

M e m o r a n d u m

Date: March 6, 2008

To: The Commission
(Meeting of March 13, 2008)

From: Bryan Crabb, Legislative Liaison
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 811 (Levine) – Contractual assessments: energy efficiency improvements.**
As amended: January 24, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

AB 811 would authorize all cities and counties in California to designate areas within which willing property owners could enter into contractual assessments to finance the installation of distributed renewable generation, as well as energy efficiency improvements, that are permanently fixed to the property owner's residential, commercial, industrial, or other real property. These financing arrangements would allow property owners to finance renewable generation and energy efficiency improvements through low-interest loans that would be repaid as an item on the property owner's property tax bill. The contractual assessments could not be used to finance the purchase or installation of appliances that are not permanently fixed to the real property.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill would provide a means to help overcome financial barriers to the installation of energy efficiency and renewable energy improvements to homes and businesses in California by making it easier for homeowners and businesses to finance these types of improvements. This bill would help to further the CPUC's goals of promoting energy efficiency and renewable generation.

SUMMARY OF SUGGESTED AMENDMENTS:

No suggested amendments.

DIVISION ANALYSIS (Energy Division):

- The contractual assessments authorized by this bill would provide access to low interest funding for energy efficiency and renewable distributed energy installations for all types of real property, including residential, commercial and industrial. The availability of funding from local governments, to be repaid on property tax bills at a low rate of interest, would eliminate the necessity that property owners have substantial sums of money up-front for the installation of renewable distributed energy and energy efficient equipment and would make energy efficiency and renewable energy improvements more affordable. Combined with the rebates and incentives available through the investor owned utilities for such measures,¹ this source of funding would help make the widespread installation of energy efficient equipment and renewable energy sources, and the resulting energy demand reduction and reduction in greenhouse gas emissions, a reality.
- The use of contractual assessment areas for energy efficiency and renewable energy installations is a new concept that originated with the City of Berkeley, California.² In November 2007, the Berkeley City Council approved the “Sustainable Energy Financing District,” which authorizes a city-wide voluntary assessment district to pay for the installation of solar panels and solar hot water systems. The City provides the funding for the project from a bond or loan fund that it repays through assessments on participating property owners’ tax bills for 20 years. The tax assessment is transferable between property owners. Participants are eligible for the California Solar Initiative rebate program. Once the Berkeley City Council approved the concept, the city received hundreds of inquiries from other governments.³ Other California cities, including the City of Palm Desert and the City and County of San Francisco, have proposed to take similar approaches.
- The availability of financing through contractual assessments would complement the financial assistance provided by the rebates currently available through the California Solar Initiative. In addition, it would further the policies recently addressed by the Commission in Decision 07-10-032,⁴ which institutes a comprehensive, long-term strategy to achieve the ultimate goal of making energy efficiency a way of life. This goal reflects the Energy Action Plan II⁵ policy that energy efficiency is the resource of first choice to meet California’s growing energy demand, and the requirement of Public Utilities Code Section 54.5(b)(9)(C) that utilities first meet their “unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.” Energy efficiency is also

¹ See, e.g., www.gosolarcalifornia.ca.gov/csi/performance_based.html (California Solar Initiative Performance-Based Incentives and New Incentive Levels Starting in 2007); www.savingsbydesign.com/ownerincentive.htm (owner incentives under the energy efficiency Savings by Design program).

² An explanation of the Berkeley program is available at <http://www.cityofberkeley.info/mayor/GHG/solar.htm>.

³ Bill Enabling Berkeley’s Innovative Solar and Energy Efficiency Financing Plan Passes Assembly Committee, available at www.fypower.org/news/?p=2216.

⁴ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/74107.pdf.

⁵ Available at http://docs.cpuc.ca.gov/word_pdf/REPORT/51604.pdf.

projected to deliver a large portion of the greenhouse gas emissions reductions necessary to achieve the goals of the California Global Warming Solutions Act of 2006 (AB 32).

- The Decision directs the investor-owned utilities jointly to prepare a single, comprehensive statewide long-term energy efficiency plan.⁶ It establishes a collaborative process for achieving and exceeding aggressive state energy efficiency and emissions reduction goals. This new strategic framework will maximize the impact of consumer outreach to save energy and reduce emissions across energy efficiency, demand-response, advanced metering and California Solar Initiative programs.
- The Decision incorporates industrial, commercial and residential sector efforts, and includes a specific focus on strategies to be implemented by local governments. By expressly authorizing contractual assessments as a source of funding for energy efficiency improvements and renewable energy sources, AB 811 would provide local governments with a powerful tool for achieving their strategic objectives.

PROGRAM BACKGROUND:

- Energy efficiency is California's highest priority resource for meeting the state's growing energy needs in a clean, low cost manner and for fighting global warming. California's investor-owned utilities⁷ play a key role as administrators of ratepayer-funded energy efficiency programs overseen by the CPUC. In D.05-09-043 and D.05-11-011, the CPUC committed \$2.2 billion in ratepayer funds to procure energy efficiency savings over the 2006-2008 program cycle and approved the utilities' program portfolios, including utility efforts to better integrate their programs at a strategic level. For example, the Commission approved the development of a joint plan on statewide marketing and outreach; a sustainable communities program incorporating higher performance energy efficiency and demand reduction technologies, along with clean on-site generation, water conservation, transportation efficiencies and waste reduction strategies; and programs to assist customers in choosing and implementing a package of demand side management measures such as conservation, demand response, and self-generation.
- In D 07-10-032, the Commission addressed the "next generation" of energy efficiency programs, to be implemented in the IOUs' 2009-2011 energy efficiency portfolios. The Decision directed that the strategies and program emphasis for the 2009-2011 program period and beyond should promote maximum energy savings through the coordinated actions of utility programs, market transformation, and codes and standards, alongside strategies for the reduction of greenhouse gases.

⁶ The Draft Strategic Plan is available at <http://www.californiaenergyefficiency.com/index.shtml>. Chapter 12 of the Draft Pan addresses the role of local governments.

⁷ "Utilities" or "IOUs" refer to Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), and Southern California Gas Company (SoCalGas).

- SCE, SoCalGas and SDG&E have offered on-bill financing as part of their 2006-2008 programs. “On-bill financing” programs allow customers to finance energy efficiency measures through their energy bills at low interest or no interest. On-bill financing allows entities who have limited access to financing to purchase energy efficiency measures provided by utility programs. SDG&E and SoCalGas currently offer on-bill financing for non-owner occupied multi-family units, small businesses and local governments. Decision 07-10-032 directed the utilities to create or continue on-bill financing pilot programs for small commercial customers. In addition, the Decision directed PG&E, SDG&E, SoCalGas and SCE to propose on-bill financing programs for institutional customers for the 2009-2011 program cycle and to continue to investigate programs for other sectors such as residential customers. However, the utilities have raised concerns that on-bill financing programs may violate consumer credit lending laws. The financing that would be available through the voluntary assessment agreements authorized by AB 811 would avoid the lending law issues, would be broader in scope than the on-bill programs administered by the utilities, and would most likely be less of a financial burden, with longer payback periods (for example, the City of Berkeley plan includes a 20-year payback period).
- Decision 07-10-032 also recognized the need for the leveraging of financial resources apart from ratepayer funds, and directed the utilities to investigate partnerships with financial institutions to develop or offer loans or other funding mechanisms for implementation of energy efficiency strategies, as well as make better use of state bond funds available for energy efficiency activities. In addition, the Decision recognized the importance of including local governments in the delivery of energy efficiency programs. By authorizing local governments to provide funding for energy efficiency and renewable energy improvements, AB 811 would further the achievement of both of those goals.

LEGISLATIVE HISTORY:

No prior bills or current similar bills.

FISCAL IMPACT:

None.

STATUS: AB 811 is pending in the Senate Energy, Utilities & Communications Committee.

SUPPORT:

- The City of Palm Desert
- The City of Concord
- The Solar Alliance

OPPOSITION:

- The Howard Jarvis Taxpayers Association

STAFF CONTACTS:

Bryan Crabb
Office of Governmental Affairs

BRD@cpuc.ca.gov
(916) 322-8858

Sean Gallagher
Director - Energy Division

SHG@cpuc.ca.gov
(415) 703-2059

Katherine Hardy
Staff - Energy Division

KEH@cpuc.ca.gov
(415) 703-2322

Date: March 6, 2008

BILL LANGUAGE:

BILL NUMBER: AB 811 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JANUARY 24, 2008
AMENDED IN ASSEMBLY JANUARY 7, 2008

INTRODUCED BY Assembly Members Levine and Beall
 (*Principal coauthor:* *Assembly Member*
 Garcia)
 (*Coauthors:* *Assembly Members*
 Huffman, Krekorian, and Leno)

FEBRUARY 22, 2007

An act to amend Sections 5898.12, 5898.20, 5898.22, and 5898.30 of, and to add Sections 5898.14 and 5898.21 to, the Streets and Highways Code, relating to contractual assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 811, as amended, Levine. Contractual assessments: energy efficiency improvements.

Existing law authorizes the legislative body of any city , as *defined*, 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 under certain circumstances. 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 information, including, but not limited to, identification of the kinds of public works that may be financed, a description of the boundaries of the area within which contractual assessments may be entered into, and a description of the proposed arrangements for financing the program. Existing law also directs an appropriate city official to prepare a report to include, among other things, the terms and conditions that would be agreed to by a property owner within the contractual assessment area and the city and identification of the types of facilities that may be financed through the use of contractual assessments.

This bill would additionally authorize a legislative body of any city 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 distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property* , as specified. The bill would require the resolution of intention to include the kinds of *distributed generation renewable energy sources or energy efficiency improvements* ~~which~~ that may

be financed as well as a statement specifying that it is in the public interest to finance those *distributed generation renewable energy sources or energy efficiency improvements*. The bill would further require the report to include the types of *distributed generation renewable energy sources or energy efficiency improvements* ~~which~~ that may be financed through the use of contractual assessments. The bill would authorize a property owner, upon written consent of an authorized city official, to purchase directly the related equipment and materials for the *distributed generation renewable energy sources or energy efficiency improvements* and to contract directly for ~~the~~ *those sources or improvements* ~~on the property owner's real property~~.

. The bill would make findings and a declaration in this regard.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~
no . State-mandated local program: no.

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

SECTION 1. 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, ~~and~~ or other real property.

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

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

~~—(d)~~

(e) 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. 2. Section 5898.14 is added to the Streets and Highways Code, to read:

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

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

(2) The upfront cost of making residential, commercial, industrial, ~~and~~ or other real property more energy efficient ~~by replacing inefficient appliances, equipment, and building materials or by installing renewable energy~~

~~sources, such as solar energy panels,~~ 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 efficiency improvements.

(b) The Legislature declares that a public purpose will be served by a contractual assessment program that provides the legislative body of any city with the authority to finance *the installation of distributed generation renewable energy sources and energy efficiency improvements that are permanently fixed to residential, commercial, industrial, ~~and~~ or other real property.*

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

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

(2) The legislative body of any city may also determine that it would be convenient, advantageous, and in the public interest to designate an area within the city, which may encompass the entire city or a lesser portion, within which authorized city officials and property owners may enter into contractual assessments to finance *the installation of distributed generation renewable energy sources or energy 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 city proposes to make contractual assessment financing available to property owners, shall identify the kinds of public works , *distributed generation renewable energy sources, or energy efficiency improvements ~~which~~ that may* be financed, shall describe the boundaries of the area within which contractual assessments may be entered into, and shall briefly describe the proposed arrangements for financing the program. The resolution of intention shall state it is in the public interest to finance *the installation of distributed generation renewable energy sources or energy efficiency improvements* 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 city official to prepare a report pursuant to Section 5898.22.

~~(c) For purposes of this chapter, "energy efficiency improvements" includes the installation of distributed generation renewable energy sources.~~

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

(1) "City" has the same meaning as defined in Section 5005.

(2) "Legislative body" has the same meaning as defined in Section 5006.

SEC. 4. Section 5898.21 is added to the Streets and Highways Code, to read:

5898.21. Notwithstanding any other provision of this chapter, upon the written consent of an authorized city official, the proposed arrangements for financing the program pertaining to *the installation of distributed generation renewable energy sources or energy 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 efficiency improvements* and to contract directly for the *installation of distributed generation renewable energy sources or energy efficiency improvements* ~~on~~ *that are permanently fixed to* the property owner's residential, commercial, industrial, ~~and~~ or other real property.

SEC. 5. 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 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 contractual assessment area and the city.

(c) A statement of city policies concerning contractual assessments including all of the following:

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

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

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

(4) A method for setting requests from property owners for financing through 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 contractual assessments. The plan may include amounts to be advanced by the city 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 contractual assessment program among the consenting property owners and the city.

SEC. 6. 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) applies to the levy and collection of assessments levied pursuant to this chapter, insofar as those provisions are not in conflict with the provisions

of this chapter, including, but not limited to, the collection of assessments in the same manner and at the same time as the general taxes of the city on real property are payable and any penalties and remedies and lien priorities in the event of delinquency and default.