

AMENDED IN SENATE AUGUST 2, 2016
AMENDED IN SENATE JUNE 22, 2016
AMENDED IN SENATE JUNE 6, 2016
AMENDED IN ASSEMBLY MAY 10, 2016
AMENDED IN ASSEMBLY APRIL 28, 2016
AMENDED IN ASSEMBLY APRIL 11, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2693

**Introduced by Assembly Member Dababneh
(Coauthors: Assembly Members Travis Allen, Hadley, and Linder)**

February 19, 2016

An act to amend Section 53328.1 of the Government Code, and to amend Section 5898.15 of, to amend, renumber, and add Section 5898.16 of, and to add Section 5898.17 to, the Streets and Highways Code, relating to property improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 2693, as amended, Dababneh. Financing requirements: property improvements.

(1) 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 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 satisfies certain conditions and the property owner is given the right to cancel the contractual assessment at any time prior to midnight on the 3rd business day after certain events occur without penalty or obligation, consistent with certain requirements. The bill would require a financing estimate document or a substantially equivalent document to be completed and delivered to a property owner at least 3 business days before the property owner consummates a voluntary contractual assessment pursuant to one of these programs. The bill would prohibit a public agency or other party to a voluntary contractual assessment pursuant to one of these programs to make any representations to a property owner regarding the effect the financed improvements will have on the market value of the property unless the public agency or other party derives its estimates of market value using specified methods.

This bill would limit these provisions to a property owner who seeks to participate in a program established to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property pursuant to these provisions for a residential property with 4 or fewer units.

(2) The Mello-Roos Community Facilities Act of 1982 specifies the requirements for the establishment of a community facilities district, including, among other things, a petition, a hearing, the establishment of the boundaries of the community facilities district, and an election on the question. Existing law authorizes a community facilities district formed pursuant to an alternative procedure under which the district initially consists solely of territory proposed for annexation to the community facilities district in the future and territory is annexed and subjected to special taxes only upon unanimous approval of the owners,

to finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements.

This bill would require a legislative body to comply with the requirements described above prior to the annexation of a parcel or parcels to a community facilities district formed pursuant to the alternative procedure. The bill would prohibit a parcel or parcels from being annexed to a community facilities district formed pursuant to the alternative procedure unless the parcel satisfies specified conditions.

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. (a) The Legislature finds and declares all of the
2 following:

3 (1) The Property Assessed Clean Energy program has been
4 promoted in California widely as an innovative and alternative
5 form of financing for environmental improvements for the benefit
6 of the public and California's environment.

7 (2) The promotion of the Property Assessed Clean Energy
8 financing is now a popular and widespread form of alternative
9 financing for consumers seeking solar energy, water conservation,
10 energy efficiency, and earthquake retrofitting improvements to the
11 benefit of all Californians.

12 (3) The consumer obligation to repay voluntary contractual
13 assessments created by the Property Assessed Clean Energy
14 program is sometimes misunderstood and may affect the
15 consumer's ability to refinance their loan or sell their property.

16 (4) Making residential real estate secured loans to consumers
17 through Property Assessed Clean Energy financing for home
18 improvements has grown rapidly, raising questions as to whether
19 the Property Assessed Clean Energy program is adequately
20 supported by government regulation.

21 (5) The passage of this act is essential to promote standardized
22 disclosures and protections for consumers to ensure that the
23 Property Assessed Clean Energy program can continue to be widely
24 used to offset the adverse impacts of years of climate change.

25 (b) This act shall be known, and may be cited, as the PACE
26 Preservation and Consumer Protections Act.

1 SEC. 2. Section 53328.1 of the Government Code is amended
2 to read:

3 53328.1. (a) As an alternate and independent procedure for
4 forming a community facilities district, the legislative body may
5 form a community facilities district that initially consists solely
6 of territory proposed for annexation to the community facilities
7 district in the future, with the condition that a parcel or parcels
8 within that territory may be annexed to the community facilities
9 district and subjected to the special tax only with the unanimous
10 approval of the owner or owners of the parcel or parcels at the
11 time that the parcel or parcels are annexed. In that case, the
12 legislative body shall follow the procedures set forth in this article
13 for the formation of a community facilities district, with the
14 following exceptions:

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

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

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

26 (2) The legislative body shall not be obligated to specify in the
27 resolution of intention the conditions under which the obligation
28 to pay the specified special tax may be prepaid and permanently
29 satisfied. Instead, a prepayment provision may be included in the
30 unanimous approval of the owner or owners of each parcel or
31 parcels at the time that the parcel or parcels are annexed to the
32 community facilities district.

33 (3) In lieu of approval pursuant to an election held in accordance
34 with the procedures set forth in Sections 53326, 53327, 53327.5,
35 and 53328, the appropriations limit for the community facilities
36 district, the applicable rate of the special tax and the method of
37 apportionment and manner of collection of that tax, and the
38 authorization to incur bonded indebtedness for the community
39 facilities district shall be specified and be approved by the
40 unanimous approval of the owner or owners of each parcel or

1 parcels at the time that the parcel or parcels are annexed to the
2 community facilities district. No additional hearings or procedures
3 are required, and the unanimous approval shall be deemed to
4 constitute a unanimous vote in favor of the appropriations limit
5 for the community facilities district, the authorization to levy the
6 special tax on the parcel or parcels, and the authorization to incur
7 bonded indebtedness for the community facilities district.

8 (4) Notwithstanding Section 53324, this paragraph establishes
9 the applicable protest provisions in the event a local agency forms
10 a community facilities district pursuant to the procedures set forth
11 in this section. If 50 percent or more of the registered voters, or
12 six registered voters, whichever is more, residing within the
13 territory proposed to be annexed to the community facilities district
14 in the future, or if the owners of one-half or more of the area of
15 land proposed to be annexed in the future and not exempt from
16 the special tax, file written protests against establishment of the
17 community facilities district, and protests are not withdrawn so as
18 to reduce the protests to less than a majority, no further proceedings
19 to form the community facilities district shall be undertaken for a
20 period of one year from the date of decision of the legislative body
21 on the issues discussed at the hearing. If the majority protests of
22 the registered voters or of the landowners are only against the
23 furnishing of a specified type or types of facilities or services
24 within the district, or against levying a specified special tax, those
25 types of facilities or services or the specified special tax shall be
26 eliminated from the resolution of formation.

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

34 (b) Notwithstanding the provisions of Section 53340, after
35 adoption of the resolution of formation for a community facilities
36 district described in subdivision (a), the legislative body may, by
37 ordinance, provide for the levy of the special taxes on parcels that
38 will annex to the community facilities district at the rate or rates
39 to be approved unanimously by the owner or owners of each parcel
40 or parcels to be annexed to the community facilities district and

1 for apportionment and collection of the special taxes in the manner
2 specified in the resolution of formation. No further ordinance shall
3 be required even though no parcels may then have annexed to the
4 community facilities district.

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

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

25 (e) (1) The legislative body shall comply with the requirements
26 specified in Sections 5898.16 and 5898.17 of the Streets and
27 Highways Code prior to the annexation of a parcel or parcels to a
28 community facilities district formed pursuant to this section.

29 (2) A parcel or parcels shall not be annexed to a community
30 facilities district formed pursuant to this section unless the parcel
31 complies with the conditions specified in subdivision (a) of Section
32 26063 of the Public Resources Code and in subdivision (b) of
33 Section 10081 of Title 4 of the California Code of Regulations.

34 (f) In connection with formation of a community facilities
35 district and annexation of a parcel or parcels to the community
36 facilities district pursuant to this section, and the conduct of an
37 election on the proposition to authorize bonded indebtedness
38 pursuant to the alternate procedures set forth in Section 53355.5,
39 the local agency may, without additional hearings or procedures,
40 designate a parcel or parcels as an improvement area within the

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

7 (g) In connection with a community facilities district formed
8 under this section, as an alternate and independent procedure for
9 making the changes described in Section 53330.7, the changes
10 may be made with the unanimous approval of the owner or owners
11 of the parcel or parcels that will be affected by the change and
12 with the written consent of the local agency. No additional hearings
13 or procedures are required, and the unanimous approval shall be
14 deemed to constitute a unanimous vote in favor of the proposed
15 changes. If the proceeds of a special tax are being used to retire
16 any debt incurred pursuant to this chapter and the unanimous
17 approval relates to the reduction of the special tax rate, the
18 unanimous approval shall recite that the reduction or termination
19 of the special tax will not interfere with the timely retirement of
20 that debt.

21 SEC. 3. Section 5898.15 of the Streets and Highways Code is
22 amended to read:

23 5898.15. (a) A public agency shall not permit a property owner
24 to participate in any program established pursuant to this chapter
25 if the owner's participation would result in the total amount of any
26 annual property taxes and assessments exceeding 5 percent of the
27 property's market value, as determined at the time of approval of
28 the owner's contractual assessment.

29 (b) Nothing in this chapter shall be construed to void or
30 otherwise release a property owner from the contractual obligations
31 incurred by a contractual assessment on a property, particularly in
32 the event that the total amount of annual property taxes and
33 assessments exceeds 5 percent of a property's market value after
34 the property owner has entered into a contractual assessment
35 pursuant to this chapter.

36 (c) This section applies to a property owner who seeks to
37 participate in a program established pursuant to this chapter for
38 types of property not subject to the requirements of Sections
39 5898.16 and 5898.17.

1 SEC. 4. Section 5898.16 of the Streets and Highways Code is
2 amended and renumbered to read:

3 5898.18. All references to financing in this chapter shall be
4 deemed to also refer to refinancing, except that with respect to
5 refinancing, the legislative body shall conclude that providing the
6 refinancing will result in an increased adoption of the
7 improvements authorized to be financed by this chapter. This
8 section does not constitute a change in, but is declaratory and a
9 clarification of existing law.

10 SEC. 5. Section 5898.16 is added to the Streets and Highways
11 Code, to read:

12 5898.16. (a) A public agency shall not permit a property owner
13 to participate in any program established pursuant to this chapter
14 for the purposes specified in paragraph (2) of subdivision (a) of
15 Section 5898.20 if any of the following apply:

16 (1) The property owner’s participation would result in the total
17 amount of the annual property taxes and assessments exceeding 5
18 percent of the property’s market value, as determined at the time
19 of approval of the property owner’s contractual assessment.

20 (2) The property does not comply with the conditions specified
21 in subdivision (a) of Section 26063 of the Public Resources Code
22 and in subdivision (b) of Section 10081 of Title 4 of the California
23 Code of Regulations.

24 (b) A public agency shall not permit the property owner to
25 participate in any program established pursuant to this chapter for
26 the purposes specified in paragraph (2) of subdivision (a) of Section
27 5898.20 unless the property owner is given the right to cancel the
28 contractual assessment without penalty or obligation, consistent
29 with the following:

30 (1) The property owner shall receive two copies of the right to
31 cancel document set forth below or a substantially similar
32 document that displays the same information in a substantially
33 similar format.

34

Right to Cancel

35

36
37 Property Owner: _____
38 [Owner Full Name], [Phone], [Email]

39 Property Address: _____
40 [Property Address]

1
2 Your Right to Cancel:

3
4 You are entering into a contractual assessment with _____ for financing
5 [Provider]
6 that will result in a lien on the property at _____. You may cancel
7 [Property Address]
8 this transaction, without cost, until midnight on the third business day after
9 whichever of the following events occurs last:

- 10 (1) The date on which you signed the contractual assessment.
- 11 (2) The date you received your Financing Estimate and Disclosure.
- 12 (3) The date you received this notice of your right to cancel.

13 If you cancel the transaction, _____, within 20 calendar days after
14 [Provider]
15 _____ receives notice of cancellation, must take the steps necessary to
16 [Provider]
17 reflect the fact that, if recorded, the lien on your property has been discharged
18 ~~or reconveyed~~, and removed from the tax rolls, and _____ must return
19 [Provider]
20 to you any money you have given in connection with your application, not
21 including the application processing fee. After _____ has done the things
22 [Provider]
23 mentioned above, you must return any money paid to you or on your behalf,
24 whether to your contractor or any other person. All money must be returned
25 to the address below.

- 26
27 If you cancel the transaction:
- 28 • You will not be charged a cancellation fee; and
 - 29 • You will be refunded any money you have given, excluding application
30 and processing fees as applicable.

31
32 To cancel this transaction, you may submit this form to _____ in writing
33 [Provider]
34 at:
35 Provider: _____
36 Attn: Right to Cancel Notification
37 Email: _____
38 Fax number: _____
39 Address: _____
40

1 Deadline to Cancel:

2

3 If you want to cancel this transaction, you must submit this form on or before
4 [Insert date].

5

6 You may use any written statement that is signed and dated by you and states
7 your intention to cancel, or you may use this notice by dating and signing
8 below. If you cancel by mail, fax, or email, you must send the notice no later
9 than midnight of the third business day following the date on which you signed
10 the contractual assessment. If you send or deliver your written notice to cancel
11 some other way, it must be delivered to the above address no later than the
12 ~~time~~ *date* indicated above.

13

14 I WISH TO CANCEL

15

16 _____
Property Owner

_____ Date

17

18 (2) The property owner is deemed to have given notice of
19 cancellation at the moment that the property owner sends the notice
20 by mail, email, or fax or at the moment that the property owner
21 otherwise delivers the notice, as applicable.

22 (c) This section only applies to a property owner who seeks to
23 participate in a program established pursuant to this chapter for
24 the purposes specified in paragraph (2) of subdivision (a) of Section
25 5898.20 for a residential property with four or fewer units.

26 (d) For the purposes of this section, “property owner” shall
27 include all ~~persons listed on the title to the property.~~ *owners of*
28 *record.*

29 SEC. 6. Section 5898.17 is added to the Streets and Highways
30 Code, to read:

31 5898.17. (a) The disclosure set forth below, or a substantially
32 equivalent document that displays the same information in a
33 substantially similar format, shall be completed and delivered to
34 a property owner at least three business days before the property
35 owner consummates a voluntary contractual assessment described
36 in this chapter for purposes specified in paragraph (2) of
37 subdivision (a) of Section 5898.20 or a special tax described in
38 Section 53328.1 of the Government Code. The disclosure shall be
39 provided to the property owner as a printed copy, if requested by
40 the property owner. A sample of the disclosure set forth below

1 shall be maintained on a public Internet Web site available to
2 property owners.

3 (b) This section only applies to disclosure to a property owner
4 who seeks to participate in a program established pursuant to this
5 chapter for the purposes specified in paragraph (2) of subdivision
6 (a) of Section 5898.20 for a residential property with four or fewer
7 units.

8

9 **Financing Estimate and Disclosure**

10 Notice to Property Owner: You have the right to request that a hard copy of
11 this document be provided to you before and after reviewing and signing. The
12 financing arrangement described below will result in an assessment against
13 your property which will be collected along with your property taxes and will
14 result in a lien on your property. You should read and review the terms
15 carefully, and if necessary, consult with a tax professional or attorney.

16

17 **Customer Service Toll-Free telephone number and email:**

18 In the event you have a consumer complaint, questions about your financing
19 obligations related to the contractual assessment or your contractual rights
20 under the terms of this contract, you can contact either this toll-free telephone
21 number or email address provided below and receive a response within 24
22 hours or one business day.

23 Toll-Free telephone number: _____

24 Customer service email address: _____

25

26 **Products and Costs**

27 Product costs (including
28 labor/installation) \$_____

29 **Description**

30 1.

31 2.

32 3.

33

34 **Financing Costs**

35 Application fees and costs \$_____

36 Prepaid Interest \$_____

37 Other Costs \$_____

38 Total Amount Financed \$_____

39

40 **Annual Percentage Rate (APR)** _____%

1 Simple Interest Rate _____%

2 Total Annual Principal, Interest, and \$ _____

3 Administrative Fees

4

5 Note: If your property taxes are paid through an impound account, your lender

6 may apportion the amount and add it to your monthly payment.

7 See "Other important considerations," below

8 Total Amount you will

9 have paid over the life of

10 the ~~loan~~ financing \$ _____

11

12 **Other Costs**

13 Appraisal Fees \$ _____

14 Bond related costs \$ _____

15 Annual Administrative fees \$ _____

16 Estimated closing costs \$ _____

17 Credit Reporting Fees \$ _____

18 Recording Fees \$ _____

19

20 **Total Financing Costs**

21 **and Closing Costs** \$ _____

22 Estimated Cash (out of

23 pocket) to close \$ _____

24

25

26 **Other Terms**

27 Prepayment fee No Yes _____

28 Assumable by new owner No Yes _____

29

30 **Additional Information About These Financing**

31 **Comparisons** [Use this information to compare to other financing options]

32

33 _____

34 ~~In 10 years~~ *Over the* \$ _____ Principal you will have paid off.

35 *term of the financing* \$ _____ Amount of interest you have paid.

36 \$ _____ Amount of financing and other costs

37 you will have paid.

38 \$ _____ Total you will have paid.

39 _____

40 Annual Percentage Rate _____%

1 _____

2
3 Total Interest Paid (as a percentage of all the _____%
4 payments you have made)
5

6
7
8
9

10 **Other Important Considerations**

11 Assumption by New Buyer Yes - Allowed on original
12 terms
13 No - Not Allowed on
14 original terms

15 I understand that if I refinance my home, my mortgage company may require
16 me to pay off the full remaining balance of this ~~obligation~~, unless I request
17 that the lien be subordinated to an existing mortgage and the holder of the lien
18 agrees to subordinate (allow the mortgage lien to take a higher priority).
19 *obligation before I can refinance my home.* If I sell my home, the buyer or
20 their mortgage company may require me to pay off the full remaining balance
21 of this ~~obligation~~. *obligation before the home may be sold. You should consider*
22 *consulting with your mortgage company or an attorney.*

23 _____
24 [Borrower initials]

25 **Monthly Mortgage Payments**

26 Your payments will be added to your property tax bill. Whether you pay your
27 property taxes through your mortgage payment, using an impound account,
28 or if you pay them directly to the tax collector, you will need to save an
29 estimated \$_____ for your first tax installment. If you pay your taxes through
30 an impound account you should notify your lender, so that your monthly
31 mortgage payment can be adjusted by your lender to cover your increased
32 property tax bill.

33 _____
34 [Borrower initials]

35
36 Tax Benefits: Consult your tax advisor regarding tax credits, credits and
37 deductions, tax deductibility, and other tax benefits available. Making an
38 appropriate application for the benefit is your responsibility.

39 _____
40

1 [Borrower initials]

2 *Statutory Penalties: If your property tax payment*
3 *is late, the amount due will be subject to a 10%*
4 *penalty, late fees, and 1.5% per month interest*
5 *penalty as established by state law, and your*
6 *property may be subject to foreclosure.*

7
8
9 _____
[Borrower initials]

10 **Three Day Right to Cancel**

11
12 You, the property owner, may cancel the contract at any time prior to midnight
13 on the third business day after the date of the transaction to enter into the
14 agreement without any penalty or obligation. To cancel this transaction, you
15 may mail or deliver a signed and dated copy of the contract with notice of
16 cancellation to:

17 _____ [name of business] at
18 _____ [address]

19 You may also cancel the contract by sending notification of cancellation by
20 email to the following email address: _____ [email address of
21 business].

22
23 _____
[Borrower initials]

24
25
26

27 **Confirmation of Receipt**

28 This confirms the receipt of the information in this form. You do not have to
29 accept this financing just because you acknowledge that you have received or
30 signed this form, and it is NOT a contract.

31
32 _____
33 [Property Owner Signature - Date] [Property Owner Signature
34 - Date]

35

36 (c) A public agency or other party to a voluntary contractual
37 assessment described in this chapter for the purposes specified in
38 paragraph (2) of subdivision (a) of Section 5898.20 or a special
39 tax described in Section 53328.1 of the Government Code shall
40 not make any representations to a property owner regarding the

1 effect the financed improvements will have on the market value
2 of the property unless that public agency or other party derives its
3 estimates of the market value using one of the following:

4 (1) An automated valuation model, which is a computerized
5 property valuation system that is used to derive a real property
6 value.

7 (2) A broker's price opinion conducted by a real estate broker
8 licensed pursuant to Part 1 (commencing with Section 10000) of
9 Division 4 of the Business and Professions Code.

10 (3) An appraisal conducted by a state licensed real estate
11 appraiser licensed pursuant to Part 3 (commencing with Section
12 11300) of Division 4 of the Business and Professions Code.

13 (d) For the purposes of this section, "property owner" shall
14 include ~~all persons listed on the title to the property.~~ *owners of*
15 *record.*