, Portantino, Ruskin, Salas, Saldana, Silva, Skinner, Smyth, Solorio, Swanson, Torlakson, Torres, Torrico, Yamada, Bass
 NOES: Adams, Anderson, Conway, DeVore, Duvall, Fuller, Gaines, Garrick, Gilmore, Hagman, Harkey, Jeffries, Knight, Logue, Miller, Niello, Audra Strickland, Tran, Villines

NO VOTE RECORDED: Buchanan, Galgiani

AGB:n1 9/2/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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**** END ****

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

DRAFT
City Attorney

RESOLUTION NO. _____ C.M.S.
2009 SEP -3 PM 5:42

Introduced by Councilmember Nadel and Council President Brunner

Resolution in support of Senate Bill 279 (Hancock): Finance Energy Efficiency, Water Conservation, and Renewable Energy Investments through Community Facility Districts

WHEREAS, An increase in energy efficiency, the use of renewable energy, and water conservation benefits the City of Oakland and its residents in many ways including: decreases in energy expenditures, pollutant emissions, and health impacts, and

WHEREAS, Local small employers in the energy and water conservation field could expand if the demand for energy and water improvements were greater; and

WHEREAS, The Mello-Roos Community Facilities Act currently allows counties, cities, special districts, and school districts to use parcel taxes to finance a wide variety of public works by issuing bonds against these special taxes, and

WHEREAS, Senate Bill 279 (Hancock) seeks to expand the Mello-Roos Act so that a Community Facility District (CFD) can be established to help finance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements, and

WHEREAS, Passage of this state legislation would allow public and private property owners to voluntarily opt-in to a program within a local CFD, to finance installation of an energy or water efficiency improvement through an additional assessment on the individual property tax, and

WHEREAS, Senate Bill 279 is consistent with City of Oakland's commitment to climate protection, energy conservation, and promoting local job development, now, therefore, be it

RESOLVED: That the City Administrator and the City's state lobbyist are directed to advocate for adoption of SB279, and immediately prepare a letter to Governor Schwarzenegger, with Council endorsement demonstrating this support.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE: BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-
ABSENT-
ABSTENTION-

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council,
City of Oakland, California