

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 1666 (Brough) – As Amended April 5, 2016

SUBJECT: Community facilities districts: reports.

SUMMARY: Requires the legislative body of a local agency that has formed a Community Facilities District (CFD) that has an Internet Web site to post specified information on their website. Specifically, **this bill:**

- 1) Requires a legislative body of a city, county, special district, school district, or joint powers entity that has an Internet Web site, within 120 days after the last day of each fiscal year of the CFD, to display prominently on their website all of the following information:
 - a) A copy of an audit report, if requested pursuant to existing law, which requires a CFD to provide an annual report upon request of a resident or landowner of the district;
 - b) A copy of the report provided to the California Debt and Investment Advisory Commission (CDIAC), pursuant to existing law, which requires a legislative body to annually report specified bond information;
 - c) A copy of the report provided to the State Controller's office, pursuant to existing law, which requires the Controller to annually publish and post specified information on each locally assessed parcel tax;
 - d) The amount of moneys expended for the year, including a summary of expenses that includes, but is not limited to, the following:
 - i) Facilities, including property;
 - ii) Services;
 - iii) The costs of bonded indebtedness;
 - iv) The costs of collection of the special tax, pursuant to the process in existing law for CFDs; and,
 - v) Other administrative and overhead costs;
 - e) A list of projects currently being funded by the CFD, and the amount the CFD has committed for each project. Requires the list to include the name and location of each project;
 - f) A list of the projects that may be funded by the CFD, but have not yet commenced and any amount committed by the CFD for those projects. Requires the list to include the name and location of each project if it is known;

- g) The total amount of special taxes in excess of the amount needed to pay the bonded indebtedness, bad debt contingencies, interest, and fees associated with the CFD, if any; and,
 - h) The date on which the bonded indebtedness will mature.
- 2) Provides that no reimbursement is required by this bill pursuant to the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Authorizes, under the Mello-Roos Community Facilities Act of 1992, a county, city, special district, and joint powers entity to establish a CFD to finance public facilities and certain public services through the imposition of special taxes and the issuance of bonds.
- 2) Requires a CFD, formed after January 1, 1992, to prepare, if requested by a person who resides in or owns property in the district, an annual report within 120 days after the last day of each fiscal year. Authorizes the CFD to charge a fee for the report not to exceed the actual costs of preparing the report. Requires the report to include the following information:
 - a) The amount of special taxes collected for the year;
 - b) The amount of other moneys collected for the year and their sources, including interest earned;
 - c) The amount of moneys expended for the year;
 - d) A summary of the amount of moneys expended for the following:
 - i) Facilities, including property;
 - ii) Services;
 - iii) The costs of bonded indebtedness;
 - iv) The costs of collecting the special tax; and,
 - v) Other administrative and overhead costs;
 - e) The moneys expended for facilities, including property, an identification of the categories of each type of facility funded with amounts expended in each category, including the total percentage of the cost of each type of facility that was funded with bond proceeds or special taxes;
 - f) The moneys expended on services, an identification of the categories of each type of service funded with amounts expended in each category, including the total percentage of cost of each type of service that was funded with bond proceeds or special tax; and,
 - g) The moneys expended for other administrative costs.

- 3) Requires the annual report to contain references to the relevant sections of the resolution of formation of the district so that interested persons may confirm that bond proceeds and special taxes are being used for authorized purposes. Requires the annual report to be made available to the public upon request. Authorizes a CFD to charge a fee for the report not to exceed the actual costs of preparing the report.
- 4) Requires the chief financial officer of a county, city, or special district levying a special tax to file an annual report with its governing body, no later than January 1, 2002, and at least once a year thereafter. Requires the annual report to contain the following information:
 - a) The amount of funds collected and expended; and,
 - b) The status of any project required or authorized to be funded as identified in a statement indicating the specific purpose of the special tax.
- 5) Exempts a CFD preparing a report pursuant to 2), above, from being required to comply with 4), above.
- 6) Requires the Controller to include in reports compiled annually and made available on its website, information on the imposition of each locally assessed parcel tax, including, but not limited to, the following:
 - a) The type and rate of parcel tax imposed;
 - b) The number of parcels subject to the parcel tax;
 - c) The number of parcels exempt from the parcel tax;
 - d) The sunset date of the parcel tax, if any;
 - e) The amount of revenue received from the parcel tax; and,
 - f) The manner in which the revenue received from the parcel tax is being used.
- 7) Requires a legislative body, each year after the sale of any bonds until the final maturity of the bonds, to supply a fiscal status report to CDIAC, no later than October 30 of each year, as follows:
 - a) Issuer name;
 - b) CFD number or name;
 - c) Name, title, and series of the bond issue;
 - d) Credit rating and name of the rating agency;
 - e) Date of the bond issue and the original principal amount;
 - f) Reserve fund minimum balance required;
 - g) The principal amount of bonds outstanding;

- h) The balance in the bond reserve fund;
- i) The balance in the capitalized interest fund, if any;
- j) Number of delinquent parcels, as specified;
- k) The balance in any construction funds;
- l) The assessed value of all parcels subject to special tax to repay the bonds, as specified;
- m) The total amount of special taxes due, the total amount of unpaid special taxes;
- n) The reason and the date, if applicable, that the issue was retired; and,
- o) Contact information for the party providing the information.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Mello-Roos and CFD.** The Mello-Roos Community Facilities Act allows counties, cities, special districts, and school districts to form a CFD and levy special taxes (parcel taxes) to finance a wide variety of facilities and services, including parks, recreation centers, schools, libraries, child care facilities, and utility infrastructure. Current law establishes the process for the formation of a CFD, and requires two-thirds voter approval for the Mello-Roos special tax. A CFD issues bonds secured by these special taxes to finance the facilities and services.

In order to establish a CFD, a resolution of intention must be adopted within 90 days of a written request or petition being filed with the legislative body of the local agency that will form the district. Current law requires specified information to be included in the resolution of intention, which includes proposed boundaries, a description of the facilities or services to be financed in a manner sufficient to allow a taxpayer to understand which district funds may be used, any financing plan, lease or other arrangement that will be used to finance the facilities, any completed facilities to be purchased, and the rate and method of collection of the special tax. Additionally, the legislative body must direct each officer responsible for providing one or more of the proposed facilities or services to file a report that contains information regarding the facilities and services required to meet the needs of the CFD and an estimate of the cost providing facilities or services.

If requested by a resident or landowner of the district, a CFD must prepare an annual report within 120 days after the last day of each fiscal year containing specified information about the CFD. Existing law authorizes a CFD to charge a fee for the report, not in excess of the actual costs of preparing the report. Most of the information required to be in the annual report is also contained in this bill.

- 2) **Current Reporting Requirements.** Under the State Treasurer, CDIAC collects, maintains, and provides comprehensive information on all state and local debt authorization and issuance, and serves as a statistical clearinghouse for all state and local debt issues. Current law requires CDIAC to make this information readily available upon request by any public official or any member of the public. Among the list of reports state and local government

debt issuers are required to submit to CDIAC is a specific requirement on all local governments issuers of CFD bonds to provide a fiscal status report containing specified information to CDIAC by October 30 of every year until the bonds have been retired.

For the 2013-14 fiscal year, CDIAC received a yearly fiscal status report from 919 CFD bond issuers who reported 1,407 separate bond issues totaling \$16.4 billion. CDIAC reports that CFDs governed by cities and K-12 school districts continue to be the largest issuers of Mello-Roos bonds and account for more than 70% of outstanding debt during the 2013-14 fiscal year reporting period. Additionally, CFDs in Southern California remain the top issuers accounting for more than 68% or \$11.3 billion of all outstanding Mello-Roos bonds.

Current law requires the State's Controller's Office to compile and publish on its Web site annual reports summarizing local agencies' finances, including their revenue sources. These reports are based on the financial data submitted to the Controller by counties, cities, and special districts and provide detail on the aggregate amount of various taxes collected by each local agency. In 2014, the Legislature expanded the information required in the annual report to include specified information on the imposition of each locally assessed parcel tax.

- 3) **Bill Summary.** This bill requires the legislative body of a city, county, special district, school district, or joint powers entity that formed a CFD that has an Internet Website to post specified information within 120 days after the last day of each fiscal year. The list of information that must be posted on the local agency's website includes: a) a copy of the yearly fiscal status report provided to CDIAC; b) a copy of the report on parcel taxes provided to the Controller; c) a copy of an audit report, if requested by a resident or landowner of the district; d) a summary of expenses, including but not limited to, facilities, services, costs of bonded indebtedness, costs of collection of special tax, and other administrative and overhead costs; e) a list of projects currently being funded by the CFD or that may be funded by the CFD; f) the amount of special taxes in excess of the amount needed to pay the bonded indebtedness, bad debt contingencies, interest, and fees; and, g) the date when the bonded indebtedness will mature. This bill is author-sponsored.
- 4) **Author's Statement.** According to the author, "The bill is being presented to require transparency in agencies who issue Community Facility District bonds. Currently, it is very difficult or nearly impossible for taxpayers to access and understand information about the original bond amount, the taxes collected, the funds collected in excess of bond payments and expenses, projects funded, the end date of the bond and when CFD tax assessments will expire. The phone number on the tax bill is generally that of the bond consultants who provide little information and refer the caller back to the bond issuing agency. In many cases the taxpayer is forced to file public records requests in an attempt to locate information or to scour hundreds of pages of agendas and board packets as well as to decipher annual audits. Even then all the information is not readily made available.

"The CFD issuing agencies often bring in legal counsel to respond to basic public records requests and charge the fees back to the CFDs, taking money from the original intended purpose - facilities. In some cases simple questions are answered by requiring taxpayers to attend in person meetings with agency staff, attorneys, and consultants resulting in tens of thousands of dollars being charged back to the CFD. Many taxpayers have been forced to form unofficial taxpayer groups to work as a united front to gather information which can take years. An Orange County Grand Jury Report (June 2015) was issued titled Mello-Roos:

Perpetual Debt Accumulation and Tax Assessment Obligation. The grand jury found that many documents and reports about the tax districts “use general, vague language that does not meet the requirements and intent.”

"Taxpayers have a right to know how funds are being collected and spent and when their obligations end. The bill is not asking any agencies to provide any information that they should not already have readily available in summary reports. This bill seeks to close gaps in current law by requiring agencies to make the information available online, in a clear, concise and easy to find format. In fact, the bill could save agencies money as it would reduce the requests for public information and consultant and attorney fees currently incurred to address the records requests."

- 5) **Related Legislation.** This Committee has heard several bills seeking to provide the public with more information regarding parcel taxes and outstanding debt. AB 237 (Daly) of 2015 would have required local agencies to provide specified notification to property owners before the adoption of any new parcel tax. AB 2476 (Daly), pending in this Committee, is substantially similar to AB 237. AB 892 (Daly) of 2013, which was held on suspense in the Assembly Appropriations Committee, would have required the Board of Equalization to report annually to the Governor on the imposition of each locally assessed parcel tax. Most recently, AB 2109 (Daly), Chapter 781, Statutes of 2014, required the State Controller to report annually on the imposition of each locally assessed parcel tax, and required each county, city, and special district to provide any information required by the Controller in order to complete the report.

Additionally, in an effort to ensure local government financial transactions information is more accurate and accessible when it is made available to the public, AB 341 (Achadjian), Chapter 37, Statutes of 2015, made several changes to the statutes requiring local governments to report annual financial information to the Controller's Office. AB 341 extends, to seven months after the close of each fiscal year, the deadline for submitting the annual report of a local agency's financial transactions.

- 6) **Pending Legislation.** SB 1029 (Hertzberg), pending in the Senate Appropriations Committee, requires state and local government debt issuers to report to CDIAC specified information about proposed and outstanding debt, including a list of the purposes for which the debt has been issued and the amounts expended for each purpose in the prior fiscal year from the proceeds of the issuance.
- 7) **Policy Considerations.** Proponents of this bill point to the findings of a 2015 Orange County Grand Jury report. The report states "It is important that the property owners in Orange County be aware of the consequences of the Mello-Roos Act used by the local government agencies that govern them. Many homeowners, especially in south Orange County, are in a CFD, but the Grand Jury suspected that *few understood how and why they were formed, how long they lasted, and how the funds were spent.*" The grand jury report did not list all the reporting required under existing law. The report mainly focuses on lack of compliance with current law that is "compounded by a lack of information available to the public on how CFD funds are being used." This bill does not address issues with compliance.

- 8) **Committee Amendments.** The Committee may wish to consider the following:
- a) **Transparency vs. Duplicative Requirements.** The Committee may wish to consider how to strike the right balance between transparency and ensuring that the bill does not create duplicative requirements in existing law. Any additional administrative costs required to comply with this bill would take away from services or facilities the special tax would otherwise fund. Ensuring there are no duplicative requirements benefits both local agencies and the taxpayers; therefore, the Committee may wish to consider the following amendments:
 - i) Existing law requires a CFD to provide an annual report upon request, which must include specified information that is also contained in this bill under subdivision (d). The annual report must also contain information and specific categories of the moneys expended on facilities and services. Given the information required in the annual report, which is available upon the request of residents and landowners of the CFD, and the existing reports to CDIAC and the Controller the Committee may wish to ask the author to remove subdivisions (d), (e), and (f), and (h) from the bill.
 - ii) Existing law authorizes a special tax to be levied only so long as it is needed to pay the principal and interest on debt incurred in order to construct facilities or pay the costs and incidental expenses of services or construction of facilities authorized by the Mello Roos Community Facilities Act. In light of the restrictions in current law, the Committee may wish to consider removing subdivision (g) from the bill that would require the total amount of special taxes collected in excess of the amount needed to pay bonded indebtedness.
 - b) **Timeline.** This bill requires the legislative agency to post specified information within 120 days after the last day of each fiscal year. Existing law provides local agencies with seven months after the close of the fiscal year to report financial transactions to the Controller's office. The Committee may wish to consider aligning the deadline in this bill with the deadline in existing law by replacing the 120 days with seven months.
 - c) **Technical Correction.** Additionally, the Committee may wish to ask the author to correct the reference in subdivision (a) to an "audit report" and use the correct term per the cross reference to existing law which is an "annual report".
- 9) **Arguments in Support.** Supporters argue that there is little oversight of CFD revenue, expenditures, and debt management by the public. CFD funding and usage is not readily transparent, and therefore, not generally understood. Additionally, supporters argue that districts of all types that issue long-term debt should be held to a higher level of scrutiny.
- 10) **Arguments in Opposition.** The California State Association of Counties argues, "We believe many of the reporting requirements in AB 1666 should and can be simplified to better reflect existing reports...Making the most of existing reports that are already posted on publicly accessible local and state agency websites will reduce the burden on counties while promoting the goals of AB 1666. Unfortunately, our concerns also extend to the request for data not captured in the CDIAC or [State Controller's Office] SCO reports. In some instances local agencies are unable to comply due to a project funding arrangement with property owners or due to prohibitions in state law."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of County Treasurers and Tax Collectors
California Taxpayers Association
Cities of Mission Viejo, San Clemente, and San Juan Capistrano
Honorable L. Anthony Beall, Mayor, City of Rancho Santa Margarita
Honorable Laurie Davies, Mayor, City of Laguna Niguel
Howard Jarvis Taxpayers Association
Orange County Auditor-Controller, Eric Wollery
Orange County Assessor Department
Orange County Association of Realtors
Orange County Taxpayers Association
Talega Residents for Fair Taxation

Opposition

California State Association of Counties (unless amended)

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