

October 6, 2017

New Bill Enhances Protections For PACE Borrowers

The state of California enacted a bill, SB 242, to govern the placement of property assessed clean energy (“PACE”) assessment contracts. A companion bill, AB 1284, establishes underwriting standards for PACE lending and brings those engaged in placing PACE loans within the jurisdiction of the Department of Business Oversight. This bill seeks to enhance PACE program administrators’ obligations to ensure that PACE borrowers understand the obligations they are undertaking.¹ A program administrator is an entity that administers a PACE program on behalf of a public agency. This bill does not apply to an agency that administers a PACE program directly.

These are the highlights to SB 242:

- requires a program administrator to orally confirm that the property owner (i) has a copy of specified documents and forms related to the contract, and (ii) the key terms of the contract
- requires a program administrator to record the oral confirmation and retain it for five years
- imposes translation requirements of the oral confirmation and certain documents

¹ SB 242 adds Chapter 29.1 (commencing with Section 5900) to the Streets and Highways Code.

and disclosures in the primary language of the borrower (Spanish, Chinese, Tagalog, Vietnamese, or Korean)

- bars a program administrator from waiving or deferring the first payment of an assessment contract, and would require the first assessment payment to be due the year after the improvement is completed
- regulates the advertising of PACE assessments by a contractor or other third party and how property owners are solicited²
- bars cash payments or anything of a material value to contractors and others (including for marketing and advertising) in excess of the assessment contract other than for training expenses related to PACE financing
- bars cash payments or anything of a material value to a property owner that is conditioned upon the owner entering into a assessment contract³

² The contractor must be licensed and bonded and must agree to abide by applicable advertising and marketing laws.

³ Reduced fees or interest rates are permitted if reflected in the assessment contract; these may not be provided as cash consideration.

- bars the making of representation as to the tax deductibility of an assessment contract that is inconsistent with applicable state and federal law
- bars a program administrator from disclosing to contractors or third parties who solicit assessment contracts the amount of funds that a property owner is eligible for under a PACE assessment or the amount of equity in a property
- bars a contractor from charging a different price for a PACE project depending on whether it is financed or paid in cash

- bars the commencement of work if the owner (believing that the work would be covered by the PACE program) rescinds the PACE financing within the 3-day right to rescind under Section 5898.16(b), and
- imposes reporting requirements on program administrators.

The bill becomes effective as of January 1, 2018, except that the document translation requirement applies as of January 1, 2019. Kevin Gould is CBA's lead lobbyist on SB 242.

The information contained in this CBA Regulatory Compliance Bulletin is not intended to constitute, and should not be received as, legal advice. Please consult with your counsel for more detailed information applicable to your institution.

© This CBA Regulatory Compliance Bulletin is copyrighted by the California Bankers Association, and may not be reproduced or distributed without the prior written consent of CBA.