

BILL NUMBER: AB 474 ENROLLED
BILL TEXT

PASSED THE SENATE SEPTEMBER 9, 2009
PASSED THE ASSEMBLY SEPTEMBER 10, 2009
AMENDED IN SENATE SEPTEMBER 4, 2009
AMENDED IN SENATE JUNE 25, 2009
AMENDED IN ASSEMBLY MAY 18, 2009
AMENDED IN ASSEMBLY APRIL 27, 2009
AMENDED IN ASSEMBLY APRIL 14, 2009

INTRODUCED BY Assembly Member Blumenfield
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Krekorian, and Nestande)

FEBRUARY 24, 2009

An act to amend Section 1102.6b of the Civil Code, and to amend Sections 5898.12, 5898.14, 5898.20, 5898.21, 5898.22, 5898.24, 5898.28, and 5898.30 of, and to add Section 5898.31 to, the Streets and Highways Code, relating to contractual assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 474, 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 its definitions and require a legislative body to perform additional record keeping duties and provide specified notice to any entity that provides energy or water within the boundaries of the area within which contractual assessments may be entered into. This bill would also require additional specified disclosures for a transfer of real property subject to a contractual assessment. The bill would declare the intent of the Legislature in regard to these provisions. This bill would make technical, nonsubstantive changes to these provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1102.6b of the Civil Code is amended to read:

1102.6b. (a) This section applies to all transfers of real property for which all of the following apply:

(1) The transfer is subject to this article.

(2) The property being transferred is subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code), to a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), or to a contractual assessment program authorized pursuant to Chapter 29 (commencing with Section 5898.10) of Part 3 of Division 7 of the Streets and Highway Code.

(3) A notice is not required pursuant to Section 53341.5 of the Government Code.

(b) In addition to any other disclosure required pursuant to this article, the seller of any real property subject to this section shall make a good faith effort to obtain a disclosure notice concerning the special tax as provided for in Section 53340.2 of the Government Code, or a disclosure notice concerning an assessment installment as provided in Section 53754 of the Government Code, from each local agency that levies a special tax pursuant to the Mello-Roos Community Facilities Act, or that collects assessment installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), or a disclosure notice concerning the contractual assessment as provided in Section 5898.24 of the Streets and Highways Code, on the property being transferred, and shall deliver that notice or those notices to the prospective purchaser, as long as the notices are made available by the local agency.

(c) (1) The seller of real property subject to this section may satisfy the disclosure notice requirements in regard to the bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) by delivering a disclosure notice that is substantially equivalent and obtained from another source, until December 31, 2004.

(2) The seller of real property subject to this section may satisfy the disclosure notice requirements in regard to the assessments collected under the contractual assessment program authorized pursuant to Chapter 29 (commencing with Section 5898.10) of Part 3 of Division 7 of the Streets and Highway Code by delivering a disclosure notice that is substantially equivalent and obtained from another source.

(3) For the purposes of this section, a substantially equivalent disclosure notice includes, but is not limited to, a copy of the most recent year's property tax bill or an itemization of current assessment amounts applicable to the property.

(d) (1) Notwithstanding subdivision (c), at any time after the effective date of this section, the seller of real property subject to this section may satisfy the disclosure notice requirements of this section by delivering a disclosure notice obtained from a nongovernmental source that satisfies the requirements of paragraph (2).

(2) A notice provided by a private entity other than a designated office, department, or bureau of the levying entity may be modified as needed to clearly and accurately describe a special tax pursuant to the Mello-Roos Community Facilities Act levied against the property or to clearly and accurately consolidate information about two or more districts that levy or are authorized to levy a special tax pursuant to the Mello-Roos Community Facilities Act against the property, and shall include the name of the Mello-Roos entity levying taxes against the property, the annual tax due for the Mello-Roos entity for the current tax year, the maximum tax that may be levied against the property in any year, the percentage by which the maximum tax for the Mello-Roos entity may increase per year, and the date until the tax may be levied against the property for the Mello-Roos entity and a contact telephone number, if available, for further information about the Mello-Roos entity. A notice provided by a private entity other than a designated office, department, or bureau of the levying entity may be modified as needed to clearly and accurately describe special assessments and bonds pursuant to the Improvement Bond Act of 1915 levied against the property, or to clearly and accurately consolidate information about two or more districts that levy or are authorized to levy special assessments and bonds pursuant to the Improvement Bond Act of 1915 against the property, and shall include the name of the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915, the current annual tax on the property for the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915 and a contact telephone number, if available, for further information about the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915.

(3) This section does not change the ability to make disclosures pursuant to Section 1102.4 of the Civil Code.

(e) If a disclosure received pursuant to subdivision (b), (c), or (d) has been delivered to the transferee, a seller or his or her agent is not required to provide additional information concerning, and information in the disclosure shall be deemed to satisfy the responsibility of the seller or his or her agent to inform the transferee regarding the special tax or assessment installments and the district. Notwithstanding subdivision (b), (c), or (d), nothing in this section imposes a duty to discover a special tax or assessment installments or the existence of any levying district not actually known to the agents.

SEC. 2. Section 5898.12 of the Streets and Highways Code is amended to read:

5898.12. (a) It is the intent of the Legislature that this chapter should be used to finance public improvements to lots or parcels which are developed and where the costs and time delays involved in creating an assessment district pursuant to other provisions of this division or any other law would be prohibitively large relative to the cost of the public improvements to be financed.

(b) It is also the intent of the Legislature that this chapter should be used to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, 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 permeable pavement.

(d) It is also the intent of the Legislature that a public agency in the process of establishing an assessment program, to the extent feasible, use a good faith effort to provide advance notice of the proposed program to water and electric service providers in the relevant service area, as set forth in Section 5898.24, to allow the most efficient coordination and collaboration between the public agency and water and electric service providers.

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

(f) 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.

(g) 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.

SEC. 3. 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, agricultural, 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 voluntary contractual assessment program that provides the legislative body of any public agency with the authority to finance the installation of distributed generation renewable energy sources and energy or water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property.

SEC. 4. Section 5898.20 of the Streets and Highways Code is amended to read:

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

(2) The legislative body of any public agency may also determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, which may encompass the entire public agency or a lesser portion, within which authorized public agency officials and property owners may enter into voluntary

contractual assessments 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 this chapter.

(b) The legislative body shall make these determinations by adopting a resolution indicating its intention to do so. The resolution of intention shall include a statement that the public agency proposes to make voluntary contractual assessment financing available to property owners, shall identify the kinds of public works, distributed generation renewable energy sources, or energy or water efficiency improvements that may be financed, shall describe the boundaries of the area within which voluntary contractual assessments may be entered into, and shall briefly describe the proposed arrangements for financing the program, including a brief description of criteria for determining the creditworthiness of a property owner. The resolution of intention shall state that it is in the public interest to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements, or both, pursuant to paragraph (2) of subdivision (a), if applicable. The resolution shall state that a 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 voluntary contractual assessments into the assessments of the general taxes of the city or county on real property.

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

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

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

(3) (A) For the purpose of financing the installation of water efficiency improvements, "public agency" means a city, county, city and county, municipal utility district, community services district, sanitary district, sanitation district, or water district, as defined in Section 20200 of the Water Code. The definition of "city" in Section 5005 shall not apply to this subparagraph.

(B) For the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements, "public agency" means a county, city, city and county, or a municipal utility district, an irrigation district, or public utility district that owns and operates an electric distribution system. The definition of "city" in Section 5005 shall not apply to this subparagraph.

(C) For the purpose of financing the public improvements, "public agency" means a city as defined in Section 5005.

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

SEC. 6. Section 5898.22 of the Streets and Highways Code is amended to read:

5898.22. The report shall contain all of the following:

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

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

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

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

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

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

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

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

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

SEC. 7. Section 5898.24 of the Streets and Highways Code is amended to read:

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

(b) A legislative body shall provide written notice of a proposed contractual assessment program to all water or electric providers within the boundaries of the area within which voluntary contractual assessments may be entered into not less than 60 days prior to adoption of any resolution pursuant to Section 5898.26.

(c) (1) A legislative body administering a voluntary contractual assessment program shall designate an office, department, or bureau of the local agency that shall be responsible for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

(2) The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future voluntary contractual assessment liability is inaccurate, nor for any failure of any seller to request notice pursuant to this chapter or to provide the notice to a buyer.

(d) For purposes of enabling sellers of real property subject to a voluntary contractual assessment to satisfy the notice requirements of Section 1102.6b of the Civil Code, the legislative body shall cause to be recorded in the office of the county recorder for the county in which the real property is located, concurrently with the instrument creating the voluntary contractual assessment, a separate document that meets all of the following requirements:

(1) The title of the document shall be "Payment of Contractual Assessment Required" in at least 14-point boldface type.

(2) The document shall include all of the following information:

(A) The names of all current owners of the real property subject to the contractual assessment, and the legal description and the assessor's parcel number for the affected real property.

(B) The annual amount of the contractual assessment.

(C) The date or circumstances under which the contractual assessment expires, or a statement that the assessment is perpetual.

(D) The purpose for which the funds from the contractual assessment will be used.

(E) The entity to which funds from the contractual assessment will be paid and specific contact information for that entity.

(F) The signature of the authorized representative of the legislative body to which funds from the contractual assessment will be paid.

(e) The recorder shall only be responsible for examining the document required by subdivision (d) and determining that it contains the information required by subparagraphs (A), (E), and (F) of paragraph (2) of subdivision (d). The recorder shall index the document under the names of the persons and entities identified in subparagraphs (A) and (E) of paragraph (2) of subdivision (d). The recorder shall not examine any other information contained in the document required by subdivision (d).

SEC. 8. Section 5898.28 of the Streets and Highways Code is amended to read:

5898.28. A public agency may issue bonds pursuant to this chapter, the principal and interest for which would be repaid by voluntary contractual assessments. A public agency may advance its own funds to finance work to be repaid through voluntary contractual

assessments, and may from time to time sell bonds to reimburse itself for such advances. A public agency may enter into a relationship with an underwriter or financial institution that would allow the sequential issuance of a series of bonds, each bond being issued as the need arose to finance work to be repaid through voluntary contractual assessments. The interest rate of each bond may be determined by an appropriate index, but shall be fixed at the time each bond is issued. Bond proceeds may be used to establish a reserve fund, and to pay for expenses incidental to the issuance and sale of the bonds. Division 10 (commencing with Section 8500) shall apply to any bonds issued pursuant to this section, insofar as that division is not in conflict with this chapter.

SEC. 9. Section 5898.30 of the Streets and Highways Code is amended to read:

5898.30. Assessments levied pursuant to this chapter, and the interest and any penalties thereon shall constitute a lien against the lots and parcels of land on which they are made, until they are paid. Division 10 (commencing with Section 8500), insofar as those provisions are not in conflict with the provisions of this chapter, Article 13 (commencing with Section 53930) of, and Article 13.5 (commencing with Section 53938) of, Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code apply to the imposition and collection of assessments contracted for pursuant to this chapter, including, but not limited to, provisions related to lien priority, the collection of assessments in the same manner and at the same time as the general taxes of the city or county on real property, and any penalties and remedies in the event of delinquency and default.

SEC. 10. Section 5898.31 is added to the Streets and Highways Code, to read:

5898.31. Since contractual assessments on real property under this chapter are voluntary and imposed pursuant to an agreement with an assessed property owner, the Legislature finds and declares that voluntary contractual assessments under this chapter are not assessments for the purposes of Articles XIII C and XIII D of the California Constitution and therefore the provisions of Articles XIII C and XIII D and Article 4.6 (commencing with Section 53750) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code are not applicable to voluntary contractual assessments levied pursuant to this chapter.