

Date of Hearing: August 28, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 465 (Jackson) – As Amended August 27, 2018

**SENATE VOTE:** Vote not relevant

**SUBJECT:** Property Assessed Clean Energy Program: wildfire safety improvements.

**SUMMARY:** Expands, until January 1, 2029, Property Assessed Clean Energy (PACE) financing to allow cities and counties in Very High Fire Hazard Severity Zones (VHFHSZ) to authorize contractual assessments for property owners to finance wildfire safety improvements. Specifically, **this bill:**

- 1) Enacts the Wildfire Safety Finance Act to allow cities and counties to authorize contractual assessments (PACE) to finance wildfire safety improvements.
- 2) Defines the following terms:
  - a) “Public agency” to mean a city, county, or city and county, as specified.
  - a) “Wildfire safety improvements” to mean permanent wildfire resilience and safety improvements fixed to an existing residential, commercial, industrial, agricultural, or other real property. These improvements mean the components identified by the Department of Forestry and Fire Protection (CAL FIRE) at [www.readyforwildfire.org/Hardening-Your-Home/](http://www.readyforwildfire.org/Hardening-Your-Home/), as updated by CAL FIRE or at a subsequent Internet Web site. Declares that a PACE assessment that finances a wildfire safety improvement shall not be eligible for a waiver of specified requirements contained in existing law.
- 3) Allows the legislative body of any public agency that has accepted the designation of VHFHSZ pursuant to Section 51179 of the Government Code, to designate an area, in the manner provided pursuant to existing law, 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.
- 4) Requires the legislative body to adopt a resolution indicating its intention to establish a voluntary contractual assessment program relating to wildfire safety improvements. Requires the resolution of intention to identify the kinds of wildfire safety improvements that may be financed, and meet other specified requirements pursuant to existing law.
- 5) Allows, upon the written consent of an authorized public agency official, the proposed arrangements for financing the program pertaining to the installation of wildfire safety improvements that are permanently fixed to real property, the property owner to purchase directly the related equipment and materials for the installation of wildfire safety improvements that are permanently fixed to the property owner’s residential, commercial, industrial, agricultural, or other real property.

- 6) Specifies that it is the responsibility of the property owner to contact the property owner's insurance provider to determine whether the wildfire safety improvement to be financed by the PACE assessment is covered by the property owner's insurance plan and whether that improvement will impact the insurance rate.
- 7) Adds conforming changes to ensure that existing PACE statutes, including oversight by the Department of Business Oversight (DBO), apply to the provisions of this bill.
- 8) Makes a number of findings and declarations, as follows:
  - a) Declares the intent of the Legislature to provide homeowners and businesses with an affordable way to finance improvements to their homes and buildings that make those facilities more resistant to wildfire by permitting voluntary individual efforts to improve the wildfire resilience and safety of those facilities. Declares the intent of the Legislature that the installation of these improvements shall be permanently fixed to real property;
  - b) The upfront cost of making residential, commercial, industrial, agricultural, or other real property more resistant to wildfire prevents many property owners from making those improvements. Declares that it is necessary to authorize alternative procedures for authorizing assessments to finance the cost of wildfire safety improvements; and,
  - c) Declares that public purpose will be served by a voluntary contractual assessment program that provides the legislative body of any public agency with the authority to finance the installation of wildfire safety improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property.
- 9) Adds to reporting requirements in existing law a requirement for a program administrator to report back to the local agency on wildfire safety improvements, as specified.
- 10) Contains a sunset of January 1, 2029.
- 11) Makes the bill's provisions operative only if both (1) Section 8 of Assembly Bill 2063 of the 2017-18 Regular Session becomes operative on or before January 1, 2019, and that section amends Section 22684 of the Financial Code, and (2) Section 10 of Assembly Bill 2063 of the 2017-18 Regular Session becomes operative on or before January 1, 2019, and that section amends Section 22687 of the Financial Code.

**EXISTING LAW:**

- 1) Authorizes the PACE program through the establishment of voluntary special assessments pursuant to rules contained in the Streets and Highways Code and through the establishment of special tax districts pursuant to the rules contained in specified sections of the Government Code.
- 2) Imposes additional, specified requirements on local agencies that participate in the PACE program.
- 3) Places requirements on PACE administrators that must be met before PACE assessment contracts can be funded and recorded by a local agency.

- 4) Requires PACE administrators to be licensed under the California Financing Law (CFL).
- 5) Establishes a regulatory scheme for oversight of PACE solicitors and PACE solicitor agents.
- 6) Requires PACE administrators to make oral confirmation with property owners regarding the key terms of the assessment contract and the financed improvements.
- 7) Mandates that the PACE administrator record the oral confirmation with the property owner and retain the recording for at least five years.
- 8) Provides additional consumer protections for property owners entering into a PACE assessment contract.
- 9) Requires the Board of Forestry and Fire Protection (Board) to classify all lands within the state for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state [known as the State Responsibility Area (SRA)].
- 10) Requires CAL FIRE to identify certain areas outside the SRA as VHFHSZ based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas.
- 11) Requires a draft element of or draft amendment to the safety element of a county or a city's general plan to be submitted to the Board and to every local agency that provides fire protection to territory in the city or county at least 90 days prior to either the adoption of the safety element or amendment to the safety element of its general plan for each county that contains an SRA or a VHFHSZ.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary.** This bill would expand California's PACE program to allow homeowners and businesses to finance wildfire safety improvements, also known as "home hardening" upgrades, to make their properties more resilient to wildfire. In general, the PACE program provides upfront financing to property owners to install renewable energy equipment or energy efficiency improvements that are permanently fixed to their properties, which is then repaid over time through the owner's property tax bill. Under existing law, PACE financing can only be used for energy and water efficiency improvements and seismic safety upgrades. This bill would also incorporate recent consumer protection measures enacted into the PACE program.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "In 2017, California experienced the largest and most destructive wildfire season in its history. Nearly 9,000 wildfires ignited across the state, burning 1.2 million acres of land, destroying more than 10,800 structures, and killing at least 44 people. Five of California's most destructive wildfires on record occurred in 2017, including the Thomas Fire, which is now the largest recorded fire in California history.

“Unfortunately, 2017 does not appear to be an abnormality. To the contrary, most of California’s largest wildfires have occurred within the past 30 years. Changing climate patterns have made our state more vulnerable to wildfire, with massive tree die-offs due to years of drought and widespread insect infestations, year-round fire weather conditions, and critical levels of fuels accumulation, all combining to create severe fire risks throughout the state. Indeed, the National Interagency Fire Center’s Predictive Outlook for 2018 is forecasting above normal large fire potential in California due to the persistence of dry fuels, frequent offshore winds, and generally unfavorable weather.

“California’s persistent threat of wildfire poses a significant risk to homes and businesses throughout the state. While much is being done to better manage our forests and improve land use decisions to minimize this threat, particularly to new communities, more needs to be done to “harden” our existing homes to make them more resistant to wildfire.”

- 3) **Wildfire Safety Improvements and Home Hardening.** According to the website referenced in the bill, wildfire safety improvements and home hardening improvements can include composite, metal, or tile roofs; mesh vent coverings; ignition-resistant or non-combustible eaves and soffits; dual-paned windows with one pane of tempered glass; ignition-resistant building materials for walls and decks; and, non-combustible chimney screens.

In previous years, the Legislature has authorized 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. Several of the improvements above can already be financed through PACE, including high-efficiency windows and doors, cool roofing (which may require a roof replacement), wall and underfloor insulation, and some natural disaster preparedness improvements.

- 4) **Prior PACE 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 of PACE programs, including 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.

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 (CFL) 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 under DBO.

- 5) **Current PACE Legislation.** There are currently two PACE bills moving through the process:

AB 2063 (Aguiar-Curry) clarifies, corrects, and cleans up provisions of AB 1284 (Dababneh), Chapter 475, Statutes of 2017, and SB 242 (Skinner), Chapter 484, Statutes of 2017. The bill requires program administrators to comply with the underwriting requirements of AB 1284 before they execute a PACE assessment contract, before the home improvement contract financed by that PACE assessment contract is executed, and before work may commence under that home improvement contract.

SB 465 contains provisions that make the bill effective only upon provisions of AB 2063 becoming operative, including the timing of underwriting requirements.

SB 1087 (Roth) makes numerous changes to the requirements placed upon the DBO, PACE administrators, PACE solicitors and PACE solicitor agents. The bill makes solicitors and their agents subject to the enforcement authority of DBO and requires program administrators to be subject to all provisions of the California Financial Information Privacy Act that are applicable to financial institutions and authorizes DBO to take immediate corrective action when it has reasonable grounds to believe that a person is conducting business as a PACE solicitor or PACE solicitor agent in an unsafe or injurious manner. The bill requires the DBO Commissioner to maintain, on its Internet Web site, a searchable list of enrolled PACE solicitors and PACE solicitor agents.

- 6) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Expansion of PACE.** The California Mortgage Association and the California Escrow Association, in opposition, write that “Having been consistently involved with the Property Assessed Clean Energy (PACE) measures on behalf of our clients for years, we are aware of the benefits of PACE financing, when done responsibly, and the benefits for California homeowners. However, our members remain concerned not only with the continuing super-priority lien status of PACE loans, how a borrower qualifies for a PACE loan or loans, how multiple PACE loans affect property, the effect of a PACE loan on a lender’s ability to evaluate loan risk and to recover in the event of foreclosure, how the existence of a PACE loan is known not only to the consumer but also to their escrow provider in a refinance or sale transaction, and other matters.

“For these reasons, a proposed expansion of the PACE program is difficult for our clients to embrace, while still considering how best to protect consumers while encouraging the ongoing health of the PACE program at a time when consumer protection and related measures are still being considered by the Legislature and by the Department of Business Oversight.”

- b) **PACE Assessment Pay-Off.** The California Bankers Association, California Credit Union League, and the California Mortgage Bankers Association, in their joint letter of “Concerns” writes that “The Legislature should also give careful consideration to the impact SB 465 has on construction financing...following a devastating wildfire, a

homeowner with a pre-existing PACE loan who is attempting to secure construction financing to rebuild their residential property, may have difficulty securing that financing until they have paid the entire balance of their PACE loan. Expanding the PACE program to wildfire safety improvements, particularly in areas that may be more prone to wildfires, may increase the likelihood of this concern.

- 7) **Arguments in Support.** Supporters argue that creating fire safe communities by reducing the flammability of structures is the single best way to protect existing homes from wildfire and that this bill will allow property owners to financing these important improvements.
- 8) **Arguments in Opposition.** Opponents argue that now is not the time to expand the PACE program, given that DBO is in the middle of rulemaking in accordance with AB 1284 and the fluctuations that the PACE industry is currently facing.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Chaparral Institute  
 CAL FIRE Local 2881  
 California Fire Chiefs Association  
 Coal Oil Point Reserve Nature Center  
 Fire Districts Association of California  
 Los Padres ForestWatch  
 Pacific Forest Trust  
 Sierra Forest Legacy  
 The Nature Conservancy  
 62 individuals

##### **Concerns**

California Bankers Association  
 California Credit Union League  
 California Mortgage Bankers Association

##### **Opposition**

California Association of REALTORS  
 California Escrow Association  
 California Land Title Association  
 California Mortgage Association

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