

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 474

Introduced by Assembly Member Blumenfield

February 24, 2009

An act to amend Sections 5898.12, 5898.14, 5898.20, 5898.21, 5898.22, 5898.24, 5898.28, and 5898.30 of the Streets and Highways Code, and to add Section 73.5 to the Revenue and Taxation Code, relating to contractual assessments, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 474, as amended, Blumenfield. Contractual assessments: water efficiency improvements.

Existing law authorizes the legislative body of any city, defined as a city, county, or city and county, to determine that it would be convenient and advantageous to designate an area within which authorized city officials and free and willing property owners may enter into contractual assessments and make arrangements to finance public improvements to specified lots or parcels or to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property, as specified. Existing law requires the legislative body to make these determinations by adopting a resolution indicating its intention to do so and requires the resolution to include certain specified information.

This bill would expand these provisions to authorize the legislative body of any public agency, as defined, to determine that it would be in the public interest to designate an area within which authorized city officials and free and willing property owners may enter into contractual

assessments to finance the installation of water efficiency improvements that are permanently fixed to real property, as specified. The bill would also, with respect to all of ~~the its provisions relating to public improvements and the installation of distributed generation renewable energy sources or energy efficiency improvements~~, redefine the term “city” as a “public agency” to include, every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, and city and county, and municipal corporation, whether incorporated or not and whether chartered or not. The bill would similarly modify the definition of “legislative body” to also include the governing body of a public agency or any other public body created by statute, *modify the definitions of “city” and “legislative body” and require a legislative body to provide written notice of a hearing to any entity that provides energy or water within the boundaries of the area within which contractual assessments may be entered into.* The bill would also specify that these improvements are not new construction which would be subject to property taxation. The bill would declare the intent of the Legislature in this regard. *This bill would make technical, nonsubstantive changes to these provisions.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 5898.12 of the Streets and Highways
- 2 Code is amended to read:
- 3 5898.12. (a) It is the intent of the Legislature that this chapter
- 4 should be used to finance public improvements to lots or parcels
- 5 which are developed and where the costs and time delays involved
- 6 in creating an assessment district pursuant to other provisions of
- 7 this division or any other law would be prohibitively large relative
- 8 to the cost of the public improvements to be financed.
- 9 (b) It is also the intent of the Legislature that this chapter should
- 10 be used to finance the installation of distributed generation
- 11 renewable energy sources or energy efficiency improvements that
- 12 are permanently fixed to residential, commercial, industrial,
- 13 *agricultural*, or other real property.

(c) It is also the intent of the Legislature to address chronic water needs throughout California by permitting voluntary individual efforts to improve water efficiency. The Legislature further intends that this chapter should be used to finance the installation of water efficiency improvements that are permanently fixed to residential, commercial, industrial, *agricultural*, or other real property, including, but not limited to, recycled water connections, synthetic turf, cisterns for stormwater recovery, and water-porous concrete.

(d) This chapter shall not be used to finance facilities for parcels which are undergoing development.

(e) This chapter shall not be used to finance the purchase or installation of appliances that are not permanently fixed to residential, commercial, industrial, *agricultural*, or other real property.

(f) Assessments may be levied pursuant to this chapter only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied.

(g) *A water district, as included in the definition of “public agency” in Section 5898.20, is authorized to use this chapter only for water efficiency improvements, and shall not use this chapter for any other improvements, including, but not limited to, energy efficiency improvements.*

SEC. 2. Section 5898.14 of the Streets and Highways Code is amended to read:

5898.14. (a) The Legislature finds all of the following:

(1) Energy and water conservation efforts, including the promotion of energy efficiency improvements to residential, commercial, industrial, *agricultural*, or other real property are necessary to address the issue of global climate change.

(2) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation of those improvements, it is necessary to authorize an alternative procedure for authorizing assessments to finance the cost of energy and water efficiency improvements.

(b) The Legislature declares that a public purpose will be served by a contractual assessment program that provides the legislative

1 body of any public agency with the authority to finance the
2 installation of distributed generation renewable energy sources
3 and energy or water efficiency improvements that are permanently
4 fixed to residential, commercial, industrial, *agricultural*, or other
5 real property.

6 SEC. 3. Section 5898.20 of the Streets and Highways Code is
7 amended to read:

8 5898.20. (a) (1) The legislative body of any public agency
9 may determine that it would be convenient and advantageous to
10 designate an area within the public agency, which may encompass
11 the entire public agency or a lesser portion, within which authorized
12 public agency officials and property owners may enter into
13 contractual assessments for public improvements and to make
14 financing arrangements pursuant to this chapter.

15 (2) The legislative body of any public agency may also
16 determine that it would be convenient, advantageous, and in the
17 public interest to designate an area within the public agency, which
18 may encompass the entire public agency or a lesser portion, within
19 which authorized public agency officials and property owners may
20 enter into contractual assessments to finance the installation of
21 distributed generation renewable energy sources or energy or water
22 efficiency improvements that are permanently fixed to real property
23 pursuant to this chapter.

24 (b) The legislative body shall make these determinations by
25 adopting a resolution indicating its intention to do so. The
26 resolution of intention shall include a statement that the public
27 agency proposes to make contractual assessment financing
28 available to property owners, shall identify the kinds of public
29 works, distributed generation renewable energy sources, or energy
30 or water efficiency improvements that may be financed, shall
31 describe the boundaries of the area within which contractual
32 assessments may be entered into, and shall briefly describe the
33 proposed arrangements for financing the ~~program~~ *program*,
34 *including a brief description of criteria for determining the*
35 *creditworthiness of a property owner*. The resolution of intention
36 shall state that it is in the public interest to finance the installation
37 of distributed generation renewable energy sources or energy or
38 water efficiency improvements, or both, pursuant to paragraph (2)
39 of subdivision (a), if applicable. The resolution shall state that a
40 public hearing should be held at which interested persons may

object to or inquire about the proposed program or any of its particulars, and shall state the time and place of the hearing. The resolution shall direct an appropriate public agency official to prepare a report pursuant to Section 5898.22 and to enter into consultations with the county auditor's office or county controller's office in order to reach agreement on what additional fees, if any, will be charged to the city or county for incorporating the proposed contractual assessments into the assessments of the general taxes of the city or county on real property.

(c) (1) As used in this chapter, each of the following terms ~~has~~ shall have the following meaning:

(1) ~~"Public agency" means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, and city and county, and municipal corporation, whether incorporated or not and whether chartered or not.~~

(2) ~~"Legislative body" includes bodies as defined in Section 5006 and the governing body of a public agency or any other public body created by statute.~~

(3) ~~"Efficiency improvements" means permanent improvements fixed to residential, commercial, industrial, or other real property.~~

(A) *"Efficiency improvements" means permanent improvements fixed to residential, commercial, industrial, agricultural, or other real property.*

(B) *"Legislative body" means the governing body of a public agency.*

(C) *"Public agency" means a city, county, city and county, municipal utility district, community services district, or water district, as defined in Section 20200 of the Water Code.*

(2) *The definitions of "city" in Section 5005 and "legislative body" in Section 5006 shall not apply to this chapter.*

SEC. 4. Section 5898.21 of the Streets and Highways Code is amended to read:

5898.21. Notwithstanding any other provision of this chapter, upon the written consent of an authorized public agency official, the proposed arrangements for financing the program pertaining to the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property may authorize the property owner to purchase directly the related equipment and materials for

1 the installation of distributed generation renewable energy sources
2 or energy or water efficiency improvements and to contract directly
3 for the installation of distributed generation renewable energy
4 sources or energy or water efficiency improvements that are
5 permanently fixed to the property owner's residential, commercial,
6 industrial, *agricultural*, or other real property.

7 SEC. 5. Section 5898.22 of the Streets and Highways Code is
8 amended to read:

9 5898.22. The report shall contain all of the following:

10 (a) A map showing the boundaries of the territory within which
11 contractual assessments are proposed to be offered.

12 (b) A draft contract specifying the terms and conditions that
13 would be agreed to by a property owner within the contractual
14 assessment area and the public agency.

15 (c) A statement of public agency policies concerning contractual
16 assessments including all of the following:

17 (1) Identification of types of facilities, distributed generation
18 renewable energy sources, or energy or water efficiency
19 improvements that may be financed through the use of contractual
20 assessments.

21 (2) Identification of a public agency official authorized to enter
22 into contractual assessments on behalf of the public agency.

23 (3) A maximum aggregate dollar amount of contractual
24 assessments.

25 (4) A method for setting requests from property owners for
26 financing through contractual assessments in priority order in the
27 event that requests appear likely to exceed the authorization
28 amount.

29 (d) A plan for raising a capital amount required to pay for work
30 performed pursuant to contractual assessments. The plan may
31 include amounts to be advanced by the public agency through
32 funds available to it from any source. The plan may include the
33 sale of a bond or bonds or other financing relationship pursuant
34 to Section 5898.28. The plan shall include a statement of or method
35 for determining the interest rate and time period during which
36 contracting property owners would pay any assessment. The plan
37 shall provide for any reserve fund or funds. The plan shall provide
38 for the apportionment of all or any portion of the costs incidental
39 to financing, administration, and collection of the contractual

1 assessment program among the consenting property owners and
2 the public agency.

3 (e) A report on the results of the consultations with the county
4 auditor's office or county controller's office concerning the
5 additional fees, if any, that will be charged to the city or county
6 for incorporating the proposed contractual assessments into the
7 assessments of the general taxes of the city or county on real
8 property, and a plan for financing the payment of those fees.

9 *SEC. 6. Section 5898.24 of the Streets and Highways Code is*
10 *amended to read:*

11 5898.24. (a) A legislative body shall publish notice of the a
12 hearing ~~shall be published~~ pursuant to Section 6066 of the
13 Government Code, and the first publication shall occur not later
14 than 20 days before the date of the hearing.

15 (b) A legislative body shall provide written notice of a hearing
16 to any entity that provides energy or water within the boundaries
17 of the area within which contractual assessments may be entered
18 into.

19 ~~SEC. 6.~~

20 *SEC. 7. Section 5898.28 of the Streets and Highways Code is*
21 *amended to read:*

22 5898.28. A public agency may issue bonds pursuant to this
23 chapter, the principal and interest for which would be repaid by
24 contractual assessments. A public agency may advance its own
25 funds to finance work to be repaid through contractual assessments,
26 and may from time to time sell bonds to reimburse itself for such
27 advances. A public agency may enter into a relationship with an
28 underwriter or financial institution that would allow the sequential
29 issuance of a series of bonds, each bond being issued as the need
30 arose to finance work to be repaid through contractual assessments.
31 The interest rate of each bond may be determined by an appropriate
32 index, but shall be fixed at the time each bond is issued. Bond
33 proceeds may be used to establish a reserve fund, and to pay for
34 expenses incidental to the issuance and sale of the bonds. Division
35 10 (commencing with Section 8500) shall apply to any bonds
36 issued pursuant to this section, insofar as that division is not in
37 conflict with this chapter.

38 ~~SEC. 7.~~

39 *SEC. 8. Section 5898.30 of the Streets and Highways Code is*
40 *amended to read:*

1 5898.30. Assessments levied pursuant to this chapter, and the
2 interest and any penalties thereon shall constitute a lien against
3 the lots and parcels of land on which they are made, until they are
4 paid. Division 10 (commencing with Section 8500) applies to the
5 levy and collection of assessments levied pursuant to this chapter,
6 insofar as those provisions are not in conflict with the provisions
7 of this chapter, including, but not limited to, the collection of
8 assessments in the same manner and at the same time as the general
9 taxes of the city or county on real property are payable and any
10 penalties and remedies and lien priorities in the event of
11 delinquency and default.

12 ~~SEC. 8.~~

13 SEC. 9. Section 73.5 is added to the Revenue and Taxation
14 Code, to read:

15 73.5. Notwithstanding any other provision of law, the term
16 “newly constructed” as used in subdivision (a) of Section 2 of
17 Article XIII A of the California Constitution does not include the
18 construction or addition of any distributed generation renewable
19 energy sources or energy or water efficiency improvements, as
20 specified in Chapter 29 (commencing with Section 5898.10) of
21 the Streets and Highways Code.

22 ~~SEC. 9.~~

23 SEC. 10. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety within
25 the meaning of Article IV of the Constitution and shall go into
26 immediate effect. The facts constituting the necessity are:

27 In order for legislative bodies of public agencies and free and
28 willing property owners to enter into contractual assessments to
29 finance water efficiency improvements and for the state to begin
30 to experience the effects of these contractual assessments, it is
31 necessary that this act take effect immediately.