

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1136 (Luz Rivas) – As Introduced February 18, 2021

SUBJECT: Property Assessed Clean Energy program: enforcement: ancillary relief

SUMMARY: Authorizes the Commissioner of Financial Protection and Innovation to order a PACE solicitor or PACE solicitor agent to pay ancillary relief to a harmed person, as specified.

Specifically, **this bill:**

- 1) Pursuant to the California Financing Law (CFL), authorizes the Commissioner of Financial Protection and Innovation to, after appropriate notice and opportunity for a hearing, order a PACE solicitor, PACE solicitor agent, or both, to pay ancillary relief to a person injured by the conduct or practice of that solicitor or solicitor agent. The ancillary relief may include, but is not limited to, refunds, restitution, disgorgement, and payment of damages.
- 2) Specifies the administrative law process for challenging an order described in #1 above.

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 (Streets and Highways Code Section 5898.10 et seq. and Government Code Section 53311 et seq.).
- 2) Establishes a regulatory framework for PACE program administrators, solicitors, and solicitor agents in order to protect property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs (Financial Code Section 22680 et seq.).
- 3) Defines “PACE solicitor” as a person authorized by a program administrator to solicit a property owner to enter into an assessment contract (Financial Code Section 22017).
- 4) Defines “PACE solicitor agent” as an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract (Financial Code Section 22017).
- 5) Prohibits a person from engaging in the business of a PACE solicitor unless that person is enrolled with a program administrator, as specified. Requires a program administrator to establish and maintain a process for enrolling PACE solicitors and PACE solicitor agents (Financial Code Section 22680).
- 6) Authorizes the Commissioner of Financial Protection and Innovation to investigate a PACE solicitor or PACE solicitor agent and to take administrative action, as specified, in response to violations of the law (Financial Code Section 22690).

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1) PURPOSE

According to the author:

AB 1136 is an accountability measure that closes a loophole in PACE law by authorizing DFPI to order PACE solicitors and PACE solicitor agents to pay ancillary relief to victims they have harmed by misleading homeowners about the program and signing them up for loans they did not agree to. Ancillary relief may include, but is not limited to, refunds, restitution, and payment of damages.

By giving the DFPI additional enforcement tool to go after the bad actors preying on vulnerable communities, AB 1136 gives a chance to recover financial damages that have been inflicted upon them by unscrupulous solicitors or solicitor agents.

2) BACKGROUND

In 2008, the Legislature granted statutory authority to cities and counties to provide financing to property owners to install renewable energy equipment or energy efficiency improvements that are permanently fixed to their properties. Property owners repay their PACE financial obligations through their annual property tax bill. Over time, the Legislature expanded PACE to allow residential and commercial property owners to finance renewable energy upgrades, energy and water efficiency retrofits, seismic improvements, wildfire hardening, and other specified improvements for their homes or buildings.

The majority of local governments either contract with a private third party (i.e., program administrator) or join a Joint Powers Authority that contracts with a program administrator to carry out their PACE programs. Local agencies do not pay the cost of third-party administration; rather, these costs are recovered from property owners through finance charges and other fees built into the PACE assessment contract. To reach potential customers, program administrators partner with home improvement contractors who offer PACE financing to property owners and deliver the efficiency improvement projects permitted by PACE programs. In statute, these home improvement contractors are known as “PACE solicitors” or “PACE solicitor agents.”

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 who 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 potential consequences of the PACE assessment contract.

For consumers who understand the costs and benefits of PACE financing, PACE provides a potentially attractive financing option. There are many consumers, however, who 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) ONGOING PROBLEMS THREATEN THE PACE PROGRAM

Despite recent reforms, home improvement contractors serving as PACE solicitors continue to engage in unfair and deceptive practices that harm property owners.¹ In response to ongoing consumer harm, Los Angeles County ended its PACE program in May 2020.² County officials cited a lack of sufficient consumer protections as one rationale for their decision. The Los Angeles County Treasurer and Tax Collector also cited the declining usage of the program, which was generating insufficient revenue to cover the county's administrative costs.

In December 2020, the Western Riverside Council of Governments (WRCOG), a Joint Powers Authority, ordered its staff to wind down the agency's residential PACE program. WRCOG administered the HERO program, which managed many aspects of the PACE ecosystem, including assessment administration, bond issuance, bond administration functions, outreach, registration and education to contractors, and outreach and customer service to property owners. At its peak, the HERO program was available to an estimated 85% of California property owners.³ WRCOG's decision to wind down the program stemmed from a marked decline in the number of new PACE assessments since Fiscal Year 2016-17.

Also in December 2020, Renovate America, once the dominant PACE program administrator in California, filed for Chapter 11 bankruptcy. The filing was driven by a steep decline in originations after California enacted consumer protections and underwriting requirements for PACE contract assessments in 2017, legislation that Renovate America strongly supported and helped to craft. The company also may have been negatively affected by the COVID-19 pandemic.

4) OVERSIGHT OF PACE SOLICITORS REMAINS INSUFFICIENT

Unlike PACE program administrations, PACE solicitors and their agents are not required to be licensed by the Department of Financial Protection and Innovation (DFPI). Partially due to the lack of a licensure requirement, the department's investigatory authority and processes related to solicitors and their agents are byzantine, requiring DFPI to work with the program administrator involved in the transaction and delaying administrative orders until a less authoritative process has been exhausted. Furthermore, the department's enforcement authority is limited to cease and desist orders with no authority for the department to order penalties or ancillary relief when a PACE solicitor or their agent has violated the law.

5) WHAT THIS BILL DOES

¹ For example, see: <https://www.latimes.com/business/la-fi-pace-adu-bankrupt-20190217-story.html>

² <https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-improvement-loans-la-county>

³ <https://cleantechnica.com/2016/04/26/85-california-can-apply-hero-pace/>

This bill authorizes DFPI to order a PACE solicitor and/or its agent to pay ancillary relief to a person harmed by their behavior. The authority provided by this bill equips DFPI with a tool to seek refunds, restitution, disgorgement, or payment of damages that would make a harmed consumer whole. According to legal aid organizations that represent low-income consumers who have been harmed by PACE transactions, oftentimes it is the home improvement contractor, serving as a PACE solicitor, who makes the false or misleading statements that deceive the property owner into entering the transaction. This bill gives DFPI the direct authority to seek redress from the PACE solicitor or its agent that remedy the harm they inflicted on the property owner.

The department's authority would be focused on actions related to PACE solicitation – those activities related to communication between the solicitor and the property owner about the PACE program. The authority is not designed to allow DFPI to bring an action related to shoddy workmanship or other harms related to the delivery of the home improvement project itself. The Contractors State Licensing Board retains its jurisdiction over issues related to the actual home improvement projects.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Realtors
California Credit Union League
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Opposition

None

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