

California Debt and Investment Advisory Commission

**Financing Solar Energy:
Options for California's Local Governments**

Legal Framework

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Legal Framework

- ❖ Focus is on local agency public financing of energy efficiency and water conservation improvements to private buildings
- ❖ Primary topics
 - ❑ AB 811
 - ❑ SB 279
- ❖ Secondary topics
 - ❑ AB 32
 - ❑ AB 474
 - ❑ Charter city “municipal affairs” authority
 - ❑ HR 3525

AB 32



- ❖ California Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006)
- ❖ Added Division 25.5 to the Health and Safety Code (Sections 38500 and following)
- ❖ Primary thrusts
 - ❑ Policy declarations respecting global warming in general and greenhouse gas (GHG) emissions in particular
 - ❑ Requires the State Air Resources Board (the “Air Resources Board”) to complete a number of assignments
 - by Jan 1, 2008 - establish statewide GHG emissions limit (pegged to 1990 level) to be achieved by 2020
 - ❑ Authorize the Air Resources Board to pursue other specific actions

AB 811

- ❖ Chapter 159, Statutes of 2008 (Urgency, Effective July 21, 2008)
- ❖ Amended Chapter 29 of the Improvement Act of 1911 (Chapter 29 is Sections 5898.10 and following)
- ❖ Limited to cities, counties and San Francisco (which is both)
- ❖ Authorizes establishment of “contractual assessment programs” on improved property
- ❖ Participants limited to property owners giving their “free and willing consent”

AB 811 (cont.)

- ❖ Most importantly:
 - ❑ Expands eligible improvement work to include “installation of distributed generation renewable energy sources and energy efficiency improvements that are permanently fixed to real property”
 - ❑ Authorizes a participating property owner to “purchase directly the related equipment and materials” and “contract directly for the installation” of the improvements”
- ❖ AB 474
 - ❑ Would add “water efficiency” improvements to the authorized list
 - ❑ AB 474 is on the Governor’s desk

AB 811 (cont.)

- ❖ Customary procedural steps for assessment proceedings EXCEPT
 - ❑ No mailed notice to property owners or Prop 218 assessment ballot proceedings, and
 - ❑ No assessments levied at close of hearing
- ❖ Hearing report components
 - ❑ Boundary map
 - ❑ Form of contract
 - ❑ Statement of local agency policies
 - ❑ Proposed financing plan
 - ❑ Report on consultations with County Auditor/Controller re billing/collection fees



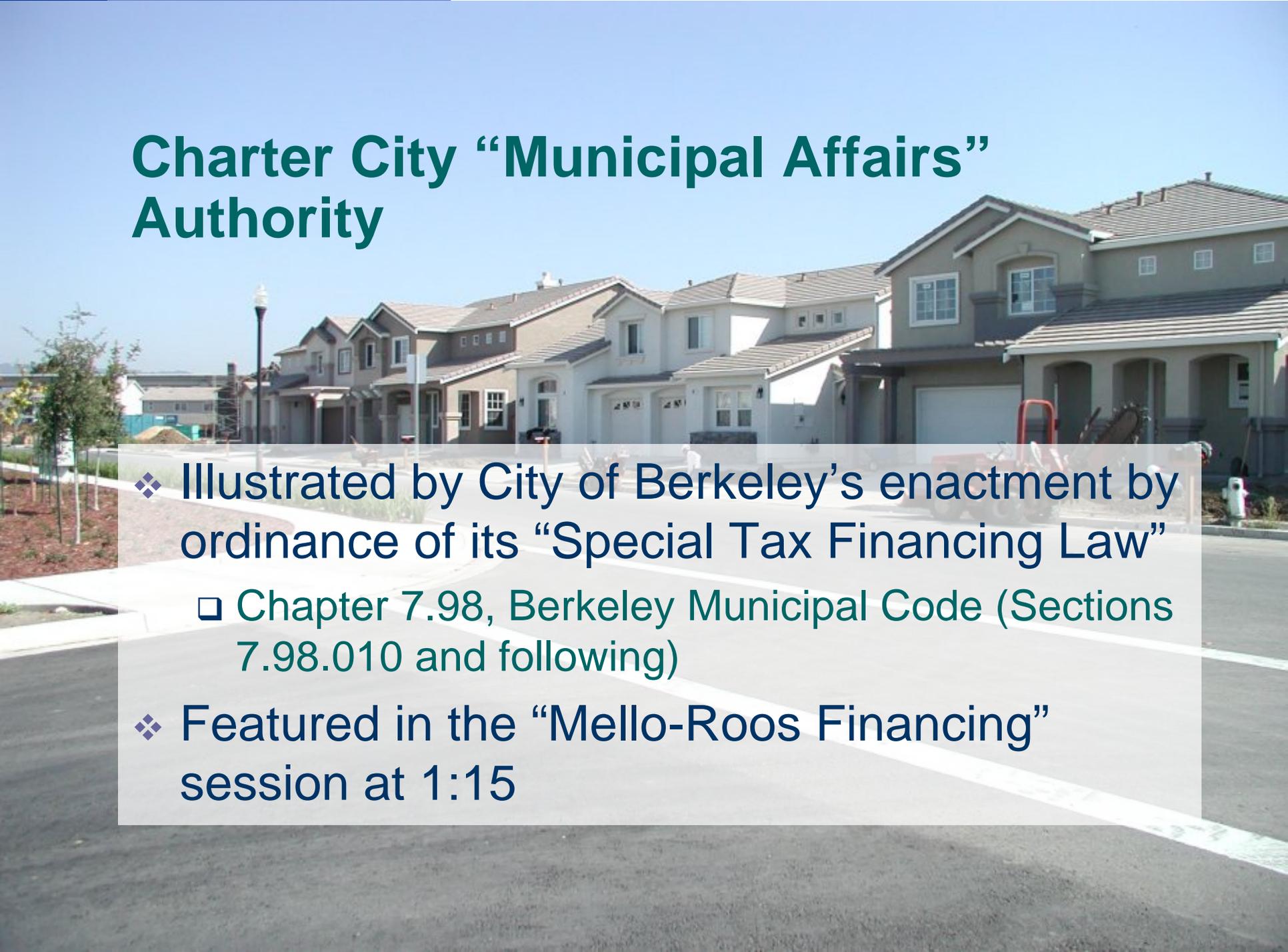
AB 811 (cont.)

- ❖ Legal issues to be addressed
 - ❑ Validity and enforceability of the contractual assessment
 - ❑ Priority of the lien
- ❖ AB 474
 - ❑ Would add statement that Chapter 29 contractual assessments ARE “assessments” for purposes of lien priority provisions of Government Code Section 53935
 - ❑ Would add statement that Chapter 29 contractual assessments are NOT “assessments” for Prop 218 purposes
- ❖ The issue of priority over existing mortgage lien
- ❖ Under present federal tax law, bond interest is federally taxable

SB 279

- ❖ Renewed effort at amending Mello-Roos Act
 - ❑ Last year's AB 1709, which passed the Legislature but was vetoed by the Governor
 - ❑ Sponsored by State Senator Loni Hancock, Berkeley
 - ❑ Adds water conservation improvements to the list of authorized improvements
- ❖ Would make Mello-Roos Act special tax financing available in much the same manner and for much the same purposes as AB 811 has done with contractual assessments
- ❖ SB 279 is on the Governor's desk – October 11 deadline for action

Charter City “Municipal Affairs” Authority



- ❖ Illustrated by City of Berkeley’s enactment by ordinance of its “Special Tax Financing Law”
 - ❑ Chapter 7.98, Berkeley Municipal Code (Sections 7.98.010 and following)
- ❖ Featured in the “Mello-Roos Financing” session at 1:15

HR 3525

- ❖ Sponsored by Congressman Mike Thompson, Napa Valley (and others)
- ❖ Would amend federal tax law to make the bonds for these programs “private activity bonds,” which makes them eligible for tax-exempt bond status

Q & A

- ❖ Thank you for attending
- ❖ **Critical Issues** presentation is next
- ❖ Contact Sam at ssperry@meyersnave.com
- ❖ Contact Kathy at klarocqu@sonoma-county.org