

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1551 (Daly) – As Amended March 28, 2019

SUBJECT: Property Assessed Clean Energy program.

SUMMARY: Makes changes to prepayments and disclosure requirements in Property Assessed Clean Energy (PACE) law. Specifically, **this bill:**

- 1) Prohibits an assessment contract from containing a penalty for early repayment of an amount owed under the contract.
- 2) Requires the oral confirmation given to the property owner to include information that the property owner may repay an amount owed pursuant to an assessment contract before the date that amount is due under the contract without an early repayment penalty.
- 3) Specifies that before a property owner executes a contract, the program administrator shall complete and deliver to the property owner a printed copy of the disclosure as detailed in this bill, or a substantially equivalent document that displays the same information in a substantially similar format, in no smaller than 12-point type.
- 4) Requires a sample of the disclosure to be maintained on a public internet website available to property owners. Requires this disclosure to include information regarding the impact on a property owner's taxes, the total amount that is being financed, and late-payment penalty information.

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 an 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: 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.

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.

- 2) **Evolution of PACE.** 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 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 of PACE assessment delinquencies has grown by nearly 450% in the previous year. Approximately 1,100 California borrowers with PACE assessments missed two consecutive payments through the tax year that ended June 30, 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.

- 3) **Bill Summary.** This bill prohibits an assessment contract from containing a prepayment penalty, and requires the program administrator to provide that information to the property owner during the oral confirmation. Also, this bill requires the program administrator to provide to the property owner a printed copy of a disclosure form. The disclosure form must include details of the contract terms including the lien amount, the annual percentage rate, the length of the term of financing, how much your monthly payment will increase, and other relevant information.

The California Association of Realtors is the sponsor of the bill.

- 4) **Author's Statement.** According to the author, "PACE programs enable home owners to finance energy and water efficient home upgrades such as solar panels, landscaping, new windows, new HVAC systems, new roofs and energy efficient appliances. It also allows for home improvements that "harden" a home against wildfire danger. The financing requires no money up front and is repaid through an additional assessment on the property owner's property tax bill. The loan is secured to the property through a super-priority lien that takes first in line status over all other claims to the property.

"Despite the low risk for the lender of such financing, PACE financing typically carries rates of 6.5 to 8.5 percent, higher than the average for a home equity loan. Some PACE administrator companies also have pre-payment penalties associated with their products. Although PACE financing must be sanctioned through a local government entity, the financing is conducted entirely through private enterprise.

"Homeowners are sometimes told they are not responsible for the assessment if they sell the property and that it will carry over to the new homeowner. While technically accurate, Fannie Mae and Freddie Mac will not purchase a mortgage with a lien that has higher priority than theirs. Thus, in practice the assessment must be paid off in full prior to sale or

refinancing of the property. When the assessment is paid off, any fees or pre-payment penalties must also be paid. This can leave a homeowner who had counted on the equity in his home seriously empty handed after years of diligent mortgage payments. Most times, a homeowner is not choosing to pay off the assessment early. They are forced to pay it off by the subsequent buyer or lender in order for the transaction to be completed.

Residential PACE assessments are among the fastest-growing types of property-secured financing in California. As such, it is vital that the Legislature continues its work to strengthen consumer protection and establish a regulatory framework for the previously unregulated PACE industry. This bill creates further safeguards for homeowners who choose to utilize California's residential PACE programs. Specifically, AB 1551 aims to clarify and simplify the PACE contract disclosures in a consumer friendly way so homeowners are less likely to find themselves in a situation with financing they did not understand. The bill also prohibits a PACE administrator from charging a prepayment penalty to consumers when they pay off their assessments."

- 5) **Arguments in Support.** Supporters argue that, "Currently, a PACE assessment takes priority lien status over and above any other lien on the property, including any mortgage. Fannie Mae and Freddie Mac have policies that prohibit them from purchasing a mortgage with a lien that has priority over the mortgage. This means that in practice, all PACE assessments must be paid off prior to the refinance or sale of a property. Despite the fact that it is nearly impossible to sell or refinance a property without paying off a PACE assessment, there are PACE assessment contracts today that contain prepayment penalties of 5% of the balance of the debt. To remedy this issue AB 1551 will prohibit a PACE assessment contract from containing a prepayment penalty, as well as include a new disclosure that will be distributed in hard copy form to potential PACE applicants. As a matter of public policy, a government sanctioned clean energy financing program should not contain a prepayment penalty which would drain a homeowner's equity in a sale and increase the costs of obtaining a lower interest rate on the mortgage by refinancing. Similarly, homeowners have a right to be fully informed of the relevant issues when participating in the PACE program."
- 6) **Arguments in Opposition.** None on file.
- 7) **Double-referral.** This bill is double-referred to the Banking and Finance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors
California Land Title Association
Consumer Attorneys of California

Opposition

None on file

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