

Date of Hearing: April 23, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2063 (Aguiar-Curry) – As Amended April 5, 2018

SUBJECT: California Financing Law: PACE program administrators

SUMMARY: Establishes additional requirements for Property Assessed Clean Energy (PACE) administrators, solicitors, and consumers. Specifically, **this bill:**

- 1) Requires PACE administrators to establish a process for enrolling, promoting, and evaluating the compliance of, and for canceling the enrollment of, PACE solicitors and PACE solicitor agents that is *acceptable to the Commissioner of Business Oversight*.
 - a) Requires the PACE administrator to *timely* notify the Commissioner when a solicitor or its agent is enrolled.
 - b) Requires the Commissioner to include the administrators report on all PACE assessments in his or her annual report.
 - c) Requires that a person must not engage as a PACE solicitor unless that person is enrolled with a PACE administrator.
- 2) Prohibits a program administrator from executing an assessment contract, including *not commencing work* under the home improvement contract financed by the assessment contract, unless the following are satisfied:
 - a) A good faith determination has been made that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment based on the property owner's income, assets, and current debt obligations, as specified.
 - b) All property taxes for the property that will be subject to the assessment contract are current.
 - c) The property has no recorded and outstanding involuntary liens in excess of one thousand dollars (\$1,000).
 - d) The property has no notices of default currently recorded that have not been rescinded.
 - e) The property owner has not been a party to any bankruptcy proceedings within the last seven years, as specified.
 - f) The property owner is current on all mortgage debt on the property and has no more than one late mortgage payment, as specified.
 - g) The property is within the geographical boundaries of the applicable PACE program.

- h) The measures to be installed are within the applicable PACE program.
 - i) The financing is for less than 15% of the value of the property up to \$700,000 and for less than 10% of the remaining value above \$700,000.
 - j) The total PACE assessments and the mortgage-related debt on the property will not exceed 97% of the market value of the property.
 - k) The term of the assessment contract shall not exceed the estimated useful life of the installed measure, as specified.
 - l) The program administrator shall verify the existence of any recorded, or as yet unrecorded, PACE assessments, as specified.
 - m) The program administrator shall use commercially reasonable and available methods to verify the above.
- 3) Requires, that if the PACE administrator is responsible to pay the difference between the amount determined and the actual amount financed, the PACE administrator must provide a written explanation as to how ability to pay was determined. This provision is only applicable to contracts executed between April 1, 2018 and January 1, 2019.
 - 4) Specifies, that during the oral confirmed terms call, the PACE administrator must notify the homeowner that it is their responsibility to contact their insurance provider to determine if the improvement is covered under their plan.
 - 5) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Authorizes the PACE program through the establishment of voluntary special assessments pursuant to rules contained in the Streets and Highways Code and through the establishment of special tax districts pursuant to the rules contained in specified sections of the Government Code.
- 2) Imposes additional, specified requirements on local agencies that participate in the PACE program.
- 3) Places requirements on PACE administrators that must be met before PACE assessment contracts can be funded and recorded by a local agency.
- 4) Requires PACE administrators to be licensed under the California Financing Law (CFL).
- 5) Establishes a regulatory scheme for oversight of PACE solicitors and PACE solicitor agents.
- 6) Requires PACE administrators to make oral confirmation with property owners regarding the key terms of the assessment contract and the financed improvements.

- 7) Mandates that the PACE administrator record the oral confirmation with the property owner and retain the recording for at least five years.
- 8) Provides additional consumer protections for property owners entering into a PACE assessment contract.

FISCAL EFFECT: Unknown

COMMENTS:

1) PURPOSE

The author states:

“While major strides have been taken to secure statewide supervision by the Department of Business Oversight and enhance consumer protections with the adoption of both SB 242 and AB 1284 last year, more work needs to be done to ensure that property owners do not enter into an assessment contract they cannot afford.

AB 2063 will make certain that a homeowner’s ability to pay the assessment is fully verified before signing an assessment or home improvement contract and before work on the improvement actually begins. The timing of the verification is crucial to decreasing the number of assessment defaults and reducing the risk of property owners losing their homes.”

2) BACKGROUND

In 2008, the Legislature granted the statutory authority to cities and counties to provide upfront financing to property owners to install renewable energy equipment or energy efficiency improvements that are permanently fixed to their properties, which is repaid through the owner’s property tax bill. The Legislature has expanded PACE for residential and commercial property owners as an option to pay for renewable energy upgrades, energy and water efficiency retrofits, seismic improvements, and other specified improvements for their homes or buildings.

The majority of local governments either contract with a private third-party (aka program administrator) or join a Joint Powers Agreement which contracts with a private third-party to carry out their PACE programs. The cost of third-party administration is not borne by the local agency, but is built into PACE loan financing. Program administrators partner with home improvement contractors who offer PACE financing to property owners and conduct the efficiency improvement projects permitted by PACE programs.

One of the key features of the PACE program is that the obligation to repay the contractual assessment remains with the property, rather than remaining the obligation of the property owner that initially agreed to the PACE assessment. Additionally, the PACE assessment has a first-lien priority over other liens on the property, including mortgages. These features complicate the sale or refinance of properties with an existing PACE assessment, which creates problems for mortgage and real estate stakeholders, as well as

property owners who did not understand the terms of the PACE assessment that they agreed to.

For consumers who understand the costs and benefits of PACE financing, PACE provides a potentially attractive financing option. There are many consumers, however, that entered into PACE assessments without a clear understanding of its terms, and the consequences of the PACE assessment have been problematic. The most severe problems occur when a consumer enters into a PACE assessment that they do have the ability to repay. Failing to repay the annual PACE assessment amount on the property owner's property taxes can lead to large late fees and exposes the property owner to the risk of foreclosure or county tax sale if they remain in default.

3) RECENT LEGISLATION

In 2017 SB 242 (Skinner) and AB 1284 (Dababneh) were widely approved with bipartisan support from both houses of the Legislature and signed into law by the Governor. These bills brought sweeping changes to the regulation of program administrators and the PACE solicitors that program administrators partner with to implement the home improvement projects and arrange PACE financing with property owners.

Last year's legislation requires program administrators to be licensed by the Department of Business Oversight (DBO) and requires program administrators to register and oversee the activities of PACE solicitors. The legislation also provides important consumer protections, including a requirement that program administrators orally confirm the terms of a PACE assessment contract with a property owner and a requirement for program administrators to determine a property owner's ability to pay the annual obligations of the PACE financing prior to recording the PACE assessment contract. Pursuant to the provisions of AB 1284, DBO is currently soliciting comments from stakeholders on an initial draft of PACE regulations in anticipation of initiating a formal rule-making action with the Office of Administrative Law. These regulations are expected to clarify and add further specification to the provisions of AB 1284.

4) TIMING OF UNDERWRITING

The primary issue addressed by this bill is the timing of underwriting. Existing law requires that program administrators determine a property owner's ability to pay prior to the *recordation* and *funding* of the PACE assessment contract. The property owner, however, may obligate themselves to the underlying home improvement contract prior to completion of the underwriting process. In cases where a program administrator determines a property owner's ability to pay is less than the amount owed on the home improvement contract, existing law makes the program administrator responsible for that difference. Existing law does not provide for how the program administrator is required to make up that difference.

This bill would require that the determination of a property owner's ability to pay occur prior to *execution of a PACE assessment contract* and prohibits work from commencing or execution of a home improvement contract prior to the conclusion of the underwriting process. Program administrators oppose this change in the underwriting process due to the length of time it can take to conduct all of the underwriting requirements established

by AB 1284. Program administrators have expressed concern that home improvement contractors will be less inclined to offer a PACE financing option if the contractor will need to wait several days to begin work on the project.

5) BALANCING CONSUMER PROTECTIONS WITH GREEN ENERGY GOALS

When initially approved by the Legislature a decade ago, the PACE program lacked important consumer protections. The Legislature did not envision the rise of a for-profit industry of program administrators that would partner with home improvement contractors to offer a complex financial product directly to consumers. For-profit businesses faced incentives that were significantly misaligned with the best interest of consumers. Program administrators made money regardless of whether consumers could pay back the PACE assessments, which caused them to aggressively pursue all consumers segments, even those in financially vulnerable situations. Home improvement contractors could convince consumers to undertake much larger, and even unnecessary, home improvement projects by misrepresenting the terms of PACE assessment contracts, even claiming that PACE was a free government program. In summary, the Legislature failed to require consumer protections; local governments outsourced the responsibility for PACE program administration to the private sector; and for-profit companies faced incentives that worked against consumers – a set of factors that exposed consumers to predatory practices by bad actors.

Over the last two years, the Legislature decided to take consumer protections in the PACE market seriously, culminating in the passing of SB 242 and AB 1284 which will empower DBO to police the industry and stamp out the bad business practices. These bills took significant strides towards better consumer protections, and after full implementation of the legislation, many of the most egregious practices should be regulated out of the market. Consumer advocates, however, have lingering concerns related to the timing of underwriting and the potential consequences when a property owner obligates themselves to a home improvement contract that they may not be able to pay back. This bill addresses those concerns. DBO is currently undertaking a rule-making process that may also allay many of those concerns.

While this analysis has focused on PACE as a financial product, the Legislature may also consider the stated intent of the program – to finance efficiency improvement projects that will conserve natural resources, generate renewable energy, and reduce greenhouse gas emissions. To the extent that PACE incentivizes the purchase of efficiency improvements that consumers would otherwise forego, this bill could negatively impact the social benefits generated by environmentally friendly upgrades. Recently published research from the Lawrence Berkeley National Lab¹ estimates that PACE programs increased solar photovoltaic systems in California over the 2010-2015 time period by 7-12% above the level of deployment that would have occurred if PACE was not an option.²

¹ http://eta-publications.lbl.gov/sites/default/files/berkeley_lab_r-pace_pv_deployment_-_final_03202018.pdf

² The research used econometric techniques that suggest that this increase would likely not have occurred in the absence of PACE programs. In other words, the researchers controlled for other factors that could affect solar

According to program administrators, the requirements of this bill will make PACE a less attractive financing product for contractors to offer and for consumers to choose. There is no empirical evidence to estimate the extent to which this is true. At this time, the Legislature does not know if DBO will finalize regulations that address all of the consumer protection concerns related to the underwriting process in existing law, nor is there sufficient evidence to estimate the extent to which the provisions of this bill would ultimately impact the deployment of energy efficiency improvements.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of County Treasurers and Tax Collectors
California Association of Realtors
California Credit Union League
California Low-Income Consumer Coalition

Opposition

Advanced Energy Economy
California Solar and Energy Storage Association
Cleantech San Diego
Renew Financial
Renovate America (unless amended)
Ygrene Financial (unless amended)

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