

Date of Hearing: July 18, 2017

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

SB 242 (Skinner) – As Amended July 13, 2017

SENATE VOTE: 34-3

SUBJECT: Property Assessed Clean Energy program: program administrator

SUMMARY: Make changes to the Property Assessed Clean Energy program (PACE) establishing prohibitions for program administrators, contractors and third parties, as specified. Specifically, **this bill:**

- 1) Prohibits a program administrator from waiving or deferring the first payment on an assessment contract.
- 2) Prohibits contractors or other third parties from advertising or soliciting on behalf of the program administrator unless the following requirements are met:
 - a) The contractor or third party maintains an appropriate license in good standing from the Contractor's State Licensing Board including the required bond and insurance coverage, as specified.
 - b) The program administrator obtains the contractor's or third party's written agreement that the contractor or third party will act in accordance with applicable advertising and marketing laws and regulations, and all other applicable laws.
- 3) Prohibits a program administrator from providing any direct or indirect cash payment to a contractor or third party in excess of that amount provided as compensation for work performed in the assessment contract.
- 4) Prohibits a program administrator from providing any direct cash payment or other thing of value to a property owner explicitly conditioned upon that property owner entering into an assessment contract.
- 5) Prohibits a program administrator, contractor, or a third party from making any representation as to the tax deductibility of an assessment contract unless that representation is consistent with Internal Revenue Service and applicable state tax agency policy with regard to the tax treatment of PACE assessments.
- 6) Prohibits a program administrator from providing to a contractor or third party engaged in soliciting assessment contracts on behalf of the program administrator any information that discloses the amount of funds for which a property owner is eligible under a PACE assessment or the amount of equity in a property.
- 7) Adds charter cities to the list of entities as defined by "public agency."
- 8) Adds language stating that the act addresses a matter of statewide concern and therefore shall apply equally to all cities and counties, including charter cities.

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 (S&H) 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 (PR) 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. (S&H 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. (PR 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 (GOV) Code Section 53313.5)
- 5) Requires PACE financing to add consumer notice requirements and tighten financing standards for PACE loans for residential properties. (GOV Code Section 53328)

FISCAL EFFECT: None

COMMENTS:

- 1) **Background:** In 2008, California enacted the first statewide PACE program through AB 811 (Levine), Chapter 159. Since 2008, at least 31 other states have created their own programs with variations. 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.

- 2) **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.

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.

- a) *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 five to 20 year period. The property owner pays the lien in the same manner as he or she would pay property taxes.

- b) *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.
- 3) **Discussion:** Since the inception of the PACE program it has been clear to all parties that additional consumer protections needed to be built into the program. Throughout California and across the nation cases of predatory sales practices, inappropriate contract measures and property owners not understanding the provisions of the program remained problematic. The author's office has provided the following statement:

With the growing use of PACE financing, last May PACE Nation, a non-profit representing PACE providers, local governments and environmental organizations, published a comprehensive set of recommended consumer protection policies for PACE. Additionally last November the Federal Department of Energy published Best Practices Guidelines for Residential PACE Programs. SB 242 incorporates many of the consumer protections and best practices recommended by PACE Nation and US DOE, including ensuring that projects financed achieve the intended public purposes, and that PACE contractors are properly licensed. By doing so, SB 242 will ensure that California's PACE program continues to be a national leader.

- a) This bill prohibits program administrators from engaging in a number of activities, including:
- i) Permitting contractors to advertise PACE assessments or solicit property owners, unless specified requirements are met.
 - ii) Waiving payments as a financial inducement.
 - iii) Providing direct or indirect cash payment or other things of value to a contractor or property owner.
 - iv) Making representation as to the tax deductibility of an assessment contract.
 - v) Providing information to a contractor that discloses the amount of funds for which a property owner is eligible or the amount of equity in a property.

4) Previous Legislation:

- a) AB 2693 (Dababneh), Chapter 618, Statutes of 2016: Amends statutes governing PACE financing to add consumer notice requirements and tighten financing standards for PACE loans for residential properties.
- b) AB 1883 (Skinner), Chapter 599, Statutes of 2014: Allows a public agency to transfer voluntary contractual assessments, if bonds have not been issued, as specified.
- c) SB 96 (Committee on Budget and Fiscal Review), Chapter 356, Statutes of 2013: Requires the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to develop and administer a risk mitigation program for PACE loans.
- d) SB 555 (Hancock), Chapter 493, Statutes of 2011: Adds 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 may finance, or refinance, regardless of whether the buildings or property are privately or publicly owned.
- e) SB 1340 (Kehoe), Chapter 649, Statutes of 2010: Expands the use of voluntary contractual assessments to finance electric vehicle charging infrastructure and correspondingly expanded the PACE bond reserve program.
- f) SB 77 (Pavley), Chapter 15, Statutes of 2010: Authorizes 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 Federal Housing Finance Agency's concerns described above.
- g) AB 44 (Blakeslee), Chapter 564, Statutes of 2010: Expands 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.
- h) AB 474 (Blumenfield), Chapter 444, Statutes of 2009: Expands local agencies' PACE authorization to include water efficiency projects.
- i) AB 811 (Levine), Chapter 159, Statutes of 2008: Authorizes 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*.

- 5) **Double Referral:** This bill has been double referred, having been heard in the Assembly Local Government Committee on July 12, 2017, and passed on a vote of 8-1.

Support/Opposition: This bill has undergone significant amendments just a few days prior to the Assembly Banking and Finance Committee hearing. Accordingly, the following list of support and opposition reflects the letters received by this committee as of the July 3, 2017, version of this bill, unless otherwise noted.

REGISTERED SUPPORT / OPPOSITION:

SUPPORT:

California Apartment Association
California Building Industry Association
California Business Properties Association
California League of Conservation Voters
California Solar Energy Industries Association
California State Association of Counties
Coalition for Clean Air
Environment California
Environmental Defense Fund
Friends Committee on Legislation of California
League of California Cities (confirmed July 14, 2017)
Natural Resources Defense Council (NRDC)
Rancho Cucamonga; City of
Sacramento Municipal Utility District (SMUD)
The Utility Reform Network (TURN)
United States Green Building Council
WattzOn

OPPOSITION:

California Association of County Treasurers & Tax Collectors (unless amended)
California Bankers Association (unless amended)
California Credit Union League (unless amended)
California Escrow Association (unless amended)
California Land Title Association (unless amended)
California Mortgage Association (unless amended)
California Mortgage Bankers Association (unless amended)
United Trustees Association (unless amended)

Analysis Prepared by: William Herms / B. & F. / (916) 319-3081