

**ASSEMBLY BILL 373 (WOLK) -
LOCAL GOVERNMENT:
COMMUNITY FACILITIES IMPROVEMENT**

SUMMARY

AB 373 amends various sections of state law primarily related to community facilities districts. AB 373 was passed by the California State Assembly on September 12, 2007 and the California State Senate on September 7, 2007. The Bill was signed by Governor Schwarzenegger on October 13, 2007 and will take effect on January 1, 2008.

The following summarizes the numerous changes, amendments and deletions to various sections of the Education Code applicable to bond elections and school facilities improvement districts (the “Education Code Portion”), to the Mello-Roos Community Facilities Act of 1982, as amended (the “Mello-Roos Portion”), to various sections of the Revenue and Taxation Code (the “Revenue and Taxation Code Portion”) and to Section 8837 of the Streets and Highways Code (the “Streets and Highways Code Portion”), as presented under Assembly Bill 373, Wolk – Local Government: Community Facilities Improvement (“AB 373”). AB 373 would also make other technical, nonsubstantive changes to these and other applicable laws.

DEFINITIONS

Unless the context otherwise requires, the following terms shall have the following meanings in this summary.

“AB 373” or “Bill” means Assembly Bill 373 (Wolk) – local government: community facilities improvement.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311 et seq. of the Government Code of the State.

“CDIAC” means the California Debt and Investment Advisory Commission.

“CFD” means a community facilities district establish under the Act and a resolution of formation.

“Education Code” means the Education Code of the State.

“GO Bonds” means a general obligation bond issued by a school district or a community college pursuant to applicable sections of the Education Code of the State, (ii) paragraph 3 of subdivision (b) of Article XIII A of the California Constitution and a voter approved measure.

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“Local Agency” means a city, county, school district, community college district, special district or any other local government entity under the laws of the State of California.

“Revenue and Taxation Code” means the Revenue and Taxation Code of the State of California.

“SAB” means the State Allocation Board, a division of the Office of Public School Construction, which is responsible for determining the allocation of state resources used for the new construction and modernization of local public school facilities.

“SFID” means a school facilities improvement district establish under Chapter 2, Part 10, Division I, Title 1 of the Education Code of the State.

“State” means the State of California.

“Streets and Highways Code” means the Streets and Highways Code of the State.

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The following summarizes the key concepts within the Education Code Portion of AB 373.

EDUCATION CODE
TITLE 1. GENERAL EDUCATION CODE PROVISIONS
DIVISION 1. GENERAL EDUCATION CODE PROVISIONS
PART 10. SCHOOL BONDS

The Education Code authorizes the governing board of a school district or community college district to authorize an election for the issuance of GO Bonds for that school district or community college district and the issuance of those GO Bonds pursuant to specified requirements. Chapter 2, Part 10, Division I, Title 1 of the Education Code authorizes the formation of a SFID by a school district or community college district and the election for the issuance of GO Bonds for that school district or community college district and the issuance of those bonds pursuant to specified requirements.

AB 373 conforms Sections 15300-15303 of the Education Code, except for specified differences, in order to standardize and make the requirements and process through which GO Bonds for school districts and community college districts the same for GO Bonds issued by SFIDs.

Under the Bill, Section 15301(c) of the Education Code deletes the prohibition of CFDs within the boundaries of a SFID including all or part of the territory of a specified CFD.

Section 15303(b) of the Education Code is added under the Bill to include that a board of supervisors of a county in which a SFID is located would be required to file a resolution adopted by that board with CDIAC.

The requirement that a notice of a hearing of a governing board of a school district or community college district on the establishment of a SFID be posted in three (3) public places within the proposed SFID for at least 14 days prior to the time of the hearing is deleted under AB 373 from Section 15321 of the Education Code.

AB 373 adds Section 15326.5 of the Education Code to allow a governing board of a school district or community college district that has established a SFID to authorize an amendment to a resolution which had established for the SFID in specified ways.

The following summarizes the key concepts within the Mello-Roos Portion of AB 373.

GOVERNMENT CODE
TITLE 5. LOCAL AGENCIES
DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES
PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND
OTHER AGENCIES
CHAPTER 2.5. THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

ARTICLE I
GENERAL PROVISIONS

(1) **§ 53312.7. Goals and Policies to be Adopted before Initiation of Proceedings to Establish District**

Section 53312.7 of the Act permits a Local Agency to initiate proceedings to establish a CFD if it has first considered and adopted local goals and policies, including, among others, a statement of the priority that various kinds of public facilities have for financing, as specified. AB 373 revises Section 53312.7 of the Act in which local goals and policies will now only address the use of the Act for financing facilities, but must also address the use of the Act for financing services.

(2) **§ 53313. Services which may be provided**

Section 53313 of the Act authorizes local governments to establish a CFD for recreational program services, library services, maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities, and permits a special tax to be levied for any of these services upon approval of all voters, as specified. Section 53313(c) of the Act provides that a vote on a special tax to support these services is not subject to the requirement that a specified number of persons have been registered to vote for each of the 90 days preceding the close of the protest hearing. The Act prohibits bonds to be issued to fund any of these services. AB 373 revises Section 53313 of the Act to include a provision that some services may not be approved by landowner vote and the cross-reference to the landowner vote where there are more than 12 registered voters residing within a CFD, however, residential property will never be taxed, are simplified. Section 53313 of the Act also authorizes local governments to establish a CFD for the maintenance of parks, parkways and open space, flood and storm protection services, as specified, among others. Under the Bill, it authorizes local governments to establish CFDs for the maintenance and lighting of parks, parkways, and open space, and adds streets and roads to these provisions, also authorizes a local government to establish a CFD for flood and storm protection services, including the plowing and removal of snow and would revise the prohibition against the issuance of bonds for CFDs, to authorize a local

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government to issue bonds to fund capital facilities to be used in providing the specified services.

(3) § 53313.4. Exemption of Territory within Community Facilities District Established for Acquisition or Improvement of School District from Fees or Levies

Section 53313.4 of the Act provides that a territory within a CFD established for the acquisition or improvement of school facilities for a school district is exempt from any fee, increase in any fee other than a cost-of-living increase, or other requirement first levied, increased, or imposed subsequent to the date that the resolution of formation creating a CFD is adopted until a specified time. AB 373 revise Section 53313.4 of the Act to provide that any territory within a CFD established for the acquisition or improvements of school facilities for a school district is exempt from any fee, as specified, pursuant to a specified chapter of the Education Code. The Bill also revises the length of the term of the exemption, as specified.

(4) § 53313.5. Types of Facilities

Section 53313.5 of the Act authorizes a CFD to finance the purchase, expansion, improvement, or rehabilitation of any real or other tangible property, as specified. Existing law provides various examples of facilities that a CFD may finance, including the acquisition, improvement, rehabilitation or maintenance of any real or other tangible property, as specified, and the payment in full of liens, assessment, obligation, or indebtedness, as specified, among others. AB 373 revises these provisions in Section 53313.5 of the Act to specify that a CFD may finance the purchase, expansion, improvement or rehabilitation of any real or other tangible property, as specified. It also revises the examples of facilities that a CFD may finance to include the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property for flood and storm protection services, as specified. The Bill also requires a written consent from a public agency other than the agency conducting the proceedings, under specified circumstances. The Bill includes, among the examples of permissible facilities, the acquisition, improvement, rehabilitation, or maintenance of property for the removal or remedial action for the cleanup of any hazardous substance released, or threatened to be released, into the environment, as specified.

(5) § 53313.6. Adjustments in *Ad Valorem* Property Taxes

Section 53313.6 of the Act authorizes a legislative body to provide for adjustments in *ad valorem* property taxes within a CFD only if two (2) specified findings are made at the conclusion of a public hearing. One of the required findings is that an *ad valorem* property tax is levied on property within a proposed CFD for the exclusive purpose of making lease payments or paying principal or interest on bonds or indebtedness, as specified. AB 373 revises Section 53313.6 of the Act to include a finding that an *ad valorem* property tax freeze on outstanding general obligation bonds, the legislative body may only extend it to cover already issued debt, however, it may cover debt that has been issued, even if the tax for such debt has not yet been levied and makes conforming changes to other provisions of law.

(6) § 53313.85. Finance By Community Facilities District of Costs Associated With Tangible Property

Section 53313.85 of the Act authorizes a CFD to finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. AB 373 repeals this section.

(7) § 53313.9. Sharing Cost of School Facilities

Section 53313.9 of the Act provides that all or part of the cost of any school facilities financed by a CFD may be shared by SAB, as specified, but that if SAB shares in any part of the cost of the school facilities, the ownership of those facilities and the real property that the facilities are located upon shall be transferred to the State, and the CFD is required to make specified reductions in bonds or special taxes, as specified, provided that the reductions are consistent with the provisions of the resolution of intention, formation, consideration and to incur bonded indebtedness, as specified. Under AB 373, Section 53313.9(b) of the Act specifies that whenever the SAB shares in any part of the cost of the school facilities, the ownership of those facilities and the real property that the facilities are located upon are held as provided in the Leroy F. Greene School Facilities Act of 1998 and eliminates the requirement that a CFD make reductions in bonds or special taxes. Under AB 373, Section 53313.9(c) of the Act also provides that the resolution of intention, formation, consideration, and to incur bonded indebtedness may provide for cost sharing by the SAB and for appropriate adjustment of the principal amount of any bond issue or issues and of the rate and method of apportionment of any special tax, as specified.

(8) § 53316.2. Joint Community Facilities Agreement or Joint Exercise of Powers Agreement

Section 53316.2 of the Act authorizes a CFD to finance facilities that are to be owned or operated by an entity other than a Local Agency that created a CFD or services to be provided by an entity other than a Local Agency that created a CFD, or any combination thereof, if a joint community facilities agreement or a joint exercise of powers agreement is adopted, as specified. AB 373 requires that the facilities be owned or operated by a public agency and specifies that a joint community facilities agreement or a joint exercise of powers agreement with a state or federal agency is not required if a Local Agency with primary responsibility for formation of a CFD is the agency that would, in the absence of a CFD, deal directly with the state or federal agency in the provision of the facilities or services, or if a Local Agency with primary responsibility for formation of a district enters into a joint agreement with a Local Agency that would, in the absence of a CFD, deal directly with a state or federal agency in the provision of the facilities.

(9) § 53317. Definitions

Section 53317 of the Act defines various terms in connection with CFDs, including "landowner," as specified. AB 373 revises the definition of landowner to specify that a public agency is a landowner or owner of land for land voting purposes under four scenarios: (a) the land owned by a public agency would be subject to a special tax, as specified, (b) the public agency has acquired the property by purchase or negotiation in connection with foreclosure of the special tax lien and it is intended that the property will be transferred to private ownership, (c) the public agency makes specified statements in the proceedings, or (d) the land owned by a public agency is within the territory of a military base that is closed or being closed.

ARTICLE 2
PROCEEDINGS TO CREATE A COMMUNITY FACILITIES DISTRICT

(10) § 53318. Institution of Proceedings by Legislative Body

Section 53318 of the Act requires a legislative body to institute proceedings for the establishment of a CFD when either a written request for the establishment of a district, signed by two (2) members of a legislative body, describing the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the CFD is filed with a legislative body, or a petition requesting the institution of the proceedings signed by the requisite number of registered voters, as specified, is filed with the clerk of a legislative body, or when a petition requesting the institution of the proceedings signed by landowners owning the requisite portion of the area of the proposed CFD, as specified, is received. Section 53318 of the Act also requires a written request or

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petition requesting the institution of the proceedings be accompanied by the payment of a fee in an amount that a legislative body determines is sufficient to compensate a legislative body for all costs incurred in conducting the proceedings, as specified. AB 373 requires the petitions signed by registered voters or landowners to include a description of the boundaries of the territory that is proposed for inclusion in a CFD and a specification of the type or types of facilities and services to be financed by a CFD. AB 373 provides that a written request or a petition signed by registered voters need not be acted on until a legislative body receives the payment of a fee that it determines, within 45 days, to be sufficient to compensate a legislative body for all costs incurred in conducting the proceedings. The Bill also provides that a legislative body may not act upon a petition by landowners until a fee is paid that a legislative body determines, within 45 days, to be sufficient to compensate a legislative body for all costs incurred in conducting the proceedings, as specified.

(11) § 53319. Powers of Local Agency Formation Commission

Section 53319 of the Act requires a petition requesting the institution of proceedings for the establishment of a CFD to, among other things, state the type or types of facilities and services to be financed by a CFD and be signed by not less than 10% of the registered voters residing within the territory proposed to be included within a CFD or by owners of not less than 10% of the area of land proposed to be included within a CFD. AB 373 requires the petition to state the type or types of facilities and services proposed to be financed by a CFD, and it authorizes the petition to include proposals for a resolution to be adopted by a legislative body. It also requires the petition to be signed by either not less than 10% of the registered voters residing within the proposed territory or not less than 10% of the owners of the area of land proposed to be included within a CFD and not proposed to be exempt from the special tax.

(12) § 53320. Adoption of Resolution of Intention

Section 53320 of the Act requires within 90 days after either a written request by two members of a legislative body or a petition requesting the institution of proceedings for the establishment of a CFD is filed with the legislative body, it shall adopt a resolution of intention to establish a CFD. AB 373 requires that the 90 days within which the legislative body must respond to a valid petition by adopting a resolution of intention does not begin to run until the petitioner have paid the fee, if required.

(13) § 53321. Form of Resolution of Intention

Section 53321 of the Act requires proceedings for the establishment of a CFD to be instituted by the adoption of a resolution of intention to establish a CFD, which

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must, among other things, state that, except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in a CFD, will be annually levied within the area. Such statement must, in the case of any special tax to pay for public facilities and to be levied against any parcel used for private residential purposes, among other things, specify that under no circumstances will the special tax levied against specified parcels be increased by more than 10% as a consequence of delinquency of default by the owner of any other parcel or parcels within a CFD. AB 373 requires the statement to specify that under no circumstances will the special tax levied in any fiscal year against specified parcels, be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within a CFD by more than 10% above the amount that would have been levied in that fiscal year had there never been any delinquencies or defaults.

(14) § 53322.4. Alternative Method for Giving Notice of Hearing

Section 53322 of the Act requires the clerk of a legislative body to publish a notice of hearing, as specified, and Section 53322.4 of the Act authorizes the clerk to give the same notice of the hearing by first-class mail, at least 15 days before the hearing, to each registered voter and to each landowner within the proposed district. AB 373 deletes the requirement in Section 53322.4 that the notice by first-class mail be mailed at least 15 days before the hearing.

(15) § 53323. Protests

Section 53323 of the Act authorizes interested persons or taxpayers to make oral or written protest against the establishment of a CFD, the extent of a CFD, or the furnishing of specified types of public facilities or services within a CFD at the hearing on the matter. This section requires written protest to be filed with the clerk of a legislative body on or before the time fixed for the hearing. AB 373 authorizes any person to make an oral or written protest and requires only written protest not personally presented by the author of the protest at the time of the hearing to be filed with the clerk of a legislative body at or before the time fixed for the hearing.

(16) § 53325. Duration of Hearing; Determination

Section 53325 of the Act authorizes a legislative body to modify the resolution of intention to establish the CFD at a public hearing. AB 373 prohibits a legislative body from modifying the resolution of intention to increase the maximum special tax or to add territory to a proposed CFD.

(17) § 53325.7. Proposition for Appropriations Limit

Section 53325.7 of the Act authorizes a legislative body to submit a proposition to establish or change the appropriations limit, as specified, of a CFD, to the qualified electors of a proposed or established district, to become effective if approved by the qualified electors voting on the proposition. It also requires the limit to be adjusted for changes in the cost of living and changes in populations. AB 373 revises this section to require the limit to be adjusted for changes in the per capita personal income in the State and changes in populations, as specified.

(18) § 53326. Submission of Special Tax Levy to Electors

Section 53326 of the Act requires a legislative body to submit the levy of any special taxes to the qualified electors of the proposed CFD subject to the levy or to the qualified electors of the territory to be annexed by the CFD subject to the levy in the next general election or in a special election to be held at least 90 days, but not more than 180 days, following the adoption of the resolution of formation and requires a legislative body to provide the resolution of formation, a certified map of sufficient scale and clarity to show the boundaries of a CFD, and a sufficient description to allow the election official to determine the boundaries of a CFD, to the official conducting the election within 3 business days after the adoption of the resolution of formation. This existing section specifies the allocation of the votes, if the vote is to be by landowners of a CFD, as specified. AB 373 requires a legislative body to provide the resolution deeming it necessary to incur bonded indebtedness, if one is adopted. It requires the ballots to be executed by an owner of a parcel, or by a lawfully appointed representative of an owner, as specified, and would further specify the allocation of landowner votes.

(19) § 53327. Applicability of Other Laws; Waiver of Analysis and Arguments

Section 53327(b) of the Act provides that when an election involves a school district and the vote is to be by the landowners of the proposed CFD, a legislative body of the school district may authorize an official of the school district to conduct the election, including preparation of analysis and compilation of arguments. AB 373 instead provides that when the vote is to be by the landowners of the proposed CFD, a legislative body of a Local Agency may authorize an official of a Local Agency to conduct the election, including the preparation of analysis and compilation of arguments.

(20) § 53328. Levy of Special Tax

Section 53328(b) of the Act provides that a special tax may be levied to provide services only if at least 12 persons shall have been registered to vote within the territory of the proposed CFD for each of the 90 days preceding the close of the protest hearing and if 2/3 of the votes cast upon the question of levying the tax are in favor of levying the tax. AB 373 repeals Section 53328(b) of the Act.

(21) § 53328.3. Lien of Special Tax

Section 53328.3 of the Act requires the clerk of a legislative body, upon determining that the required 2/3 votes cast are in favor of levying the special tax, to record the notice of a special tax lien, as specified. AB 373 requires the clerk of a legislative body to record the notice within 15 days of a landowner election or within 90 days of a registered voter election.

ARTICLE 3
EXTENSION OF AUTHORIZED FACILITIES AND SERVICES AND
CHANGES IN SPECIAL TAXES

(22) § 53330.7. Elimination of Facilities and Services in Resolution

Section 53330.7 of the Act authorizes a legislative body, at any time after conducting a public hearing, to eliminate one or more of the types of facilities and services specified in the resolution of intention to establish a CFD, but may not finance any types of facilities and services that were not specified in the resolution of intention. AB 373 revises this provision to refer to the resolution of formation of a CFD, instead of the resolution of intention.

(23) § 53332. Petition for Changes in Facilities, Services, or Taxes

Section 53332 of the Act requires a legislative body, if it receives a petition signed by 25% or more of the registered voters residing in a CFD or by the owners of 25% or more of the territory within a CFD, to adopt a resolution of consideration within 40 days of the payment of the fee determined by a legislative body, as specified, reflecting the changes in the CFD the petition requested. AB 373 requires a petition by landowners to be by 25% or more of the owners of land within a CFD not exempt from the special tax and would provide an additional reason to petition for a change in the CFD. It also requires a legislative body to determine the required fee within 45 days of receipt of a petition filed by landowners and permits a legislative body to require a fee that must be determined within 45 days (in the case of a petition filed by registered voters).

(24) § 53336. Protests

Section 53336 of the Act permits protests against a proposal to change a CFD or special tax to be made in writing by any interested person, and requires written protest to be filed with the clerk of a legislative body on or before the time fixed for the hearing. AB 373 only requires written protests not personally presented by the author at the hearing to be filed with the clerk of a legislative body on or before the time fixed for the hearing.

ARTICLE 3.5
ANNEXATION OF TERRITORY

(25) § 53339.3. Contents of Resolution of Intention

Section 53339.3 of the Act requires the resolution of intention to annex a territory or to provide for future annexation of territory to, among other requirements, specify any special taxes that would be levied within the territory proposed to be annexed or to be annexed in the future and requires a special tax proposed to pay for public facilities financed with bonds secured by an existing CFD to be the same as the tax levied in an existing CFD for that purpose. The resolution of intention must also specify any alteration in the special tax rate levied within the existing CFD as a result of the proposed annexation. AB 373 requires a special tax proposed to pay for public facilities with bonds that have already been issued and that are secured by an existing CFD to be the same as the tax levied in the existing district for that purpose. It also specifies that these provisions may not be construed to limit the levy of a special tax within the territory to be annexed or to be annexed in the future to provide new or additional services beyond those supplied within the existing territory of the CFD or to pay for new or additional public facilities with or without bond financing. It also requires the resolution of intention to specify in quantitative terms any change in a legislative body's expectations with respect to the probable special tax rate to be levied within the existing CFD as a result of the proposed annexation.

(26) § 53339.5. Protest

Section 53339.5 of the Act authorizes protests against a resolution of intention to annex a territory or to provide for future annexation of a territory to be made in writing by any interested person, and requires written protest to be filed with the clerk of a legislative body on or before the time fixed for the hearing. AB 373 only requires written protests not personally presented by the author at the hearing to be filed with the clerk of a legislative body on or before the time fixed for the hearing.

(27) § 53339.6. Protest by 50 Percent or More of Registered Voters

Section 53339.6 of the Act prohibits any further proceedings to be taken on the annexation of territory for a period of one year from the decision of a legislative body at the hearing on the annexation if a specified number or groups of persons, including the owners of 1/2 or more of the area of land in the territory included in the existing district, or the owners of 1/2 or more of the area of land in the territory proposed to be annexed or proposed to be annexed in the future, file written protests with a legislative body. AB 373 specifies that the land in the existing CFD, and the land in the territory proposed to be annexed or proposed to be annexed in the future, in which 1/2 or more of the owners have filed protests against annexation not be exempt from the special tax, and would clarify that no further proceedings to annex the same territory, or to authorize the same territory to be annexed in the future, take place.

(28) § 53339.7. Duration of Hearing; Abandonment Election

Section 53339.7(b) of the Act provides that when the question of levying a special tax within the areas proposed to be annexed into an existing CFD appears on the same ballot as the question of annexation of the same territory to a school district, the effectiveness of each measure may be made contingent on the passage of the other. AB 373 provides that when the question of levying a special tax within the areas proposed to be annexed into an existing CFD appears on the same ballot as the question of annexation of the same territory to a Local Agency, other than a school district, the effectiveness of each measure may be made contingent on the passage of the other.

(29) § 53339.8. Determination to Annex; Special Tax

Under Section 53339.8(a) of the Act, if a canvass of returns of any election on the question of levying a special tax, as specified, shows that 2/3 of the votes cast are in favor levying the special tax, requires a legislative body to determine that the area proposed to be annexed is added to, and part of, an existing CFD with full legal effect, and a legislative body may levy any special tax within the annexed territory, as specified in the resolution of intention to annex. AB 373 specifies that a legislative body may levy any special tax within the annexed territory, as specified in the resolution of intention to annex and in the ordinance adopted, as specified, to levy special taxes.

**ARTICLE 4
PROCEDURES FOR LEVYING**

(30) § 53340. Levy of Special Tax

Section 53340(c) of the Act provides that properties or entities of the State, federal or other local governments are exempt from the special tax, except as specified. Section 53340(e) of the Act requires the special tax to be collected in the same manner as ordinary *ad valorem* property taxes are collected, but that a legislative body of a CFD may waive delinquency penalties and redemption penalties if it makes specified determinations. AB 373 specifies when properties that a Local Agency is a landowner of, as specified, are not exempt from the special tax. It authorizes a legislative body of a CFD to waive all or any specified portion of the delinquency penalties and redemption penalties if it makes specified determinations.

(31) § 53340.2. Designation of Agency for Annual Preparation of Special Tax Levy Obligations roll; Notice of Special Tax

Section 53340.2(a) of the Act requires a legislative body levying the special tax to designate an office, department, or bureau of the Local Agency to be responsible for annually preparing the current roll of special tax levy obligations. Section 53340.2(b) of the Act requires the office, department, or bureau to furnish a Notice of Special Tax to any individual requesting the notice or any owner of property subject to a special tax levied by the Local Agency, within five (5) working days of receiving the request, and permits the Local Agency to charge a reasonable fee, not to exceed \$10, for this service and requires that the notice be in a specified format, that may be modified as needed, for specified reasons. AB 373 authorizes the Local Agency to charge a fee for furnishing the Notice of Special Tax, not to exceed \$15. It would also authorize the form of the notice to be modified as needed to clearly and accurately describe a tax rate that will change with a change in use of the parcel, or to clearly and accurately describe a tax that will be levied only once.

(32) § 53342. Manner of Fixing and Collecting Charges

Section 53342 of the Act permits a legislative body to fix and collect charges for any CFD or zone thereof, in the same manner as for miscellaneous extended services in county service areas. AB 373 repeals this section.

(33) § 53344. Notice of Cancellation of Special Tax Lien on Prepayment of Special Tax

Section 53344 of the Act requires a Notice of Cancellation of Special Tax Lien to, among other things, state the book and page number in the records of the county

recorder where the Notice of Special Tax Lien being canceled is recorded. AB 373 specifies that the Notice of Cancellation of Special Tax Lien must state the book and page number or the document or instrument number in the records of the county recorder where the Notice of Special Tax Lien being canceled is recorded.

ARTICLE 5
BONDS

(34) § 53345. Resolution

Section 53345 of the Act requires a legislative body, whenever a legislative body deems it necessary for the CFD to incur bonded indebtedness, as specified, to set forth certain items in a resolution, including the time and place for a hearing by a legislative body on the proposed debt issue. AB 373 revises this provision to require a legislative body to set forth the time and place for a hearing by a legislative body on the proposed debt authorization. AB 373 also prohibits the issuance of bonds to fund specified services, except that bonds may be issued to fund capital facilities to be used in providing those services.

(35) § 53355. Two-thirds Vote Required

Section 53355 of the Act requires a 2/3 vote for the issuance of revenue anticipation bonds, as specified. AB 373 instead provides that a 2/3 vote is required for the issuance of revenue bonds.

(36) § 53356.1. Foreclosure Action to Collect Unpaid Special Taxes

Section 53356.1(b) of the Act authorizes a legislative body, by resolution adopted prior to the issuance of debt, as specified, to covenant for the benefit of debt holders to commence and diligently pursue any foreclosure action regarding delinquent installments of any amount levied as a special tax for the payment of interest or principal of any bonds that are issued, as specified. AB 373 authorizes a legislative body to pursue a foreclosure action regarding delinquent installments or any amount levied as a special tax, in whole or in part, for the payment of interest or principal of any debt that is incurred, as specified.

(37) § 53356.2. Delinquent Installment Procedure

Section 53356.2 of the Act authorizes a legislative body to bring a foreclosure action to collect, among other debts, any outstanding debts, special taxes, interest, penalties, as specified. AB 373 specifies allocation of the sale price in a foreclosure action where the property is sold for less than the amount necessary to redeem plus costs, as defined, and would provide that if the property is sold for at least the total amount necessary to redeem plus costs, as defined, the sale of the property

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extinguishes the delinquent special taxes, interest, penalties and costs included in the sales price.

(38) § 53359.5. Information to be Supplied to California Debt and Investment Advisory Commission

Section 53359.5(c) of the Act requires a legislative body, with respect to any bonds sold, as specified, and until the final maturity of bonds, to notify CDIAC within 10 days if, among other events, funds are withdrawn from a reserve fund to pay principal and interest on the bonds beyond levels set by CDIAC. AB 373 instead requires a legislative body to notify CDIAC when, among other events, funds are withdrawn from a reserve fund to pay principal and interest on the bonds that reduces the reserve fund to less than the reserve requirement.

(39) § 53360. Manner of Sale

Section 53360 of the Act authorizes a CFD to sell bonds, as specified, at the time or in the manner a legislative body deems to be in the public interest, except that all bonds must be sold on sealed proposals to the highest bidder, after advertising for bids by publication of notice of sale, as specified, not less than 10 days prior to the date of sale in a newspaper of general circulation circulating in the area. AB 373 authorizes a CFD to sell bonds on sealed proposals or through generally accepted electronic means to the highest bidder after advertising for bids by publication of notice of sale, as specified.

(40) § 53362.5. Limitations on Issuance of Refunding Bonds

Section 53362.5 of the Act prohibits the issuance of refunding bonds if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded. Section 53362.5 of the Act also provides that the designated costs of issuing refunding bonds may be paid by the purchaser of the refunding bonds or may be paid from any other legally available source, including, among other sources, any available revenues of a legislative body, except that any amounts paid by the Local Agency other than from proceeds of sale of the refunding bonds or from interest or other gains derived from the investment of the proceeds of sale shall be added to the total net interest cost to maturity on the refunding bonds in determining whether the issuance of the refunding bonds comply with specified law. AB 373 instead provides that refunding bonds may not be issued if the total interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded and would provide that any amounts paid by a Local Agency other than from the proceeds of sale of the refunding bonds or from interest

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or other gains derived from the investment of the proceeds shall be added to the total interest cost to maturity on the refunding bonds in determining whether the issuance of the refunding bonds complies with specified law.

(41) § 53364.2. Reduction of Refunding Bond Taxes

Section 533364.2 of the Act requires any savings achieved through the issuance of refunding bonds to be used by a legislative body to reduce the special taxes that were levied to retire the bonds being refunded, and requires a legislative body, at the time it makes a determination to issue the refunding bonds, to determine and cause to be made any reductions in the annual tax levy in a CFD, as specified. AB 373 provides that if further facilities or services are authorized to be financed by a CFD, savings achieved through the issuance of refunding bonds may be used by a legislative body for those purposes, but if no further facilities or services are authorized to be financed by a CFD, any savings achieved through the issuance of refunding bonds shall be used by a legislative body to reduce the special taxes levied to retire outstanding bonds. It also provides that savings achieved through the issuance of refunding bonds, as specified, may be used in proportions determined by a legislative body, and defines the term "savings achieved through the issuance of refunding bonds" to mean the difference between the principal and interest to maturity of the refunded bonds and the principal and interest to maturity of the refunding bonds. It also provides that if savings are to be used for authorized facilities, bonds may be issued which are secured by those savings.

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The following summarizes the key concepts within the Revenue and Taxation Code Portion of AB 373.

REVENUE AND TAXATION CODE
DIVISION 1. PROPERTY TAXATION
PART 6. TAX SALES
CHAPTER 7. SALE TO PRIVATE PARTIES AFTER DEED TO STATE

(42) Section 3712 of the Revenue and Taxation Code provides, in the case of property that is tax defaulted, that the deed conveys title to the purchaser free of all encumbrances of any kind, except a number of specified liens, assessments, and taxes. AB 373 provides that the title of a piece or property that is sold in tax default is not free of unpaid assessments that are being collected through a foreclosure action, as specified, and that the sale shall not nullify, eliminate or reduce the amount of a foreclosure judgment, as specified.

The following summarizes the key concepts within the Streets and Highway Code Portion of AB 373.

STREETS AND HIGHWAY CODE
DIVISION 4.5. NOTICE OF SPECIAL ASSESSMENT, SPECIAL TAX, AND
FORECLOSURE
PART 2. FILING OF MAPS OF DISTRICTS AND RECORDATION OF
NOTICES

(43) § 3110. Proposed Boundaries of Assessment District; Description in Resolution of Legislative Body Prior to Hearing on Formation or Extent of District; Map

Section 3110 of the Streets and Highways Code prohibits a legislative body from ordering a modification in the boundaries of a district shown on a previously filed map of the district unless a legislative body describes the proposed modification by reference to an amended map of a CFD boundary that shall be approved by resolution, and the amended map must be filed with the county recorder not later than 10 days after the resolution of a legislative body approving the amended boundary. AB 373 requires the amended map to be filed with the county recorder not later than 15 days after the resolution of a legislative body approving the amended boundary.

(44) § 3114.5. Community Facilities Districts; Notice of Special Tax Lien

Section of the Streets and Highways Code provides that, with regard to CFDs, within 15 days after the determination, as specified, that the requisite number of voters is in favor of the levy of a special tax, the clerk of a legislative body shall execute and record a notice of special tax lien in the office of a county recorder of each county that all or any part of the CFD is located, as specified. AB 373 provides that this notice shall be filed within 15 days in the case of a landowner vote, or 90 days, in the case of a registered voter election.

(45) § 3115.5. Community Facilities Districts; Recordation as Notice of Special Tax Lien

Under Section 3115.5 of the Streets and Highways Code, with regard to CFDs, provides that from the date of the recording in the office of the county recorder, as specified, or if the CFD is located in two (2) or more counties, then from the date of the recording in the office of the county recorder where a notice is last recorded, all persons are deemed to have notice of the contents of the Notice of Special Tax Lien. Existing law also provides that, upon the date of the last recording, the notice of special tax lien imposes a lien upon all nonexempt real property in a CFD. AB 373 provides that, in the case of a CFD that is located in two (2) or more counties,

all persons are deemed to have notice of the contents of the Notice of Special Tax Lien, with respect to parcels located within each county, from the date of the recording in the office of each county recorder where a notice recorded. It also provides that upon the date the recording is made, the Notice of Special Tax Lien imposes a lien upon all nonexempt real property in a CFD within that county.

(46) § 3115.5. Recordation of Superseding Map and Notice

Section 3117.5 of the Streets and Highways Code requires the clerk of a legislative body, if any proceedings subsequent to the approval by the voters of a special tax result in a change to the approved special tax lien, as specified, to record an amendment to the original Notice of Special Tax Lien and any amendments thereto, and to reference the book and page and recording date of that notice and any amendments to it, as specified. AB 373 instead requires the Special Tax Lien and any amendments thereto to reference the recorder's serial or document number and recording date of the notice and any amendments to it, as specified.

STREETS AND HIGHWAY CODE
DIVISION 10. THE IMPROVEMENT BOND ACT OF 1915
PART 14. FORECLOSURE BY ACTION

(47) Part 14, Division 10 of the Streets and Highway Code specifies the procedures for the foreclosure sale of a piece of property, and the allocation of the proceeds to owed installments, interest, penalties, costs, fees, and other delinquent charges that are owed at the time of the sale. AB 373 adds Section 8837 of the Streets and Highway Code to specify the distribution of the sale proceeds from a foreclosure sale of property by the tax collector. Section 8837 of the Streets and Highway Code provides that if the property is sold for at least, the total amount necessary to redeem plus costs, as defined, the sale of the property would distinguish assessment installments, interest, penalties, and costs included in the sale price, but if the property is sold for less than the total amount necessary to redeem plus costs, as defined, the proceeds must be distributed.

Source: AB 373 Assembly Bill – Bill Analysis as of September 12, 2007 and the enrolled Assembly Bill 373.