

**CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE ANALYSIS**

Bill Number: AB 2693 (Dababneh)
Status/Location: Amended 6/6/16 – Senate Judiciary Committee
Sponsor: California Association of Realtors and California Bankers Association
Subject: Financing Requirements: Property Improvements
Code Section: Government Code 53328.1; Streets & Highway Code 5989.15-5898.17

Summary:

This bill provides enhanced financial disclosures for consumers regarding participating in a Property Assessed Clean Energy (PACE) Program.

Existing Law:

1. Provides authority for local governments to establish PACE Programs, 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.
2. 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.

This bill:

1. Contains legislative findings and declarations, including that the consumer obligation to repay voluntary contractual assessments created by PACE is sometimes misunderstood and may affect the consumer's ability to refinance their loan or sell their property.
2. Prohibits a public agency from permitting a property owner's participation in any PACE program if any of the following apply:
 - (a) Participation would result in the total amount of the annual property taxes and assessments exceeding 5% of property's fair market value.
 - (b) The total mortgage-related debt and contractual assessment-related debt on the property would exceed fair market value of the property.
 - (c) The total mortgage-related debt on the property alone is equal to 90% or greater of the property's fair market value.
 - (d) The property owner is unable to meet all of the following criteria: certify that property taxes are current and there has been no more than one late payment during the previous 3 years; not currently in default on any debt; no active bankruptcies within last 7 years; no involuntary lien on property of more than \$1000.

3. Additionally prohibits a public agency from permitting a property owner's participation in a PACE program, unless both of the following requirements are met:
 - (a) The owner has been provided with a complete financing estimate document, as specified.
 - (b) The owner is given the right to cancel the contractual assessment at any time prior to midnight on the third business day after the date of the transaction, without any penalty or obligation.
4. Requires the property owner to be provided with two copies of the right to cancel document.

Amendments:

This bill was amended in the Senate Governance and Finance Committee on June 15th. The amendments are not yet in print, but as described in the analysis, the amendments relating to the disclosure would:

1. Strike an appropriate balance in the disclosure requirements between informing consumers without biasing their decisions about signing up for a PACE loan.
2. Specify that loan providers estimates of fair market value are valid as long as they are conducted according to specified standards.

Background:

AB 811 (Levine, Chapter 159, Statutes of 2008) authorized the use of PACE assessments to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property. The intent of the PACE 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, 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.

Comments:

According to the author, AB 2693 responds to concerns that PACE financing extends credit secured by a home without providing truth in lending disclosures and without the underwriting safeguards applicable to other consumer loans. Some consumers have complained about misleading marketing campaigns related to PACE and receiving insufficient information about a PACE lien's interaction with their residential mortgage agreements.

Priority Lien Status:

This bill no longer addresses another issue related to PACE participation, which is the status of a PACE lien. PACE loans are a first-priority lien in the case of foreclosure and outstanding PACE assessments are paid before mortgage costs. This has impacted some homeowners who have a PACE lien from selling or refinancing their homes. In

2010, the Federal Housing Financing Agency, 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, because PACE loans are a first-priority lien.

Support (from Senate Governance & Finance Committee analysis):

California Association of Realtors; California Bankers Association; California Credit Union League; California Escrow Association; California Land Title Association, California Mortgage Association; California Mortgage Bankers Association; United Trustees Association; 1st Northern California Credit Union; America's United Bank; Bank of America; California Association of County Treasurers & Tax Collectors; California Coast Credit Union; California Community Banking Network; California Land Title Association; Central Valley Community Bank; Comerica Bank; Commonwealth Central Credit Union; Community West Bank; El Dorado Savings Bank; F&M Bank; First Choice Bank; Heritage Community Credit Union; Neighborhood National Bank; Patelco Credit Union; Provident Credit Union; Sacramento Credit Union; SAFE Credit Union; San Diego County Credit Union; San Francisco Federal Credit Union; Schools Financial Credit Union; Sierra Central Credit Union; Star One Credit Union; Star One Credit Union; Valley First Credit Union; Valley Republic Bank.

Opposition (from Senate Governance & Finance Committee analysis):

Applied Building Science; Brower Mechanical, Inc.; California Chapters of the National Electrical Contractors Association; California Energy Efficiency Industry Council; California League of Conservation Voters; California Legislative Council of the Plumbing, Heating and Piping Industry ; California State Association of Counties; Center for Climate Protection; Clarke & Rush; Climate Action Plan; Community Action Agency of Butte County; Eco Performance Builders; Efficiency First California; Energy Masters; Energy Resolutions, Inc.; Environmental Defense Fund; J R Construction – SOL SOLUTIONS; JR Putman Inc.; League of California Cities; McClelland Air Conditioning; PACE Equity; PACE Funding Group; PACENation; Placer County Contractors Association; Placer County Treasurer-Tax Collector; PROgressive Insulation & Windows; PROS360; Renew Financial; ReNewAll; Renovate America; South Bay Cities Council of Governments; Syntrol; Vote Solar; Western Riverside Council of Governments; Ygrene Energy Fund.

Fiscal Impact for CSLB:

None, this bill does not impact CSLB.

Staff Recommendation and Comments:

WATCH. While this bill does not directly impact CSLB, it does address an issue of interest to the Board, providing an additional disclosure to homeowners to better inform them of their obligations under these contracts. In 2010, CSLB received 59 complaints on solar projects, a number that has increased each year, such that in 2015 CSLB received 274 complaints. Consumers face several issues related to the growing solar economy, including a general lack of specificity in solar contracts, complex finance agreements, and unclear estimates of solar savings when systems perform below expectations. While a large majority of contractors are performing well and many consumers are satisfied with their systems, CSLB believes additional consumer disclosures are necessary to help address the recurrent problems identified in the growing number of complaints it has received.

Date: June 15, 2016
