

October 6, 2017

## New Bill Establishes State Oversight of PACE Lending

The California Legislature passed a bill, AB 1284, sponsored by the Department of Business Oversight that establishes state oversight of property assessed clean energy ("PACE") lending. The bill establishes underwriting standards that program administrators must comply with when they enter into assessment agreements with property owners for energy improvements. The bill also brings PACE program administrators, solicitors, and solicitor agents within the California Finance Lenders Law, renamed by this bill to the California Financing Law ("CFL").

### Background on PACE

Cities and counties in California have authority<sup>1</sup> to provide financing to property owners to install energy efficiency improvements that are repaid through the property tax bill. Sums financed through PACE programs are secured by priority liens on the borrower's property and have the same lien priority as tax assessments. That is, these obligations are secured by liens that are higher in priority than traditional

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<sup>1</sup> Most PACE programs are implemented and administered under two statutory frameworks: AB 811, Chapter 159, Statutes of 2008, allows for voluntary contractual assessments to finance PACE projects, and SB 555, Chapter 493, Statutes of 2011, allows for Mello-Roos special taxes (parcel taxes) to finance PACE projects

mortgage lenders' security liens. A PACE loan, in theory, remains with the property even if it is sold or transferred, and the improvements must be permanently fixed to the property.

### What the Bill Addresses

Currently the origination and underwriting of PACE loans have few of the safeguards found with other forms of home lending. Borrowers who cannot pay their tax bills are subject to collection actions by the tax collector. And since the obligation to repay the contractual assessment runs with the property, some homeowners find themselves having to repay the entire PACE assessment in order to sell or refinance their homes.

AB 1284 requires, among other things, that as a condition to entering into an assessment agreement with a property owner, a program administrator must first determine that the owner has the ability to pay the annual PACE obligations. A number of detailed procedures are prescribed. Other conditions include that the owner has met minimum standards for paying property taxes in a timely fashion and is current, is current on mortgage debts, has no involuntary liens and recorded notices of default, no bankruptcies within the past seven years, and others.

In addition, AB 1284 limits the amount of PACE financing that may be extended to the owner in relation to the value of the owner's property (up to 15% of the first \$700,000 in value and 10% of the remaining value of above \$700,000), and establishes a debt-to-value ratio limit of 97%. Those engaged in the business of a program administrator must obtain a finance lenders or finance brokers license from the DBO and comply with certain provisions of the CFL, including criminal history background checks.

A new chapter is added to the CFL to regulate PACE program administrators, PACE solicitors, and PACE solicitor agents, subjecting them to DBO's supervision and enforcement authority.

Kevin Gould is CBA's lead lobbyist on AB 1284.

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