

Date of Hearing: September 15, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1284 (Dababneh) – As Amended September 12, 2017

SUBJECT: California Financing Law: Property Assessed Clean Energy program: program administrators.

SUMMARY: Establishes requirements for Property Assessed Clean Energy (PACE) program administrators that must be met before PACE assessment contracts may be funded and recorded by a public agency, renames the California Finance Lenders Law (CFLL) as the California Financing Law (CFL), requires program administrators to be licensed under the CFL, and establishes a regulatory scheme for the oversight of PACE solicitors and PACE solicitor agents.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Prohibit a program administrator from approving an assessment contract for funding and recordation by a public agency, unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment.
- 2) Require a program administrator to determine, prior to funding and recordation by a public agency of the assessment contract 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. The determination process must be based on the following factors:
 - a) The property owner's monthly income and housing expenses, as submitted by the property owner on their application;
 - b) Housing expenses, including all mortgage and interest payments, insurance, and property taxes, as specified; and,
 - c) Debt obligations, as specified.
- 3) Prohibit equity of the property from being considered in evaluating the income, assets, and current debt obligations.
- 4) Require the program administrator to ask the property owner open ended questions during a confirmed terms call to verify stated income.
- 5) Require the program administrator to determine and consider a property owner's current or reasonably expected income or assets, that the program administrator relies on, using reasonably reliable third-party records, in order to determine a property owner's ability to pay the PACE assessment annual payment obligations.
- 6) Authorize the program administrator to use automated verification provided the source of verification is specific to the income of the property owner and not based on predictive or estimation methodologies, and has been determined sufficient for verification purposes by a

federal mortgage lending authority or regulator, and provide examples of the records the program administrator may use to verify the property owner's income or assets, as specified.

- 7) Require a program administrator to consider the monthly debt obligations of the property owner to determine a property owner's ability to pay the annual payment PACE assessment obligations using reasonably reliable third-party records, including one or more consumer credit reports from specified agencies. Program administrators must use at least a two-file Merged Credit Report (MCR) or a Residential Mortgage Credit Report (RMCR). Monthly debt obligations include, but are not limited to, all secured and unsecured debt, alimony, child support, and monthly housing expenses.
- 8) Require the program administrator, in calculating the ability of the property owner to pay annual payment obligations, to determine that the property owner's income is sufficient to meet the PACE payment, including all interest and fees, mortgage payments, existing debt and obligations, and household living expenses, as specified.
- 9) Provide an exemption from the requirements to verify income using third party-records, the funding and recordation of a PACE assessment to finance a heating, ventilation, and air conditioning (HVAC) system, boiler, or other system whose primary function is temperature regulation as long as the amount of the assessment contract is no greater than \$15,000 in total or \$1,500 per year, whichever is larger, and the property owner confirms the emergency or immediate necessity of the improvement, as specified. The program administrator must report annually all PACE assessments that were funded and recorded in a form acceptable to the Commissioner (Commissioner) of the California Department of Business Oversight (DBO).
- 10) Require the program administrator to be responsible for the difference between the determination of the property owner's ability to pay the annual PACE obligations and the actual amount financed for the property owner that is obligated on the underlying home improvement contract, except in a case of intentional misrepresentation by the property owner.
- 11) Prohibit a program administrator from submitting, presenting, or otherwise approving for recordation by a public agency an assessment contract, unless the following criteria are met:
 - a) All property taxes for that property that will be subject to the assessment contract are current. Require the program administrator to ask the property owner whether there has been no more than one late payment of property taxes in the three previous years or since the current owner acquired the property, whichever period is shorter;
 - b) The property has no recorded and outstanding involuntary liens in excess of \$1,000;
 - c) The property has no notices of default currently recorded which have not been rescinded;
 - d) The property owner has not been party to any bankruptcy proceedings within the last seven years, except as specified;

- e) The property owner is current on all mortgage debt and has been late on payments no more than once during the 12 months preceding the application date, as specified;
 - f) The property is within the geographical boundaries of the applicable PACE program and the measures to be installed, pursuant to the assessment contract, are eligible under the terms of the applicable PACE program;
 - g) The financing is for less than 15% of the value of the property, up to the first \$700,000 inclusive of the existing assessments, and is for less than 10% of the remaining value of the property above \$700,000;
 - h) The total PACE assessments and the mortgage-related debt on the property does not exceed 97% of the market value of the property, as specified;
 - i) The term of the assessment contract does not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract are attributable. The program administrator must determine useful life based upon credible third-party standards or certification criteria established by appropriate government agencies or nationally recognized standards and testing organizations;
 - j) The program administrator must verify the existence of recorded PACE assessments and to ask if the property owner has authorized additional PACE assessments on the same subject property that have not yet been recorded; and,
 - k) The program administrator must use commercially reasonable and available methods to verify the required information above.
- 12) Require a program administrator to derive market value using an automated valuation model, as specified, or an appraisal conducted within six months of the PACE assessment application date by a state-licensed real estate appraiser, and require the market value determination by the program administrator to be disclosed to the property owner.
- 13) Rename the CFLL the CFL, prohibit any person from engaging in the business of a program administrator without obtaining a license from the Commissioner, and provide that program administrators are subject to: the administrative provisions of the CFL; a new Chapter of the CFL that this bill creates; and, specified enforcement provisions of the CFL.
- 14) Provide that the provisions of this bill do not affect the validity and enforceability of any PACE assessment contracts entered into or any bonds issued and secured by such contracts.
- 15) Require persons seeking to be licensed as program administrators to comply with all of the same requirements applicable to persons seeking to be licensed as finance lenders or finance brokers under the existing CFLL, including criminal history background checks of key management and personnel; a requirement to license one's main office and each branch office out of which it wishes to engage in business; a net worth requirement; and, a surety bond requirement.

- 16) Provide that, once licensed, program administrators are subject to the non lending-specific requirements of the CFL, such as requirements to pay an annual assessment to cover DBO's administrative costs, notify DBO of changes in the information required as a condition of licensure, retain books and records for a specified period of time, submit to periodic examinations, and file annual reports, as specified, and special reports, as applicable.
- 17) Subject licensed program administrators to the same prohibitions against misleading and dishonest behavior that apply to finance lender and finance broker licensees under the existing CFL and to the same types of enforcement actions as those that may be brought against finance lender and finance broker licensees, with the exception that the criminal penalties contained in the CFL for willful violations of the law by finance lenders and finance brokers (Financial Code Sections 22753 and 22780) will not apply to program administrators.
- 18) Add a new Chapter 3.5 to the CFL to regulate PACE program administrators, PACE solicitors, and PACE solicitor agents; provide that program administrators, PACE solicitors, and PACE solicitor agents are not subject to the provisions of the CFL governing consumer or commercial loans; and, provide that finance lenders, finance brokers, and mortgage loan originators are not subject to the provisions of the CFL governing program administrators.
- 19) Require a program administrator to establish and maintain a process for enrolling PACE solicitors and PACE solicitor agents, which must include the following: a required written agreement between the program administrator and the PACE solicitor, setting forth the obligations of the PACE solicitor and its PACE solicitor agents; and, a review of readily and publicly available information regarding each PACE solicitor.
- 20) Require each PACE solicitor or PACE solicitor agent to be either licensed or registered in good standing with the Contractors' State License Board or be exempt from or not subject to such licensure or registration.
- 21) Prohibit a program administrator from enrolling a PACE solicitor if there is a clear pattern of specified complaints against or specified inappropriate behavior committed by that PACE solicitor or a high likelihood that the PACE solicitor will engage in specified bad acts, if enrolled, and require the enrollment process for PACE solicitor agents to include background checks and specified training and testing.
- 22) Require a program administrator to establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law and to cancel the enrollment of PACE solicitors and PACE solicitor agents, as specified. A program administrator must notify the Commissioner of each PACE solicitor and PACE solicitor agent enrolled and of each PACE solicitor and PACE solicitor agent enrollment cancellation and withdrawal processes.
- 23) Require a program administrator to develop and implement policies and procedures for responding to questions and addressing complaints as soon as reasonably practicable.

24) Establish the following enforcement provisions specific to program administrators and PACE solicitors:

- a) A program administrator may not permit a PACE solicitor to do any of the following:
 - i) Solicit a property owner to enter into an assessment contract with a program administrator, unless the PACE solicitor and the program administrator comply with the requirements of this bill;
 - ii) Engage in any act in violation of specified sections of the Streets and Highways Code, as specified, regarding financial disclosure documents and a three day right to cancel document provided to property owners, and those that are proposed to be added by SB 242 (Skinner);
- b) Provide that a program administrator is subject to the enforcement authority of the Commissioner for any violations of the CFL, to the extent such violations are committed by the program administrator or by a PACE solicitor authorized by that program administrator in connection with activity related to that program administrator;
- c) Provide that a violation of a), above, by a program administrator or by a PACE solicitor authorized by that program administrator in connection with activity related to that program administrator represents a violation of the CFL;

25) Establish the following examination and enforcement procedures specific to PACE solicitors and PACE solicitor agents:

- a) If, in the course of an inspection, examination, or investigation of a program administrator, the Commissioner has cause to believe that the program administrator, a PACE solicitor, or a PACE solicitor agent may have committed a violation of the CFL, or if the Commissioner seeks to obtain or provide information necessary to administer the CFL with respect to a matter related to a PACE solicitor or PACE solicitor agent, and either this information is not available directly from the program administrator, or the Commissioner seeks to validate the information obtained from the program administrator, the Commissioner may inspect, examine, or investigate any and all relevant documents, records, files, and communications of the PACE solicitor or PACE solicitor agent, and may require the attendance of witnesses and examine specified persons under oath;
- b) If, upon inspection, examination, or investigation, the Commissioner has cause to believe that a PACE solicitor or PACE solicitor agent is violating any provision of the CFL, the Commissioner must exhaust the procedure described in i) immediately below, before he or she may bring an order against a PACE solicitor or PACE solicitor agent using the procedure described in ii) immediately below;
 - i) The Commissioner must issue a report to the program administrator and PACE solicitor and, if applicable, to the PACE solicitor agent identifying each suspected violation. The report recipients must be given the opportunity to provide a written response to the Commissioner. If the Commissioner believes that further action is

necessary, he or she may demand specified corrective action, demand that the program administrator, PACE solicitor, or PACE solicitor agent stop engaging in the violation(s), and/or do one of the following: demand that the PACE solicitor or PACE solicitor agent cease engaging in the business of soliciting property owners to enter into assessment contracts, or demand that the program administrator deauthorize the PACE solicitor or PACE solicitor agent, or both, for up to 12 months, or indefinitely. If the program administrator, PACE solicitor, and/or PACE solicitor agent, as applicable, agree to the Commissioner's demand or otherwise reach a mutually agreeable resolution with the Commissioner, the examination and related correspondence must be kept confidential by DBO. The Commissioner may, but is not required to, make publicly available the identity of any PACE solicitor or PACE solicitor agent who agrees to discontinue engaging in the business of soliciting property owners; and,

- ii) Only if the program administrator, PACE solicitor, and/or PACE solicitor agent do not agree to the Commissioner's demand or otherwise reach a mutually agreeable resolution with the Commissioner, may the Commissioner issue an order to censure or suspend for up to 12 months, or to bar any individual from directly or indirectly soliciting a property owner to enter into an assessment contract. If the Commissioner has reasonable grounds to believe that a person is conducting business as a PACE solicitor or PACE solicitor agent in an unsafe or injurious manner that will result in irreparable harm, a censure, suspension, or bar order is effective immediately upon issuance and is final if uncontested within 30 days. In all other cases, the order is final following the exhaustion of a respondent's appeal rights. All orders issued using this authority are subject to the Administrative Procedures Act and are matters of public record.

- 26) Provide that the revocation, suspension, expiration, or surrender of any license does not impair or affect the obligation of any preexisting lawful contract between a licensee and a property owner, nor the validity and enforceability of any bonds issued and secured by such contracts.
- 27) Authorize the Commissioner to require a program administrator to use a real-time registry or database system for tracking PACE assessments, as specified, and to contract with an independent third party to develop and maintain the registry or database. All costs associated with the registry or database must be apportioned among licensed program administrators.
- 28) Provide that the Real Estate Law does not apply to any PACE program administrator, when acting under the authority of that license, or to a PACE solicitor or PACE solicitor agent, as specified.
- 29) Define a number of terms in the CFL, including the following:
 - a) A program administrator is a person administering a PACE program on behalf of, and with the written consent of a public agency. Program administrators are not subject to the CFL if they administer a PACE program that provides financing for the installation of efficiency improvements on multi-family residential property (i.e., property containing more than four dwelling units) or commercial property, as long as the market value of that property is \$1 million or more;

- b) A PACE solicitor is a person authorized by a program administrator to solicit a property owner to enter into an assessment contract; and,
- c) A PACE solicitor agent is an individual who is employed or retained by, and who acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract.

30) Contain an urgency clause, however, several provisions of this bill contain a January 1, 2019 or April 1, 2018 operative date.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **History and Statutory Authorization.** 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 energy 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. In 2008, the Legislature granted the statutory authority to cities and counties 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 bill.

Most PACE programs are implemented and administered under two statutory frameworks: AB 811 (Levine), Chapter 159, Statutes of 2008, which 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, which 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 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. Local agencies create PACE assessment districts under AB 811 or establish a Community Facilities District (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, 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.

- 2) **PACE Models.** 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 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.

- 3) **Evolution of PACE.** It is clear that there is an immediate need to provide additional parameters around the PACE program to ensure consumer protections. Local control of the PACE program has come at a cost. This bill seeks to provide a statewide regulatory body for PACE oversight.

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. Nearly all local governments utilize the JPA and program administrator model for PACE programs, and as PACE continues to evolve, the realities are very different than those imagined at the outset of legislative authorization. For example, one of the key features of the PACE program is that not only does the efficiency improvement remain with the property, but so does the obligation to repay the contractual assessment. Homeowners, mortgage and realtor industry stakeholders, PACE administrators, local governments, including tax collectors, and now consumer groups, have seen the consequences when homeowners are forced to repay the entire PACE assessment in order to sell or refinance their homes or cannot afford to make the payments on their property tax bills. The Legislature continues to grapple with laws which govern local government assessments, including lien priority, unpaid payments, foreclosure, and noticing requirements, and lending practices in determining which requirements PACE should be subject to in light of the current realities of the program.

According to a Wall Street Journal article published August 15, 2017 ("More Borrowers Are Defaulting on Their Green PACE Loans"), a Wall Street Journal analysis using tax data from 40 California counties found the number PACE assessment delinquencies has grown by nearly 450% in the last year. Approximately 1,100 California borrowers with PACE assessments missed two consecutive payments through the tax year that ended June 30th, 2017, compared with 245 the previous year. Furthermore, because they are placed on a homeowner's property tax bill, delinquent PACE assessments accrue additional interest rapidly, at a rate of 18% annually, making delinquencies, once incurred, that much harder for property owners to cure. PACE assessments totaling nearly \$3.7 million are past due across California through the 2016-17 tax year, up from about \$520,000 in the 2015-16 tax year.

- 4) **Prior and Related Legislation and Hearings.** Last session, AB 2693 (Dababneh), Chapter 618, Statutes of 2016, established a number of consumer notice requirements and sought to tighten financing standards for PACE assessments for residential properties. AB 2693 prohibits a local agency from allowing a homeowner to participate in PACE, unless the homeowner is provided both the right to cancel and a financing estimate and disclosure document. The financing estimate and disclosure must include specified information, including product costs, financing costs, additional information to use to compare to other financing options, and a number of statements that require the homeowner to initial. AB 2693 applies to all PACE programs, regardless of whether local agencies use a PACE administrator, for residential properties with four or fewer units.

AB 242 (Skinner) of this legislative session, would establish requirements for third-party program administrators of PACE programs, including an oral confirmation of key terms of an assessment contract with a property owner, prohibits program administrators from engaging in a number of activities, requires program administrators to biannually report to a public agency, and establishes requirements around home improvement contracts.

AB 271 (Caballero), pending in the Senate, authorizes a county tax collector to direct the county auditor to remove a delinquent installment based on a PACE assessment that arises from a contract entered into on or after January 1, 2018, from the county's tax rolls.

The Local Government Committee, jointly with the Banking and Finance Committee, held an oversight hearing, in June 2016, to provide oversight on the current administration of PACE programs and to gain a better understanding on concerns expressed over residential PACE and the impacts on the financial market.

- 5) **Support Arguments.** Renovate America argues, "We fully support AB 1284 to further ensure that PACE programs are implemented with strong consumer protections that help ensure PACE program administrators and contractors abide by standards which honor the integrity of the local government program at the heart of PACE. AB 1284 builds on the robust PACE consumer protections in last year's AB 2693 (Dababneh) and this year's SB 242 (Skinner), by fundamentally enhancing PACE underwriting, regulating PACE at the state level, and enforcing compliance with all PACE laws by PACE administrators and individual contractors.

"Marketing practices, disclosures, and other customer support mechanisms in the PACE industry have evolved in the market over time as the private-sector companies providing PACE and their local government partners have identified gaps and worked to establish consumer protections. Not all private-sector PACE programs have the same protections and AB 1284 would ensure a rigorous regulatory framework is applied to the entire industry. When combined with the consumer safeguards in SB 242 (Skinner), this will ensure that PACE financing can continue to grow responsibly across California."

- 6) **Opposition Arguments.** The California News Publishers Association (CNPA) is concerned that AB 1284 "would make secret vital information about the government's oversight of a financial program that some analysts see as potentially leading to the next mortgage crisis." Proposed 22690(c)(1)(D) "would make confidential documents used by a commissioner to investigate potential misconduct by a program administrator, PACE solicitor or PACE solicitor agent when the commissioner enters into a settlement agreement with the alleged violator. The mandatory confidentiality proposed by this bill undermines any specter of real reform, contravenes longstanding public policy of this state, and prevents the press and the public from engaging in any oversight of the PACE program to detect and deter potential malfeasance...Astonishingly, this secrecy provision is being advanced out of concern for the PACE solicitors' privacy interests while subordinating the protection of consumers of these products."

CNPA also criticizes the process by which this bill was brought forward. "The secrecy provision that concerns CNPA was amended in on September 8th. To date – the second to last day of the legislative session – this measure has advanced with no meaningful policy hearing or opportunity for the public to provide input and attempt to influence the language. Instead, it has sprouted, fully formed, and now faces an up or down vote in policy committee hearings and on the Senate and Assembly floors."

- 7) **Policy Considerations.** The Committee may wish to consider the following unanswered policy questions and issues presented by the September 12, 2017, version of this bill:
- a) **Will the Underwriting Provisions Protect Homeowners?** Supporters point to a number of consumer protections put in place by AB 2693 and SB 242 (if it is signed into law by the Governor). The Committee may wish to note that the consumer protections in these two bills all require a program administrator or public agency to comply with specified requirements *prior* to a homeowner entering into a contractual assessment. The Committee may wish to consider the following issues pertaining to this bill's underwriting provisions:
 - i) **Does Underwriting Occur Early Enough?** The underwriting provisions in this bill *do not* require a program administrator to underwrite the property owner before that property owner obligates him or herself on a home improvement contract that will be paid for using PACE financing. Instead, both sections require a program administrator to undertake an ability-to-pay determination of a property owner "prior to funding, and recordation by a public agency of the assessment contract." Funding and recordation of a PACE assessment occur after all of the efficiency improvements are installed on a property and the homeowner is obligated to pay for them.
 - ii) **Mechanics of Paying the Difference: How Will it Work?** According to conversations with interested parties who negotiated the final language, the decision to use the "funding or recordation" language, rather than alternative language that would require underwriting much earlier in the PACE assessment process, was deliberate. In the absence of stronger language that would have required underwriting earlier in the process, consumer advocates settled for the language in Section 22687(g), which is intended to ensure that, if a property owner obligates him or herself on a home improvement contract for an amount greater than he or she is ultimately approved based on the required underwriting language, the program administrator is "responsible for the difference." However, as drafted, this bill is silent on how a program administrator is expected to comply with this requirement. This bill does not require that the homeowner is provided any information as to how a program administrator, utilizing the flexibility granted by this bill, has determined their ability to pay. It is unclear how this section will be enforced, especially in the absence of any additional requirements that the homeowner is provided information regarding the determination of their ability to pay.

Additionally, a number of questions remain:

- Under this section, would the program administrator pay the property owner directly?
- If the property owner is in a county that accepts partial payments of property taxes, would the program administrator wait until the PACE assessment is recorded and pay the county tax collector directly?

- Is it the intent that this requirement on program administrators to make up the difference apply to property owners with a PACE assessment to fund HVAC systems that fit the emergency exemption in this bill? If so, the Committee may wish to consider clarifying language to this provision.

Given these outstanding questions, the Committee may wish to ask about DBO's plan to establish rules and regulations for underwriting.

- b) **Will Homeowners Be Protected from Inappropriate Acts by PACE Solicitors and Pace Solicitor Agents?** As AB 1284 is drafted, Section 22690 provides that, even if DBO has reasonable grounds to believe that a person is conducting business as a PACE solicitor or PACE solicitor agent in an unsafe or injurious manner that will result in irreparable harm to the public, the Commissioner must undertake a potentially lengthy process of back-and-forth with the program administrator on whose behalf the PACE solicitor and PACE solicitor agent are working, before the Commissioner can directly sanction a PACE solicitor or PACE solicitor agent (there are constraints placed on DBO when it believes that a PACE solicitor or PACE solicitor agent are violating the law).
- i) **Does this bill Target Program Administrators Instead of PACE Solicitors?** Furthermore, even when DBO follows the potentially lengthy back-and-forth process described in 22690(c)(1), Section 22690 fails to automatically require DBO to make public the identity of any PACE solicitor or PACE solicitor agent whose enrollment is cancelled or who voluntarily agrees to discontinue engaging in the business of soliciting property owners to enter into assessment contracts. Section 22690(c)(1)(D) provides that the Commissioner may make public the identity of a PACE solicitor or PACE solicitor agent who agrees to discontinue engaging in the business of soliciting property owners, but fails to require that this information be made public, and additionally fails to authorize or require DBO to make public the identity of PACE solicitor agents whose enrollments are cancelled by a program administrator.
- ii) **Sanctions in Private?** More generally, AB 1284 lacks a requirement that DBO make public the identity of any PACE solicitor or PACE solicitor agent who has been required to or who voluntarily agrees to cease soliciting property owners in connection with PACE assessments. Even if DBO bypasses the procedure in Section 22690 and uses another enforcement provision of the CFL in an attempt to sanction a PACE solicitor or PACE solicitor agent, the bill lacks any requirement that DBO make public the identity of the PACE solicitor or PACE solicitor agent who is sanctioned.

Failure to maintain a readily searchable, public list of PACE solicitors and PACE solicitor agents who have agreed to stop or have been prohibited from soliciting property owners has the potential to allow rogue PACE solicitor agents to move from one PACE solicitor to the next, causing harm to members of the public, just as rogue mortgage brokers were allowed to do, before California enacted a mortgage loan originator licensing law. It also has the potential to allow unscrupulous PACE solicitors to continue soliciting members of the public, who will be unaware that the contractor offering to sell them a home improvement has acted unscrupulously in the past.

- c) **What Happens If a Noncompliant PACE Assessment Is Recorded?** Section 22716 states that nothing in the bill affects the validity and enforceability of any PACE assessment contracts entered into, nor of any bonds issued and secured by such contracts. Although this language will likely be helpful for ensuring investors' continued willingness to purchase PACE bonds, it begs the question, "What is the remedy for a consumer, if a noncompliant PACE assessment is recorded?" Although AB 1284 gives DBO enforcement authority to penalize program administrators for violations of the bill's provisions, it is unclear how this authority will be used to help property owners whose PACE assessments are approved in violation of the bill's provisions.
- d) **How Does This Bill Fit in the Broader PACE Picture?** The California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) administers the PACE loss reserve program of \$10 million to keep mortgage interests whole during a foreclosure or a forced sale. CAEATFA established regulations and, beginning in February, 2017, started undergoing a process to update regulations. CAEATFA's proposed regulations make extensive changes to the language that Section 22684 is based on, in an effort to strengthen the PACE Loss Reserve Program's minimum underwriting criteria and increase the data collected. The Committee may wish to ask the author why this bill does not include the proposed regulations that provide more protections for homeowners than the provisions of this bill. The Committee may also wish to consider if DBO should be granted enforcement authority over program administrators for violations of CAEATFA's rules.

Additionally, the Committee may wish to consider how the provisions of this bill interact with a number of consumer protections established by AB 2693 (Dababneh) and SB 242 (Skinner). The underwriting provisions of this bill make some references to the confirmed terms call required by SB 242 (Skinner), which requires a program administrator to make an oral confirmation of key terms of the contract to at least one property owner prior to a property owner executing an assessment contract. This bill does not require a program administrator to provide the homeowner with any information about their ability to pay.

The Committee may wish to ask the author why the determination about a property owner's ability to pay is not required to be included in the financing estimate and disclosure document that was put in place by AB 2693 (Dababneh) last session or the confirmed terms call required by SB 242 (Skinner), if it is signed into law by the Governor.

- e) **Is the Emergency Exemption Drafted Narrowly?** For some PACE administrators, HVAC and other temperature regulating systems make up over one-third of the types of improvements funded for homeowners. SB 242 (Skinner) provides an exemption for PACE assessments funding HVAC systems on an emergency basis from the three day right to cancel period and protections put in place when work begins on a home improvement before a homeowner signs a PACE assessment contract. This bill will also provide an exemption to the income verification if specified steps are met. Due to the high volume of these types of improvements, the Committee may wish to undergo a more careful analysis of the parameters established around this exception to ensure that it is narrowly drafted. For example, consumer groups point to the \$15,000 threshold contained in this bill and question the need for such a high amount.

- f) **Technical and Clarifying.** In addition to a number of outstanding substantive policy questions, there are a number of technical issues that remain in this bill. Please see the Senate Insurance, Banking and Financial Institutions Committee analysis comment #10 on page 14 for a full discussion.
- 8) **Urgency Clause.** This bill contains an urgency clause and requires a two-thirds vote in each house.
- 9) **New Provisions.** The provisions of this bill have not been heard in an Assembly policy committee this legislative session. Since August 24th, 2017, when AB 1284 was gutted and amended to become a PACE bill, the bill has been amended four additional times and has swelled to 74 pages. The Committee may wish to consider that this bill's provisions relating to underwriting were amended into the bill on September 8th and amended again on September 12th, leaving no time for additional amendments to occur prior to the 72-hour in print deadline.

In July, the Assembly Local Government Committee heard SB 242 (Skinner), which sought to establish a number of requirements on PACE assessment contracts, efficiency improvements, disclosures, and program administrators. To ensure that SB 242 (Skinner) would provide meaningful protections for homeowners, the Committee amended the bill to narrow the scope to the sections that had achieved consensus among stakeholders. Further, the Committee asked for a commitment that outstanding issues be discussed in a stakeholder process, inclusive of stakeholders and Committee staff. Some of the provisions of this bill added on September 8th were the same provisions removed from SB 242. Those provisions could have been discussed in the stakeholder process.

Because this bill's provisions were negotiated in private, rather than through an open stakeholder process, interested parties have scrambled to understand each successive version of the bill language, suggest improvements, and negotiate changes, only to see the bill change again following negotiations in which they were not involved. Even organizations that support the bill acknowledge that it will require extensive cleanup next year, if it is enacted. When considering whether to move the current version of this bill forward during 2017, the Committee will need to weigh the extent to which it prefers to enact a contested bill now, versus the extent to which it prefers to see more inclusive negotiations occur over the fall interim.

REGISTERED SUPPORT / OPPOSITION:

Support

Advanced Energy Economy
Bay Area Council
Brightline Defense
Build It Green
California Bankers Association
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Credit Union League
California Energy Storage Alliance
California Escrow Association
California Hispanic Chamber of Commerce
California Land Title Association
California Mortgage Bankers Association
California Solar Energy Industries Association
California State Association of Counties
Center for Sustainable Energy
Cleantech San Diego
Climate Action Campaign
Energy Efficient Equity
Environmental Defense Fund
Local Government Commission
Los Angeles County Board of Supervisors
National Federation of Independent Business
Orange County Business Council
Renew Financial
Renovate America
TechNet
United Trustees Association
Vote Solar

Opposition

California News Publishers Association
Ygrene Energy Fund

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