

Date of Hearing: May 4, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2693 (Dababneh) – As Amended April 28, 2016

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

**SUMMARY:** Makes changes to the statutes which govern contractual voluntary assessments and Mello-Roos special taxes which provide the financing authorization for Property Assessed Clean Energy (PACE) programs. Specifically, **this bill:**

- 1) Prohibits a public agency from permitting a property owner to participate in any voluntary contractual assessment program if any of the following apply:
  - a) 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;
  - b) The total mortgage-related debt on the property alone 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; and,
  - c) The property owner is unable to meet all of the following criteria:
    - i) The property owner certifies that the property taxes are current and that there is no more than one late payment, as specified;
    - ii) The property owner certifies that he or she is not currently in default on any debt secured by the property and that there is no more than one late payment, as specified;
    - iii) If the property owner is a homeowner applicant, the property owner has not had any active bankruptcies within the last seven years. This criteria can be met if the bankruptcy was discharged between two and seven years before the application date and there are no mortgage or nonmortgage payments past due, as specified; and,
    - iv) The property owner does not have an involuntary lien recorded against the property in excess of \$1,000.
- 2) Prohibits a public agency from permitting a homeowner from participating in any voluntary assessment program, unless the property owner has been provided with a completed financing estimate document, described in 7), below, or a substantially equivalent document that displays the same information in a substantially similar format.
- 3) Provides failure to comply with the requirements of 1), and 2), above renders the contractual obligation of a property owner for a voluntary contractual assessment void.
- 4) Specifies that the 5% cap on any annual property taxes and assessments, as determined at the time of the approval of the owner's voluntary contractual assessment, is on the property fair market value.

- 5) Deletes existing law which provides that nothing in the statutes which govern contractual assessments shall be construed to void or otherwise release a property owner from the contractual obligations incurred by a contractual assessment, particularly in the event that the total amount of annual property taxes and assessments exceeds 5% of a property's market value after the property owner has entered into a contractual assessment. Instead provides, except as stated in 1), and 2), above, nothing in the statutes which govern contractual assessments shall be construed to void or otherwise release a property owner from the contractual obligations incurred by a contractual assessment on a property.
- 6) Requires specified disclosure to be completed and delivered to a homeowner, as soon as practicable before, and in no event later than when a homeowner becomes obligated to a voluntary assessment, pursuant to existing law which governs voluntary contractual assessments, Mello-Roos special taxes, and the definition of a PACE bond under the California Alternative Energy and Advanced Transportation Financing Authority's (CAEATFA) Act.
- 7) Specifies the contents and format of the "Financing Estimate and Disclosure" which must also include a Notice to Homeowners that reads "The financing arrangement described below will result in an assessment against your 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."
- 8) Changes, in existing law for residential private property units that the number is five not four, to distinguish commercial and nonresidential property from residential dwelling units.
- 9) Requires, in a foreclosure initiated by the noteholder secured by a deed of trust for purchase money or refinanced purchase money obligation or the local government, the purchase money or refinance purchase money holder to be treated as an encumbrance that is senior to any delinquency of a contractual voluntary assessment.
- 10) Requires the seniority of the purchase money obligation to be retained, regardless of whether the delinquency occurred before or after the purchase money obligation was recorded against the property.
- 11) Provides that the Legislature recognizes that the voluntary special assessments, as specified, are unique, and require unique treatment of this secured priority.
- 12) Prohibits this bill from being interpreted or applied to affect the status or priority of any municipal or county lien other than a lien addressed in this section, and prohibits it from creating any implied precedent for the interpretation of any other remedy or collection mechanism available to a governmental entity.
- 13) States the change in priority affected by this bill applies to assessments agreed to on or after January 1, 2017.
- 14) Requires an assessment levied or a delinquency collected, pursuant to the Mello Roos Community Facilities Act, to finance specified energy improvements be collected using the procedures set out in statutes which govern voluntary contractual assessments.

- 15) Removes a Mello Roos special tax, a voluntary special tax, or authorization granted, pursuant to a chartered city's constitutional authority, under Section 5 of Article XI of the California Constitution, from the types of revenues used to secure a "Property Assessed Clean Energy bond" or "PACE bond" in the definition provided in the PACE and Cleaner Energy Financing Program under the CAEATFA Act.
- 16) Removes the authorization in existing law for a local agency's legislative body to authorize another procedure for the imposition and collection of voluntary contractual assessments, including, but not limited to, lien priority, the timing of collection, and any penalties and remedies in the event of delinquency and default.
- 17) Provides that any voluntary assessment has the force, effect, and priority of a judgment lien, as established by the date of its recordation.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Property Assessed Clean Energy (PACE) Programs.** Utilizing the authority to create a financing district as a charter city, the City of Berkeley, in 2007, established a citywide voluntary program to allow residential and commercial property owners to install solar systems and make energy efficiency improvements to their buildings and to repay the cost over 20 years via an assessment on the property tax bill. Since the inception of PACE as a financing tool in Berkeley, the Legislature has granted the authority to local governments to provide up-front financing to property owners to install renewable energy sources or energy efficiency improvements that are permanently fixed to their properties, which is repaid through the property tax system.

Most PACE programs are implemented and administered under two statutory frameworks: AB 811 (Levine), Chapter 159, Statutes of 2008, amended the Improvement Act of 1911 to allow for voluntary contractual assessments to finance PACE projects, and SB 555 (Hancock), Chapter 493, Statutes of 2011, amended the Mello-Roos Community Facilities District Act to allow for Mello-Roos special taxes (parcel taxes) to finance PACE projects.

The Legislature has expanded PACE for residential and commercial property owners to pay for renewable energy upgrades, energy or water efficiency retrofits, seismic improvements, and other specified improvements for their homes or buildings. Local agencies create PACE assessment districts under AB 811 or establish a CFD under SB 555, 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 or agree to annex their property into a CFD to re-pay the bonds via an assessment or special tax (parcel tax), secured by a priority lien, on their property tax bill. The intent of the program is that the assessment or parcel tax remains with the property even if it is sold or transferred, and the improvements must be permanently fixed to the property.

In California, there are several models available to local governments in administering a PACE program. Only the counties of Sonoma and Placer administer their own PACE programs. The majority of local governments contract with a private third-party or join a Joint Powers Authority (JPA), 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. Some of these programs focus on residential projects, others target commercial projects, and some handle both residential and commercial portfolios.

- 2) **Federal Housing Finance Agency.** In 2010, the Federal Housing Finance Agency (FHFA), which oversees the nation's largest mortgage finance companies, Fannie Mae and Freddie Mac, raised concerns that residential PACE financing could pose a risk for federal mortgage enterprises (Fannie Mae and Freddie Mac), because PACE loans are a first-priority lien in the case of foreclosure and outstanding PACE assessments would be paid before mortgage costs. FHFA specifically pointed to the underwriting for PACE programs which result in collateral-based lending rather than lending based upon ability to pay. Statements also pointed to the absence of Truth In Lending Act and other consumer protections. In August of 2010, Fannie Mae and Freddie Mac announced they would not purchase mortgages for homes with first lien priority PACE obligations. The FHFA's action triggered many local governments to suspend their residential PACE programs.

SB 96 (Committee on Budget and Fiscal Review), Chapter 356, Statutes of 2013, sought to address FHFA's decision, and tasked CAEATFA with administering a PACE loss reserve program of \$10 million to keep mortgage interests whole during a foreclosure or a forced sale. CAEATFA established regulations, and the majority of PACE administrators participate in the program. The PACE Loss Reserve Program will compensate first mortgage lenders for losses resulting from the existence of a PACE lien in a foreclosure or forced sale. The program will cover PACE payments made during foreclosure, if a mortgage lender forecloses on a home that has a PACE lien, and any losses to a first mortgage lender up to the amount of outstanding PACE payment, if a county conducts a forced sale on a home for unpaid taxes. The intent of the Program is to put the first mortgage lender in the same position it would be in without a PACE lien.

The FHFA issued clarity to their position following the creation of the PACE Loss Reserve Program, in a letter to the Governor dated May 1, 2014, which reads, "I am writing to inform you that FHFA is not prepared to change its position on California's first-lien PACE program and will continue to prohibit the Enterprises from purchasing or refinancing mortgages that are encumbered with first-lien PACE loans...In making this determination, 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. "

- 3) **Federal Housing Administration.** In August 2015, the Federal Housing Administration (FHA) announced the development of Single Family FHA PACE guidance. "The Single Family FHA guidance will address the impact of PACE assessment on purchases, refinances and loan modification options available to borrowers experiencing distress and will require the subordination of PACE financing to the first lien FHA mortgage. The guidance will address the eligible methods of subordination of existing PACE liens." The FHFA has not issued anything further following the announcement from FHA regarding the development of guidelines.

- 4) **Liens.** PACE financing provides creditors security that they would be repaid because property tax liens are super priority liens that are senior to mortgage debt. If a house is sold in a foreclosure or tax sale, the PACE lien holder will be paid before other lienholders, like mortgage lenders. In response to FHFA's decision not to purchase mortgages with PACE liens, some third party PACE providers have started offering an option to homeowners who are unable to refinance or sell their homes called "Limited Subordination" or "Contractual Subordination". These contractual lien subordinations are an agreement between the PACE lien holder (third party PACE program administrator/local government) and a mortgage lender (noteholder of the first deed of trust), where the PACE lien holder "subordinates" their right to foreclose on a home for non-payment of PACE assessments, and to the proceeds from foreclosure, until the mortgage lender has been paid in full for amounts due under its mortgage.

This practice is relatively new within the industry, and not all PACE providers offer contractual lien subordination. The concept of subordinated PACE liens and subordinated PACE bonds is still relatively new to the capital markets. According to Renovate America, a third party PACE administrator, since last spring they have approved 100% of applications from homeowners seeking to enter into contractual lien subordination agreements and have completed over 400 subordination contracts. Additionally, the consequences of contractual subordination agreements is untested when it comes to the issues presented to a local government's county tax collector to comply with existing law which governs delinquent assessments, when they are removed from the tax roll, interest penalties, and property sales.

- 5) **Bill Summary.** This bill makes a number of changes to the statutes governing voluntary contractual assessments and Mello-Roos special taxes which are used to repay "PACE bonds" which finance energy improvements on private property in PACE programs that utilize the AB 811 or SB 555 statutory framework. This bill is co-sponsored by the California Association of Realtors, California Bankers Association, California Credit Union League, California Escrow Association, California Mortgage Association, California Mortgage Bankers Association, and the United Trustees Association.

**Parameters on a Property Owner's Participation in PACE.** This bill establishes uniform criteria that a property owner must meet in order to participate in a voluntary contractual assessment program. Existing law prohibits a property owner from participating in a voluntary contractual assessment program, if participation would result in the total amount of annual property taxes and assessments exceeding 5% of the property's market value, as determined at the time of approval of the owner's contractual assessment. This bill specifies that the 5% cap is based on the property's fair market value. This bill also places parameters on a property owner's participation based on the property's total mortgage-related debt and in combination with debt related to the contractual assessments. This bill also places constraints on a property owner's participation based on financial history relating to late payments on property tax and other related debt secured by the property.

If the property owner is a homeowner, this bill places parameters on participation due to recent bankruptcy and requires that homeowners are provided with a completed financing estimate document. This bill states that failure to comply with any of these requirements renders the contractual obligation of a property owner for a voluntary contractual assessment void.

**Disclosure to Homeowners.** This bill establishes uniform disclosures that must be provided to each homeowner prior to participating in a PACE program (established pursuant to AB 811 or SB 555). Existing law places requirements on a local agency upon passage of a resolution to use voluntary contractual assessments, including a report which must contain specified information regarding the program and underwriting standards used. Under this bill, each homeowner must receive a completed financing estimate document, which contains products and costs, financing costs, other terms, and notification to the homeowner about making payments via the property tax bill, and the potential requirement to pay the remaining balance of the assessment upon sale or refinance.

**Lien Status.** This bill requires, in a foreclosure initiated by the purchase money or refinanced purchase money holder or local government, the delinquency of a contractual voluntary assessment to be junior to the purchase money. This bill provides that the seniority of the purchase money obligation remains, regardless of whether the delinquency occurred before or after the purchase money obligation was recorded against the property. This bill states the changes in priority affected by this bill applies to assessments agreed to on or after January 1, 2017.

Unlike the current practice of contractual lien subordination, which is an agreement entered into on a case-by-case basis, when a homeowner tries to refinance or sell their home, this bill changes the lien priority in the event of foreclosure for delinquent PACE assessments to any voluntary contractual assessment agreed to on or after January 1, 2017. This bill seeks to provide more security to a mortgage lender (note holder of trust deed of trust for purchase or refinance money) by granting their claim to the proceeds in the event of a foreclosure as senior to the claims of a PACE lien holder (third party administrator or local governments) of any delinquent contractual assessment.

- 6) **Author's Statement.** According to the author, "Homeowners are at risk from two deficiencies in the law governing so-called PACE financing: (1) A PACE encumbrance jeopardizes conventional mortgage financing for the home; and, (2) PACE financing extends credit secured by the home without providing Truth in Lending disclosures and without the underwriting safeguards applicable to other loans.

"PACE loans present several challenges for consumers in that they negatively affect future financial transactions, there is a lack of true underwriting relative to the borrower's ability to repay the debt, and the terms and conditions are not adequately disclosed. These methods of finance have received attention by FHFA, the regulator for the government-sponsored entities (GSEs) known as Fannie Mae and Freddie Mac. The FHFA's concerns are rooted in longstanding lending and underwriting principles. The GSEs exist as a secondary market providing liquidity, stability and affordability to the mortgage market. The GSEs buy mortgages from lenders and the cash raised from selling loans allows those lenders to engage in further lending. This process provides a stable supply of funds available for mortgage loans and makes those loans more affordable for consumers.

"Since the federal government is responsible for backing the overwhelming majority of all new mortgage originations, the GSEs' unwillingness to purchase mortgages will have a chilling effect on the availability of credit and the opportunity for consumers to purchase or refinance homes. One of the GSEs has recently announced that it will allow a "cash out" refinance to include funds to pay off the balance of a pace encumbrance, but the solution is at

best a bandaid on a broken situation - homeowners must then demonstrate that they have additional equity to secure the extra debt, they will have to pay increased downpayment and costs, and must qualify to pay the increased mortgage payments.

"These consequences are substantial and may preclude a borrower from completing a necessary transaction. Ultimately, a borrower needing to refinance or sell their property will be forced to pay the entirety of the PACE loan balance. Concerns have also been expressed that such PACE-like financing mechanisms may reduce the marketability of houses so encumbered. Prospective purchasers may be reluctant to enter transactions where a PACE loan exists, or find that conventional financing is unavailable.

"The level of underwriting conducted by public agencies or their agents when extending PACE loans is deficient. In fact, PACE loans currently technically trigger a "term default" under uniform deeds of trust wherein they violate clauses prohibiting the borrower from allowing a super-priority lien to attach to the real property. This is exacerbated by the failure to ask lienholders for consent prior to entering into a voluntary contractual assessment.

"AB 2693 makes two important consumer protection changes to PACE loan agreements. First, the measure requires that borrowers receive a model, statutory disclosure designed to inform them about the financial terms and conditions associated with a PACE loan. Adopting this standardized disclosure is intended to reflect an effort to achieve compromise in that it is less burdensome than the Truth in Lending/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) that lenders must provide when making real-estate secured loans. Second, the measure requires PACE loans to be subordinated to purchase money mortgage debt consistent with what has been described as the PACE industry general business practice. This is a fair compromise giving PACE providers better lien priority compared to other creditors. Other creditors are granted judgment lien status wherein their priority is based upon recordation date.

"In furtherance of our effort to achieve compromise, recent amendments make it clear that the bill applies only to single-family residential PACE liens, and not commercial or non-residential loans. In addition, language has been added applying these new provisions prospectively to PACE encumbrances agreed to on or after January 1, 2017."

- 7) **April 28<sup>th</sup> Amendments.** Upon passage in the Banking and Finance Committee, the author significantly amended this bill. The committee amendments sought to remove language in the bill regarding judgment liens and instead add language regarding limited lien subordination. These amendments did not, however, strike out the judgment lien language. The Committee may wish to note the bill summary and comments of this analysis focus on the author's intent which does not reference the judgment lien language.
- 8) **CAEATFA.** As part of the 2015-16 Budget, the Legislature tasked CAEATFA, in consultation with the California Public Utilities Commission, to create a working group with stakeholders to develop criteria for the comparative assessment of energy efficiency financing programs in California, including PACE financing. CAEATFA has created a public process to ensure stakeholder participation and draft criteria for the comparative assessment of energy efficiency financing programs for public comment. The draft criteria includes energy saving attributable to program financing, cost-effectiveness, and customer experience, which includes customer satisfaction and customer protections.

9) **Policy Considerations.** The Committee may wish to consider the following:

- a) **The Evolution of PACE and Lien Subordination.** The Committee may wish to consider if it is the best approach to legislate based on the current practice of contractual lien subordination offered by some third party PACE providers.

At the inception of the PACE program, the presence of third party administrators and the accompanying complex financing structures were not contemplated by the Legislature. Very few local governments administer their own PACE programs, and instead, contract out to third party providers. As PACE continues to evolve and the realities are very different than those imagined at the outset of Legislative authorization, the Legislature has continued to attempt to catch up not only with the advances in energy efficiency technology, but to the evolving methods of financing utilized by these companies in this vastly growing and thriving industry. The Committee may wish to consider the impact of this bill on PACE programs implemented by local governments that do not offer contractual lien subordination and who argue that the risk to local governments placed in a less secure position behind mortgage lenders in the case of foreclose would prevent them from continuing their PACE program in a responsible manner.

Additionally, the Committee may wish to obtain a fuller picture of the use of contractual lien subordination by third party providers before concluding that there would be no consequences to the viability of PACE programs. The Committee may wish to consider the implications of subordination to any degree either statutorily or contractually not only because the security is provided by assessments or special taxes collected on the property tax roll, but because the rules governing tax collection, default, and property sale do not address the types of unique PACE financing structures. Further, the Committee may wish to consider the implications on the market of more frequently used contractual subordination and legislatively mandated subordination.

- b) **Disclosures.** The Committee may wish to note the consensus from stakeholders around the increased disclosures provided by this bill and contemplate whether disclosures may address some of the potential issues of homeowners becoming delinquent on their assessment payments and help to avoid foreclosure. The Committee may wish to ask the author to expand these efforts by requiring PACE providers to offer a three-day right of rescission.
- c) **Broader Oversight.** Beyond the scope of this individual bill, the Committee may wish to consider a few other elements in consideration of PACE programs. A number of articles provided by the author point to aggressive contracting techniques, misinformation and misunderstanding on the part of the homeowner, a lack of savings due to high interest rates, and challenges for homeowners seeking to refinance or sell their properties. The Committee may wish to more closely examine the oversight that is being provided by local governments, including JPAs, on the practices of contractors, the relationship between third party providers and contractors, the outcomes of CAEATFA's working group, and the use contractual lien subordination and effects on local governments in the event of a default, foreclosure, and property sale.
- d) **Local Government Requirements.** Current law establishes a number of requirements for a local agency upon passage of a resolution to use voluntary contractual assessments. One of these requirements is a report which must include specified information regarding

the contractual assessment program. For example, the report must include a brief description of criteria for determining the underwriting requirements and safeguards that will be used to ensure that the total annual property tax and assessments on the property will not exceed 5% of the property's market value, and a plan for raising a capital amount required to pay for work performed pursuant to contractual assessments.

As the statutes to expand flexibility to financing structures utilized by PACE have been amended, the requirements of what should be included in a local governments resolution has not. For example, local agencies that transfer all rights to any voluntary contractual assessments, if bonds have not been issued, to a third party capital provider are not required to include these types of agreements in their report on a contractual assessment program. Similarly this bill does not require any of the criteria, disclosure, or information regarding the lien status to be included in the report. The Committee may wish to consider if this information should be provided to homeowners on an individual basis if there should also be increased disclosure provided in the report produced by local governments.

- e) **Clarity and Consistency.** The Committee may wish to encourage the author to further clarify which provisions of the bill impact residential versus commercial property owners. The author may also wish to clarify the amendments to the definition of a PACE bond under CAEATFA's Act and the Mello-Roos Act to ensure that special taxes collected for PACE programs are correctly referenced to ensure the bill's provisions apply to PACE programs administered utilizing both the AB 811 and SB 555 statutes. Further, because local agencies utilize voluntary contractual assessments to pay for other improvements besides PACE, the author may wish to clarify that the disclosure and limitations on participation apply to other programs established under existing law which authorizes voluntary contractual assessments.

10) **Committee Amendments.** In order to address issues raised in the Policy Considerations under (a), (b), and (c) above, the Committee amendments would do the following:

- a) Remove the language contained in Section 6 of the bill regarding liens and the priority of the encumbrance of a note holder of a deed of trust over a PACE lien holder of a delinquent assessment.
- b) Retain all disclosure requirements and parameters for participation in PACE programs and add a three day right to rescission that must be provided to homeowners.
- c) Remove the judgment lien language in Section 7 of the bill that was inadvertently kept in the April 28<sup>th</sup> amendments.

11) **Arguments in Support.** Co-sponsors of the bill argue, "AB 2693 requires that borrower receive a model, statutory disclosure designed to inform them about the financial terms and conditions associated with a PACE loan. There should be no confusion in the mind of 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. Unfortunately for homeowner, if they don't receive a disclosure that adequately describes the terms and conditions of the underlying agreement they are entering, they cannot effectively shop for financing of energy conservation improvements, cannot make a

thoughtful comparison of the loan to finance the home improvement, and may not have the opportunity to consider the effect of placing a lien on their home for that purpose.

"Existing law treats PACE liens as an opt-in tax assessment. This is a huge difference from most financing. As a tax assessment, they have 'super-priority' over other liens, like mortgages, in part because they are collected by county tax assessors. If there is a delinquency, it jumps ahead of other obligations (like a mortgage or mechanic's lien) secured by the property. This jumping ahead in line means the PACE obligation is paid first, even if it was attached to the property long after the mortgage or other lien, and even if it was done without the consent of the senior lenders.

"The super-priority of PACE liens has caused the secondary mortgage market (Fannie Mae and Freddie Mac; and soon FHA as well) to refuse to finance or re-finance a property with a PACE lien. The rejection by the secondary mortgage market will dramatically impair the California real estate market.

"As, amended, AB 2693 will now make a delinquency in the PACE assessment junior to a purchase money mortgage in priority. However, the underlying assessment will be preserved, and only the delinquent payment will be affected by a mortgage foreclosure. In addition, recent amendments make it clear that the bill applies only to single-family residential PACE liens, and not commercial or non-residential loans. Finally, language has been added making it clear that these new provisions will apply prospectively to encumbrances agreed to after January 1, 2017."

- 12) **Arguments in Opposition.** The League of California Cities and California State Association of Counties argues, "To date, over 400 local government in California have voted to enable PACE programs to operate in their communities, and at their discretion. Sonoma County's Energy Independence Program, a pioneer of the PACE movement, to date, funded thousands of projects, totaling \$73 million in energy and water efficiency improvements, which equates to a reduction of 10,505 metric tons of CO2 equivalent per year. AB 2693 would seriously undermine this progress. Eliminating the senior lien status of PACE assessment 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 assessment to be limitedly subordinated to a first deed of trust. As California continues to work with FHFA to develop resolution on the property lien status issue, we strongly believe that this bill would impair this process and potentially undermine the effort."

The California Association of County Treasurers and Tax Collectors argues, "The reality is that oftentimes, taxpayers don't understand that repayment of these assessments are collected on the annual property tax bill and that they should contract their lender to increase their monthly impound, or set aside additional funds to pay for their higher tax bill. In the continued absence of strict regulation in this area by a state agency tasked with consumer protection, there will undoubtedly be untold more angry consumers contacting treasurer tax collector... We believe the bill should also be amended to place private party PACE lenders under the jurisdiction of an agency with regulatory authority such as the Department of Business Oversight to eliminate further disclosure – related and other consumer problems.

We would recommend that industry standards for disclosure, training, and ethics be required, and standardized disclosure forms be developed and required for future PACE transactions.

"At the outset of the legislation authorizing PACE liens, these types of third party lenders were not contemplated. In fact, County Treasurer Tax Collectors initiated some programs, notably in Placer and Sonoma, which exist to this day and which do not report the same kind of angry taxpayer calls, disclosure, and other consumer problems. As public agencies, we have the responsibility to operate prudent and responsible programs not only for those who participate, but for all of our constituents. Third party providers do not have the same incentive.

"Contractual subordination does not belong in the statute...those amendments were crafted with no input from the very government body tasked with making those collections, and they pose an incredible threat to the import and integrity of the tax collection system. It is our sincere hope that your committee, charged with crafting and considering legislation that will directly impact local government, will reject this preposterous language."

Renovate America argues, "The contractual subordination model has proven successful for Renovate America, but ensconcing it in statute at this point and tying the hands of local governments who operate PACE programs without private capital is not necessary so long as clear and transparent disclosures are in place. The existence of a – yet untapped - \$10 million fund to compensate first mortgage lenders for any losses in a foreclosure for forced sale due to the PACE lien, and the market response by actors such as Renovate America in assigning their rights to initiate a foreclosure and to collect proceeds from a foreclosure further underscore this point."

- 13) **Double Referral.** This bill was heard by the Banking and Finance Committee on April 25, 2016, where it passed with an 11-1 vote.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Association of Realtors [CO-SPONSOR]  
California Bankers Association [CO-SPONSOR]  
California Credit Union League [CO-SPONSOR]  
California Escrow Association [CO-SPONSOR]  
California Mortgage Association [CO-SPONSOR]  
California Mortgage Bankers Association [CO-SPONSOR]  
United Trustees Association [CO-SPONSOR]  
California Community Banking Network  
Central Valley Community Bank  
Community West Bank  
Valley Republic Bank

##### **Concerns**

California Municipal Finance Authority

**Opposition**

California Association of County Treasurers and Tax Collectors (unless amended)  
California Solar Energy Industries Association  
California State Association of Counties (unless amended)  
CleanFund Commercial PACE Capital, Inc.  
Ecosystem Integrity Fund  
Placer County Treasurer-Tax Collector Jenine Windeshausen (unless amended)  
League of California Cities (unless amended)  
PACE Equity  
PACE Funding  
Placer County Board of Supervisors (unless amended)  
Renew Financial  
Renovate America  
Sonoma County Board of Supervisors  
Sonoma County Water Agency  
Urban Counties of California  
Western Riverside Council of Governments

**Opposition to the previous version of the bill:**

ABS Applied Building Science  
Apperson Energy Management  
Brower Mechanical, Inc.  
California Energy Efficiency Industry Council  
California League of Conservation Voters (unless amended)  
City of San Diego  
Clarke & Rush  
Climate Action Plan  
Community Action Agency of Butte County, Inc.  
Eco Performance Builders  
Efficiency First California  
Energy Masters  
Energy Resolutions, Inc.  
Environmental Defense Fund (unless amended)  
Gary Dobson Construction  
JR Construction – SOL Solutions, Inc.  
JR Putman, Inc.  
Kevel Home Performance  
McClelland Air Conditioning  
PACENation  
Placer County Contractors' Association (unless amended)  
Progressive Insulation & Windows  
Pros360  
RBB Architects, Inc.  
ReNewAll  
Rising Design & Construction  
Seagate Properties, Inc.  
South Bay Cities Council of Governments

**Opposition to previous version of the bill (continued)**

Syntrol  
Ultimate Home Performance  
Vote Solar  
Ygrene  
Individual letters (5)

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