

AMENDED IN ASSEMBLY APRIL 27, 2009

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, *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 its provisions, 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.
- 14 (c) It is also the intent of the Legislature to address chronic
- 15 water needs throughout California by permitting voluntary
- 16 individual efforts to improve water efficiency. The Legislature
- 17 further intends that this chapter should be used to finance the
- 18 installation of water efficiency improvements that are permanently
- 19 fixed to residential, commercial, industrial, agricultural, or other
- 20 real property, including, but not limited to, recycled water

1 connections, synthetic turf, cisterns for stormwater recovery, and
2 water-porous concrete.

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

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

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

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

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

20 5898.14. (a) The Legislature finds all of the following:

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

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

32 (b) The Legislature declares that a public purpose will be served
33 by a contractual assessment program that provides the legislative
34 body of any public agency with the authority to finance the
35 installation of distributed generation renewable energy sources
36 and energy or water efficiency improvements that are permanently
37 fixed to residential, commercial, industrial, agricultural, or other
38 real property.

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

1 5898.20. (a) (1) The legislative body of any public agency
2 may determine that it would be convenient and advantageous to
3 designate an area within the public agency, which may encompass
4 the entire public agency or a lesser portion, within which authorized
5 public agency officials and property owners may enter into
6 contractual assessments for public improvements and to make
7 financing arrangements pursuant to this chapter.

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

17 (b) The legislative body shall make these determinations by
18 adopting a resolution indicating its intention to do so. The
19 resolution of intention shall include a statement that the public
20 agency proposes to make contractual assessment financing
21 available to property owners, shall identify the kinds of public
22 works, distributed generation renewable energy sources, or energy
23 or water efficiency improvements that may be financed, shall
24 describe the boundaries of the area within which contractual
25 assessments may be entered into, and shall briefly describe the
26 proposed arrangements for financing the program, including a
27 brief description of criteria for determining the creditworthiness
28 of a property owner. The resolution of intention shall state that it
29 is in the public interest to finance the installation of distributed
30 generation renewable energy sources or energy or water efficiency
31 improvements, or both, pursuant to paragraph (2) of subdivision
32 (a), if applicable. The resolution shall state that a public hearing
33 should be held at which interested persons may object to or inquire
34 about the proposed program or any of its particulars, and shall
35 state the time and place of the hearing. The resolution shall direct
36 an appropriate public agency official to prepare a report pursuant
37 to Section 5898.22 and to enter into consultations with the county
38 auditor's office or county controller's office in order to reach
39 agreement on what additional fees, if any, will be charged to the
40 city or county for incorporating the proposed contractual

1 assessments into the assessments of the general taxes of the city
2 or county on real property.

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

5 (A) “Efficiency improvements” means permanent improvements
6 fixed to residential, commercial, industrial, agricultural, or other
7 real property.

8 (B) “Legislative body” means the governing body of a public
9 agency.

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

13 (2) The definitions of “city” in Section 5005 and “legislative
14 body” in Section 5006 shall not apply to this chapter.

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

17 5898.21. Notwithstanding any other provision of this chapter,
18 upon the written consent of an authorized public agency official,
19 the proposed arrangements for financing the program pertaining
20 to the installation of distributed generation renewable energy
21 sources or energy or water efficiency improvements that are
22 permanently fixed to real property may authorize the property
23 owner to purchase directly the related equipment and materials for
24 the installation of distributed generation renewable energy sources
25 or energy or water efficiency improvements and to contract directly
26 for the installation of distributed generation renewable energy
27 sources or energy or water efficiency improvements that are
28 permanently fixed to the property owner’s residential, commercial,
29 industrial, agricultural, or other real property.

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

32 5898.22. The report shall contain all of the following:

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

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

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

1 (1) Identification of types of facilities, distributed generation
2 renewable energy sources, or energy or water efficiency
3 improvements that may be financed through the use of contractual
4 assessments.

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

7 (3) A maximum aggregate dollar amount of contractual
8 assessments.

9 (4) A method for setting requests from property owners for
10 financing through contractual assessments in priority order in the
11 event that requests appear likely to exceed the authorization
12 amount.

13 (d) A plan for raising a capital amount required to pay for work
14 performed pursuant to contractual assessments. The plan may
15 include amounts to be advanced by the public agency through
16 funds available to it from any source. The plan may include the
17 sale of a bond or bonds or other financing relationship pursuant
18 to Section 5898.28. The plan shall include a statement of or method
19 for determining the interest rate and time period during which
20 contracting property owners would pay any assessment. The plan
21 shall provide for any reserve fund or funds. The plan shall provide
22 for the apportionment of all or any portion of the costs incidental
23 to financing, administration, and collection of the contractual
24 assessment program among the consenting property owners and
25 the public agency.

26 (e) A report on the results of the consultations with the county
27 auditor's office or county controller's office concerning the
28 additional fees, if any, that will be charged to the city or county
29 for incorporating the proposed contractual assessments into the
30 assessments of the general taxes of the city or county on real
31 property, and a plan for financing the payment of those fees.

32 SEC. 6. Section 5898.24 of the Streets and Highways Code is
33 amended to read:

34 5898.24. (a) A legislative body shall publish notice of a hearing
35 pursuant to Section 6066 of the Government Code, and the first
36 publication shall occur not later than 20 days before the date of
37 the hearing.

38 (b) A legislative body shall provide written notice of a hearing
39 to any entity that provides energy or water within the boundaries

1 of the area within which contractual assessments may be entered
2 into.

3 SEC. 7. Section 5898.28 of the Streets and Highways Code is
4 amended to read:

5 5898.28. A public agency may issue bonds pursuant to this
6 chapter, the principal and interest for which would be repaid by
7 contractual assessments. A public agency may advance its own
8 funds to finance work to be repaid through contractual assessments,
9 and may from time to time sell bonds to reimburse itself for such
10 advances. A public agency may enter into a relationship with an
11 underwriter or financial institution that would allow the sequential
12 issuance of a series of bonds, each bond being issued as the need
13 arose to finance work to be repaid through contractual assessments.
14 The interest rate of each bond may be determined by an appropriate
15 index, but shall be fixed at the time each bond is issued. Bond
16 proceeds may be used to establish a reserve fund, and to pay for
17 expenses incidental to the issuance and sale of the bonds. Division
18 10 (commencing with Section 8500) shall apply to any bonds
19 issued pursuant to this section, insofar as that division is not in
20 conflict with this chapter.

21 SEC. 8. Section 5898.30 of the Streets and Highways Code is
22 amended to read:

23 5898.30. Assessments levied pursuant to this chapter, and the
24 interest and any penalties thereon shall constitute a lien against
25 the lots and parcels of land on which they are made, until they are
26 paid. Division 10 (commencing with Section 8500) applies to the
27 levy and collection of assessments levied pursuant to this chapter,
28 insofar as those provisions are not in conflict with the provisions
29 of this chapter, including, but not limited to, the collection of
30 assessments in the same manner and at the same time as the general
31 taxes of the city or county on real property are payable and any
32 penalties and remedies and lien priorities in the event of
33 delinquency and default.

34 ~~SEC. 9. Section 73.5 is added to the Revenue and Taxation~~
35 ~~Code, to read:~~

36 ~~73.5. Notwithstanding any other provision of law, the term~~
37 ~~“newly constructed” as used in subdivision (a) of Section 2 of~~
38 ~~Article XIII A of the California Constitution does not include the~~
39 ~~construction or addition of any distributed generation renewable~~
40 ~~energy sources or energy or water efficiency improvements, as~~

1 ~~specified in Chapter 29 (commencing with Section 5898.10) of~~
2 ~~the Streets and Highways Code.~~

3 ~~SEC. 10.~~

4 *SEC. 9.* This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning of Article IV of the Constitution and shall go into
7 immediate effect. The facts constituting the necessity are:

8 In order for legislative bodies of public agencies and free and
9 willing property owners to enter into contractual assessments to
10 finance water efficiency improvements and for the state to begin
11 to experience the effects of these contractual assessments, it is
12 necessary that this act take effect immediately.