

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2693

Introduced by Assembly Member Dababneh

February 19, 2016

An act to amend Section ~~167~~ 26054 of the Public Resources Code, and to amend Sections 5898.15, 5898.28, and 5898.30 of the Streets and Highways Code, relating to ~~transportation~~: *contractual assessments*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2693, as amended, Dababneh. ~~Transportation funds~~. *Contractual assessments: financing requirements: property improvements.*

Existing law defines "property assessed clean energy bond," commonly known as a PACE bond, to mean a bond that is secured by a voluntary contractual assessment or by certain special taxes on property, as specified.

This bill would delete the reference to bonds secured by special taxes.

Existing law authorizes the legislative body of a public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance certain improvements, including the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property, as specified. Existing law authorizes the public agency to issue bonds to be repaid by voluntary contractual assessments, and to enter into a relationship with an underwriter or financial institution that allows the sequential issuance of a series of bonds as the need arises. Existing law requires the interest rate on bonds to be fixed at

the time each bond is issued, unless the bond is issued to finance improvements to nonresidential private property or residential private property with 4 or more units. Existing law also provides that certain provisions relating to redemption of bonds prior to their scheduled maturity date or refinance of outstanding bonds only apply to nonresidential private property or residential private property with 4 or more units.

This bill, with respect to residential private property, would instead require the interest rate on the bonds, when issued, to be fixed unless the property consists of 5 or more units. The bill would provide that the provisions relating to redemption of bonds prior to their scheduled maturity date, or refinance of outstanding bonds, with respect to residential private property, would apply to property that consists of 5 or more units.

Existing law provides that an assessment under these provisions, and any interest and penalties, until paid, constitute a lien against the property on which the assessment was made. Existing law provides that certain other provisions, including provisions relating to lien priority, apply to liens imposed relative to these assessments.

This bill would delete the reference to the other provisions relating to lien priority, and instead provide that an assessment under these provisions shall have the force, effect, and priority of a judgment lien as established by its date of recordation.

Existing law, if bonds have not been issued by a public agency, authorizes the public agency to transfer its right, title, and interest to voluntary contractual assessments to another party, as specified. Existing law, however, provides that initiation and prosecution of a foreclosure action from a delinquency in the payment of voluntary contractual assessments remains the responsibility of the public agency, which shall retain the sole right to enforce its senior lien status.

This bill would delete the provision that the public agency shall retain the sole right to enforce its senior lien status, and would instead provide that a foreclosure action by the public agency shall have the force, effect, and priority of a judgment lien as established by the date of its recordation.

Existing law prohibits a public agency from permitting a property owner to participate in any program established pursuant to these provisions if the owner's participation would result in the total amount of any annual property taxes and assessments exceeding 5% of the

property’s market value, as determined at the time of approval of the owner’s contractual assessment.

This bill would also prohibit a public agency from permitting a property owner to participate in a program pursuant to these provisions unless the property owner has been provided with a Truth in Lending Act- Real Estate Settlement Procedures Act Integrated Mortgage Disclosure for the obligation being incurred or if the total mortgage-related debt and contractual assessment-related debt on the underlying property exceeds the fair market value of the property at the time of the agreement.

The bill would provide that the failure of a public agency to comply with either of these 2 prohibitions voids the contractual obligations of the property owner for the contractual assessment.

~~Existing law requires funds in the State Highway Account to be programmed, budgeted, and expended to maximize the use of federal funds and according to a specified sequence of priorities. Existing law requires the Department of Transportation to provide certain information to the Legislature to substantiate the department’s proposed capital outlay support budget.~~

~~This bill would make nonsubstantive changes to these provisions.~~

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 26054 of the Public Resources Code is
2 amended to read:

3 26054. “Property Assessed Clean Energy bond” or “PACE
4 bond” means a bond that is secured by ~~any~~ either of the following:

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

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

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

1 *SEC. 2. Section 5898.15 of the Streets and Highways Code is*
 2 *amended to read:*

3 5898.15. (a) A public agency shall not permit a property owner
 4 to participate in any program established pursuant to this chapter
 5 if the owner’s participation would result in the total amount of any
 6 annual property taxes and assessments exceeding 5 percent of the
 7 property’s market value, as determined at the time of approval of
 8 the owner’s contractual assessment.

9 **(b) (1)** *A public agency shall not permit a property owner to*
 10 *participate in a program pursuant to this chapter unless the*
 11 *property owner has been provided with a federal Truth in Lending*
 12 *Act–Real Estate Settlement Procedures Act Integrated Mortgage*
 13 *Disclosure for the obligation being incurred that is required for*
 14 *mortgages by the federal Consumer Financial Protection Bureau.*

15 **(2)** *A public agency shall not permit the total mortgage-related*
 16 *debt and contractual assessment-related debt on the underlying*
 17 *property to exceed the fair market value of the property at the time*
 18 *of the agreement.*

19 **(3)** *Failure to comply with the requirements of either paragraph*
 20 *(1) or (2) voids the contractual obligations of a property owner*
 21 *for a contractual assessment entered into pursuant to this chapter.*

22 ~~(b) Nothing~~

23 **(c)** *Except as provided in subdivision (b), nothing in this chapter*
 24 *shall be construed to void or otherwise release a property owner*
 25 *from the contractual obligations incurred by a contractual*
 26 *assessment on a property, particularly in the event that the total*
 27 *amount of annual property taxes and assessments exceeds 5 percent*
 28 *of a property’s market value after the property owner has entered*
 29 *into a contractual assessment pursuant to this chapter. property*

30 *SEC. 3. Section 5898.28 of the Streets and Highways Code is*
 31 *amended to read:*

32 5898.28. (a) A public agency may issue bonds pursuant to this
 33 chapter, the principal and interest for which would be repaid by
 34 voluntary contractual assessments. A public agency may advance
 35 its own funds to finance work to be repaid through voluntary
 36 contractual assessments, and may from time to time sell bonds to
 37 reimburse itself for those advances. A public agency may enter
 38 into a relationship with an underwriter or financial institution that
 39 would allow the sequential issuance of a series of bonds, each bond
 40 being issued as the need arose to finance work to be repaid through

1 voluntary contractual assessments. The interest rate of each bond
2 may be determined by an appropriate index, but shall be fixed at
3 the time each bond is issued unless the bond is issued to finance
4 improvements to nonresidential private property or residential
5 private property with ~~four~~ *five* or more units. Bond proceeds may
6 be used to establish a reserve fund for debt service or paying the
7 costs of foreclosure on properties participating in the program, to
8 fund capitalized interest for a period up to two years from the date
9 of issuance of the bonds, to fund the administrative fee required
10 for participation in the PACE Reserve Program established
11 pursuant to Chapter 4 (commencing with Section 26050) of
12 Division 16 of the Public Resources Code, and to pay for expenses
13 incidental to the issuance and sale of the bonds. Division 10
14 (commencing with Section 8500) shall apply to any bonds issued
15 pursuant to this section, insofar as that division is not in conflict
16 with this chapter.

17 (b) (1) Notwithstanding any provision of this division or the
18 Improvement Act of 1915 (Division 10 (commencing with Section
19 8500)), a public agency may transfer its right, title, and interest in
20 and to any voluntary contractual assessments, if bonds have not
21 been issued pursuant to subdivision (a). The public agency and
22 the transferee shall enter into an agreement that, among other
23 things, identifies the specific period of time during which the
24 transfer of voluntary contractual assessments will be operative,
25 not to exceed three years. Except as provided in paragraph (2), a
26 transfer of any voluntary contractual assessments under this
27 subdivision shall be treated as a true and absolute transfer of the
28 asset so transferred for the period of the transfer and not as a pledge
29 or grant of a security interest by the public agency for any
30 borrowing. The characterization of the transfer of any of those
31 assets as an absolute transfer by the public agency shall not be
32 negated or adversely affected by the fact that only a portion of any
33 voluntary contractual assessment is transferred, nor by any
34 characterization of the transferee for purposes of accounting,
35 taxation, or securities regulation, nor by any other factor
36 whatsoever. As used in this section, “transfer” means sale,
37 assignment, or other transfer.

38 (2) Nothing in this subdivision shall be construed to authorize
39 the transferee to initiate and prosecute a foreclosure action resulting
40 from a delinquency in the payment of the voluntary contractual

1 assessment. Initiation and prosecution of a foreclosure action shall
2 remain the responsibility of the public agency, which shall ~~retain~~
3 ~~the sole right to enforce its senior lien status.~~ *have the force, effect,*
4 *and priority of a judgment lien as established by the date of its*
5 *recordation.*

6 (c) Division 10 (commencing with Section 8500) shall apply to
7 any bonds issued pursuant to this section, insofar as that division
8 is not in conflict with this chapter. Notwithstanding Part 16
9 (commencing with Section 8880) of Division 10, if any reserve
10 fund is established in whole or in part with legally available
11 moneys of one or more public agencies other than bond proceeds,
12 the public agency or agencies may provide that a property owner
13 who prepays all or a portion of the assessment shall not be credited
14 with the public agency moneys in the reserve fund and there shall
15 be no reduction in the assessment pursuant to Sections 8884 or
16 8881, and the public agency moneys in the reserve account shall
17 not be used to redeem bonds pursuant to Section 8885 and any
18 public agency moneys remaining in the reserve fund at the maturity
19 of the bonds shall be disbursed to the public agency free and clear
20 of the lien of the issuing instrument. Any excess bond proceeds
21 may be used to pay principal of and interest on the bonds in
22 addition to any other use permitted by Division 10 (commencing
23 with Section 8500).

24 (d) Notwithstanding any other law, the public agency may
25 conclude that it is in the public interest for bonds issued by the
26 public agency pursuant to this chapter to not be subject to
27 redemption prior to their scheduled maturity date except as a result
28 of the prepayment in whole or in part of contractual assessments.
29 Notwithstanding any other limitations set forth in law, and with
30 respect to bonds issued to finance improvements to nonresidential
31 property or residential property with ~~four~~ *five* or more units, the
32 redemption premium associated with a redemption of bonds as a
33 result of a contractual assessment prepayment shall be determined
34 by agreement of the public agency issuing the bonds, the property
35 owner, and the initial purchaser of the bonds.

36 (e) (1) Without the prior written approval of the property owner,
37 and notwithstanding any other law, a public agency may issue
38 bonds pursuant to this chapter to refinance outstanding bonds
39 payable from contractual assessments levied pursuant to this
40 chapter if all of the following are true:

1 (A) The total interest cost to maturity on the refunding bonds
2 is less than the total interest cost to maturity on the bonds to be
3 refunded.

4 (B) The final maturity date of the refunding bonds is not later
5 than the final maturity date of the refunded bonds, except that if
6 the bonds to be refunded are variable rate bonds, the final maturity
7 date of the refunding bonds may extend to, but not beyond, the
8 useful life of the financed improvements.

9 (C) The total interest component of the scheduled contractual
10 assessment installments to maturity, after issuance of the refunding
11 bonds, is less than the total interest component of the scheduled
12 contractual assessment installments to maturity prior to issuance
13 of the refunding bonds.

14 (2) For purposes of this section, in connection with the issuance
15 of fixed rate bonds to refinance variable rate bonds, the interest
16 rate on the refunded bonds for purpose of demonstrating
17 compliance with this section may be assumed to be the maximum
18 possible interest rate on the bonds to be refunded as long as the
19 legislative body concludes that the public interest will be served
20 by issuing fixed rate bonds to refinance the outstanding variable
21 rate bonds. In connection with an issuance of refunding bonds
22 under this chapter, the legislative body may direct that an
23 amendment to the document required by subdivision (d) of Section
24 5898.24 be recorded to reflect the revised contractual assessment
25 installment schedule.

26 (f) With the prior written approval of the owner of nonresidential
27 property or residential property with ~~four~~ five or more units, and
28 notwithstanding any other law, a public agency may issue bonds
29 pursuant to this chapter to refinance outstanding bonds payable
30 from contractual assessments levied pursuant to this chapter
31 without complying with subdivision (e). The final maturity date
32 of the refunding bonds issued pursuant to this subdivision may be
33 later than the final maturity date of the bonds being refunded as
34 long as the final maturity date of the refunding bonds does not
35 extend beyond the useful life of the financed improvements.

36 *SEC. 4. Section 5898.30 of the Streets and Highways Code is*
37 *amended to read:*

38 5898.30. Assessments levied pursuant to this chapter, and the
39 interest and any penalties thereon shall constitute a lien against
40 the lots and parcels of land on which they are made, until they are

1 paid. Division 10 (commencing with Section 8500), insofar as
 2 those provisions are not in conflict with this chapter, Article 13
 3 (commencing with Section 53930) of, and Article 13.5
 4 (commencing with Section 53938) of, Chapter 4 of Part 1 of
 5 Division 2 of Title 5 of the Government Code *shall only* apply to
 6 the ~~imposition and~~ collection of assessments contracted for
 7 pursuant to this chapter, ~~including, but not limited to, provisions~~
 8 ~~related to lien priority, the collection of assessments which may~~
 9 ~~be collected~~ in the same manner and at the same time as the general
 10 taxes of the city or county on real ~~property, unless another~~
 11 ~~procedure has been authorized by the legislative body or by statute,~~
 12 ~~and any penalties and remedies in the event of delinquency and~~
 13 ~~default.~~ *property. Any assessment levied pursuant to this chapter*
 14 *shall have the force, effect, and priority of a judgment lien as*
 15 *established by the date of its recordation.*

16 SECTION 1. ~~Section 167 of the Streets and Highways Code~~
 17 ~~is amended to read:~~

18 ~~167. (a) Funds in the State Highway Account in the State~~
 19 ~~Transportation Fund shall be programmed, budgeted subject to~~
 20 ~~Section 163, and expended to maximize the use of federal funds~~
 21 ~~and shall be based on the following sequence of priorities:~~

22 ~~(1) Operation, maintenance, and rehabilitation of the state~~
 23 ~~highway system.~~

24 ~~(2) Safety improvements where physical changes, other than~~
 25 ~~adding additional lanes, would reduce fatalities and the number~~
 26 ~~and severity of injuries.~~

27 ~~(3) Transportation capital improvements that expand capacity~~
 28 ~~or reduce congestion, or do both.~~

29 ~~(4) Environmental enhancement and mitigation programs.~~

30 ~~(b) With respect to the funds in the State Highway Account, in~~
 31 ~~the Public Transportation Account, and in the Passenger Rail Bond~~
 32 ~~Fund, the proposed budget shall be organized on a program basis.~~
 33 ~~The proposed budget shall list the proposed expenditures for the~~
 34 ~~transportation program under the following program elements:~~

35 ~~(1) Administration.~~

36 ~~(2) Program development.~~

37 ~~(3) Maintenance.~~

38 ~~(4) State highway operation and protection.~~

39 ~~(5) Local assistance.~~

40 ~~(6) Interregional improvements.~~

1 ~~(7) Regional improvements.~~

2 ~~(8) Environmental enhancement and mitigation programs.~~

3 ~~(e) State operations expenditure amounts of the department for~~
4 ~~interregional and regional transportation improvement projects~~
5 ~~shall be listed as required by subdivision (b) of Section 14529 of~~
6 ~~the Government Code, but those amounts other than those for the~~
7 ~~acquisition of rights-of-way, construction, and construction support~~
8 ~~shall not be subject to allocation by the commission.~~

9 ~~(d) To align the annual budget with the adopted state~~
10 ~~transportation improvement program, the department may submit~~
11 ~~to the Department of Finance revised capital outlay support and~~
12 ~~capital outlay budget estimates as part of its May Revision process.~~
13 ~~Budget proposals related to these changes shall be provided to the~~
14 ~~Legislature no later than May 1.~~

15 ~~(e) The budget shall not include specific appropriations for~~
16 ~~specific transportation improvement projects, and the Legislature~~
17 ~~shall not enact legislation containing specific individual~~
18 ~~transportation projects.~~

19 ~~(f) The basis for defining major and minor capital outlay projects~~
20 ~~shall be established by the commission.~~

21 ~~(g) The Legislative Analyst shall prepare an analysis of the~~
22 ~~proposed expenditures for each program element as a part of the~~
23 ~~budget analysis.~~

24 ~~(h) The department shall submit to the Legislative Analyst, the~~
25 ~~Senate Committee on Budget and Fiscal Review, and the Assembly~~
26 ~~Committee on Budget, on an annual basis, supplemental~~
27 ~~information to substantiate the department's proposed capital outlay~~
28 ~~support budget. The information shall be provided no later than~~
29 ~~May 1 of each year, and may be provided at an earlier date. The~~
30 ~~information shall include, but not be limited to, the following:~~

31 ~~(1) A list of projects for which the department will perform~~
32 ~~capital outlay support work in the budget year. For each project,~~
33 ~~the department shall include all of the following:~~

34 ~~(A) The planned project support budget for support of~~
35 ~~environmental, design, right-of-way, and construction phases.~~

36 ~~(B) The planned capital costs, including construction capital~~
37 ~~costs and right-of-way capital costs.~~

38 ~~(C) The estimated or actual construction start date and~~
39 ~~completion date.~~

- 1 ~~(D) The name and year of the state transportation program in~~
2 ~~which the project is programmed, if applicable.~~
- 3 ~~(E) Total prior fiscal year expenditures for capital outlay support.~~
- 4 ~~(F) The number of full-time equivalent positions requested to~~
5 ~~perform support of environmental, design, right-of-way, and~~
6 ~~construction work in the fiscal year of the budget request.~~
- 7 ~~(G) Milestones of project work by phases that are planned to~~
8 ~~be completed in the fiscal year of the budget request.~~
- 9 ~~(H) The ratio of support to capital costs based on current~~
10 ~~programming.~~
- 11 ~~(2) The capital-to-support ratio for all projects completed in the~~
12 ~~prior fiscal year in each program in each district.~~
- 13 ~~(3) The current total number of authorized and vacant positions~~
14 ~~in the capital outlay support program in headquarters and in each~~
15 ~~district.~~
- 16 ~~(4) A five-year projection of the department's staffing needs to~~
17 ~~support the state's transportation capital programs and any~~
18 ~~workload performed by the department related to federal or local~~
19 ~~funding for highway capital projects.~~
- 20 ~~(5) The average cost of a personnel-year equivalent in each~~
21 ~~district based on the department's existing contracts for capital~~
22 ~~outlay support work performed by a private company under~~
23 ~~contract with the department. For each average cost, the department~~
24 ~~shall provide a description of what factors are included in that cost.~~
- 25 ~~(6) The average cost of a state staff personnel-year in the capital~~
26 ~~outlay support program in each district and in headquarters. The~~
27 ~~cost shall include the salary and wages, benefits, program overhead,~~
28 ~~administrative overhead, and other associated costs. The~~
29 ~~department shall provide a description of each component of the~~
30 ~~average cost.~~
- 31 ~~(7) A summary of expected capital outlay support workload for~~
32 ~~the budget year that includes the following:~~
- 33 ~~(A) The total full-time equivalents requested for each type of~~
34 ~~the following activities: environmental, design, right-of-way, and~~
35 ~~construction.~~
- 36 ~~(B) The total full-time equivalents requested for each type of~~
37 ~~project, including, but not limited to, the state transportation~~
38 ~~improvement program, the state highway operation and protection~~
39 ~~program, bond programs, regional and local agency partnership~~
40 ~~workload, and any other program.~~

1 ~~(8) The total number of projects with requested resources, as~~
2 ~~well as the number of projects in which the department is limited~~
3 ~~to an oversight role.~~

4 ~~(9) The number of milestones scheduled, including~~
5 ~~environmental, design, right-of-way, and construction deliverables,~~
6 ~~as well as the number of projects expected to begin construction~~
7 ~~and reach completion.~~

8 ~~(10) A summary for the most recently completed fiscal year for~~
9 ~~the following:~~

10 ~~(A) Full-time equivalents and related funding expended,~~
11 ~~including support of environmental, design, right-of-way, and~~
12 ~~construction activities.~~

13 ~~(B) Approved and filled positions as of the end of the fiscal~~
14 ~~year.~~

O