

AMENDED IN ASSEMBLY MAY 10, 2016
AMENDED IN ASSEMBLY APRIL 28, 2016
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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 ~~53313.5~~ *53328.1* of the Government Code, to amend Section 26054 of the Public Resources Code, and to amend Sections 5898.15, 5898.28, and 5898.30 of, *Section 5898.15 of*, and to amend, renumber, and add Section 5898.16 of, the Streets and Highways Code, relating to ~~contractual assessments~~: *property improvements*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2693, as amended, Dababneh. ~~Contractual assessments: financing~~ *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~~

(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 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, except for nonresidential private property or residential private property with 5 or more units, 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 provide that if the holder of a note secured by a deed of trust for purchase money or a refinanced purchase money obligation institutes a foreclosure, or if a public agency institutes a foreclosure, the interest of the purchase money noteholder is treated as an encumbrance that is senior to any delinquency of specified voluntary assessments.~~

~~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.~~

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 who is a homeowner applicant to participate in a program pursuant to these provisions unless the property owner has been provided with a completed financing estimate document or a substantially equivalent ~~document~~. *document 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 the date of the transaction to enter into the agreement without penalty or obligation.* The bill would also prohibit a public agency from permitting a property owner to participate in a program pursuant to these provisions if the total mortgage-related debt and contractual assessment-related debt on the underlying property would exceed the fair market value of the property at the time of the owner's contractual assessment, if the mortgage-related debt on the property alone is equal to 90% or greater of the property's fair market value at the time of the approval of the owner's contractual assessment, or if the owner is unable to meet specified requirements.

This bill would provide that the failure of a public agency to comply with these prohibitions renders the contractual obligations of the property owner for the contractual assessment void.

~~The~~

(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. ~~A Existing law authorizes a community facilities district formed pursuant to that law is authorized to, among other things, finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements to or on real property and in buildings, as specified. 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 that an assessment levied or a delinquency collected in connection with those improvements be collected using the procedures described above. 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.~~

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 53313.5 of the Government Code is~~
 2 ~~amended to read:~~
 3 ~~53313.5. A community facilities district may also finance the~~
 4 ~~purchase, construction, expansion, improvement, or rehabilitation~~
 5 ~~of any real or other tangible property with an estimated useful life~~
 6 ~~of five years or longer or may finance planning and design work~~
 7 ~~that is directly related to the purchase, construction, expansion, or~~
 8 ~~rehabilitation of any real or tangible property. The facilities need~~
 9 ~~not be physically located within the district. A district may not~~
 10 ~~lease out facilities that it has financed except pursuant to a lease~~
 11 ~~agreement or annexation agreement entered into prior to January~~
 12 ~~1, 1988. A district may only finance the purchase of facilities~~
 13 ~~whose construction has been completed, as determined by the~~
 14 ~~legislative body, before the resolution of formation to establish~~
 15 ~~the district is adopted pursuant to Section 53325.1, except that a~~
 16 ~~district may finance the purchase of facilities completed after the~~

1 adoption of the resolution of formation if the facility was
2 constructed as if it had been constructed under the direction and
3 supervision, or under the authority of, the local agency that will
4 own or operate the facility. For example, a community facilities
5 district may finance facilities, including, but not limited to, the
6 following:

7 (a) Local park, recreation, parkway, and open-space facilities.

8 (b) Elementary and secondary schoolsites and structures
9 provided that the facilities meet the building area and cost standards
10 established by the State Allocation Board.

11 (c) Libraries.

12 (d) Child care facilities, including costs of insuring the facilities
13 against loss, liability insurance in connection with the operation
14 of the facility, and other insurance costs relating to the operation
15 of the facilities, but excluding all other operational costs. However,
16 the proceeds of bonds issued pursuant to this chapter shall not be
17 used to pay these insurance costs.

18 (e) The district may also finance the construction or
19 undergrounding of water transmission and distribution facilities,
20 natural gas pipeline facilities, telephone lines, facilities for the
21 transmission or distribution of electrical energy, and cable
22 television lines to provide access to those services to customers
23 who do not have access to those services or to mitigate existing
24 visual blight. The district may enter into an agreement with a public
25 utility to utilize those facilities to provide a particular service and
26 for the conveyance of those facilities to the public utility. "Public
27 utility" shall include all utilities, whether public and regulated by
28 the Public Utilities Commission, or municipal. If the facilities are
29 conveyed to the public utility, the agreement shall provide that the
30 cost or a portion of the cost of the facilities that are the
31 responsibility of the utility shall be refunded by the public utility
32 to the district or improvement area thereof, to the extent that
33 refunds are applicable pursuant to (1) the Public Utilities Code or
34 rules of the Public Utilities Commission, as to utilities regulated
35 by the commission, or (2) other laws regulating public utilities.
36 Any reimbursement made to the district shall be utilized to reduce
37 or minimize the special tax levied within the district or
38 improvement area, or to construct or acquire additional facilities
39 within the district or improvement area, as specified in the
40 resolution of formation.

1 ~~(f) The district may also finance the acquisition, improvement,~~
 2 ~~rehabilitation, or maintenance of any real or other tangible property,~~
 3 ~~whether privately or publicly owned, for flood and storm protection~~
 4 ~~services, including, but not limited to, storm drainage and treatment~~
 5 ~~systems and sandstorm protection systems.~~

6 ~~(g) The district may also pay in full all amounts necessary to~~
 7 ~~eliminate any fixed special assessment liens or to pay, repay, or~~
 8 ~~defease any obligation to pay or any indebtedness secured by any~~
 9 ~~tax, fee, charge, or assessment levied within the area of a~~
 10 ~~community facilities district or may pay debt service on that~~
 11 ~~indebtedness. When the amount financed by the district is to pay~~
 12 ~~a tax, fee, charge, or assessment imposed by a public agency other~~
 13 ~~than the one conducting the proceedings, and if the amount~~
 14 ~~provided to the other public agency will not be entirely used to~~
 15 ~~pay off or prepay an assessment lien or special tax obligation~~
 16 ~~pursuant to the property owner’s legal right to do so, the written~~
 17 ~~consent of the other public agency is required. In addition, tax~~
 18 ~~revenues of a district may be used to make lease or debt service~~
 19 ~~payments on any lease, lease-purchase contract, or certificate of~~
 20 ~~participation used to finance facilities authorized to be financed~~
 21 ~~by the district.~~

22 ~~(h) Any other governmental facilities that the legislative body~~
 23 ~~creating the community facilities district is authorized by law to~~
 24 ~~contribute revenue to, or construct, own, or operate. However, the~~
 25 ~~district shall not operate, maintain, or, except as otherwise provided~~
 26 ~~in subdivisions (e) and (k), have any ownership interest in any~~
 27 ~~facilities for the transmission or distribution of natural gas,~~
 28 ~~telephone service, or electricity.~~

29 ~~(i) (1) A district may also pay for the following:~~

30 ~~(A) Work deemed necessary to bring buildings or real property,~~
 31 ~~including privately owned buildings or real property, into~~
 32 ~~compliance with seismic safety standards or regulations. Only~~
 33 ~~work certified as necessary to comply with seismic safety standards~~
 34 ~~or regulations by local building officials may be financed. No~~
 35 ~~project involving the dismantling of an existing building and its~~
 36 ~~replacement by a new building, nor the construction of a new or~~
 37 ~~substantially new building may be financed pursuant to this~~
 38 ~~subparagraph. Work on qualified historical buildings or structures~~
 39 ~~shall be done in accordance with the State Historical Building~~

1 Code (Part 2.7 (commencing with Section 18950) of Division 13
2 of the Health and Safety Code):

3 (B) In addition, within any county or area designated by the
4 President of the United States or by the Governor as a disaster area
5 or for which the Governor has proclaimed the existence of a state
6 of emergency because of earthquake damage, a district may also
7 pay for any work deemed necessary to repair any damage to real
8 property directly or indirectly caused by the occurrence of an
9 earthquake cited in the President's or the Governor's designation
10 or proclamation, or by aftershocks associated with that earthquake,
11 including work to reconstruct, repair, shore up, or replace any
12 building damaged or destroyed by the earthquake, and specifically
13 including, but not limited to, work on any building damaged or
14 destroyed in the Loma Prieta earthquake that occurred on October
15 17, 1989, or by its aftershocks. Work may be financed pursuant
16 to this subparagraph only on property or buildings identified in a
17 resolution of intention to establish a community facilities district
18 adopted within seven years of the date on which the county or area
19 is designated as a disaster area by the President or by the Governor
20 or on which the Governor proclaims for the area the existence of
21 a state of emergency.

22 (2) Work on privately owned property, including reconstruction
23 or replacement of privately owned buildings pursuant to
24 subparagraph (B) of paragraph (1), may only be financed by a tax
25 levy if all of the votes cast on the question of levying the tax, vote
26 in favor of levying the tax, or with the prior written consent to the
27 tax of the owners of all property that may be subject to the tax, in
28 that case the prior written consent shall be deemed to constitute a
29 vote in favor of the tax and any associated bond issue. Any district
30 created to finance seismic safety work on privately owned
31 buildings, including repair, reconstruction, or replacement of
32 privately owned buildings pursuant to this subdivision, shall consist
33 only of lots or parcels that the legislative body finds have buildings
34 that were damaged or destroyed by the earthquake cited pursuant
35 to subparagraph (B) of paragraph (1) or by the aftershocks of that
36 earthquake.

37 (j) A district may also pay for the following:

38 (1) Work deemed necessary to repair and abate damage caused
39 to privately owned buildings and structures by soil deterioration.
40 "Soil deterioration" means a chemical reaction by soils that causes

1 structural damage or defects in construction materials including
2 concrete, steel, and ductile or cast iron. Only work certified as
3 necessary by local building officials may be financed. No project
4 involving the dismantling of an existing building or structure and
5 its replacement by a new building or structure, nor the construction
6 of a new or substantially new building or structure may be financed
7 pursuant to this paragraph.

8 (2) ~~Work on privately owned buildings and structures pursuant~~
9 ~~to this subdivision, including reconstruction, repair, and abatement~~
10 ~~of damage caused by soil deterioration, may only be financed by~~
11 ~~a tax levy if all of the votes cast on the question of levying the tax~~
12 ~~vote in favor of levying the tax. Any district created to finance the~~
13 ~~work on privately owned buildings or structures, including~~
14 ~~reconstruction, repair, and abatement of damage caused by soil~~
15 ~~deterioration, shall consist only of lots or parcels on which the~~
16 ~~legislative body finds that the buildings or structures to be worked~~
17 ~~on pursuant to this subdivision suffer from soil deterioration.~~

18 (k) ~~A district may also finance the acquisition, improvement,~~
19 ~~rehabilitation, or maintenance of any real or other tangible property,~~
20 ~~whether privately or publicly owned, for the purposes of removal~~
21 ~~or remedial action for the cleanup of any hazardous substance~~
22 ~~released or threatened to be released into the environment. As used~~
23 ~~in this subdivision, “remedial action” and “removal” shall have~~
24 ~~the meaning set forth in Sections 25322 and 25323, respectively,~~
25 ~~of the Health and Safety Code, and “hazardous substance” shall~~
26 ~~have the meaning set forth in Section 25281 of the Health and~~
27 ~~Safety Code.~~

28 (l) ~~A district may also finance and refinance the acquisition,~~
29 ~~installation, and improvement of energy efficiency, water~~
30 ~~conservation, and renewable energy improvements that are affixed,~~
31 ~~as specified in Section 660 of the Civil Code, to or on real property~~
32 ~~and in buildings, whether the real property or buildings are~~
33 ~~privately or publicly owned. Energy efficiency, water conservation,~~
34 ~~and renewable energy improvements financed by a district may~~
35 ~~only be installed on a privately owned building and on privately~~
36 ~~owned real property with the prior written consent of the owner~~
37 ~~or owners of the building or real property. This chapter shall not~~
38 ~~be used to finance installation of energy efficiency, water~~
39 ~~conservation, and renewable energy improvements on a privately~~
40 ~~owned building or on privately owned real property in connection~~

1 with the initial construction of a residential building unless the
2 initial construction is undertaken by the intended owner or
3 occupant. An assessment levied or a delinquency collected pursuant
4 to this subdivision shall be collected using the procedures set out
5 in Section 26054 of the Public Resource Code and in Sections
6 5898.15 and 5898.30 of the Streets and Highways Code.

7 (m) Any improvement on private property authorized to be
8 financed by this section shall constitute a “public facility” for
9 purposes of this chapter and a “public improvement” for purposes
10 of Part 1 (commencing with Section 3100) and Part 2 (commencing
11 with Section 3110) of Division 4.5 of the Streets and Highways
12 Code, whether the improvement is owned by a private entity, if
13 the legislative body has determined that the improvement provides
14 a public benefit, or the improvement is owned by a public agency.

15 *SECTION 1. Section 53328.1 of the Government Code is*
16 *amended to read:*

17 53328.1. (a) As an alternate and independent procedure for
18 forming a community facilities district, the legislative body may
19 form a community facilities district that initially consists solely
20 of territory proposed for annexation to the community facilities
21 district in the future, with the condition that a parcel or parcels
22 within that territory may be annexed to the community facilities
23 district and subjected to the special tax only with the unanimous
24 approval of the owner or owners of the parcel or parcels at the
25 time that the parcel or parcels are annexed. In that case, the
26 legislative body shall follow the procedures set forth in this article
27 for the formation of a community facilities district, with the
28 following exceptions:

29 (1) The legislative body shall not be obligated to specify the
30 rate or rates of special tax in the resolution of intention or the
31 resolution of formation, provided that both of the following are
32 met:

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

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

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

8 (3) In lieu of approval pursuant to an election held in accordance
9 with the procedures set forth in Sections 53326, 53327, 53327.5,
10 and 53328, the appropriations limit for the community facilities
11 district, the applicable rate of the special tax and the method of
12 apportionment and manner of collection of that tax, and the
13 authorization to incur bonded indebtedness for the community
14 facilities district shall be specified and be approved by the
15 unanimous approval of the owner or owners of each parcel or
16 parcels at the time that the parcel or parcels are annexed to the
17 community facilities district. No additional hearings or procedures
18 are required, and the unanimous approval shall be deemed to
19 constitute a unanimous vote in favor of the appropriations limit
20 for the community facilities district, the authorization to levy the
21 special tax on the parcel or parcels, and the authorization to incur
22 bonded indebtedness for the community facilities district.

23 (4) Notwithstanding Section 53324, this paragraph establishes
24 the applicable protest provisions in the event a local agency forms
25 a community facilities district pursuant to the procedures set forth
26 in this section. If 50 percent or more of the registered voters, or
27 six registered voters, whichever is more, residing within the
28 territory proposed to be annexed to the community facilities district
29 in the future, or if the owners of one-half or more of the area of
30 land proposed to be annexed in the future and not exempt from
31 the special tax, file written protests against establishment of the
32 community facilities district, and protests are not withdrawn so as
33 to reduce the protests to less than a majority, no further proceedings
34 to form the community facilities district shall be undertaken for a
35 period of one year from the date of decision of the legislative body
36 on the issues discussed at the hearing. If the majority protests of
37 the registered voters or of the landowners are only against the
38 furnishing of a specified type or types of facilities or services
39 within the district, or against levying a specified special tax, those

1 types of facilities or services or the specified special tax shall be
2 eliminated from the resolution of formation.

3 (5) The legislative body shall not record a notice of special tax
4 lien against any parcel or parcels in the community facilities district
5 until the owner or owners of the parcel or parcels have given their
6 unanimous approval of the parcel's or parcels' annexation to the
7 community facilities district, at which time the notice of special
8 tax lien shall be recorded against the parcel or parcels as set forth
9 in Section 53328.3.

10 (b) Notwithstanding the provisions of Section 53340, after
11 adoption of the resolution of formation for a community facilities
12 district described in subdivision (a), the legislative body may, by
13 ordinance, provide for the levy of the special taxes on parcels that
14 will annex to the community facilities district at the rate or rates
15 to be approved unanimously by the owner or owners of each parcel
16 or parcels to be annexed to the community facilities district and
17 for apportionment and collection of the special taxes in the manner
18 specified in the resolution of formation. No further ordinance shall
19 be required even though no parcels may then have annexed to the
20 community facilities district.

21 (c) The local agency may bring an action to determine the
22 validity of any special taxes levied pursuant to this chapter and
23 authorized pursuant to the procedures set forth in this section
24 pursuant to Chapter 9 (commencing with Section 860) of Title 10
25 of Part 2 of the Code of Civil Procedure. Notwithstanding Section
26 53359, if an action is brought by an interested person pursuant to
27 Section 863 of the Code of Civil Procedure to determine the
28 validity of any special taxes levied against a parcel pursuant to
29 this chapter and authorized pursuant to the procedures set forth in
30 this section, the action shall be brought pursuant to Chapter 9
31 (commencing with Section 860) of Title 10 of Part 2 of the Code
32 of Civil Procedure, but shall, notwithstanding the time limits
33 specified in Section 860 of the Code of Civil Procedure, be
34 commenced within 15 days after the date on which the notice of
35 special tax lien is recorded against the parcel. Any appeal from a
36 judgment in any action or proceeding described in this subdivision
37 shall be commenced within 30 days after entry of judgment.

38 (d) A community facilities district formed pursuant to this
39 section may only finance facilities pursuant to subdivision (l) of
40 Section 53313.5.

1 (e) *The legislative body shall comply with the requirements*
2 *specified in Sections 5898.15 and 5898.16 of the Streets and*
3 *Highways Code prior to the annexation of a parcel or parcels to*
4 *a community facilities district formed pursuant to this section.*

5 (e)

6 (f) In connection with formation of a community facilities
7 district and annexation of a parcel or parcels to the community
8 facilities district pursuant to this section, and the conduct of an
9 election on the proposition to authorize bonded indebtedness
10 pursuant to the alternate procedures set forth in Section 53355.5,
11 the local agency may, without additional hearings or procedures,
12 designate a parcel or parcels as an improvement area within the
13 community facilities district. After the designation of a parcel or
14 parcels as an improvement area, all proceedings for approval of
15 the appropriations limit, the rate and method of apportionment and
16 manner of collection of special tax and the authorization to incur
17 bonded indebtedness for the parcel or parcels shall apply only to
18 the improvement area.

19 (f)

20 (g) In connection with a community facilities district formed
21 under this section, as an alternate and independent procedure for
22 making the changes described in Section 53330.7, the changes
23 may be made with the unanimous approval of the owner or owners
24 of the parcel or parcels that will be affected by the change and
25 with the written consent of the local agency. No additional hearings
26 or procedures are required, and the unanimous approval shall be
27 deemed to constitute a unanimous vote in favor of the proposed
28 changes. If the proceeds of a special tax are being used to retire
29 any debt incurred pursuant to this chapter and the unanimous
30 approval relates to the reduction of the special tax rate, the
31 unanimous approval shall recite that the reduction or termination
32 of the special tax will not interfere with the timely retirement of
33 that debt.

34 ~~SEC. 2. Section 26054 of the Public Resources Code is~~
35 ~~amended to read:~~

36 ~~26054. “Property Assessed Clean Energy bond” or “PACE~~
37 ~~bond” means a bond that is secured by either of the following:~~

38 ~~(a) A voluntary contractual assessment on property authorized~~
39 ~~pursuant to paragraph (2) of subdivision (a) of Section 5898.20 of~~
40 ~~the Streets and Highways Code.~~

1 ~~(b) A voluntary contractual assessment on property to finance~~
2 ~~the installation of distributed generation renewable energy sources,~~
3 ~~electric vehicle charging infrastructure, or energy or water~~
4 ~~efficiency improvements.~~

5 ~~SEC. 3.~~

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

8 5898.15. (a) A public agency shall not permit a property owner
9 to participate in any program established pursuant to this chapter
10 if any of the following apply:

11 (1) The owner's participation would result in the total amount
12 of the annual property taxes and assessments exceeding 5 percent
13 of the property's fair market value, as determined at the time of
14 approval of the owner's contractual assessment.

15 (2) The total mortgage-related debt and contractual
16 assessment-related debt on the underlying property would exceed
17 the fair market value of the property, as determined at the time of
18 the owner's contractual assessment.

19 (3) The total mortgage-related debt on the property alone is
20 equal to 90 percent or greater of the property's fair market value,
21 as determined at the time of approval of the owner's contractual
22 assessment.

23 (4) The property owner is unable to meet all of the following
24 criteria:

25 (A) The property owner shall certify that the property taxes for
26 the property are current and that there is no more than one late
27 payment during the previous three years or the period of time
28 during which the owner has owned the property, whichever is less.

29 (B) The property owner shall certify that he or she is not
30 currently in default on any debt secured by the property and that
31 there is no more than one late payment during the 12-month period
32 preceding the time of the owner's contractual assessment and that
33 late payment, if any, was submitted no later than 30 days after the
34 due date.

35 (C) If the property owner is a homeowner applicant, the property
36 owner has not had any active bankruptcies within the last seven
37 years. This criterion can be met if a property owner's bankruptcy
38 was discharged between two and seven years before the application
39 date and the property owner has not had any mortgage or

1 nonmortgage payments past due for more than 60 days in the most
2 recent 24 months.

3 (D) The property owner does not have an involuntary lien
4 recorded against the property in excess of one thousand dollars
5 (\$1,000).

6 (b) If a property owner is a homeowner applicant, a public
7 agency shall not permit the property owner to participate in any
8 program established pursuant to this chapter unless ~~the~~ *both of the*
9 *following requirements are met:*

10 (1) *The property owner has been provided with a completed*
11 *financing estimate document set forth in Section 5898.16, or a*
12 *substantially equivalent document that displays the same*
13 *information in a substantially similar format.*

14 (2) *The property owner is given the right to cancel the*
15 *contractual assessment at any time prior to midnight on the third*
16 *business day after the date of the transaction to enter into the*
17 *agreement without penalty or obligation. The property owner is*
18 *deemed to have given notice of cancellation at the moment that*
19 *the property owner sends the notice by mail or email or at the*
20 *moment that the property owner otherwise delivers the notice, as*
21 *applicable.*

22 (c) Failure to comply with the requirements of either subdivision
23 (a) or (b) renders the contractual obligations of a property owner
24 for a contractual assessment entered into pursuant to this chapter
25 void.

26 (d) Except as provided in subdivisions (a) and (b), nothing in
27 this chapter shall be construed to void or otherwise release a
28 property owner from the contractual obligations incurred by a
29 contractual assessment on a property.

30 ~~SEC. 4.~~

31 *SEC. 3.* Section 5898.16 of the Streets and Highways Code is
32 amended and renumbered to read:

33 5898.17. All references to financing in this chapter shall be
34 deemed to also refer to refinancing, except that with respect to
35 refinancing, the legislative body shall conclude that providing the
36 refinancing will result in an increased adoption of the
37 improvements authorized to be financed by this chapter. This
38 section does not constitute a change in, but is declaratory and a
39 clarification of existing law.

1 ~~SEC. 5.~~

2 *SEC. 4.* Section 5898.16 is added to the Streets and Highways
3 Code, to read:

4 5898.16. The disclosure set forth below shall be completed
5 and delivered to a homeowner as soon as practicable before, and
6 in no event later than when, a homeowner becomes obligated on
7 an agreement to a voluntary *contractual* assessment described in
8 ~~this chapter, Section 26054 of the Public Resources Code, or~~
9 *chapter or a special tax described in Section 53328.1 of the*
10 *Government Code.*

11

12 Financing Estimate and Disclosure

13 Notice to Homeowners: The financing arrangement described below will result
14 in an assessment against ~~you~~ *your* property which will be collected along with
15 your property taxes. The assessment may jeopardize your ability to sell or
16 refinance your property unless you repay the underlying debt.

17 There may be cheaper alternative financing arrangements available from
18 conventional lenders. You should read and review the terms carefully, and if
19 necessary, consult with a tax professional or attorney.

20

21 **Products and Costs**

22 Product costs (including
23 labor/installation) \$_____

24 **Description**

- 25 1.
- 26 2.
- 27 3.

28

29 **Financing Costs**

30 Application fees and costs \$_____

31 Prepaid Interest \$_____

32 Other Costs \$_____

33 Total Amount Financed \$_____

34

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

36 Simple Interest Rate _____%

37 Total Annual Principal, Interest, and \$_____

38 Administrative Fees

39

1 Note: If your property taxes are paid through an impound account, your lender
2 may apportion the amount and add it to your monthly payment.
3 See "Other important considerations," below

4 Total Amount you will
5 have paid over the life of
6 the loan \$ _____

7
8 **Other Costs**

9 Appraisal Fees \$ _____
10 Bond related costs \$ _____
11 Annual Administrative fees \$ _____
12 Estimated closing costs \$ _____
13 Credit Reporting Fees \$ _____
14 Recording Fees \$ _____

15
16 **Total Financing Costs**
17 **and Closing Costs** \$ _____

18 Estimated Cash (out of
19 pocket) to close \$ _____

20
21
22 **Other Terms**

23 Prepayment fee No Yes _____
24 Assumable by new owner No Yes _____

25
26 **Additional Information About This Financing**

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

28
29 _____
30 In 10 years \$ _____ Principal you will have paid off.
31 \$ _____ Amount of interest you have paid.
32 \$ _____ Amount of financing and other costs
33 you will have paid.
34 \$ _____ Total you will have paid.

35 _____
36 Annual Percentage Rate _____%

37 _____
38
39 Total Interest Paid (as a percentage of all the _____%
40 payments you have made)

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Other Important Considerations

Assumption by New Buyer Yes - Allowed on original terms
 No - Not Allowed on original terms

I understand that if I refinance my home, my mortgage company may require me to pay off the full remaining balance of this obligation. If I sell my home, the buyer or their mortgage company may require me to pay off the full remaining balance of this obligation.

[Borrower initials]

Monthly Mortgage Payments

Your payments will be added to your property tax bill. Whether you pay your property taxes through your mortgage payment, using an impound account, or if you pay them directly to the tax collector, you will need to save an estimated \$_____ for your first tax installment. After your first payment, if you pay your taxes through an impound account, your monthly mortgage payment should be adjusted by your lender to cover your increased property tax bill.

[Borrower initials]

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

[Borrower initials]

Three Day Right to Cancel

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

_____ [name of business] at
_____ [address]

1 You may also cancel the contract by sending notification of cancellation by
2 email to the following email address: _____ [email address of
3 business].

4 _____
5 [Borrower initials]

6 **Confirmation of Receipt**

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

10 _____
11 _____
12 [Property Owner Signature - Date] [Property Owner Signature
13 - Date]

14
15 ~~SEC. 6. Section 5898.28 of the Streets and Highways Code is~~
16 ~~amended to read:~~

17 ~~5898.28. (a) A public agency may issue bonds pursuant to this~~
18 ~~chapter, the principal and interest for which would be repaid by~~
19 ~~voluntary contractual assessments. A public agency may advance~~
20 ~~its own funds to finance work to be repaid through voluntary~~
21 ~~contractual assessments, and may from time to time sell bonds to~~
22 ~~reimburse itself for those advances. A public agency may enter~~
23 ~~into a relationship with an underwriter or financial institution that~~
24 ~~would allow the sequential issuance of a series of bonds, each bond~~
25 ~~being issued as the need arose to finance work to be repaid through~~
26 ~~voluntary contractual assessments. The interest rate of each bond~~
27 ~~may be determined by an appropriate index, but shall be fixed at~~
28 ~~the time each bond is issued unless the bond is issued to finance~~
29 ~~improvements to nonresidential private property or residential~~
30 ~~private property with five or more units. Bond proceeds may be~~
31 ~~used to establish a reserve fund for debt service or paying the costs~~
32 ~~of foreclosure on properties participating in the program, to fund~~
33 ~~capitalized interest for a period up to two years from the date of~~
34 ~~issuance of the bonds, to fund the administrative fee required for~~
35 ~~participation in the PACE Reserve Program established pursuant~~
36 ~~to Chapter 4 (commencing with Section 26050) of Division 16 of~~
37 ~~the Public Resources Code, and to pay for expenses incidental to~~
38 ~~the issuance and sale of the bonds. Division 10 (commencing with~~
39 ~~Section 8500) shall apply to any bonds issued pursuant to this~~
40 ~~section, insofar as that division is not in conflict with this chapter.~~

1 ~~(b) (1) Notwithstanding any provision of this division or the~~
2 ~~Improvement Act of 1915 (Division 10 (commencing with Section~~
3 ~~8500)), a public agency may transfer its right, title, and interest in~~
4 ~~and to any voluntary contractual assessments, if bonds have not~~
5 ~~been issued pursuant to subdivision (a). The public agency and~~
6 ~~the transferee shall enter into an agreement that, among other~~
7 ~~things, identifies the specific period of time during which the~~
8 ~~transfer of voluntary contractual assessments will be operative,~~
9 ~~not to exceed three years. Except as provided in paragraph (2), a~~
10 ~~transfer of any voluntary contractual assessments under this~~
11 ~~subdivision shall be treated as a true and absolute transfer of the~~
12 ~~asset so transferred for the period of the transfer and not as a pledge~~
13 ~~or grant of a security interest by the public agency for any~~
14 ~~borrowing. The characterization of the transfer of any of those~~
15 ~~assets as an absolute transfer by the public agency shall not be~~
16 ~~negated or adversely affected by the fact that only a portion of any~~
17 ~~voluntary contractual assessment is transferred, nor by any~~
18 ~~characterization of the transferee for purposes of accounting,~~
19 ~~taxation, or securities regulation, nor by any other factor~~
20 ~~whatsoever. As used in this section, “transfer” means sale,~~
21 ~~assignment, or other transfer.~~

22 ~~(2) Nothing in this subdivision shall be construed to authorize~~
23 ~~the transferee to initiate and prosecute a foreclosure action resulting~~
24 ~~from a delinquency in the payment of the voluntary contractual~~
25 ~~assessment. Initiation and prosecution of a foreclosure action shall~~
26 ~~remain the responsibility of the public agency, which shall, subject~~
27 ~~to paragraph (3), retain the sole right to enforce its senior lien~~
28 ~~status.~~

29 ~~(3) When a holder of a note secured by a deed of trust for~~
30 ~~purchase money or a refinanced purchase money obligation~~
31 ~~institutes a foreclosure, or when the public agency institutes a~~
32 ~~foreclosure, the interest of the purchase money noteholder shall~~
33 ~~be treated as an encumbrance that is senior to any delinquency of~~
34 ~~a voluntary assessment described in this chapter, Section 26054~~
35 ~~of the Public Resources Code, or Section 53328.1 of the~~
36 ~~Government Code. The seniority of the purchase money obligation~~
37 ~~shall be retained regardless of whether the delinquency occurred~~
38 ~~before or after the purchase money obligation was recorded against~~
39 ~~the property. In enacting this paragraph, the Legislature recognizes~~
40 ~~that the voluntary special assessments authorized by this chapter~~

1 are unique, and require unique treatment of their secured priority.
2 This paragraph shall not be interpreted or applied to affect the
3 status or priority of any municipal or county lien other than a lien
4 addressed in this section, nor shall it create any implied precedent
5 for the interpretation of any other remedy or collection mechanism
6 available to a governmental entity. The change in priority effected
7 by this paragraph applies to assessments agreed to on or after
8 January 1, 2017.

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

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

39 ~~(e) (1) Without the prior written approval of the property owner,~~
40 ~~and notwithstanding any other law, a public agency may issue~~

1 ~~bonds pursuant to this chapter to refinance outstanding bonds~~
2 ~~payable from contractual assessments levied pursuant to this~~
3 ~~chapter if all of the following are true:~~

4 ~~(A) The total interest cost to maturity on the refunding bonds~~
5 ~~is less than the total interest cost to maturity on the bonds to be~~
6 ~~refunded.~~

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

12 ~~(C) The total interest component of the scheduled contractual~~
13 ~~assessment installments to maturity, after issuance of the refunding~~
14 ~~bonds, is less than the total interest component of the scheduled~~
15 ~~contractual assessment installments to maturity prior to issuance~~
16 ~~of the refunding bonds.~~

17 ~~(2) For purposes of this section, in connection with the issuance~~
18 ~~of fixed rate bonds to refinance variable rate bonds, the interest~~
19 ~~rate on the refunded bonds for purpose of demonstrating~~
20 ~~compliance with this section may be assumed to be the maximum~~
21 ~~possible interest rate on the bonds to be refunded as long as the~~
22 ~~legislative body concludes that the public interest will be served~~
23 ~~by issuing fixed rate bonds to refinance the outstanding variable~~
24 ~~rate bonds. In connection with an issuance of refunding bonds~~
25 ~~under this chapter, the legislative body may direct that an~~
26 ~~amendment to the document required by subdivision (d) of Section~~
27 ~~5898.24 be recorded to reflect the revised contractual assessment~~
28 ~~installment schedule.~~

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

39 ~~SEC. 7. Section 5898.30 of the Streets and Highways Code is~~
40 ~~amended to read:~~

1 ~~5898.30. (a) Notwithstanding Section 5898.28 and except as~~
2 ~~otherwise provided in subdivision (b), assessments levied pursuant~~
3 ~~to this chapter, and the interest and any penalties thereon shall~~
4 ~~constitute a lien against the lots and parcels of land on which they~~
5 ~~are made, until they are paid. Division 10 (commencing with~~
6 ~~Section 8500), insofar as those provisions are not in conflict with~~
7 ~~this chapter, Article 13 (commencing with Section 53930) of, and~~
8 ~~Article 13.5 (commencing with Section 53938) of, Chapter 4 of~~
9 ~~Part 1 of Division 2 of Title 5 of the Government Code shall only~~
10 ~~apply to the collection of assessments contracted for pursuant to~~
11 ~~this chapter, which may be collected in the same manner and at~~
12 ~~the same time as the general taxes of the city or county on real~~
13 ~~property. Any assessment levied pursuant to this chapter shall have~~
14 ~~the force, effect, and priority of a judgment lien as established by~~
15 ~~the date of its recordation.~~

16 ~~(b) Assessments levied pursuant to Section 5898.28 against~~
17 ~~nonresidential private property or residential private property with~~
18 ~~five or more units and the interest and any penalties thereon shall~~
19 ~~constitute a lien against the lots and parcels of land on which they~~
20 ~~are made, until they are paid. Division 10 (commencing with~~
21 ~~Section 8500), insofar as those provisions are not in conflict with~~
22 ~~this chapter, Article 13 (commencing with Section 53930) of, and~~
23 ~~Article 13.5 (commencing with Section 53938) of, Chapter 4 of~~
24 ~~Part 1 of Division 2 of Title 5 of the Government Code apply to~~
25 ~~the imposition and collection of assessments contracted for~~
26 ~~pursuant to this chapter, including, but not limited to, provisions~~
27 ~~related to lien priority, the collection of assessments in the same~~
28 ~~manner and at the same time as the general taxes of the city or~~
29 ~~county on real property, unless another procedure has been~~
30 ~~authorized by the legislative body or by statute, and any penalties~~
31 ~~and remedies in the event of delinquency and default.~~