

Date of Hearing: April 25, 2016

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 2693 (Dababneh) – As Amended April 11, 2016

**SUBJECT:** Contractual assessments: financing requirements: property improvements

**SUMMARY:** Makes changes to California's Property Assessed Clean Energy (PACE) Program. Specifically, **this bill:**

- 1) Prohibits a public agency from permitting a property owner to participate in PACE unless the property owner has been provided with a federal Truth in Lending Act-Real Estate Settlement Procedures Act Integrated Mortgage Disclosure (TRID) for the obligation being incurred that is required by the federal Consumer Financial Protection Bureau (CFPB).
- 2) Prohibits the public agency from permitting the total mortgage-related debt and contractual assessment-related debt on the property from exceeding the fair market value of the property at the time of the agreement.
- 3) Provides that failure to comply with #1 or #2 above voids the contractual obligations of the property owner.
- 4) Provides that an assessment shall have the force, effect, and priority of a judgement lien as established by its date of recordation rather than a senior lien.
- 5) Provides that above referenced changes do not apply to nonresidential private property or residential private property with 5 or more units.

**EXISTING LAW:**

- 1) Defines “Property Assessed Clean Energy bond” or “PACE bond” as a bond that is secured by any of the following:
  - a) A voluntary contractual assessment on property authorized pursuant to paragraph (2) of subdivision (a) of Section 5898.20 of the Streets and Highways Code;
  - b) A voluntary contractual assessment or a voluntary special tax on property to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements that is levied pursuant to a chartered city’s constitutional authority under Section 5 of Article XI of the California Constitution; or,
  - c) A special tax on property authorized pursuant to subdivision (b) of Section 53328.1 of the Government Code. [Public Resources Code, Section 26054]
- 2) Authorizes cities, counties, and other local public agencies and utility districts to provide up-front financing to property owners to install renewable energy-generating devices, make specified water or energy efficiency improvements, or install electric vehicle charging infrastructure on their properties through a system of voluntary contractual assessments

which is repaid, with interest, through property tax assessments. The programs are commonly referred to as the PACE programs. [Streets & Highways Code, Section 5898.10 et seq.]

- 3) Requires the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to develop and administer a PACE Reserve program to reduce overall costs to the property owners of PACE bonds issued by an applicant by providing a reserve of no more than 10 percent of the initial principal amount of the PACE bond. Requires the CAEATFA to develop and administer a PACE risk mitigation program for PACE financing to increase its acceptance in the marketplace and protect against the risk of default and foreclosure. [Public Resources Code, Section 26060]
- 4) Allows a community facilities district to finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements that are affixed, as specified in Section 660 of the Civil Code, to or on real property and in buildings, whether the real property or buildings are privately or publicly owned. Energy efficiency, water conservation, and renewable energy improvements financed by a district may only be installed on a privately owned building and on privately owned real property with the prior written consent of the owner or owners of the building or real property. This chapter shall not be used to finance installation of energy efficiency, water conservation, and renewable energy improvements on a privately owned building or on privately owned real property in connection with the initial construction of a residential building unless the initial construction is undertaken by the intended owner or occupant. [Government Code, Section 53313.5]

**FISCAL EFFECT:** None.

**COMMENTS:**

AB 2693 addresses two issues that have been raised since the creation of the PACE program. The measure provides enhanced consumer protections including increased disclosures regarding the financing product being provided and second, reversing the lien status of the PACE lien from a super-priority lien to a judgement lien.

**Background:**

In 2008, California enacted the first statewide PACE program through AB 811. Since 2008, at least 31 other states have created their own programs with variations. Not all PACE programs carry super-lien status. PACE is an innovative financing tool that residential or commercial property owners can use to pay for renewable energy upgrades, energy, or water efficiency, or electric vehicle charging stations for their homes or buildings. Local agencies create PACE assessment districts in their jurisdictions via a resolution of their legislative body, allowing the local agency to issue bonds to finance the up-front costs of improvements. In turn, property owners enter into a voluntary contractual assessment agreement with the local agency to re-pay the bonds via an assessment on their property tax bill. The assessment remains with the property even if it is sold or transferred, and the improvements must be permanently fixed to the property.

PACE programs typically are more attractive to borrowers and lenders because they can offer a longer pay-back period (up to 20 years) with smaller payments than other types of loans, and they are securitized by the property assessment rather than the borrower.

### **Federal Housing Finance Agency (FHFA)**

On July 6, 2010, Fannie Mae and Freddie Mac stated that they would no longer purchase mortgage loans secured by properties with outstanding PACE loans. The FHFA announcement states, "First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation."

The FHFA announcement can be found here:

<http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx>

The State of California and several other parties sued FHFA for not conducting a formal rulemaking before its decision; however, the 9th Circuit Court of Appeals ruled in FHFA's favor in March of 2013. (County of Sonoma, et al. v. Federal Housing Finance Agency, 710 F.3d 987 (2013)).

On December 22, 2014, the FHFA once again alerted homeowners, financial institutions, and state authorities of FHFAs concerns with state-level that threaten the first-lien status of single-family loans owned or guaranteed by Fannie Mae and Freddie Mac. FHFA stated,

*"The existence of these super-priority liens increases the risk of losses to taxpayers. Fannie Mae and Freddie Mac, while operating in conservatorship, currently support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. One of the bedrock principles in this process is that the mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning that they have first priority in receiving the proceeds from selling a house in foreclosure. As a result, any lien from a loan added after origination should not be able to jump in line ahead of a Fannie Mae or Freddie Mac mortgage to collect the proceeds of the sale of a foreclosed property. Localities offering these PACE loans threaten to move existing Fannie Mae and Freddie Mac mortgages to a second lien position and increase the risk of loss to the Enterprises and, by extension, to taxpayers.*

*In issuing this statement, FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it. This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan cannot refinance their existing mortgage with a*

*Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house."*

### **California PACE Loss Reserve Program (LRP)**

In 2013, Senate Bill 96, directed CAEATFA to develop the PACE LRP to mitigate the potential risk to mortgage lenders associated with residential PACE financing. The \$10 million Loss Reserve makes the first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE lien covered under the LRP. The goal of the LRP is to put first mortgage lenders in the same position they would be in without a PACE lien.

PACE administrators can participate in the LRP by applying to CAEATFA and demonstrating that they meet the LRP's minimum underwriting criteria. Once a PACE program is enrolled, the Loss Reserve will cover assessments issued by that program for their full terms, or until funds are exhausted. Enrolled PACE programs report their financing activity to CAEATFA semi-annually. To date, no claims have been made on the LRP.

In May of 2014, FHFA responded to California's PACE LRP by stating, "FHFA has carefully reviewed the Reserve Fund created by the State of California and while, I appreciate that it is intended to mitigate these increased losses, it fails to offer full loss protection to the Enterprises. The Reserve Fund is not an adequate substitute for Enterprise mortgages maintaining a first lien position and FHFA also has concerns about the Reserve Fund's ongoing sustainability."

### **Department of Housing and Urban Development- Federal Housing Administration (FHA)**

In August, 2015, FHA announced the development of Single Family PACE guidance. The Single Family FHA guidance will address the impact of PACE assessments on purchases, refinances and loan modification options available to borrowers experiencing distress and will require subordination of PACE financing to the first lien FHA mortgage. FHA stated the guidance at a minimum will include the following:

- Lien position: only PACE liens that preserve payment priority for first lien mortgages through subordination;
- PACE payment, structure, and term: PACE financing must be fixed rate, fully amortizing loan;
- Eligible properties: PACE assessments must be attached to single family properties, as defined by FHA, which are 1 to 4-unit dwellings, including detached, semi-detached and townhome properties;
- Equity requirements: PACE liens that preserve payment priority for first lien mortgages will be eligible for financing that does not exceed FHA's maximum combined loan-to-value ratio;
- Record keeping: PACE liens must be formally recorded and be identifiable to a mortgage lender through a title search;
- Additional consumer protections: PACE programs must comply with applicable federal and state consumer laws and should include disclosures to and training for homeowners participating in the program.

**Concerns with PACE:**

*Refinancing:* A person with a traditional PACE lien which has super priority status will not be able to obtain refinancing with a loan which conforms to current Fannie Mae or Freddie Mac guidelines, which represents the vast majority of conventional refinancing. Fannie Mae and Freddie Mac policies prohibit them from purchasing a mortgage with a PACE lien on it (discussed further below). This greatly limits, if not eliminates, the ability of a borrower to refinance the property if there is a PACE super priority lien. Certain programs have advertised that many homeowners have been able to refinance their property with PACE liens, but it is likely most of those were done prior to July 6, 2010 or the homeowners are using non-conventional financing which may carry higher interest rates.

However, a number of PACE programs are offering to subordinate the liens at the request of a homeowner. While the FHFA has not yet taken a stance on the subordination agreements being offered by these PACE programs it is possible that if the PACE lien is subordinated the homeowner may be able to then refinance their homes with conventional financing.

*Selling:* A homeowner with a PACE lien will have difficulty selling his or her property to buyers with conventional loans. Fannie Mae and Freddie Mac are prohibited from purchasing a mortgage with a PACE lien on it. Therefore a buyer who is using conventional financing will likely be unable to purchase a home with the lien, as most conventional mortgages will conform to Fannie Mae and Freddie Mac guidelines.

Sellers would be limited to those persons who are cash buyers, or buyers who have loans from lenders who make loans which do not conform to Fannie Mae or Freddie Mac guidelines and only where such loans omit provisions restricting the ability to borrow with the super priority lien.

*Lack of consumer protections:* The current PACE program lacks disclosure requirements in statute. Borrowers should fully understand these restrictions prior to taking out a first-lien PACE loan. PACE loan underwriting conducted by public agencies or private entities lacks basic standards with federal lending laws. Potential borrowers are not evaluated for their ability to repay, there are insufficient parameters for debt-to-income or loan-to-value ratios, and consumer disclosures are inadequate failing to clearly identify the terms and conditions of the loan and the subsequent impact such loans have on existing mortgages and the consumer's ability to sell or refinance their home.

*Number of PACE Loans:* It is also unclear how many PACE loans can be made on a single parcel. A single property may therefore have a super-priority lien established for a loan made for solar efficiency, a separate loan for water efficiency and a third loan for seismic strengthening improvements. The potential stacking of these PACE loans further complicates title and the rights of other prior lienholders.

AB 2693 will provide much needed consumer protections by requiring specified disclosure requirements about the PACE loan. Additionally, the measure addresses FHFAs announcement which prohibited Freddie Mac and Fannie Mae from purchasing any mortgages with a PACE lien on the property by changing the PACE super-priority lien to a judgment lien.

**PACE:**

Generally, PACE programs begin with a local public agency (such as a city, county or municipal utility district) adopting a resolution to create a Joint Power Authority (JPA) to authorize the creation of a PACE loan program. The JPA administers the program directly or may contract with a private entity to administer it. The JPA may authorize either local governments or third parties to make loans to homeowners for the conservation improvements.

When created, it was presumed that public agencies would run the PACE program themselves; instead the majority of cities or counties have contracted out the services to new unregulated private entities to administer the PACE program. Only two programs run their own PACE program internally: Sonoma County and Placer County.

The programs are funded by either private or public sources, or a combination of both. For example, Sonoma County has generally used public funds for their residential PACE program. The residential PACE program in Sonoma County, Sonoma County Energy Independence Program, borrows money from the County, which is then paid back with interest as the lien is paid off by the homeowner. In other areas, it is primarily private funding. In PACE programs administered by private entities the bonds are typically issued to private investors to pay the cost of the of the conservation improvements.

*How does PACE work?* Although details vary between the programs, generally a homeowner who is interested in adding a conservation improvement to his or her home is first advised and sometimes required to have an energy audit conducted on the property to identify areas of potential conservation improvements. After that, a homeowner contacts a contractor, who typically has to be approved or certified by the PACE program to be eligible to work on the project. The contractor provides an estimate of the costs of the conservation improvement(s) the homeowner wishes to add. The homeowner then applies to the program for approval. Typically there are costs associated with the application. Only once the improvement application is approved, will the work begin.

If the project is approved, the entity administering the program will enter into an agreement with the property owner where the entity agrees to pay the cost of the improvement. An assessment lien is placed on the property for the amount owed plus interest. After the work is performed, the PACE program entity pays the contractor. The property owner repays the entity for the improvements as a special tax assessment on the property tax bill, generally over a 5 to 20 year period. The property owner pays the lien in the same manner as he or she would pay property taxes.

*Who uses PACE?*-PACE financing is available to property owners in certain cities or counties that have adopted a program. In California, over 400 cities and counties participate in PACE. To qualify, homeowners need to have equity in their home. The homeowner must have no judgment liens or federal or state tax liens. The homeowner cannot be in bankruptcy. The property cannot be subject to a bankruptcy proceeding. The homeowner must not be delinquent on any mortgages.

According to Ygrene Energy Fund, "PACE is most powerful for people with income. It heavily favors those with household incomes over \$70,000. In fact, the higher the income of the property owner, the higher the tax savings and lower the tax-adjusted interest rate. For many income

earners, the tax-adjusted interest rate may be negative, putting cash back into the property owners' pocket."

### **PACE Financing:**

PACE was created as a financing alternative for homeowners in hopes of encouraging energy efficiency across the state. Homeowners can use PACE for various energy efficiency improvements such as solar panels, irrigation components, windows, HVAC systems, etc. PACE allows a homeowner to apply for PACE financing, if approved the money financed runs with the property rather than the homeowner for up to 20 years. PACE providers encourage homeowners to participate by telling them PACE is:

- Easy and simple to qualify
- Financing is not based on the owner's annual income
- Assessments do not appear on your credit report - personal credit score has no impact on funding eligibility or interest rate
- Assessments are paid semi-annually along with your property taxes
- Assessments may be passed to subsequent property owners
- 0% down- 100% financing- no payment until December 2017
- Terms and tax advantages deliver the lowest monthly payments – saving you 50% or more over traditional financing.

*Prepayment penalties:* According to the Sonoma County program: initial bond financing for improvements is held by the Sonoma County Treasury, and there is no penalty while the County Treasury holds the note. However, in order to continue to provide funding for Program growth, this investment will at some point be converted to long-term bonds. Bond purchasers generally require an early payment penalty/premium of up to 3%, based on current conditions. Please note that while a homeowner can pay off the assessment completely, the County of Sonoma cannot accept partial prepayments. Because PACE Financing is through the sale of bonds, any early payoff would need to include interest due until the next semi-annual bond payment date, which under state law is either March 2 or September 2.

*Interest rates:* Interest rates vary depending on the program, but tend to be higher than they would be for home equity loans. A review of various programs showed rates in a range from 6.95 to 9.25% which varied on a number of factors including the amount borrowed, and the duration of the assessment.

### **In the News:**

- Mark Chacon: Energy-efficiency loans could cause homeowner headaches

Even if you can afford to pay off the liens before the sale closes, that reduces the amount you can realize from the sale. And even if you find an all-cash buyer, because the assessment will transfer with the property, that's an added cost many prospective buyers won't want to deal with.

Steve Lista found that out the hard way. He put his five-bedroom home in Riverside County on the market in June but couldn't find a buyer willing to take on the \$3,000-a-year assessment for his \$27,000 solar panel system.

<http://www.vcstar.com/opinion/columnists/mark-chacon-energy-efficiency-loans-could-cause-homeowner-headaches-2f20c692-4bb8-17c7-e053-0100007f-375102471.html>)

- Energy improvement program can hobble home sales

When Patti Smith sought a refinance last year for her senior community home in San Diego County, she had to pay off a \$14,774 HERO loan she previously took out for an air-conditioning unit, tankless water heater and replacement ductwork.

“I was flabbergasted when our mortgage company told us we had a lien,” said Smith, 62. “The contractor who pushed the HERO program never mentioned the word ‘lien.’ If he would have we would have never done it.”

Smith said she also had to pay a penalty of \$1,734.14 to HERO for paying off the loan early. The HERO program has since waived the penalty fee for homeowners.

<http://www.sacbee.com/news/business/real-estate-news/article27528559.html#storylink=cpy>)

- A Growing Green Debt?

Last September, Erin Stumpf of Dunnigan Realtors met with a homeowner in Sacramento’s Tallac Village neighborhood. The owner wanted to sell, and she’d replaced her yard with artificial turf, taking out a \$7,000 PACE loan to do it. “Oh, but don’t worry,” the homeowner told Stumpf. “The PACE loan will be transferred to the new owner.”

Stumpf had to explain that wasn’t true. The prospective buyer likely wouldn’t be able to get a mortgage because of the PACE loan — Fannie Mae and Freddie Mac, which guarantee 90 percent of the country’s home loans, won’t do so for properties with a PACE lien. The seller fortunately had enough home equity and used it to pay off her turf at the time of the sale.

Because she cleared her loan early, she was also hit with a prepayment penalty of at least \$800, Stumpf says. “The way this was sold to my client and the way that it’s sold to the public in general is really misleading,” Stumpf says.

<http://www.comstocksmag.com/article/growing-green-debt>)

- Clean Energy Loans Make Sales Messy- Wall Street Journal- 11/7/2015

Lori Laine’s foray into a California clean-energy program made it tough for her to sell her house and ended up costing her hundreds of dollars and months of aggravation.

The culprit: a nearly \$8,000 loan she took out last year to pay for a new air-conditioning unit to replace her broken one, part of a statewide push to promote clean energy with low-interest loans.

“I would never do this again,” Ms. Laine said.

Ms. Laine said her air-conditioning contractor told her the financing would transfer to a new owner if she sold the home, though she admits the documents she signed from San Diego-based lender Renovate America Inc. stated there could be difficulties.

When she tried to sell her Highland, Calif., home last October, the buyer said Ms. Laine would need to pay off the balance in full before the buyer could get a mortgage.

Ms. Laine took the home off the market in hopes the rules would change, but earlier this year, she gave in and paid it off in order to sell the house.

### **Arguments in Support:**

According to the California Association of Realtors, the California Bankers Association, the California Credit Union League, the California Escrow Association, the California Mortgage Association, the United Trustees Association and the California Mortgage Bankers Association, AB 2693 will require that consumers receive the same Truth in Lending Disclosures about the PACE loan as they are entitled to receive in connection with any other home equity loan. There should be no confusion in the mind of either the Committee Members or homeowners- these encumbrances might be labeled "assessments," but they are really loans and they come at the expense of the homeowner's equity in the property. The federal Consumer Financial Protection Bureau has recently released a universal Truth in Lending Disclosure that applies to every consumer loan, and consumers and homeowners should receive it in PACE loans too. Unfortunately for homeowners, if they don't receive a Truth in Lending Disclosure they cannot effectively shop for financing of energy conservation improvements, and cannot make an "apples to apple" comparison of the loans to finance the home improvement.

The super priority of PACE liens has caused the secondary market (Fannie Mae and Freddie Mac; and soon FHA as well) to refuse to finance or re-finance a property with a PACE lien remaining attached, consequently affecting the liquidity of the lending market in CA. In a statement issued in December 2014, the FHFA wanted to "make it clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has first-lien PACE loan attached to it. The statement by the FHFA has two implications for borrowers: first, a homeowner with a first lien PACE loan cannot refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase.

### **Arguments in Opposition:**

According to the California State Association of Counties and the League of California Cities, "eliminating the senior lien status of PACE assessments would essentially prohibit the use of property tax assessments to secure the financing, the major attractant of the program. AB 2693 creates a financing structure that would make PACE unaffordable, unsustainable and unavailable. Not only does that structure attack the very foundation of PACE, it does so without regard to options already available in the marketplace enabling PACE contractual assessments to be limitedly subordinated to a first deed of trust."

According to Renovate America, "If passed, AB 2693 would strike a devastating blow to PACE by removing the very features of the program which motivate consumer behavior by converting the lien from an assessment lien to a judgment lien. A judgment lien, by its legal character, is unable to have 20-year financing terms, like PACE currently allows, or transfer from owner to owner, like PACE currently allows. It would eliminate the ability of homeowners to finance products over their entire useful life, forcing them to elect higher monthly payments or making PACE financing altogether unaffordable. Further, a judgment lien is extinguishable by

foreclosure, jeopardizing the security and credit rating of the bonds issued by local government and, therefore, the end price to the consumer. Converting the PACE lien to a judgment lien would gut the structure of PACE, making it an uncompetitive form of lender financing that raises costs to consumers and reinstates the very market failure PACE was created to address."

**Previous Legislation:**

AB 2597 (Ting, Chapter 614, Statutes of 2014) revised the CAEATFA underwriting standard for the PACE program by increasing the maximum amount of an assessment from 10 percent to 15 percent of the property value and specifies that PACE financing is an "assessment" or "financing" (as appropriate) and not a "loan."

AB 1883 (Skinner, Chapter 599, Statutes of 2014) allowed a public agency to transfer voluntary contractual assessments, if bonds have not been issued, as specified.

SB 96 (Committee on Budget and Fiscal Review, Chapter 356, Statutes of 2013) required the California Alternative Energy and Advanced Transportation Financing Authority to develop and administer a risk mitigation program for PACE loans.

SB 555 (Hancock, Chapter 493, Statutes of 2011) added the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements that are affixed to the types of facilities that a community facilities district (CFD) may finance, or refinance, regardless of whether the buildings or property are privately or publicly owned.

SB 1340 (Kehoe, Chapter 649, Statutes of 2010) expanded the use of voluntary contractual assessments to finance electric vehicle charging infrastructure and correspondingly expanded the PACE bond reserve program.

SB 77 (Pavley, Chapter 15, Statutes of 2010) authorized CAEATFA to develop and administer a state PACE bond reserve program to pay bondholders in the event a PACE program had insufficient funds, which would reduce risk to bondholders and facilitate smaller interest rates. CAEATFA has suspended development of this program pending resolution of FHFA's concerns described above.

AB 44 (Blakeslee, Chapter 564, Statutes of 2010) expanded the use of voluntary contractual assessments to include financing of power purchase agreements, and prohibited contractual assessments if the total amount of the assessments and taxes on the property exceeds 5% of the property's market value.

AB 474 (Blumenfield, Chapter 444, Statutes of 2009) expanded local agencies' PACE authorization to include water efficiency projects.

AB 811 (Levine, Chapter 159, Statutes of 2008) authorized all cities and counties in California to designate areas within which city officials and willing property owners may enter into contractual assessments to finance the installation of distributed generation renewable energy sources and energy efficiency improvements.

**Double-referral:**

This measure is double referred to the Assembly Local Government Committee.

**Recommended Amendments:**

The suggested amendments attempt to address the issues raised by the opposition. The amends will delete the disclosure provisions in the bill referencing TRID and instead codify disclosure requirements in statute so all entities using the PACE program will have to provide the same disclosures to borrowers. Additionally, the amends address the concerns around changing the super lien priority by stating that in the event of a foreclosure by the purchase money (or refinanced purchase money) lender, the delinquency on a PACE encumbrance is junior to the purchase money, but the encumbrance itself survives. The amendments also clarify that the measure is prospective.

On page 9, delete lines 1-9 and insert:

*Streets and Highway Code- 5898.15.*

- (a) A public agency shall not permit a property owner to participate in any program established pursuant to this chapter if:
- (1) The owner's participation would result in the total amount of any annual property taxes and assessments exceeding 5 percent of the property's fair market value, as determined at the time of approval of the owner's contractual assessment; or
  - (2) The total mortgage-related debt and contractual assessment-related debt on the underlying property would exceed the fair market value of the property, as determined at the time of the owner's contractual assessment; or
  - (3) The mortgage-related debt on the property is equal to 90% or greater of the property's fair market value, as determined at the time of approval of the owner's contractual assessment; or
  - (4) The property owner is unable to meet all of the following criteria:
    - a. The property owner must certify that property tax for the subject property are current and that there is no more than one late payment during the previous three years or the period of time during which the property owner has owned the subject property, whichever is less.
    - b. The property owner must certify that he or she is not currently in default on any debt secured by the subject property, and that there is no more than one late payment (30 days maximum) during the 12-month period preceding the time of the owner's contractual assessment.
    - c. No homeowner applicant has had any active bankruptcies within the last 7 years; provided however, that this criterion can be met if a homeowner's bankruptcy was discharged between two and seven years before the application date, and the homeowner(s) have had no payments (mortgage or non-mortgage) past due for more than 60 days in the most recent 24 months; and
    - d. The property owner(s) have no involuntary lien(s) recorded against the Property in excess of \$1,000.
- (b) A public agency shall not permit a property owner to participate in a program pursuant to this chapter unless the property owner has been provided with a completed Financing Estimate set out in Section 5898.15.5, or a substantially equivalent document that displays the same information in a substantially similar format
- (c) Failure to comply with the requirements of either subsection (a) or (b) renders the contractual obligations of a property owner for a contractual assessment entered into pursuant to this chapter void.

(d) Except as provided in subdivision (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.

1) Add Streets and Highway code Section 5898.15.5 and insert the following language:

5898.15.5. The disclosure set out below shall be completed and delivered to a homeowner as soon as practicable before, and in no event later than when, a homeowner becomes obligated on an agreement to a voluntary assessment described in Section 26054 of the Public Resources Code, Chapter \_\_, commencing with Sec. 5898 of this code, or Section 53328.1 of the Government Code.

P.A.C.E. Financing Estimate and Disclosure

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

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

**Products and Costs**

Product costs (including labor/installation)	\$ _____	<u>Description</u>
		1.
		2.
		3.

**Financing Costs**

Application fees and costs	\$ _____
Prepaid Interest	\$ _____
Other Costs	\$ _____
Total Amount Financed	\$ _____

**Annual Percentage Rate (APR)** \_\_\_\_\_ %

Simple Interest Rate \_\_\_\_\_ %

Total Annual Principal, Interest and Administrative Fees \$ \_\_\_\_\_ Note: If your property taxes are paid through an impounds account, your lender may apportion the amount and add

it to your monthly payment.  
See "Other considerations", below

Total Amount you will have paid  
over the life of the loan \$\_\_\_\_\_

**Other Costs**

Appraisal fees \$\_\_\_\_\_  
Bond related costs \$\_\_\_\_\_  
Annual Administrative fees \$\_\_\_\_\_  
Estimated closing costs \$\_\_\_\_\_  
Credit Reporting Fees \$\_\_\_\_\_  
Recording Fees \$\_\_\_\_\_

**Total Financing Costs and Closing Costs** \$\_\_\_\_\_

Estimated cash (out of pocket)  
to close \$\_\_\_\_\_

**Other Terms**

Prepayment fee /\_/ No /\_/ Yes \_\_\_\_\_  
Assumable by new owner /\_/ No /\_/ Yes

**Additional Information About This Financing**

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

----- \$\_\_\_\_\_ Principal you will have paid off.  
In 10 years \$\_\_\_\_\_ Amount of interest paid.  
\$\_\_\_\_\_ Amount of financing and other  
costs you will have paid.  
\$\_\_\_\_\_ Total you will have paid.

-----  
Annual Percentage Rate (APR) \_\_\_\_\_%

-----  
Total Interest Paid (as a percentage  
of all the payments you have made) \_\_\_\_\_%

**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]

**Confirmation of Receipt**

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

\_\_\_\_\_  
[Property Owner Signature - Date]

\_\_\_\_\_  
[Property Owner Signature - Date]

2) On page 11, delete lines 4-5 and insert:

”subject to (3) below, retain the sole right to enforce its senior lien status.

(3) When a holder of a note secured by a deed of trust for purchase money, or a refinanced purchase money obligation institutes a foreclosure; or when the public agency institutes a foreclosure, the interest of the purchase money note holder shall be treated as an encumbrance that is senior to any delinquency of a voluntary assessment described in Section 26054 of the Public Resources Code, commencing with Sec. 5898 of this code, or Section 53328.1 of the Government Code. The seniority of the purchase money obligation shall be retained regardless of whether the delinquency occurred before or after the purchase money obligation was recorded against the property. In enacting this Section, the Legislature recognizes that the voluntary special assessments authorized by this Chapter are unique, and require unique treatment of their

secured priority. This Act shall not be interpreted or applied to affect the status or priority of any municipal or county lien other than a lien addressed in this Section, nor shall it create any implied precedent for the interpretation of any other remedy or collection mechanism available to a governmental entity. The change in priority effected by this Act shall apply to assessments agreed to after January 1, 2017.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Realtors (Sponsor)  
California Bankers Association (Sponsor)  
California Credit Union League (Sponsor)  
California Escrow Association (Sponsor)  
California Mortgage Association (Sponsor)  
California Mortgage Bankers Association (Sponsor)  
United Trustees Association (Sponsor)  
California Community Banking Network (CCBN)  
Community West Bank  
Valley Republic Bank

### **Oppose unless Amended**

California Association of County Treasurers and Tax Collectors (CACTTC)

### **Opposition**

Applied Building Science (ABS)  
Brower Mechanical, Inc.  
California Chapters of the National Electrical Contractors Association (NECA)  
California Energy Efficiency Industry Council  
California League of Conservation Voters (CLCV)  
California Legislative Council of the Plumbing, Heating and Piping Industry (CLC)  
California State Association of Counties (CSAC)  
Center for Climate Protection  
Clarke & Rush  
Climate Action Plan  
Community Action Agency of Butte County  
Eco Performance Builders  
Efficiency First California  
Energy Masters  
Energy Resolutions, Inc.  
Environmental Defense Fund (EDF)  
J R Construction – SOL SOLUTIONS  
JR Putman Inc.  
League of California Cities (LCC)  
McClelland Air Conditioning  
PACE Equity

PACE Funding Group  
PACENation  
Placer County Contractors Association (PCCA)  
Placer County Treasurer-Tax Collector  
PROgressive Insulation & Windows  
PROS360  
Renew Financial  
ReNewAll  
Renovate America  
Sonoma County Board of Supervisors  
Sonoma County Water Agency (SCWA)  
South Bay Cities Council of Governments (SBCCOG)  
Syntrol  
Vote Solar  
Western Riverside Council of Governments  
Ygrene Energy Fund  
12 individuals

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