

AB 811 Contractual Assessments

California Debt and Investment Advisory Commission
Solar Energy: Public Financing Options for California's
Local Governments

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Trisha Ortiz

Richards | Watson | Gershon

44 Montgomery Street, Suite 3800

San Francisco, CA 94104

(415) 421-8484

tortiz@rwglaw.com

www.rwglaw.com

Diana Chuang

Richards | Watson | Gershon

355 S. Grand Ave, 40th Floor

Los Angeles, CA 90071

(213) 626-8484

dchuang@rwglaw.com

www.rwglaw.com



AB 811 Overview

- Added to existing statutory authority for contractual assessment financing
 - Chapter 29 adopted in 1987 as an alternative to benefit assessment financing for public improvements
 - AB 811 expanded Chapter 29 to include energy efficiency and renewable energy improvements to private property
- Provides broad statutory authority

AB 811 Nuts & Bolts

- Property owners request financing and agree to place a lien on property through a contractual assessment agreement
- Financing repaid with property taxes
- Process:
 - Resolution of Intention
 - Preparation of report on program
 - Noticed public hearing and approval of report
 - Assessment contract
 - Record assessment lien

AB 811 Nuts & Bolts

- Contractual Assessment
 - Agreement between public agency and property owner
 - Assessment on property paid in annual installments with property taxes
 - Repayment period
 - Interest rate
 - Lien recorded against property

AB 811 Outstanding Issues

- Superior lien priority
- Validity of lien
- Preexisting lender consent
- Validation

AB 811 Outstanding Issues

- Funding source
- Program costs
- Credit market

Public or Private Markets?

- Separate Security Analysis – Securities Act Rule 131 and Exchange Act Rule 3b-5
- Private placement exemptions (Reg. D, Rule 144A)
- Chicken and the Egg for Funding (timing of assessment revenues (security) vs. funds on hand to fund construction of improvements)

Separate Security Analysis (Rules 131, 3b-5)

- Registration and Reporting requirements apply to any portion of an obligation issued by a 3(a)(2) governmental unit
- which is payable from payments to be made in respect of property or money which is or will be used under a lease, sale, or loan arrangement, by or for commercial enterprise (public agency financing of private improvements).

Separate Security Exceptions

- (1) Obligation is payable from general revenues of a 3(a)(2) governmental unit, with other resources.
- (2) Obligation relates to a public project or facility owned and operated by or on behalf of and under the control of a 3(a)(2) governmental unit.
- (3) Obligation relates to a facility which is leased to and under the control of an industrial or commercial enterprise but is a part of a public project which, as a whole, is owned by and under the general control of a (3)(a)(2) governmental unit, or an instrumentality thereof.

Financing Options

Pledge of Assessments – Private Placement

- Timing of revenues
- Accredited Investor under Reg. D
- Qualified Institutional Buyer under Rule 144A
- Reserve Fund?
- Costs of Issuance?
- Tax-Exemption?

No pledge - General Fund Obligation

- Timing of revenues
- Credit
- Assets to subject to lease
- Reserve Fund?
- Costs of Issuance?
- Tax-Exemption?

Palm Desert

- Phase I - Program seed \$ - General Fund advance
- Phases II & III – Limited Obligation Improvement Bonds privately placed with RDA
- Phases II & III – Variable Rate Demand Lease Revenue Bonds (general fund obligation) publicly sold

PDFFA Lease Revenue Bonds

- Taxable
- Variable Rate Demand
- Proceeds used to repay General Fund and establish lending pool
- Wells Fargo letter of credit
- Interest rate collar (1.93% to 5.25%)
- Leased assets
- Callable any time when other monies become available or “all-in” fixed rates drop below the 7.00% assessment contract rate