

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2258 (Wood) – As Amended March 30, 2022

SUBJECT: Property Assessed Clean Energy program: wildfire safety improvements.

SUMMARY: Makes changes to the Property Assessed Clean Energy (PACE) Program related to wildfire safety improvements. Specifically, **this bill:**

- 1) Adds to the definition of “wildfire safety improvements” for the purposes of the PACE program wildfire resiliency and safety improvements that contribute to the defensible space Zones 1 and 2 of a property, as described by the Department of Forestry and Fire Protection (CALFIRE) at www.readyforwildfire.org, that can be fixed to existing real property.
- 2) Removes an existing requirement that a wildfire safety improvement be fixed to an existing building or structure, and not be used as a part of a project to construct a new home or to rebuild or reconstruct a home that is destroyed or damaged in a fire.
- 3) Removes an existing requirement that the legislative body of any public agency accept the designation of VHFHSZ, as specified, prior to entering into voluntary contractual assessments to finance the installation of wildfire safety improvements.

EXISTING LAW:

- 1) Authorizes the PACE program through the establishment of voluntary special assessments or special tax districts.
- 2) Provides a regulatory framework, administered by the Department of Financial Protection and Innovation (DFPI), for PACE program administrators, solicitors, and solicitor agents in order to protect property owners from deceptive and misleading practices.
- 3) Prohibits the execution of an assessment contract or an associated home improvement contract unless specified criteria are satisfied.

FISCAL EFFECT: None.

COMMENTS:

- 1) **History and Statutory Authorization.** Utilizing the authority to create a financing district as a charter city, the City of Berkeley, in 2007, established a citywide voluntary program to allow residential and commercial property owners to install solar energy systems and make energy efficiency improvements to their buildings and to repay the cost over 20 years via an assessment on the property tax bill. In 2008, the Legislature granted the statutory authority to cities and counties to provide up-front financing to property owners to install renewable energy sources or energy efficiency improvements that are permanently fixed to their properties, which is repaid through the property tax bill.

Most PACE programs are implemented and administered under two statutory frameworks: AB 811 (Levine), Chapter 159, Statutes of 2008, which amended the Improvement Act of 1911, to allow for voluntary contractual assessments to finance PACE projects; and, SB 555 (Hancock), Chapter 493, Statutes of 2011, which amended the Mello-Roos Community Facilities District (CFD) Act to allow for Mello-Roos special taxes (parcel taxes) to finance PACE projects.

The Legislature has expanded PACE for residential and commercial property owners as an option to pay for renewable energy upgrades, energy and water efficiency retrofits, seismic improvements, and other specified improvements for their homes or buildings. Local agencies create PACE assessment districts under AB 811 or establish a CFD under SB 555, allowing the local agency to issue bonds to finance the up-front costs of improvements. In turn, property owners enter into a voluntary contractual assessment agreement with the local agency or agree to annex their property into a CFD to re-pay the bonds via an assessment or special tax, secured by a priority lien, on their property tax bill. The intent of the program is that the assessment or parcel tax remains with the property even if it is sold or transferred, and the improvements must be permanently fixed to the property.

- 2) **PACE Models.** In California, there are several models available to local governments in administering a PACE program. Only the county of Sonoma administers its own PACE program. The majority of local governments contract with a private third-party or join a joint powers authority (JPA), which contracts with a private third-party to carry out their PACE programs. The cost of third-party administration is not borne by the local agency, but is built into PACE loan financing. Some of these programs focus on residential projects, others target commercial projects, and some handle both residential and commercial portfolios.
- 3) **Evolution of PACE.** At the inception of the PACE program, the presence of third party administrators and the accompanying complex financing structures were not contemplated by the Legislature. Nearly all local governments utilize the JPA and administrator model for PACE programs and, as PACE continues to evolve, the realities are very different than those imagined at the outset of legislative authorization. For example, one of the key features of the PACE program is that not only does the efficiency improvement remain with the property, but so does the obligation to repay the contractual assessment. Homeowners, mortgage and realtor industry stakeholders, PACE administrators, local governments, including tax collectors, and now consumer groups, have seen the consequences when homeowners are forced to repay the entire PACE assessment in order to sell or refinance their homes or cannot afford to make the payments on their property tax bills. The Legislature continues to grapple with laws that govern local government assessments, including lien priority, unpaid payments, foreclosure, noticing requirements, and lending practices in determining which requirements PACE should be subject to in light of the current realities of the program.

An August 15, 2017, Wall Street Journal analysis (“More Borrowers Are Defaulting on Their Green PACE Loans”) using tax data from 40 California counties found the number of PACE assessment delinquencies had grown by nearly 450% in the previous year. Approximately 1,100 California borrowers with PACE assessments missed two consecutive payments through the tax year that ended June 30, 2017, compared with 245 the previous year. Furthermore, because they are placed on a homeowner's property tax bill, delinquent PACE assessments accrue additional interest rapidly at a rate of 18% annually. This makes

delinquencies, once incurred, that much harder for property owners to cure. PACE assessments totaling nearly \$3.7 million were past due across California through the 2016-17 tax year, up from about \$520,000 in the 2015-16 tax year.

- 4) **Recent Developments in PACE.** Los Angeles County ended its PACE program in 2020 with county officials citing inadequate consumer protections as the rationale for their decision. The county also faced lawsuits alleging that government authorities failed to properly oversee the private PACE companies that interacted with property owners.

In December 2020, the Western Riverside Council of Governments (WRCOG), a JPA, ordered its staff to wind down the agency's residential PACE program. WRCOG administered the HERO program in partnership with Renovate America, which managed many aspects of the PACE ecosystem, including assessment administration, bond issuance, bond administration functions, outreach, registration and education to contractors, and outreach and customer service to property owners. At its peak, the HERO program was available to an estimated 85% of California property owners. WRCOG's decision to wind down the program stemmed from a marked decline in the number of new PACE assessments since Fiscal Year 2016-17.

Also in December 2020, Renovate America, once a dominant PACE program administrator in California, filed for Chapter 11 bankruptcy. In a June 4, 2021, press release, DFPI, which regulates the PACE program at the state level, announced, "it has moved to revoke the Property Assessed Clean Energy (PACE) Administrator license of Renovate America, Inc. (Renovate) after finding that one of its solicitors repeatedly defrauded homeowners in San Diego County. It is the first time in the program's history that the Department has moved to revoke the license of a PACE administrator..."

"While Renovate received and documented the homeowners' complaints, sent persons to verify if the work was done or not, and cooperated with regulatory investigative requests, Renovate did little else of substance to address the complaints. The PACE liens remain on the properties for at least nine homeowners. Renovate filed for bankruptcy on December 21, 2020. To help homeowners, the DFPI is coordinating with the Western Riverside Council of Governments, the public agency that issued the PACE liens. With these findings, Commissioner Alvarez has found Renovate responsible for acts of its solicitor, whose fraudulent practices are found to be injurious and unsafe to the public."

- 5) **DFPI Regulations.** AB 1284 (Dababneh), Chapter 475, Statutes of 2017, established requirements for PACE administrators that must be met before PACE assessment contracts may be funded and recorded by a public agency, renamed the California Finance Lenders Law (CFLL) as the California Financing Law (CFL), required PACE administrators to be licensed under the CFL, and established a regulatory scheme for the oversight of PACE solicitors and PACE solicitor agents by DFPI.

DFPI adopted the final regulations last year and they went into effect on October 1, 2021. The regulations require a private entity that administers a PACE program on behalf of a public agency to be licensed under the CFL, and these private PACE program administrators must also comply with several new regulatory provisions, including those related to advertising standards and disclosures, among others.

- 6) **Fire Hazard Severity Zones.** The CALFIRE provides wildland fire protection on non-federal lands outside cities. To meet this duty, the State Board of Forestry and Fire Protection (Board) designates the State Responsibility Area (SRA) every five years. Within SRA lands, the Director of CALFIRE designates moderate, high, and VHFHSZs. After the 1991 Oakland-Berkeley firestorm, the Legislature required CALFIRE to designate the VHFHSZ in the Local Responsibility Area (LRA). These maps must be updated every five years (current maps date to 2007).

Landowners in the SRA and the VHFHSZ must follow specified fire prevention practices and meet standards developed by the Board (AB 337, Bates, 1992). These practices and standards include maintaining defensible space of 100 feet around structures, performing certain activities to reduce the amount of flammable material near and on structures, and meeting specific building standards developed by CALFIRE and the Department of Housing and Community Development that help a structure withstand ignition and reduce fire risk. AB 2911 (Friedman, 2018) required the State Fire Marshal to update these building standards to provide for comprehensive site and structure fire risk reduction by January 1, 2020.

- 7) **Background on California Wildfires.** Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. In 2021 alone, preliminary data show almost 9,000 wildland fires burned almost 2.6 million acres in the state. Slightly fewer wildland fires in 2020 burned almost 4.4 million acres – a modern record. The 2020 August Complex Fire in northern California – the largest fire in California’s modern history – burned over 1 million acres by itself. The 2021 Dixie fire also almost reached 1 million acres. Two wildland fires in the last year burned over the crest of the Sierras which had not been previously observed. Nine of the twenty largest and seven of the twenty most destructive wildland fires in state history occurred in 2020 and 2021.
- 8) **Wildfire Safety Improvements Under PACE.** The Legislature has expanded the PACE program a few times to allow different types of infrastructure improvements to be funded by PACE that were not included at the program’s inception. SB 1340 (Kehoe), Chapter 649, Statutes of 2010, authorized the use of contractual assessments to finance the installation of electric vehicle charging infrastructure, and AB 184 (Swanson), Chapter 28, Statutes of 2011, authorized the use of contractual assessments to finance the installation of seismic strengthening improvements.

More recently, SB 465 (Jackson), Chapter 837, Statutes of 2018, authorized, until January 1, 2029, a city, county, or city and county to approve the use of contractual assessments to finance the installation of wildfire safety improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property in a manner similar to existing PACE law. SB 465 also defined eligible wildfire safety improvements as any of the improvements identified by CALFIRE at a specified website that can be fixed to an existing building or structure. Some of these improvements include ember-resistant roofs, dual-paned windows, driveways, and various ignition-resistant products such as walls, decks, and patio covers. Lastly, SB 465 required wildfire safety improvements to not be used as a part of a project to construct a new home, or to rebuild or reconstruct a home that was destroyed or damaged in a fire.

- 9) **Bill Summary.** This bill expands the types of wildfire safety improvements that can be funded by PACE, and it removes the requirement that a public agency accept the designation of VHFHSZ, as specified, prior to entering into voluntary contractual assessments to finance the installation of wildfire safety improvements. Additionally, this bill removes the requirement that a wildfire safety improvement be fixed to an existing building or structure, and not be used as a part of a project to construct a new home or to rebuild or reconstruct a home that is destroyed or damaged in a fire. The author is the sponsor of this bill.
- 10) **Author's Statement.** According to the author, "The scale and intensity of wildfire in California has become a statewide crisis. 7 of the state's 10 deadliest fires have occurred since 2017 taking the lives of more than 150 people. Additionally, California has lost more than 1,200 homes per year to wildfires in 5 of the last 6 years, and in total, lost 51,868 homes due to wildfires since 2015, including 3,629 in 2021 alone.

"Overwhelming data suggests the two most important factors in protecting homes from wildfire are selection of building materials and the presence of adequate defensible space. Existing building codes and standards ensure that newly constructed buildings utilize appropriate fire resistant materials, but there are millions of homes in California that were built before these standards were established.

"Retrofitting older homes to meet current building standards can be very costly. SB 465 (Jackson 2018) expanded the PACE program to offer homeowners an additional financing option to assist with these critical retrofits. Unfortunately, specified requirements in SB 465 have prevented homeowners from being able to take advantage of the program expansion, and to date we are not aware of a single homeowner that has been able to utilize PACE financing to harden their home."

- 11) **Policy Considerations.** The committee may wish to consider the following:

- a) **Nexus to High-Risk Areas.** California is currently facing historic wildfire challenges, placing many homes at risk every year. However, while retrofitting a home to improve its fire resiliency may make sense in our higher fire-risk areas, it may not make sense in our denser urban cores. This bill removes the requirement that a public agency accept the designation of VHFHSZ prior to entering into voluntary contractual assessments to finance the installation of wildfire safety improvements. Removing this requirement would likely open PACE financing for wildfire improvements statewide. This could lead to wildfire improvements being sold to property owners that might not otherwise need them. The Committee may wish to consider if the nexus to higher fire risk areas should be restored, allowing wildfire hardening improvements to only be sold in areas that are most in need.
- b) **Defensible Space.** An important and widely-recognized method to minimize the risk that a home will ignite from a wildland fire is the creation and maintenance of defensible space around the structure. Defensible space requirements include the clearing of dead vegetation, and maintenance, such as the trimming of overhanging tree branches, for live vegetation within 100 feet of a structure. These requirements are more stringent within 30 feet of a structure. In a recent review of its data, the CALFIRE found that the odds of a structure being destroyed by wildfire were roughly five times higher for structures that did not comply with defensible space requirements compared to those that did.

Despite the noted advantages to conducting defensible space projects, most projects are likely not suitable for PACE financing. The removal of brush and vegetation management are temporary and reoccurring projects that must be conducted regularly. Generally, when taking out a loan or agreeing to have a 20-year lien placed on your property, the life of the improvement should last at least as long as the length of the repayment period. While the bill does require that improvement be fixed to the real property, the Committee may wish to consider if clarification is needed to ensure certain defensible space projects cannot be financed with PACE.

- c) **Additional Safeguards.** This bill removes the requirement that a wildfire safety improvement be fixed to an existing building or structure, and not be used as a part of a project to construct a new home or to rebuild or reconstruct a home that is destroyed or damaged in a fire. A coalition of bankers and lenders argue that, “Allowing PACE to finance the construction of an entire home that was destroyed or damaged in a fire could lead to increased fraud and abuse of homeowners who have already been devastated by the loss of their residential property. PACE lending has suffered from unscrupulous contractors, and it is not uncommon for underhanded contractors to exploit victims of natural disaster.” In light of the concerns raised by this coalition, the Committee may wish to consider if additional safeguards are needed to ensure unscrupulous contractors do not take advantage of victims of wildfire.
- d) **Too Soon?** SB 465 was a significant expansion of the PACE program. Like many other bills that are adopted every year, it contained a 10-year sunset date of January 1, 2029. We are currently less than halfway through the 10-year period. The Legislature often adds sunset dates to programs to have an opportunity to revisit and review the program at that given time. Additionally, over the last few years, PACE has faced much greater scrutiny and consumer protections have been put in place to ensure that homeowners are safeguarded, including DFPI’s newly adopted regulations for the PACE Industry. These regulations just went into effect on October 1, 2021. The Committee may wish to consider if it is currently premature to expand the PACE program even further.
- e) **Continued Concerns.** A coalition of bankers and lenders continue to have concerns with PACE arguing, “We must continue to emphasize overall concerns that flow from the super-priority lien associated with a PACE loan and the harmful consumer consequences the super-priority lien has on subsequent financial transactions involving the consumer’s home. It is an established fact that the Federal Housing Finance Agency (FHFA), which oversees government sponsored entities, Fannie Mae and Freddie Mac, along with the Federal Housing Agency, will not purchase mortgages with a PACE encumbrance. As a consequence, borrowers who have obligated themselves with a PACE loan may find it difficult to sell their property or refinance. Ultimately, these PACE borrowers will need to pay the entire balance of their PACE loan in order to move forward with subsequent transactions. We believe that reforms to the PACE program, such as those advanced in AB 2258, should involve a change in lien status so that future PACE loans are secured by a judgment lien-status encumbrance.” The Committee may wish to consider if PACE should be expanded in light of this coalition’s continued concerns.

12) **Committee Amendments.** In response to the above considerations, the Committee may wish to amend the bill as follows:

(2) “Wildfire safety improvements” means permanent wildfire resilience and safety improvements fixed to ~~existing~~ residential, commercial, industrial, agricultural, or other real property. An improvement within the meaning of this paragraph means any of the components identified by the Department of Forestry and Fire Protection at www.readyforwildfire.org/Hardening-Your-Home/, as updated by the Department of Forestry and Fire Protection or at a subsequent internet website, or wildfire ~~resiliency~~ **resilience** and safety improvements that contribute to the defensible space ~~Zones~~ **Zone 1 and 2** of a property, as ~~described~~ **may be identified** by the Department of Forestry and Fire Protection at ~~www.readyforwildfire.org~~, **www.readyforwildfire.org from time to time**, that can be **permanently** fixed to ~~existing~~ real property. ~~A Property Assessed Clean Energy (PACE) As used in this section, a wildfire safety improvement that contributes to defensible space shall not include vegetation management, brush clearing, or other improvements that are temporary in nature unless they are necessary as part of the installation or acquisition of another permanent wildfire safety improvement. A voluntary contractual~~ assessment that finances a wildfire safety improvement shall not be eligible for a waiver of the requirements of paragraph (1) of subdivision (b) of Section 22687 of the Financial Code pursuant to subdivision (e) of Section 22687 of the Financial Code. In order to qualify under this paragraph, a wildfire safety improvement shall be **permanently** fixed to ~~existing~~ real property.

(c) ~~Any public agency that has established a PACE program in accordance with Section 5898.20, 5899, or 5899.3, or a special tax described in Section 53328.1 of the Government Code, may enter into voluntary contractual assessments with property owners to finance the installation of wildfire safety improvements that are permanently fixed to real property pursuant to this chapter. For purposes of this section, the legislative body of a public agency may do either of the following with respect to wildfire safety improvements:~~

~~(1) The legislative body of a public agency that has accepted the designation of very high fire hazard severity zone pursuant to Section 51179 of the Government Code may designate an area, in the manner provided pursuant to Section 5898.20, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of wildfire safety improvements that are permanently fixed to real property pursuant to this chapter.~~

~~(2) The legislative body of a public agency may designate an area reasonably determined to be within a very high or high fire hazard severity zone identified pursuant to Section 51178 of the Government Code, in the manner provided pursuant to Section 5898.20, within which authorized public agency officials and property owners may enter into voluntary contractual assessments with property owners to finance the installation of wildfire safety improvements that are permanently fixed to real property pursuant to this chapter.~~

~~(d) (1) A voluntary contractual assessment for wildfire safety improvements entered into pursuant to this section shall not be used to rebuild or reconstruct property that was destroyed or damaged in a fire.~~

~~(2) A voluntary contractual assessment for wildfire safety improvements entered into pursuant to this section may be used to acquire or construct wildfire safety improvements in connection with the rebuilding or reconstruction of property if the wildfire safety~~

improvements are in addition to or an improvement to, and were not part of, the property as it existed immediately prior to the destruction or damage to the property by fire

- 13) **Prior Legislation.** AB 2693 (Dababneh), Chapter 618, Statutes of 2016, established a number of consumer notice requirements and sought to tighten financing standards for PACE assessments for residential properties. AB 2693 prohibited a local agency from allowing a homeowner to participate in PACE, unless the homeowner is provided both the right to cancel and a financing estimate and disclosure document; and, required that the financing estimate and disclosure must include specified information, including product costs, financing costs, additional information to use to compare to other financing options, and a number of statements that require the homeowner to initial. AB 2693 applied to all PACE programs, regardless of whether local agencies use a PACE administrator, for residential properties with four or fewer units.

AB 242 (Skinner), Chapter 484, Statutes of 2017, established requirements for third-party PACE administrators to include an oral confirmation of key terms of an assessment contract with a property owner, prohibited PACE administrators from engaging in a number of activities, required PACE administrators to biannually report to a public agency, and established requirements around home improvement contracts.

SB 1087 (Roth), Chapter 798, Statutes of 2018, clarified, corrected, and cleaned up provisions of AB 1284 (Dababneh) relating to the PACE program. The most significant provisions of SB 1087 made it unlawful to commence work under a home improvement contract and made a home improvement contract unenforceable, if a property owner entered into that contract based on the reasonable belief that the work would be covered by the PACE program and the property owner applied for but was not approved for PACE financing in the amount requested by the property owner. This bill also improved transparency around disciplinary actions taken by DFPI against PACE program administrators and PACE solicitors.

AB 2063 (Aguilar-Curry), Chapter 813, Statutes of 2018, required PACE program administrators to comply with the underwriting requirements of AB 1284 before executing a PACE assessment contract, before a home improvement contract financed by that PACE assessment contract is executed, and before work may commence under that home improvement contract.

- 14) **Arguments in Support.** The California Forestry Association argues, “As a result of Senate Bill 465, some property owners can use PACE to finance critical home hardening upgrades that protect against wildfire, such as non-combustible roofing materials, fire resistant materials to box in eaves, soffits, and sub-floors, and even fire resistant double paned or tempered glass windows, among many others. Currently, PACE financing will only cover defensible space improvements in cities and counties that pass a resolution officially accepting the designation as a very high fire hazard severity zone. Over the past five years, this requirement has been very limiting. As such, Sonoma County is the only program that has successfully authorized PACE expansion for wildfire safety improvements.

“Assembly Bill 2258 would build upon the ‘wildfire safety improvement’ PACE expansion from 2018 by eliminating the requirement for a local government to be designated as a very high fire hazard severity zone in order to leverage PACE financing. This requirement

elimination will significantly expand access for more private property owners to conduct much needed home hardening improvements around their homes and structures on their properties. Assembly Bill 2258 also expands the eligible improvements to include wildfire resiliency and safety improvements contributing to defensible space zones, as defined by the Department of Forestry and Fire Protection. Not only would this measure help Californians in high-risk areas harden their homes and improve defensible space around structures, but it also helps California meet home hardening and defensible space goals as outlined in *California's Wildfire and Forest Resilience Plan*.”

- 15) **Arguments in Opposition.** A coalition of consumer rights groups argue, “AB 2258 would expand California homeowners’ exposure to these risks. Rather than placing additional safeguards on a program that has placed thousands of homes at risk of foreclosure or forced sale, this bill would allow administrators and contractors to significantly increase the scope and cost of home improvement projects. At a time when California homeowners are justifiably worried about protecting their homes from the risks of wildfire, the bill increases the opportunity for PACE solicitors to expand the type and scope of projects that can be financed by preying on public fears and anxieties. This bill will allow PACE administrators and contractors to solicit homeowners for projects that are even broader in scope and more expensive than projects that have been previously funded through PACE financing. PACE assessments already often exceed the needs and financial abilities of homeowners, with many homeowners struggling to make semi-annual financing payments which may double or even triple their tax bill.

“Legal service providers throughout the state are already overwhelmed by cases where the residential PACE program has misled homeowners, especially older homeowners with greater equity in their homes and homeowners in low-income communities and in communities of color. Several of the groups who have signed onto this letter have had to close their intake on all other cases to preserve the homes of those defrauded by PACE. Most of these cases include PACE projects in just the past few years that have been left half-finished or not even started. Legal aid providers report that instances of ‘no work’ and ineligible-work cases have sharply *increased* since 2018, despite PACE reforms that took effect that year.”

- 16) **Double-Referral.** This bill is double-referred to the Assembly Banking and Finance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Ygrene Energy Fund
California Forestry Association

Opposition

Alliance for Community Empowerment Institute
Bet Tzedek Legal Services
California Bankers Association
California Community Banking Network
California Credit Union League

California Land Title Association
California Low-Income Consumer Coalition
California Mortgage Association
California Mortgage Bankers Association
Centro Legal De La Raza
Community Legal Services of East Palo Alto
Elder Law & Advocacy
Legal Aid of Marin
Mental Health Advocacy Services
National Consumer Law Center
National Housing Law Project
Public Counsel
Public Law Center
Riverside Legal Aid
Santa Clara University School of Law, Katherine & George Alexander Law Center
University of California Irvine, Consumer Law Clinic
Watsonville Law Center

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