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AB-2063 California Financing Law: PACE program administrators. (2017-2018)

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Assembly Bill No. 2063

CHAPTER 813

An act to amend Sections 22017, 22018, 22105, 22157, 22680, 22681, 22682, 22684, 22686, 22687, 22689, 22691, 22693, and 22716 of the Financial Code, and to amend Sections 5898.24 and 5913 of the Streets and Highways Code, relating to the Property Assessed Clean Energy program.

[Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2063, Aguiar-Curry. California Financing Law: PACE program administrators.

(1) Existing law, known commonly as the Property Assessed Clean Energy (PACE) program, authorizes a public agency, by making specified findings, to authorize public agency officials and property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.

Existing law, the California Financing Law (CFL), requires a program administrator who administers a PACE program on behalf of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program, including requiring, commencing on January 1, 2019, a program administrator to be licensed by the Commissioner of Business Oversight under the California Financing Law.

The CFL, commencing on January 1, 2019, requires a program administrator to establish and maintain a process for the enrollment, and for the cancellation of that enrollment, of a PACE solicitor and a PACE solicitor agent. The CFL defines the term "PACE solicitor" and "PACE solicitor agent" to not include specified persons.

This bill would clarify that the term "PACE solicitor" and "PACE solicitor agent" does not include a person who only solicits a property owner to enter into an assessment contract with a person who is not considered a program administrator within the meaning of the CFL. The bill would prohibit a person from engaging in the business of a PACE solicitor unless that person is enrolled with a program administrator. The bill would also require the program administrator to maintain the processes described above in a manner that is acceptable to the commissioner.

(2) The CFL requires a program administrator who administers a PACE program on behalf of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program, including requiring a program administrator to ensure criteria related to the assessment contract are satisfied before the contract is approved for recordation, including ensuring that the property owner has not been a party to any bankruptcy proceedings within the last 7 years and that the property owner is current on all mortgage debt on the subject property and has had no more than one late payment during the 12 months immediately preceding the application date, as provided.

This bill would, instead, prohibit a program administrator from executing an assessment contract, and would prohibit any work from commencing under a home improvement contract that is financed by that assessment contract and would prohibit that home improvement contract from being executed, unless the program administrator ensures that certain criteria related to that assessment contract are satisfied. The bill would revise the two criteria described above to require the program administrator to ensure that the property owner has not been a party to any bankruptcy proceeding within the last 4 years and to require the program administrator to ensure that the property owner is current on all mortgage debt on the subject property and has had no more than one late payment during the 6 months immediately preceding the application date.

(3) The CFL prohibits a program administrator from approving an assessment contract for funding and recording 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 PACE assessment, and requires that determination to include specified factors, including household income.

Existing law requires a public agency that administers a voluntary contractual assessment program under the PACE program to, with respect to each real property subject to an assessment, record a document that contains specified information related to the assessment, including, the names of all current owners of the real property subject to the assessment.

This bill would, instead, prohibit a program administrator from executing an assessment contract, and would prohibit any work from commencing under a home improvement contract that is financed by that assessment contract and would prohibit that home improvement contract from being executed, unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the PACE assessment. The bill would authorize a program administrator when conducting this determination to utilize the income of a property owner's legal spouse through marriage or domestic partnership who is not on title to the property, provided that person consents, in writing, to that effect. The bill would also provide that if the property owner's legal spouse through marriage or domestic partner is used to determine the property owner's income in that manner, then the public agency that administers the PACE assessment is required to include that person's name in the document recorded related to that assessment described above.

(4) The CFL requires the program administrator to be responsible for the difference between the determination of the property owner, who is obligated on the underlying home improvement contract, ability to pay the annual PACE obligations and the actual amount financed for the property owner, provided certain requirements are met.

This bill would require the program administrator in that instance to provide to the property owner a written disclosure of the methodology that the program administrator used to determine whether there was a difference between the property owner's ability to pay the annual PACE obligation and the actual amount financed for the property owner. The bill would also provide that this requirement only applies to an assessment contract executed between April 1, 2018, and January 1, 2019.

(5) The CFL requires a program administrator to submit to the commissioner information beneficial to evaluating various aspects of the PACE program to be included in a specified annual report, and requires the commissioner to file an annual report with the department as a public record that is a composite of the annual reports and any comments on that report that the commissioner determines to be in the public interest. The CFL requires a program administrator to report annually to the commissioner all PACE assessments that were funded and recorded.

This bill would require the commissioner to include information on all PACE assessments that were funded and recorded into the annual composite report described above.

(6) This bill would make other clarifying changes to the provisions of the CFL relating to program administrators, PACE solicitors, and PACE solicitor agents.

(7) Existing law requires a program administrator to provide an oral confirmation of the key terms of an assessment contract with the property owner on the call, or his or her authorized representative, and to retain a copy of a recording of that confirmation for a period of 5 years after the recording is made. Existing law requires that oral confirmation to contain specified information.

This bill would also require the program administrator to include in the oral conformation that it is the responsibility of the property owner to contact the property owner's home insurance provider to determine whether the efficiency improvement to be financed by the PACE assessment is covered by the property owner's insurance plan.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22017 of the Financial Code is amended to read:

22017. (a) "PACE solicitor" means a person authorized by a program administrator to solicit a property owner to enter into an assessment contract.

(b) "PACE solicitor agent" means an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract.

(c) "PACE solicitor" and "PACE solicitor agent" do not include any of the following:

(1) A person employed by a program administrator.

(2) A person, including a home improvement contractor or subcontractor, who does not solicit property owners to enter into assessment contracts.

(3) A person who performs purely administrative or clerical tasks.

(4) A person who advertises a PACE program, if the content of the advertising is created, prepared, or approved by a program administrator, and advertising is subject to, and in compliance with this division.

(5) A person who obtains information regarding prospective applicants for PACE financing, or who provides to a program administrator information regarding prospective applicants for PACE financing, if that information was not obtained in connection with advertising or soliciting a PACE program.

(6) A person who only solicits a property owner to enter into an assessment contract with a person who is not considered a program administrator within the meaning of subdivision (b) of Section 22018.

SEC. 2. Section 22018 of the Financial Code is amended to read:

22018. (a) "Program administrator" means a person administering a PACE program on behalf of, and with the written consent of, a public agency. "Program administrator" does not include a public agency.

(b) For purposes of this division, "program administrator" does not include a person who meets both of the following conditions:

(1) The person does not administer a PACE program that provides financing for the installation of efficiency improvements on residential property with four or fewer units.

(2) The person does not administer a PACE program that provides financing for the installation of efficiency improvements on real property with a market value of less than one million dollars (\$1,000,000).

SEC. 3. Section 22105 of the Financial Code, as added by Section 32 of Chapter 475 of the Statutes of 2017, is amended to read:

22105. (a) Upon the filing of an application pursuant to Section 22101 and the payment of the fees, the commissioner shall investigate the applicant and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any person responsible for the conduct of the applicant's lending or program administration activities in this state, if the applicant is a partnership. If the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, managing members, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any person responsible for the conduct of the applicant's lending activities or for administering PACE programs for the applicant in this state. Upon the filing of an application pursuant to Section 22102 and the payment of the fees, the commissioner shall investigate the person responsible for the lending activity of the licensee, or for administering one or more PACE programs for the licensee, at the new location described in the application. The investigation may be limited to information that was not included in prior applications filed pursuant to this division. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 22109, the commissioner shall issue and deliver a license to the applicant.

(b) For the purposes of this section, "principal officers" shall mean president, chief executive officer, treasurer, and chief financial officer, as may be applicable, and any other officer with direct responsibility for the conduct of the applicant's lending activities or for PACE program administration for the applicant within the state.

(c) This section shall become operative on January 1, 2019.

SEC. 4. Section 22157 of the Financial Code, as added by Section 54 of Chapter 475 of the Statutes of 2017, is amended to read:

22157. (a) Finance lender, broker, and mortgage loan originator licensees shall preserve their books, accounts, and records, if any, for at least three years after making the final entry on any loan recorded therein.

(b) Except as otherwise specified by applicable law, including paragraph (3) of subdivision (b) of Section 5913 of the Streets and Highways Code, program administrator licensees shall preserve their books, accounts, and records for at least three years after the extinguishment of a PACE assessment is recorded therein.

(c) This section shall become operative on January 1, 2019.

SEC. 5. Section 22680 of the Financial Code is amended to read:

22680. (a) A person shall not engage in the business of a PACE solicitor unless that person is enrolled with a program administrator pursuant to the requirements of this section.

(b) A program administrator shall establish and maintain a process for enrolling PACE solicitors that is acceptable to the commissioner. That process shall include both of the following:

(1) A written agreement between the program administrator and the PACE solicitor that shall set forth the obligations of the PACE solicitor and its PACE solicitor agents.

(2) A review of readily and publicly available information regarding each PACE solicitor.

(c) A program administrator shall establish and maintain a process for enrolling PACE solicitor agents that is acceptable to the commissioner. That process shall include a background check of each PACE solicitor agent. A program administrator may rely on a background check conducted by the Contractors' State License Board to comply with this requirement.

(d) A program administrator shall not enroll a PACE solicitor or a PACE solicitor agent that does not satisfy at least one of the following criteria:

(1) Maintain in good standing a license from the Contractors' State License Board.

(2) Maintain a registration in good standing with the Contractors' State License Board as a home improvement salesperson.

(3) Be exempt from, or not subject to, licensure or registration under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code).

(e) A program administrator shall not enroll a PACE solicitor if, as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds any of the following:

(1) A clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions.

(2) A high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law.

(3) A clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor.

(f) A program administrator shall establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law that is acceptable to the commissioner. That process shall include all of the following, at a minimum:

(1) A risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of subdivision (a) of Section 22689.

(2) A procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents.

(3) A periodic review of the solicitation activities of PACE solicitors enrolled with the program administrator, to be conducted at least once every two years.

(g) A program administrator shall establish and implement a process, which is acceptable to the commissioner, for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by this section, or who violate any provision of this division.

SEC. 6. Section 22681 of the Financial Code is amended to read:

22681. (a) A program administrator shall establish and maintain a training program for PACE solicitor agents that is acceptable to the commissioner.

(b) A program administrator shall require each PACE solicitor agent to complete an introductory training that addresses the topics listed in subdivision (c) as part of the program administrator's enrollment process for PACE solicitor agents. The introductory training shall require that the PACE solicitor agent pass a test that measures the PACE solicitor agent's knowledge and comprehension of the training material. The introductory training shall not be subject to any minimum duration requirements.

(c) In addition to the introductory training, a program administrator shall require that each PACE solicitor agent complete six hours of education provided by the program administrator within three months of completing the program administrator's enrollment process. The training shall include the following topics:

- (1) PACE programs and assessment contracts.
- (2) PACE disclosures.
- (3) Ethics.
- (4) Fraud prevention.
- (5) Consumer protection.
- (6) Nondiscrimination.
- (7) Senior financial abuse.

SEC. 7. Section 22682 of the Financial Code is amended to read:

22682. (a) A program administrator shall, in the manner prescribed by the commissioner, timely notify the commissioner of each PACE solicitor and PACE solicitor agent enrolled by the program administrator.

(b) A program administrator shall, in the manner prescribed by the commissioner, timely notify the commissioner of each enrollment cancellation and withdrawal of a PACE solicitor or a PACE solicitor agent pursuant to subdivision (g) of Section 22680.

SEC. 8. Section 22684 of the Financial Code is amended to read:

22684. A program administrator shall not execute an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed unless the following criteria are satisfied:

(a) All property taxes for the property that will be subject to the assessment contract are current. The program administrator shall ask a property owner whether there has been no more than one late payment of property taxes on the property for the previous three years or since the current owner acquired the property, whichever period is shorter.

(b) The property that will be subject to the assessment contract has no recorded and outstanding involuntary liens in excess of one thousand dollars (\$1,000).

(c) The property that will be subject to the assessment contract has no notices of default currently recorded that have not been rescinded.

(d) The property owner has not been a party to any bankruptcy proceedings within the last four years, except that the property owner may have been party to a bankruptcy proceeding that was discharged or dismissed between two and four years before the application date and the property owner has had no payments more than 30 days past due on any mortgage debt or nonmortgage debt, excluding medical debt, during the 12 months immediately preceding the application date.

(e) The property owner is current on all mortgage debt on the subject property and has no more than one late payment during the six months immediately preceding the application date and if the late payment did not exceed 30 days past due.

(f) The property that will be subject to the assessment contract is within the geographical boundaries of the applicable PACE program.

(g) The measures to be installed pursuant to the assessment contract are eligible under the terms of the applicable PACE program.

(h) The financing is for less than 15 percent of the value of the property, up to the first seven hundred thousand dollars (\$700,000) inclusive of the existing assessments, and is for less than 10 percent of the remaining value of the property above seven hundred thousand dollars (\$700,000).

(i) The total PACE assessments and the mortgage-related debt on the property subject to the PACE assessment will not exceed 97 percent of the market value of the property as established by the valuation required by Section 22685.

(j) The term of the assessment contract shall not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract is attributable. The program administrator shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations.

(k) The program administrator shall verify the existence of recorded PACE assessments and shall ask if the property owner has authorized additional PACE assessments on the same subject property that have not yet been recorded. The failure of a property owner to comply with this subdivision shall not invalidate an assessment contract or any obligations thereunder, notwithstanding if the combined amount of the PACE assessments exceed the criteria set forth in subdivision (h) or (i). The existence of a prior PACE assessment or a prior assessment contract shall not constitute evidence that the assessment contract under consideration is affordable or meets any other program requirements.

(l) The program administrator shall use commercially reasonable and available methods to verify the above.

SEC. 9. Section 22686 of the Financial Code is amended to read:

22686. A program administrator shall not execute an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed 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.

SEC. 10. Section 22687 of the Financial Code is amended to read:

22687. (a) A program administrator shall determine before executing an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed until this determination is made, 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 shall be based on the following factors:

(1) The property owner shall submit on their application their monthly income and their monthly housing expenses.

(2) Housing expenses shall include all mortgage principal and interest payments, insurance, property taxes, mortgage guaranty insurance, and other preexisting fees and assessments on the property.

(3) Household income shall include the income of the mortgagor on the subject property and may include the income of any persons 18 years of age or older who are on title to the property. In complying with this paragraph, the program administrator shall do both of the following:

(A) The program administrator may also utilize the income of a property owner's legal spouse through marriage, as defined by Division 3 (commencing with Section 300) of the Family Code, or domestic partnership, as defined by Division 2.5 (commencing with Section 297) of the Family Code, who is not on title to the property. Any spouse or domestic partner who is not on title to the property shall consent, in writing, to the inclusion of his or her income and to the verification of his or income as required pursuant to this section.

(B) For any person whose income is considered, the program administrator shall also consider their debt obligations pursuant to this section. The program administrator is not required to consider more income than is necessary, nor to verify assets if verified income is sufficient to determine the ability of the property owner to pay the annual payment obligations.

(4) Debt obligations in accordance with subdivision (c).

(5) In evaluating the income, assets, and current debt obligations of the property owner, the program administrator shall not consider the equity of the property that will secure the assessment contract.

(6) Pursuant to Section 5913 of the Streets and Highways Code, the program administrator shall ask the homeowner open-ended questions during the oral confirmation of key terms call, to confirm the income provided on the application and to identify the sources of their income.

(b) (1) The program administrator shall determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies on in order to determine a property owner's ability to pay the PACE assessment annual payment obligations using reasonably reliable third-party records of the property owner's income or assets. The program administrator may use automated verification provided the source of that verification is specific to the income of the

property owner and not based on predictive or estimation methodologies, and has been determined sufficient for those verification purposes by a federal mortgage lending authority or regulator. Examples of records the program administrator may use to verify the property owner's income or assets include:

(A) A pay stub showing the most recent 30-day pay period or financial institution records showing regular deposits consistent with reported income for the most recent 60 days.

(B) Copies of the most recent tax returns the property owner filed with the Internal Revenue Service or the Franchise Tax Board.

(C) Copies of the most recent Internal Revenue Service Form W-2 (Wage and Tax Statement), or other similar Internal Revenue Service forms that are used for reporting wages or tax withholding.

(D) Payroll statements, including the Department of Defense Leave and Earnings Statement (LES).

(E) Financial institution records, such as bank statements or investment account statements reflecting the value of particular assets.

(F) Records from the property owner's employer or a third party that obtained income information from the employer.

(G) Records from a federal, state, or local government agency stating the property owner's income from benefits or entitlements. Income from benefits paid by a government entity shall not include any benefits for which the recipient must satisfy a means test or any cash equivalent nonmonetary benefits, such as food stamps.

(2) Income may not be derived from any of the following:

(A) Temporary sources of income.

(B) Nonliquid assets.

(C) Proceeds derived from the equity from the subject property.

(c) A program administrator shall 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 agencies that meet the requirements of Section 1681a(p) of Title 15 of the United States Code. Program administrators shall use at least a two-file Merged Credit Report (MCR) or a Residential Mortgage Credit Report (RMCR). For purposes of this subdivision, monthly debt obligations include, but are not limited to, the following:

(1) All secured and unsecured debt.

(2) Alimony.

(3) Child support.

(4) Monthly housing expenses. If property tax and insurance obligations are not included in a property owner's escrow, a program administrator shall use reasonably reliable methods to determine these obligations.

(d) In calculating the ability of the property owner to pay the annual payment obligations, the program administrator shall determine that the property owner's income is sufficient to meet:

(1) The PACE payment, including all interest and fees.

(2) Any mortgage payments, as defined by the higher of the borrower's self-reported housing payment or housing expenses determined in accordance with paragraphs (1) and (2) of subdivision (a).

(3) All existing debts and obligations as identified in subdivision (c).

(4) Sufficient residual income to meet basic household living expenses, defined as expected expenses which may be variable based on circumstances and consumption patterns of the household. A program administrator may make reasonable estimation of basic living expenses based on the number of persons in the household. Examples of basic living expenses include, but are not limited to, the following:

(A) Food and other necessary household consumables.

(B) Transportation costs to work or school, including fuel costs, auto insurance and maintenance costs, and public transit costs.

(C) Utilities expenses for telecommunication, water, sewage, electricity, and gas.

(e) In the case of emergency or immediate necessity, the requirements of paragraph (1) of subdivision (b) may be waived, in accordance with the requirements of Section 5940 of the Streets and Highways Code, for 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 in a home if all of the following are met:

(1) The program administrator first attempted to use an automated means of verification as described in paragraph (1) of subdivision (b).

(2) If the program administrator was unable to verify the property owner's income pursuant to paragraph (1) of subdivision (b), pursuant to Section 5913 of the Streets and Highways Code, the program administrator shall ask the property owner open-ended questions during the oral confirmation of key terms call to identify their income and the sources of their income. The program administrator shall comply with the requirements of subdivision (a), paragraph (2) of subdivision (b), and subdivisions (c) and (d).

(3) The funding is limited to the emergency or immediate necessity improvement and any required improvements directly necessary to the installation and safe operation of the improvement.

(4) Any efficiency improvement funded is eligible for PACE financing.

(5) The property owner executes a waiver of their right to cancel pursuant to subdivision (d) of Section 5940 of the Streets and Highways Code, and confirms, pursuant to Section 5913 of the Streets and Highways Code, the emergency or immediate necessity of the improvement.

(6) The amount of the assessment contract does not exceed fifteen thousand dollars (\$15,000) or a monthly equivalent payment on the PACE assessment of one hundred twenty-five dollars (\$125), as adjusted by any annual increase in the California Consumer Price Index as determined pursuant to Section 2212 of the Revenue and Taxation Code, whichever is greater.

(f) The program administrator shall report annually all PACE assessments that were funded and recorded pursuant to subdivision (e) in a form acceptable to the commissioner. The commissioner shall include this information in the annual composite report prepared in accordance with Section 22160.

(g) (1) If there is a 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, and the property owner is obligated on the underlying home improvement contract, the program administrator shall be responsible for that difference. This subdivision does not apply in a case of intentional misrepresentation by the property owner. If the program administrator is responsible to pay the difference under this subdivision, the program administrator shall provide to the property owner a written disclosure of the methodology that the program administrator used to determine whether that there was a difference between the property owner's ability to pay the annual PACE obligation and the actual amount financed for the property owner for purposes of this subdivision.

(2) This subdivision only applies to an assessment contract that was executed between April 1, 2018, and January 1, 2019.

SEC. 11. Section 22689 of the Financial Code is amended to read:

22689. (a) A program administrator shall not permit a PACE solicitor to do any of the following:

(1) 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 chapter and any rules adopted by the commissioner.

(2) Engage in any act in violation of Section 5898.16 or 5898.17 of the Streets and Highways Code or Chapter 29.1 (commencing with Section 5900) of Part 3 of Division 7 of the Streets and Highways Code, including offering an assessment contract with terms, conditions, or disclosures that are not in compliance with applicable laws or that omits terms, conditions, or disclosures required by applicable law, excepting the reporting requirements of Section 5954 of the Streets and Highways Code.

(b) A program administrator shall be subject to the enforcement authority of the commissioner for any violations of this division, to the extent those violations have been 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) A violation of any provision of Section 5898.16 or 5898.17 of the Streets and Highways Code or of any provision of Chapter 29.1 (commencing with Section 5900) of Part 3 of Division 7 of the Streets and Highways Code by a program administrator, excepting the reporting requirements of Section 5954 of the Streets and Highways Code, or by a PACE solicitor authorized by that program administrator in connection with activity related to that program administrator, shall be a violation of this division.

SEC. 12. Section 22691 of the Financial Code is amended to read:

22691. The commissioner may by any rules he or she deems necessary or appropriate in the public interest or for the protection of property owners, either unconditionally or upon specified terms and conditions or for specified periods, exempt any class of persons specified in those rules from the provisions of Sections 22680, 22681, and 22682.

SEC. 13. Section 22693 of the Financial Code is amended to read:

22693. (a) The commissioner may, by rule, require a program administrator to use a real-time registry or database system for tracking PACE assessments in order to carry out his or her regulatory duties and to support enforcement. That registry or database system shall enable the program administrator to trace PACE assessments and shall include, but not be limited to, features for providing or obtaining information about a property's status with regard to PACE assessments placed on the property, whether recorded or not. All costs associated with the real-time registry or database system shall be apportioned among licensed program administrators based on the volume and amount of PACE assessments by each program administrator, or any other method that fairly apportions the costs, as required by rule. The commissioner may contract with an independent third party for the development and ongoing maintenance and support of the real-time registry or database system, and may require the program administrators to pay for the cost of development and ongoing maintenance and support directly to the independent third party. In no event shall the costs apportioned to a program administrator exceed a reasonable regulatory cost.

(b) On or before January 1, 2020, the commissioner shall determine whether to proceed with a rulemaking action. This subdivision shall not restrict the ability of the commissioner to proceed with a rule under this section at any time.

SEC. 14. Section 22716 of the Financial Code, as added by Section 83 of Chapter 475 of the Statutes of 2017, is amended to read:

22716. (a) The revocation, suspension, expiration, or surrender of any license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower or property owner, nor the validity and enforceability of any bonds issued and secured by those contracts. This division does not affect the validity and enforceability of any PACE assessment contracts entered into or bonds issued and secured by those contracts.

(b) This section shall become operative on January 1, 2019.

SEC. 15. Section 5898.24 of the Streets and Highways Code is amended to read:

5898.24. (a) A legislative body shall publish notice of a hearing pursuant to Section 6066 of the Government Code, and the first publication shall occur not later than 20 days before the date of the hearing.

(b) A legislative body shall provide written notice of a proposed contractual assessment program to all water or electric providers within the boundaries of the area within which voluntary contractual assessments may be entered into not less than 60 days prior to adoption of any resolution pursuant to Section 5898.26.

(c) (1) A legislative body administering a voluntary contractual assessment program shall designate an office, department, or bureau of the local agency that shall be responsible for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

(2) The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future voluntary contractual assessment liability is inaccurate, nor for any failure of any seller to request notice pursuant to this chapter or to provide the notice to a buyer.

(d) For purposes of enabling sellers of real property subject to a voluntary contractual assessment to satisfy the notice requirements of Section 1102.6b of the Civil Code, the legislative body shall cause to be recorded in the office of the county recorder for the county in which the real property is located, concurrently with the instrument creating the voluntary contractual assessment, a separate document that meets all of the following requirements:

(1) The title of the document shall be "Payment of Contractual Assessment Required" in at least 14-point boldface type.

(2) The document shall include all of the following information:

(A) The names of all current owners of the real property subject to the contractual assessment and the legal description and assessor's parcel number for the affected property. If a program administrator utilized the income of the property owner's legal spouse or domestic partner who was not on title to the property to determine whether the property owner had a

reasonable ability to pay the assessment pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 22687 of the Financial Code, the document shall also include the name of the property owner's legal spouse or domestic partner.

(B) The annual amount of the contractual assessment.

(C) The date or circumstances under which the contractual assessment expires, or a statement that the assessment is perpetual.

(D) The purpose for which the funds from the contractual assessment will be used.

(E) The entity to which funds from the contractual assessment will be paid and specific contact information for that entity.

(F) The signature of the authorized representative of the legislative body to which funds from the contractual assessment will be paid.

(e) The recorder shall only be responsible for examining the document required by subdivision (d) and determining that it contains the information required by subparagraphs (A), (E), and (F) of paragraph (2) of subdivision (d). The recorder shall index the document under the names of the persons and entities identified in subparagraphs (A) and (E) of paragraph (2) of subdivision (d). The recorder shall not examine any other information contained in the document required by subdivision (d).

(f) In order to reduce the costs associated with contractual assessments, a legislative body may authorize the document described in subdivision (d) to be combined with the notice required by Section 5898.32, and recorded as a single document.

SEC. 16. Section 5913 of the Streets and Highways Code is amended to read:

5913. (a) (1) Before a property owner executes an assessment contract the program administrator shall do the following:

(A) Make an oral confirmation that at least one owner of the property has a copy of the contract assessment documents required by paragraph (2) of subdivision (a) of Section 5898.20 or Section 5899 or 5899.3, or Section 53328.1 of the Government Code, as applicable, with all the key terms completed, the financing estimate and disclosure form specified in Section 5898.17, and the right to cancel form specified in Section 5898.16, with hard copies available upon request.

(B) Make an oral confirmation of the key terms of the assessment contract, in plain language, with the property owner on the call or to a verified authorized representative of the owner on the call and shall obtain acknowledgment from the property owner on the call to whom the oral confirmation is given.

(2) The oral confirmation required pursuant to paragraph (1) shall include, but is not limited to, all the following information:

(A) The property owner on the call has the right to have other persons present for the call, and an inquiry as to whether the property owner would like to exercise the right to include anyone else on the call. This shall occur at the onset of the call, after the determination of the preferred language of communication.

(B) The property owner on the call is informed that they should review the assessment contract and financing estimate and disclosure form with all other owners of the property.

(C) The efficiency improvement being installed is being financed by a PACE assessment.

(D) The total estimated annual costs the property owner will have to pay under the assessment contract, including applicable fees.

(E) The total estimated average monthly amount of funds the property owner would have to save in order to pay the annual costs under the PACE assessment, including applicable fees.

(F) That the county annual secured property tax bill, which will include the installment of the PACE lien, will be mailed by the county tax collector no later than November 1 each year, and that if the lien is recorded after the fiscal year closes but before the bill is mailed, the first installment may not appear on the county tax bill until the following year.

(G) The term of the assessment contract.

(H) That payments on the assessment contract will be made through an additional annual assessment on the property and paid either directly to the county tax collector's office as part of the total annual secured property tax bill, or through the property owner's mortgage impound account, and that if the property owner pays his or her taxes through an impound account he or she should notify their mortgage lender to discuss adjusting his or her monthly mortgage payment by the estimated monthly cost of the PACE assessment.

(I) That the property will be subject to a lien during the term of the assessment contract and that the obligations under the assessment contract may be required to be paid in full before the property owner sells or refinances the property.

(J) That the property owner has disclosed whether the property has received or is seeking additional PACE assessments and has disclosed all other PACE assessments or special taxes that are or about to be placed on the property, if known to and understood by the property owner.

(K) That any potential utility savings are not guaranteed, and will not reduce the assessment payments or total assessment amount.

(L) That the program administrator and contractor do not provide tax advice, and that the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or of other tax impacts on the PACE assessment or assessment contract.

(M) That if that property tax payment is delinquent within the fiscal year, the county tax collector will assess a 10-percent penalty and may assess related costs, as required by state law. A delinquent payment also subjects the property to foreclosure. If the delinquent payment continues past June 30 of a given year and defaults, the county tax collector will assess penalties at the rate of 1 ½ percent per month (18 percent per year), and the property will continue to be subject to foreclosure and may become subject to the county tax collector's right to sell the property at auction.

(N) That the property owner has a three-business day right to cancel the assessment contract pursuant to subdivision (b) of Section 5898.16, and that canceling the assessment contract may also cancel the home improvement contract under Section 5940.

(O) That it is the responsibility of the property owner to contact the property owner's home insurance provider to determine whether the efficiency improvement to be financed by the PACE assessment is covered by the property owner's insurance plan.

(b) The program administrator shall comply with the following when giving the oral confirmation described in subdivision (a):

(1) The program administrator shall record the oral confirmation in an audio format in accordance with applicable laws.

(2) The program administrator may not comply with the requirement in subdivision (a) through the use of a prerecorded message, or other similar device or method.

(3) Recording of an oral confirmation shall be retained by the program administrator for a period of at least five years from the time of the recording.

(c) The provisions of this section shall be in addition to the documents required to be provided to the property owner under Sections 5898.16 and 5898.17.

(d) At the commencement of the oral confirmation, the program administrator shall ask if the property owner on the call would prefer to communicate during the oral confirmation primarily in a language other than English that is specified in Section 1632 of the Civil Code. If the preferred language is supported by the program administrator, the oral confirmation shall be given in that primary language, except where the property owner on the call chooses to communicate through his or her own interpreter. If the preferred language is not supported and an interpreter is not chosen by the property owner on the call, the PACE assessment transaction shall not proceed. For purposes of this subdivision, "his or her own interpreter" means a person, who is not a minor, is able to speak fluently and read with full understanding both the English language and any of the languages specified in Section 1632 of the Civil Code, and who is not employed by, and whose services are not made available through, the program administrator, the public agency, or the contractor.

(e) (1) Beginning on January 1, 2019, if the oral confirmation was conducted primarily in a language other than English that is specified in Section 1632 of the Civil Code, the program administrator shall deliver in writing the disclosures and contract or agreement required by law, including, but not limited to, the following:

(A) Assessment contract documents specified in paragraph (2) of subdivision (a) of Section 5898.20 or Section 5899 or 5899.3, or a special tax described in Section 53328.1 of the Government Code.

(B) The financing estimate and disclosure form specified in Section 5898.17.

(C) The right to cancel form specified in Section 5898.16.

(2) Before the execution of any contract or agreement described in paragraph (1), the program administrator shall deliver a translation of the disclosures, contract, or agreement in the language in which the oral confirmation was conducted, that includes a translation of every term and condition in that contract or agreement.

