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SB-1087 PACE program: program administrators. (2017-2018)

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Senate Bill No. 1087

CHAPTER 798

An act to amend Sections 22105, 22680, 22681, 22682, 22684, 22685, 22687, 22688, 22689, 22690, 22693, 22694, and 22716 of, and to add Section 22690.5 to, the Financial Code, and to amend Section 5940 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

SB 1087, Roth. PACE program: 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. Existing law requires a program administrator, as of that date, to establish and maintain a process for the enrollment of, and the cancellation of that enrollment, a PACE solicitor and a PACE solicitor agent.

This bill would require the program administrator to maintain the processes described above in writing.

(2) The CFL requires 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 is current on all mortgage debt on the subject property. The CFL requires a program administrator to derive market value for those purposes in accordance with certain requirements, including that the appraisal is conducted within 6 months by a state-licensed or state-certified real estate appraiser.

This bill would make clarifying changes to that criteria, including requiring the program administrator to ensure that the property owner is current on all mortgage debt on the subject property as of the application date. The bill would modify the appraisal requirements by, among other clarifying changes, authorizing a program administrator to rely upon an appraisal obtained from the property owner if certain requirements are met.

(3) The CFL, commencing on April 1, 2018, 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 assessments, subject to specified requirements and procedures, including a requirement that the program administrator verify the property owner's income. The CFL, commencing on April 1, 2018, requires the program administrator to be responsible for the difference between the determination of the ability of the

property owner, who is obligated on the underlying home improvement contract, to pay the annual PACE obligations and the actual amount financed for the property owner, provided certain requirements are met.

This bill would require a program administrator that is unable to verify the property owner's income before the assessment contract is executed, to verify that information in a timely manner following the execution of the contract. This bill would require the assessment contract to include a disclosure that is substantially similar to the language in existing law described above that requires, absent intentional misrepresentation by the property owner, a program administrator to be responsible for the difference between the determination of the property owner's ability to pay the annual PACE obligation and the amount financed for the property owner.

(4) The CFL 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, commencing on April 1, 2018, requires a program administrator to report annually to the commissioner all PACE assessments that were funded and recorded.

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

(5) Existing law, the California Financial Information Privacy Act, prohibits a financial institution from selling, sharing, transferring, or otherwise disclosing nonpublic personal information to, or with, nonaffiliated 3rd parties without the explicit prior consent from the consumer to whom the information relates. The CFL, commencing on April 1, 2018, requires a program administrator to comply with the California Financial Information Privacy Act.

This bill would require a program administrator to be subject to all provisions of the California Financial Information Privacy Act that are applicable to financial institutions.

(6) The CFL, commencing on January 1, 2019, authorizes the commissioner to conduct an examination under oath of every person engaged in the business of program administrator for the purpose of discovering violations of the CFL. Existing law provides that if during the course of an inspection, examination, or investigation of a program administrator the commissioner has cause to believe that the program administrator, PACE solicitor, or PACE solicitor agent may have committed a violation of the CFL or that certain conditions are met, the commissioner may take specified actions to investigate a PACE solicitor or a PACE solicitor agent, including inspecting specified files and communications of the PACE solicitor or PACE solicitor agent and requiring the attendance of witnesses under oath. The CFL provides that if, after an inspection, examination, or investigation, the commissioner has cause to believe that a PACE solicitor or PACE solicitor agent has committed a violation of the CFL, the commissioner is required to exhaust a procedure before bringing an order. Under existing law, that procedure requires the commissioner to issue a report to that person identifying each violation and requires that person to have an opportunity to provide a written answer to that report within a reasonable time. The CFL authorizes the commissioner, after the time period for a response has expired, and if the commissioner believes further action is necessary or appropriate, to demand a corrective action by the person subject to the investigation, demand the person stop violating the relevant portion of the CFL or rules or orders issued thereunder, or demand the PACE solicitor or PACE solicitor agent, or both, discontinue engaging in the business of soliciting property owners to enter into assessment contracts related to any and all program administrators or demand the program administrator deauthorize the PACE solicitor or PACE solicitor agent for a specified period of time. The CFL requires that, in that instance, any examinations and correspondence related to that investigation remain confidential, but authorizes the commissioner to make publicly available the identity of any PACE solicitor or PACE solicitor agent who has agreed to discontinue engaging in business as a consequence of an investigation. The CFL authorizes the commissioner, after the procedure described above is exhausted, to bring an order against the person subject to the investigation, subject to certain standards.

This bill would revise the procedure described above by, among other clarifying changes, requiring the commissioner to issue a report documenting the commissioner's findings, and if applicable, requesting corrective action or a cessation of any violation of the CFL. The bill would require any answer to a demand to include any voluntary corrective action or other action taken or planned to address the commissioner's request, and would require the commissioner to shorten the period of time to provide a written answer to no greater than 5 business days if he or she has reasonable grounds to believe that person is conducting business as a PACE solicitor or PACE solicitor agent, or both, in an unsafe or injurious manner. The bill would remove the provision that authorizes the commissioner to make publicly available the identity of any PACE solicitor or PACE solicitor agent who has agreed to, or been required to, discontinue engaging in business as a consequence of an investigation, and would no longer require that examinations and correspondence related to an investigation as described above be confidential.

This bill require the commissioner to bring an order against a person following the issuance of a demand for the PACE solicitor or PACE solicitor agent, or both, to discontinue engaging in the business of soliciting property owners to enter into assessment contracts or following the issuance of a demand that the program administrator deauthorize the PACE solicitor or PACE solicitor agent for a specified period of time. The bill would also require the commissioner to bring an order against a person following the issuance of a demand to take corrective action or to stop violating the relevant portion of the CFL if the commissioner believes

that the public's interest will be served by the public nature of the order. The bill would require that any order addressing unsafe or injurious behavior by a PACE solicitor or PACE solicitor agent, or both, be effective immediately, but would provide that any other order issued under this process be effective once final in accordance with certain requirements.

The bill would require the department, beginning on January 1, 2020, to maintain on its Internet Web site the identities of enrolled PACE solicitors and PACE solicitor agents. The bill would require the department to maintain on its Internet Web site the identities of PACE solicitors and PACE solicitor agents ordered to discontinue engaging in the business of soliciting property owners to enter into assessment contracts.

(7) Existing law makes 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 applies for, accepts, and cancels the PACE financing within the right to cancel period.

The bill would also apply the above prohibition if the property owner applied for, but was not approved for, PACE financing, and would make a conforming change to that effect. The bill would also broaden that prohibition to make it unlawful to deliver any property or perform any services, except to obtain a building permit or other similar services, under a home improvement contract if the circumstances described above are met. The bill would state that the provision governing home improvement contracts does not authorize the commencement of work under a home improvement contract if the commencement of work is prohibited by specified provisions of the CFL.

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

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

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

SECTION 1. 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. 2. Section 22680 of the Financial Code is amended to read:

22680. (a) A program administrator shall establish and maintain a process for enrolling PACE solicitors. That process shall include both of the following:

(1) A written agreement between the program administrator and the PACE solicitor. That agreement 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.

(b) A program administrator shall establish and maintain a process for enrolling PACE solicitor agents. 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.

(c) 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).

(d) 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.

(e) 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 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.

(f) A program administrator shall establish and implement a process 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.

(g) The processes required to be developed by program administrators pursuant to subdivisions (a), (b), (d) and (f) shall be in writing.

SEC. 3. Section 22681 of the Financial Code is amended to read:

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

(a) A program administrator shall require each PACE solicitor agent to complete an introductory training that addresses the topics listed in subdivision (b) 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.

(b) 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. 4. 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 (f) of Section 22680.

SEC. 5. Section 22684 of the Financial Code is amended to read:

22684. A program administrator shall not submit, present, or otherwise approve for recordation by a public agency an assessment contract 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 currently recorded notices of default, which have not been rescinded.

(d) One of the following two criteria is satisfied:

(1) The property owner has not been a party to any bankruptcy proceedings within the last seven years.

(2) The property owner has been party to a bankruptcy proceeding that was discharged or dismissed between two and seven years before the application date and has had no payments more than 30 days past due on any 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 as of the application date and has had no more than one late payment and no payments more than 30 days past due during the 12 months immediately preceding the application date.

(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 amount of the assessment is less than 15 percent of the market 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). For purposes of this subdivision, the market value of the property shall be established in accordance with Section 22685.

(i) The total PACE assessments and the outstanding mortgage-related debt on the property subject to the PACE assessment do not exceed 97 percent of the market value of the property as established in accordance with 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 where 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. 6. Section 22685 of the Financial Code is amended to read:

22685. (a) A program administrator shall derive market value using one of the following:

(1) Automated valuation models, using the following criteria:

(A) Each automated valuation model must be provided by a third-party vendor.

(B) Each automated valuation model must have estimation models with confidence scores and regular statistical calibration by the third-party vendor.

(C) The program administrator shall utilize at least three automated valuation models for each property. The estimated value for each model shall be the average between the high and low values, if a range is provided.

(D) The program administrator shall utilize the estimated value with the highest confidence score for a property. If an automated valuation model meeting the criteria of subparagraphs (A), (B), and (C) does not obtain a confidence score for a subject property, the PACE program shall utilize the average of all estimated values.

(2) An appraisal conducted within six months of the application date by a state-licensed or state-certified real estate appraiser licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code. A program administrator may rely upon an appraisal obtained from a property owner if that appraisal was conducted in accordance with applicable laws and regulations by a state-licensed or state-certified appraiser in connection with a consumer credit transaction secured by the subject property, including the purchase or refinance of the subject property or the extension of an equity line of credit secured by the subject property.

(b) The market value determination by the program administrator shall be disclosed to the property owner prior to signing the assessment contract.

SEC. 7. Section 22687 of the Financial Code is amended to read:

22687. (a) A program administrator shall determine, prior to funding, and recordation by a public agency of the assessment contract that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment based on the property owner 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. 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. For any person whose income is considered, their debt obligations must also be considered pursuant to the provisions of this section. There is no requirement to consider more income than is necessary, nor to verify assets if verified income is sufficient to determine the ability to pay the annual payment obligations.

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

(4) In evaluating the income, assets and current debt obligations of the property owner, the equity of the property that will secure the assessment shall not be considered.

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

(b) (1) The program administrator shall verify 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 such 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 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 temporary sources of income, illiquid assets, or 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 housing payments, as defined by the higher of the borrower's self-reported housing payment or housing expenses determined in accordance with paragraph (1) and (2) of subdivision (a).

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

(4) 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, categories such as food and other necessary household consumables; transportation costs to work or school (fuel, auto insurance and maintenance, public transit, etc.); and 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 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 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.

(7) If a program administrator is unable to verify the property owner's income pursuant to paragraph (1) of subdivision (b) before the assessment contract is executed, the program administrator shall do so in a timely manner following the execution of that contract.

(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 issued in accordance with Section 22160.

(g) 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.

(h) The assessment contract shall include a disclosure substantially similar to the language within subdivision (g).

SEC. 8. Section 22688 of the Financial Code is amended to read:

22688. A program administrator shall be subject to all provisions of the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050)) that are applicable to financial institutions.

SEC. 9. 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 such 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 or PACE solicitor agent authorized by that program administrator in connection with activity related to that program administrator, shall represent a violation of this division.

SEC. 10. Section 22690 of the Financial Code is amended to read:

22690. (a) A program administrator is subject to an inspection, examination, or investigation in accordance with Section 22701.

(b) If, in the course of an inspection, examination, or investigation of a program administrator, the commissioner has cause to believe that the program administrator, the PACE solicitor, or the PACE solicitor agent may have committed a violation of this division or any rule or order thereunder, or the commissioner seeks to obtain or provide information necessary to the commissioner in the administration of the division, with respect to a matter related to a PACE solicitor or PACE solicitor agent, and either this information is not available directly from the program administrator or the commissioner seeks to validate the information obtained from the program administrator, the commissioner may do the following:

(1) Inspect, examine, or investigate any and all documents, records, files, and communications of the PACE solicitor or PACE solicitor agent that are relevant to the violation or the matter. For purposes of the inspection, examination, or investigation, the commissioner and his or her representatives shall have access to the records of the PACE solicitor or PACE solicitor agent related to assessment contracts associated with the violation or matter.

(2) Require the attendance of witnesses and examine under oath all persons whose testimony he or she requires relative to the violation or matter.

(c) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a PACE solicitor or PACE solicitor agent is violating any provision of this division or any rule or order thereunder, the commissioner or his or her designee shall exhaust the procedure set forth in paragraph (1) before bringing any action authorized under paragraph (2).

(1) (A) The commissioner shall issue a report to the program administrator, the PACE solicitor, and, if applicable, the PACE solicitor agent, documenting the commissioner's findings and, if applicable, requesting corrective action or a cessation of any violation of this division or any rule or order thereunder.

(B) The program administrator, PACE solicitor, and, if applicable, PACE solicitor agent, or any combination thereof, shall have the opportunity to provide a written answer to the report submitted pursuant to subparagraph (A) within a reasonable period and shall document in its written answer any voluntary corrective action or other actions taken or planned to address the commissioner's request. The commissioner shall shorten the period of time to provide a written answer to no greater than five business days if he or she has reasonable grounds to believe that a person is conducting business as a PACE solicitor or PACE solicitor agent, or both, in an unsafe or injurious manner.

(C) If following the process outlined in subparagraphs (A) and (B), the commissioner believes further action is necessary or appropriate, the commissioner may do any of the following, in any combination:

(i) Demand a corrective action by the program administrator, PACE solicitor, PACE solicitor agent, or any combination thereof.

(ii) Demand the program administrator, PACE solicitor, PACE solicitor agent, or any combination thereof, stop violating the division, rule, or order.

(iii) Demand the PACE solicitor or PACE solicitor agent, or both, discontinue engaging in the business of soliciting property owners to enter into assessment contracts related to any or all program administrators, or demand the program administrator deauthorize the PACE solicitor or PACE solicitor agent, or both, for a defined period not exceeding 12 months, or indefinitely.

(2) (A) The commissioner may, upon exhaustion of the procedure in paragraph (1), bring an order against a PACE solicitor, PACE solicitor agent, or both, as provided in this paragraph. However, the commissioner shall, upon exhaustion of the procedure in paragraph (1), bring an order against a PACE solicitor, PACE solicitor agent, or both, as provided in this paragraph, following either of the following:

(i) The issuance of a demand pursuant to clause (iii) of subparagraph (C) of paragraph (1).

(ii) The issuance of a demand pursuant to clause (i) or (ii) of subparagraph (C) of paragraph (1) involving a violation of Section 22161, when the commissioner believes that the public's interest will be served by the public nature of the order.

(B) The commissioner may order a PACE solicitor or PACE solicitor agent, or both, to desist and refrain from engaging in business as a PACE solicitor or PACE solicitor agent, or further violating this division, or the rules thereunder, in accordance with clause (i) and (ii) of this subparagraph. This paragraph does not authorize the commissioner to restrict the ability of a PACE solicitor or PACE solicitor agent to engage in any business that does not involve soliciting a property owner to enter into an assessment contract.

(i) If the order addresses unsafe or injurious behavior by a PACE solicitor or PACE solicitor agent, or both, the order shall be effective immediately. All other orders shall be effective once final.

(ii) If, within 30 days of the receipt of the order, the PACE solicitor or PACE solicitor agent, or both, fails to request a hearing, the order shall become final.

(iii) If, within 30 days of the receipt of the order, the PACE solicitor or PACE solicitor agent, or both, requests a hearing, the hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(C) The commissioner may, after appropriate notice and opportunity for a hearing, by order, censure or suspend for a period not exceeding 12 months, or bar any natural person from directly or indirectly soliciting a property owner to enter into an assessment contract, in accordance with clause (i) to (iv), inclusive, of this subparagraph. This paragraph does not authorize the commissioner to restrict the ability of a natural person to engage in any business that does not involve soliciting a property owner to enter into an assessment contract, or being employed by a PACE solicitor in a capacity that does not involve soliciting a property owner to enter into an assessment contract.

(i) Within 15 days from the date of a notice of intention to issue an order pursuant to this subparagraph, the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code).

(ii) Upon receipt of a request submitted pursuant to clause (i), the matter shall be set for hearing to commence within 30 days after the commissioner receives the request pursuant to clause (i), unless the person subject to the notice consents to a later date.

(iii) If no hearing is requested within 15 days after the mailing or service of the notice of intention as described in clause (i), and the commissioner does not order a hearing, the right to a hearing shall be deemed to be waived.

(iv) Upon receipt of a notice of intention to issue an order pursuant to this subparagraph, the person who is the subject of the proposed order is immediately prohibited from directly or indirectly soliciting a property owner to enter into an assessment contract.

(d) An order brought under paragraph (2) of subdivision (c) shall be public.

(e) A PACE solicitor or PACE solicitor agent subject to this section shall not be subject to Chapter 4 (commencing with Section 22700).

(f) The commissioner shall not be bound to the provisions of this section in connection with his or her enforcement of this division with respect to a program administrator.

SEC. 11. Section 22690.5 is added to the Financial Code, to read:

22690.5. (a) The department shall maintain, on its Internet Web site, the identities of enrolled PACE solicitors and PACE solicitor agents. The Internet Web site shall identify the date of the most recent update, and the frequency with which the list is updated. This subdivision shall become operative on January 1, 2020.

(b) The department shall maintain on its Internet Web site the identities of PACE solicitors and PACE solicitor agents ordered to discontinue engaging in the business of soliciting property owners to enter into assessment contracts. The Internet Web site shall identify the date of the most recent update.

SEC. 12. 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 such 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 the cost of development and ongoing maintenance and support directly to the independent third party. In no event, the costs apportioned to a program administrator shall not 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. 13. Section 22694 of the Financial Code is amended to read:

22694. This chapter does not apply to a finance lender, mortgage loan originator, or broker licensee, unless they engage in the business of a program administrator, PACE solicitor, or PACE solicitor agent.

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 such contracts. This division does not affect the validity and enforceability of any PACE assessment contracts entered into or bonds issued and secured by such contracts.

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

SEC. 15. Section 5940 of the Streets and Highways Code is amended to read:

5940. (a) It shall be unlawful to commence work under a home improvement contract, or deliver any property or perform any services other than obtaining building permits or other similar services preliminary to the commencement of work, 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 or applies for but is not approved for PACE financing in the amount requested by the property owner.

(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 or is not approved for PACE financing in the amount requested by the property owner, it shall not invalidate the home improvement contract.

(f) This section does not authorize the commencement of work under a home improvement contract if the commencement of work is prohibited by Sections 22684, 22686, or 22687 of the Financial Code.