

Chapter 29

STREETS AND HIGHWAYS CODE

SECTION 5898.10-5898.15

5898.10. This chapter provides an alternative procedure for authorizing assessments to finance any work which may be done pursuant to this division. The terms and definitions of this division apply to this chapter, except as otherwise provided. The Special Assessment Investigation, Limitation, and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)) does not apply to any proceedings taken under this chapter.

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.

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.

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

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

STREETS AND HIGHWAYS CODE

SECTION 5898.20-5899.3

Chapter 29

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.

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.

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.

5898.23. For purposes of the report required pursuant to Section 5898.22, the statement of public agency policies required pursuant to subdivision (c) of that section shall also include a brief description of criteria for determining the underwriting requirements, and safeguards that will be used to ensure that the total annual property tax and assessments on the property will not exceed 5 percent of the property's market value, as determined at the time of approval for the owner's contractual assessment.

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).

5898.26. At the time of the hearing, the report shall be summarized and the legislative body shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed contractual assessment program, the extent of the area proposed to be included within the program, the terms and conditions of the draft contract, or the proposed financing provisions. At the conclusion of the hearing, the legislative body may adopt a resolution confirming the report or may direct its modification in any respect, and thereafter may adopt a resolution confirming the report as modified, or the legislative body may abandon the proceedings. However, the legislative body may not increase the area within which contractual assessments would be offered without providing notice of the proposed increase in area pursuant to Section 5808.24. The hearing may be continued from time to time not exceeding a total of 180 days.

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.

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.

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.

5898.32. The legislative body shall direct its clerk to record a

notice of the existence and amount of each contractual assessment with the county recorder of the county in which the lot or parcel is located. The county recorder shall accept those filings and may charge the clerk a fee for recording those documents pursuant to Section 3116. The failure of the clerk or recorder to perform the filings shall not subject the local agency or any of its officers or employees to civil liability.

5899. (a) The Legislature finds and declares all of the following:

(1) It is the intent of the Legislature to address seismic safety needs throughout this state by permitting voluntary individual efforts to improve the seismic safety of homes and buildings. The Legislature further intends that this chapter should be used to finance the installation of seismic strengthening improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property, including, but not limited to, the seismic strengthening of cripple walls and sill plate anchorage of light, wood-framed buildings.

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

(3) 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 seismic strengthening improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property.

(b) For purposes of this section, the following terms shall have the following meanings:

(1) For the purpose of financing the installation of seismic strengthening improvements, "public agency" means a city, county, or city and county. The definition of "city" in Section 5005 shall not apply to this paragraph.

(2) "Seismic strengthening improvements" means permanent seismic safety improvements fixed to residential, commercial, industrial, agricultural, or other real property.

(c) The legislative body of any public agency may designate an area, in the manner provided pursuant to Section 5898.20, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of seismic strengthening improvements that are permanently fixed to real property pursuant to this chapter.

(d) For purposes of establishing a voluntary contractual assessment program relating to seismic strengthening improvements, the legislative body shall make the determinations required pursuant to Section 5898.20 by adopting a resolution indicating its intention to do so. The resolution of intention shall identify the kinds of seismic strengthening improvements that may be financed and shall include all of the information that is required pursuant to subdivision (b) of Section 5898.20, including, but not limited to, directing an appropriate public agency official to prepare a report pursuant to Section 5898.22.

(e) For purposes of the report required pursuant to Section 5898.22, relating to a voluntary contractual assessment program for seismic strengthening improvements, the designated public agency official shall satisfy the requirements of paragraph (1) of subdivision (c) of Section 5898.22 by identifying the types of seismic strengthening improvements that may be financed through the use of contractual assessments.

(f) 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 seismic strengthening 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 seismic strengthening improvements and to contract directly for the installation of seismic strengthening improvements that are permanently fixed to the property owner's residential, commercial, industrial, agricultural, or other real property.

5899.2. For the purpose of financing the installation of distributed generation renewable energy sources pursuant to this chapter, "permanently fixed" includes, but is not limited to, systems attached to a residential, commercial, industrial, agricultural, or other real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the power purchase agreement or lease contains all of the following provisions:

(a) The attached system is an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(b) The term of the power purchase agreement or lease is at least as long as the term of the related assessment contract.

(c) The owner of the attached system agrees to install, maintain, and monitor the system for the entire term of the power purchase agreement or lease.

(d) The owner of the attached system is not permitted to remove the system prior to completion of the term of the contractual assessment lien.

(e) After installation, the power purchase agreement or lease is paid in full using the funds from the contractual assessment program.

(f) The right to receive the electricity from the system, through a power purchase agreement or lease or the right to the system itself, is tied to the ownership of the assessed real property and is required to be automatically transferred with the title to the real property whether the title is transferred by voluntary sale, judicial or nonjudicial foreclosure, or by any other means.

(g) The power purchase agreement or lease identifies the public agency that is a party to the assessment contract on the real property as a third-party beneficiary of the power purchase agreement or lease until the assessment lien on the property has been fully paid and, only until that time, prohibits amendments to the power purchase agreement or lease without the consent of the public agency.

(h) Each of the following provisions, in order to ensure that the property owner is guaranteed the electric power from the system for the length of the lien:

(1) The system cannot be removed if the owner of the attached system is not performing its obligations under the contract.

(2) The owner of the attached system must be a bankruptcy remote special purpose entity that is bankruptcy remote and meets all of the following conditions:

(A) It does not engage in any business other than owning the attached systems and entering into electricity contracts with the homeowner.

(B) It has no material debt.

(C) Its contracts are either entered into with unrelated third parties or have terms negotiated at arms length.

5899.3. (a) The Legislature finds and declares all of the following:

(1) This chapter should be used to finance the installation of electric vehicle charging infrastructure that is permanently fixed to residential, commercial, industrial, agricultural, or other real property.

(2) Electric vehicle charging infrastructure is a necessary component to transitioning to increase electric vehicle usage. Electric vehicles and their electric charging infrastructure also address the issue of global climate change.

(3) The upfront cost of installing electric vehicle charging infrastructure improvements for residential, commercial, industrial, agricultural, or other real property 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 installing electric vehicle charging infrastructure.

(4) The Legislature declares that a public purpose will be served by a voluntary contractual assessment program that provides the legislative body of a public agency with the authority to finance the installation of electric vehicle charging infrastructure that is permanently fixed to residential, commercial, industrial, agricultural, or other real property.

(b) For the purpose of financing the installation of electric vehicle charging infrastructure, "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 section.

(c) The legislative body of any public agency may designate an area, in the manner provided pursuant to Section 5898.20, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of electric vehicle charging infrastructure that is permanently fixed to real property pursuant to this chapter.

(d) For purposes of establishing a voluntary contractual assessment program relating to electric vehicle charging infrastructure, the legislative body shall make the determinations required pursuant to Section 5898.20 by adopting a resolution indicating its intention to do so. The resolution of intention shall identify the kinds of electric vehicle charging infrastructure that may be financed and shall include all of the information that is required pursuant to subdivision (b) of Section 5898.20, including, but not limited to, directing an appropriate public agency official to prepare a report pursuant to Section 5898.22.

(e) For purposes of the report required pursuant to Section 5898.22, relating to a voluntary contractual assessment program for electric vehicle charging infrastructure, the designated public agency official shall satisfy the requirements of paragraph (1) of subdivision (c) of Section 5898.22 by identifying the types of electric vehicle charging infrastructure that may be financed through the use of contractual assessments.

(f) 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 electric vehicle charging infrastructure that is permanently fixed to real property may authorize the property owner to purchase directly the related equipment and materials for the installation of electric vehicle charging infrastructure and to contract directly for the installation of electric vehicle charging infrastructure that is permanently fixed to the property owner's residential, commercial, industrial, agricultural, or other real property.