

## Senate Bill No. 555

### CHAPTER 493

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, and to amend Section 26104 of the Public Resources Code, relating to local government.

[Approved by Governor October 5, 2011. Filed with  
Secretary of State October 6, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 555, 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, the 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.

This bill would provide that the refusal by a person to undertake or cause to be undertaken an act relating to community facilities districts, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, shall not be a factor when considering the approval of a legislative or adjudicative act, or both, including, but not limited to, the planning use, or development of real property or any change in governmental organization or reorganization if the purpose of the community facilities district is to finance energy efficiency, water conservation, and renewable energy improvements.

(3) Existing law defines a Property Assessed Clean Energy bond, otherwise known as a PACE bond, to mean a bond that is secured by a voluntary contractual assessment on property or a voluntary contractual

assessment or a voluntary special tax on property to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements that is levied pursuant to a chartered city's constitutional authority under the California Constitution.

This bill would also include within this definition a bond secured by a special tax on property levied by specified community facilities districts.

*The people of the State of California do enact as follows:*

SECTION 1. Section 53313.5 of the Government Code is amended to read:

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities that it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency that will own or operate the facility. For example, a community facilities district may finance facilities, including, but not limited to, the following:

- (a) Local park, recreation, parkway, and open-space facilities.
- (b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.
- (c) Libraries.
- (d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.
- (e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the

conveyance of those facilities to the public utility. “Public utility” shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission, or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

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

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

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

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

(A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in

accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

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

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

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

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

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

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

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

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

(m) Any improvement on private property authorized to be financed by this section shall constitute a “public facility” for purposes of this chapter and a “public improvement” for purposes of Part 1 (commencing with Section 3100) and Part 2 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code, 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.

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

53324. (a) If 50 percent 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 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, and protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to create the specified community facilities district or to authorize the specified special tax shall be taken for a period of one year from the date of the decision of the legislative body.

If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services

within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

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

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

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

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

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

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

(2) In lieu of approval pursuant to an election held in accordance with the procedures set forth in Sections 53326, 53327, 53327.5, and 53328, the appropriations limit for the community facilities district, the applicable rate of the special tax and the method of apportionment and manner of collection of that tax, and the authorization to incur bonded indebtedness for the community facilities district shall 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 are annexed to the community facilities district. 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 community facilities district, the authorization to levy the special tax on the parcel or parcels, and the authorization to incur bonded indebtedness for the community facilities district.

(3) Notwithstanding Section 53324, this paragraph establishes the applicable protest provisions in the event a local agency forms a community facilities district pursuant to the procedures set forth in this section. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be annexed to the community facilities district in the future, or if the owners of one-half or more of the area of land proposed to be annexed in the future and not exempt from the special tax, file written protests against establishment of the

community facilities district, and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to form the community facilities district shall be undertaken for a period of one year from the date of decision of the legislative body on the issues discussed at the hearing. If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

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

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

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

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

(e) In connection with formation of a community facilities district and annexation of a parcel or parcels to the community facilities district pursuant to this section, and the conduct of an election on the proposition to authorize bonded indebtedness pursuant to the alternate procedures set forth in Section 53355.5, the local agency may, without additional hearings or procedures,

designate a parcel or parcels as an improvement area within the community facilities district. After the designation of a parcel or parcels as an improvement area, all proceedings for approval of the appropriations limit, the rate and method of apportionment and manner of collection of special tax and the authorization to incur bonded indebtedness for the parcel or parcels shall apply only to the improvement area.

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

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

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

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

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

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

53355.7. The refusal by a person to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, shall not be a factor when considering

the approval of a legislative or adjudicative act, or both, including, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined by Section 56021 or 56037, if the purpose of the community facilities district is to finance energy efficiency, water conservation, and renewable energy improvements.

SEC. 7. Section 26104 of the Public Resources Code is amended to read:

26104. “Property Assessed Clean Energy bond” or “PACE bond” means a bond that is secured by any of the following:

(a) A voluntary contractual assessment on property authorized pursuant to paragraph (2) of subdivision (a) of Section 5898.20 of the Streets and Highways Code.

(b) A voluntary contractual assessment or a voluntary special tax on property to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements that is levied pursuant to a chartered city’s constitutional authority under Section 5 of Article XI of the California Constitution.

(c) A special tax on property authorized pursuant to subdivision (b) of Section 53328.1 of the Government Code.

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

The Legislature further finds and declares that the growing population, climate change, and the need to protect and grow California’s economy while protecting and restoring our fish and wildlife habitats make it essential that the state manage its water resources as efficiently as possible. Section 2 of Article X of the California Constitution declares: “It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of those waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.” Former Governor Schwarzenegger, in his Executive Order S-06-08, proclaimed a condition of statewide drought and ordered implementation of additional actions to promote water conservation which will contribute

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