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**SB-242 Property Assessed Clean Energy program: program administrator.** (2017-2018)

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**Senate Bill No. 242**

**CHAPTER 484**

An act to add Chapter 29.1 (commencing with Section 5900) to Part 3 of Division 7 of the Streets and Highways Code, relating to the Property Assessed Clean Energy program.

[ Approved by Governor October 04, 2017. Filed with Secretary of State October 04, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 242, Skinner. Property Assessed Clean Energy program: program administrator.

Existing law, known commonly as a Property Assessed Clean Energy (PACE) financing 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 similarly authorizes a community facilities district to be formed pursuant to an alternative procedure under which the district initially consists solely of territory proposed for annexation to the community facilities district in the future and territory is annexed and subjected to special taxes only upon unanimous approval of the owners, to finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements. Existing law authorizes a public agency, or an entity that administers a PACE financing program on behalf of and with the written consent of a public agency, to issue PACE bonds that are secured by voluntary contractual assessments, voluntary special taxes, or special taxes on property to assist property owners in financing the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements.

The bill would require a program administrator, before a property owner executes an assessment contract, as defined, to make an oral confirmation that at least one owner of the property has a copy of specified documents and forms related to the contract, and to provide an oral confirmation of the key terms of an assessment contract with the property owner on the call or an authorized representative of the owner on the call that contains specified information. The bill would require a program administrator to record the oral confirmation, and to retain that recording for a specified period of time. The bill would require a program administrator to ask if the property owner would prefer the oral confirmation be provided in a language other than English, and would require the program administrator to deliver the oral confirmation in the property owner's language or via an interpreter chosen by the property owner in order for the contract to proceed, and would require the program administrator to provide the property owner with the translation of specified documents. This bill would prohibit a program administrator from waiving or deferring the first payment on an assessment contract, and would require that a property owner's first assessment payment be due no later than the fiscal year following the fiscal year in which the installation of the efficiency improvement is completed.

The bill would prohibit a contractor or other 3rd party from advertising the availability of an assessment contract that is administered by a program administrator, or from soliciting property owners on behalf of the program administrator, unless specified requirements are met. The bill would prohibit a program administrator from providing direct or indirect cash payments or

anything of a material value to a contractor or 3rd party that is in excess of the actual price charged to the property owner for the sale or installation of efficiency improvements financed by an assessment contract, except for reimbursement of bona fide and reasonable training expenses related to PACE financing, as provided. The bill would also prohibit a program administrator from providing direct or indirect cash payments or anything of a material value to a property owner that is explicitly conditioned upon the property owner entering into the assessment contract. The bill would prohibit a program administrator, contractor, or other 3rd party from making any representation as to the tax deductibility of an assessment contract, unless that representation is consistent with applicable state and federal law. The bill would prohibit a program administrator from providing information that discloses specified information relating to the property owner or the property. The bill would prohibit a contractor from providing a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner.

Existing law prohibits a public agency from permitting a property owner to participate in a PACE program unless the property owner satisfies certain conditions and the property owner is given the right to cancel the contractual assessment at any time before midnight on the 3rd business day after certain events occur, without penalty or obligation, consistent with certain requirements. Existing law requires a home improvement contract to be in writing and to contain certain information, notices, and disclosures, including a statement that a consumer has a right to cancel or rescind the contract within 3 days, and authorizes the consumer to waive that right to cancel in the case of an emergency or immediately necessary repairs.

The bill would make it unlawful to commence work under a home improvement contract if the property owner entered into the home improvement contract based on the reasonable belief that the work would be covered by the PACE program, and the property owner rescinds the PACE financing within the 3-day time period described above. The bill would require a contractor who violates that provision to restore the property to its original condition, and to return any money, property, and other consideration back to the property owner. The bill would authorize a property owner to waive his or her right to cancel for a contract that the property owner initiated for emergency repair or immediately necessary repair, as provided.

The bill would require a program administrator, for each PACE program that it administers, to submit reports to the public agency by a specified time that contains specified information regarding that program.

This bill would include findings that the changes proposed by this bill address a matter of statewide concern, and therefore shall apply to all cities and counties, including charter cities.

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

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

**SECTION 1.** Chapter 29.1 (commencing with Section 5900) is added to Part 3 of Division 7 of the Streets and Highways Code, to read:

### **CHAPTER 29.1. Clean Energy Assessment Contracts**

**5900.** The provisions of this article shall apply exclusively to residential real property with four or fewer units.

**5901.** The provisions of this chapter shall not apply to any public agency that does not use a program administrator to administer a PACE program.

**5902.** For purposes of this chapter:

(a) "Assessment contract" means an agreement entered into between all property owners of record on real property and a public agency in which, for voluntary contractual assessments imposed on the real property, the public agency provides a PACE assessment for the installation of one or more efficiency improvements on the real property in accordance with a PACE program, 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) "Authorized representative" means an attorney-in-fact, as defined in Section 4014 of the Probate Code, or conservator of the estate, as defined in Section 2400 of the Probate Code, of the property owner.

(c) "Efficiency improvement" means one or more permanent improvements fixed to real property.

(d) "PACE assessment" means a voluntary contractual assessment, voluntary special tax, or special tax, as described in subdivisions (a), (b), and (c) of Section 26054 of the Public Resources Code.

(e) "PACE program" means a program in which financing is provided for the installation of efficiency improvements on real property and funded through the use of property assessments, as well as other program components defined in this section, established pursuant to any of the following:

(1) Chapter 29 (commencing with Section 5898.10) of Part 3 of this code.

(2) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code).

(3) A charter city's constitutional authority under Section 5 of Article XI of the California Constitution.

(f) "Program administrator" means an entity administering a PACE program on behalf of, and with the written consent of, a public agency.

(g) "Property owner" means all property owners of record on the property subject to the PACE assessment.

(h) "Public agency" means a city, including a charter city, county, city and county, municipal utility district, community services district, community facilities district, joint powers authority, sanitary district, sanitation district, or water district, as defined in Section 20200 of the Water Code, that has established or participates in a PACE program, and utilizes a program administrator.

**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.

(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.

**5914.** A program administrator may not waive or defer the first payment on an assessment contract. A property owner's first assessment payment shall be due no later than the fiscal year following the fiscal year in which the installation of the efficiency improvement is completed.

**5922.** A program administrator shall not permit contractors or other third parties to advertise the availability of assessment contracts that are administered by the program administrator, or to solicit property owners on behalf of the program administrator, unless both of the following requirements are met:

(a) The contractor or third party maintains in good standing an appropriate license from the Contractors' State Licensing Board, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates, and maintains the required bond and insurance coverage pursuant thereto.

(b) The program administrator obtains the contractor's or third party's written agreement that the contractor or third party will act in accordance with applicable advertising and marketing laws and regulations, and all other applicable laws.

**5923.** (a) A program administrator shall not provide any direct or indirect cash payment or other thing of material value to a contractor or third party in excess of the actual price charged by that contractor or third party to the property owner for the sale and installation of one or more efficiency improvements financed by an assessment contract.

(b) A program administrator shall not reimburse a contractor or third party for expenses for advertising and marketing campaigns and collateral. A program administrator may reimburse a contractor's bona fide and reasonable training expenses related to PACE financing, provided that:

(1) The training expenses are actually incurred by the contractor.

(2) The reimbursement does not exceed one hundred dollars (\$100) per each salesperson or agent of the contractor who participated in the training.

(3) The reimbursement is paid directly to the contractor, and is not paid to its salespersons or agents.

(c) A program administrator shall not provide any direct cash payment or other thing of value to a property owner explicitly conditioned upon that property owner entering into an assessment contract. Notwithstanding the above, programs or promotions that offer reduced fees or interest rates to property owners are neither a direct cash payment or "other thing of value," provided that the reduced fee or interest rate is reflected in the assessment contract and in no circumstance provided to the property owner as cash consideration.

**5924.** A program administrator, contractor, or a third party shall not make any representation as to the tax deductibility of an assessment contract unless that representation is consistent with representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency with regard to the tax treatment of PACE assessments.

**5925.** A program administrator shall not provide to a contractor or third party engaged in soliciting assessment contracts on its behalf any information that discloses the amount of funds for which a property owner is eligible under a PACE assessment or the amount of equity in a property.

**5926.** A contractor shall not provide a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner.

**5940.** (a) It shall be unlawful to commence work under a home improvement contract, and the home improvement contract shall be unenforceable, if both of the following occur:

(1) The property owner entered into the home improvement contract based on the reasonable belief that the work would be covered by the PACE program.

(2) The property owner applies for, accepts, and cancels the PACE financing within the right to cancel period set forth in subdivision (b) of Section 5898.16.

(b) If work has commenced in violation of subdivision (a), then:

(1) The contractor is entitled to no compensation for that work.

(2) The contractor shall restore the property to its original condition at no cost to the property owner.

(3) The contractor shall immediately and without condition return all money, property, and other consideration given by the property owner. If the property owner gave any property as consideration and the contractor does not or cannot return it for whatever reason, the contractor shall immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.

(c) (1) If the contractor has delivered any property to the property owner pursuant to a contract that is unenforceable under subdivision (a), the property owner shall make the property available to the contractor for return within 90 days of execution of the contract provided that:

(A) The provisions of subdivision (b) have been met.

(B) The property can be practically returned to the contractor and removed, at the contractor's expense, without leaving any damage to the property owner's property.

(2) Failure of the contractor to comply with this subdivision shall allow the property owner to retain without obligation in law or equity any property provided pursuant to the unenforceable contract.

(d) The property owner may waive the requirements in subdivision (a) if all the following are met:

(1) The contract is executed in connection with the making of emergency or immediately necessary repairs to protect persons or real or personal property.

(2) The property owner initiated the contract for the emergency repair or immediately necessary repair.

(3) The property owner provides a separate statement that is handwritten in ink by a property owner and dated and signed by each property owner, describing the situation that requires immediate remedy, and expressly acknowledges that the contractor has informed them of his or her right to cancel and that he or she waives the right to cancel the sale.

(e) If the property owner waives his or her right to cancel on the home improvement contract to allow the home improvement contractor to proceed with installation, and then cancels his or her PACE financing, it shall not invalidate the home improvement contract.

**5954.** (a) For each PACE program that it administers, a program administrator shall submit a report to the public agency no later than February 1 for the activity that occurred between July 1st through December 31st of the previous year, and another report no later than August 1 for the activity that occurred between January 1st through June 30th of that year. Those reports shall contain the following information, along with all methodologies and supporting assumptions or sources relied upon in preparing the report:

(1) The number of PACE assessments funded, by city, county, and ZIP Code.

(2) The aggregate dollar amount of PACE assessments funded, by city, county, and ZIP Code.

(3) The average dollar amount of PACE assessments funded, by city, county, and ZIP Code.

(4) The categories of installed efficiency improvements whether energy or water efficiency, renewable energy, or seismic improvements, and the percentage of PACE assessments represented by each category type, on a number and dollar basis, by city, county, and ZIP Code.

(5) The definition of default used by the program administrator.

(6) For each delinquent assessment:

(A) The total delinquent amount.

(B) The number and dates of missed payments.

(C) ZIP Code, city, and county in which the underlying property is located.

(7) For each defaulted assessment:

(A) The total defaulted amount.

(B) The number and dates of missed payments.

(C) ZIP Code, city, and county in which the underlying property is located.

(D) The percentage the defaults represent of the total assessments within each ZIP Code.

(E) The total number of parcels defaulted and the number of years in default for each property.

(8) The estimated total amount of energy saved, and the estimated total dollar amount of those savings by property owners by the efficiency improvements installed in the calendar year, by city, county, and ZIP Code. In addition, the report shall state the total number of energy savings improvements, and number of improvements installed that are qualified for the Energy Star program of the United States Environmental Protection Agency, including the overall average efficiency rating of installed units for each product type.

(9) The estimated total amount of renewable energy produced by the efficiency improvements installed in the calendar year, by city, county, and ZIP Code. In addition, the report shall state the total number of renewable energy installations, including the average and median system size.

(10) The estimated total amount of water saved, and the estimated total dollar amount of such savings by property owners, by city, county, and ZIP Code. In addition, the report shall state the total number of water savings improvements, the number of

efficiency improvements that are qualified for the WaterSense program of the United States Environmental Protection Agency, including the overall average efficiency rating of installed units for each product type.

(11) The estimated amount of greenhouse gas emissions reductions.

(12) The estimated number of jobs created.

(13) The average and median amount of annual and total PACE assessments based on ZIP Code, by city, county, and ZIP Code.

(14) The number and percentage of homeowners over 60 years old by city, county, and ZIP Code.

(b) All reports submitted pursuant to this section shall include only aggregate data, and shall not include any nonpublic personal information.

(c) A public agency that receives a report pursuant to this section shall make the data publicly available on its Internet Web site.

(d) This section does not limit another governmental or regulatory entity from establishing reporting requirements.

**SEC. 2.** This act addresses a matter of statewide concern and therefore shall apply equally to all cities and counties, including charter cities.