

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 905

Introduced by Assembly Member Ting

February 22, 2013

An act to add Section 1471.5 to the Civil Code, relating to ~~energy~~ real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 905, as amended, Ting. ~~Energy: energy efficiency programs: financing.~~ *Real property: environmental fee covenants.*

Existing law provides for the recording of an instrument containing an Environmental Restriction covenant made by an owner of land or by the grantee of land to do or refrain from doing an act that is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.

This bill would also provide for the recording of an Environmental Fee Covenant, as specified, that is, among other things, imposed in connection with the installation on the property of equipment or improvements that are intended to promote, among other things, energy efficiency and the reduction of the consumption of water or other natural resources.

~~Existing law establishes various energy efficiency programs to assist public and private entities to implement energy efficiency projects to reduce the consumption of energy.~~

~~This bill would state the intent of the Legislature to enact legislation to provide an efficient financing mechanism for commercial property~~

~~owners to make improvements to reduce the consumption of energy and natural resources.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 1471.5 is added to the Civil Code, to read:
 2 1471.5. (a) Notwithstanding Section 1468 or any other law,
 3 a covenant made by an owner of land or by the grantee of land to
 4 do or refrain from doing some act on his or her own land, which
 5 doing or refraining is expressed to be for the benefit of the
 6 covenantee, regardless of whether or not it is for the benefit of
 7 land owned by the covenantee, shall run with the land owned by
 8 or granted to the covenantor if all the following requirements are
 9 met:
- 10 (1) The land of the covenantor that is to be affected by the
 11 covenant is particularly described in the instrument containing
 12 the covenant.
- 13 (2) The successive owners of the land are expressed to be bound
 14 thereby for the benefit of the covenantee in the instrument
 15 containing the covenant.
- 16 (3) The covenant is an Environmental Fee Covenant pursuant
 17 to subdivision (e).
- 18 (4) The instrument containing the covenant is recorded in the
 19 office of the recorder of each county in which the land or some
 20 portion thereof is situated.
- 21 (b) Except as provided by Section 1466 or as specifically
 22 provided in the instrument creating a covenant made pursuant to
 23 this section, the covenant shall be binding upon each successive
 24 owner, during his or her ownership, of any portion of the land
 25 affected thereby and upon each person having any interest therein
 26 derived through any owner thereof.
- 27 (c) If several persons are subject to the burden of a covenant
 28 recorded pursuant to this section, it shall be apportioned among
 29 them pursuant to Section 1467, except if only a portion of the land
 30 is so affected thereby, the apportionment shall be only among the
 31 several owners of that portion.
- 32 (d) This section shall apply to the mortgagee, trustee, or
 33 beneficiary of a mortgage or deed of trust upon the land or any

1 part thereof while, but only while, he or she, in that capacity, is
2 in possession thereof.

3 (e) For purposes of this section, “Environmental Fee Covenant”
4 is a covenant that meets all of the following requirements:

5 (1) The covenant imposes a transfer fee meeting the
6 requirements set forth in Section 1098. The amount of the transfer
7 fee imposed through the covenant, combined with the amount of
8 the fee imposed through any prior Environmental Fee Covenant
9 imposed on the same property, shall not exceed 2 percent of the
10 full cash value, as defined in Section 110 of the Revenue and
11 Taxation Code, of the property upon transfer.

12 (2) The covenant encumbers property that, at the time the
13 covenant is entered, either does not contain residential units or
14 contains five or more residential units.

15 (3) The covenant is imposed in connection with the installation
16 on the property of equipment or improvements that are intended
17 to promote any of the following:

18 (A) Energy efficiency.

19 (B) The reduction of the generation of greenhouse gasses.

20 (C) The reduction of the consumption of water or other natural
21 resources.

22 (D) Compliance with Part 6 and Part 11 of Title 24 of the
23 California Code of Regulations.

24 (E) The generation of renewable energy using one or more
25 means identified in paragraph (1) of subdivision (a) of Section
26 25741 of the Public Resources Code.

27 (4) The covenant includes in its title the words: “Environmental
28 Fee Covenant.”

29 (5) The covenant recites that it meets the requirements of this
30 subdivision. It shall be rebuttably presumed that the covenant
31 meets the requirements of this subdivision. The presumption may
32 be overcome if it is established by a preponderance of the evidence
33 that the covenant fails to meet the requirements of this subdivision.

34 ~~SECTION 1. It is the intent of the Legislature to enact~~
35 ~~legislation to provide an efficient financing mechanism for~~
36 ~~commercial property owners to make improvements to reduce the~~
37 ~~consumption of energy and natural resources.~~