

Date of Hearing: June 23, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 476 (Min) – As Amended May 20, 2021

SENATE VOTE: 31-4

SUBJECT: California Financing Law: program administrators.

SUMMARY: Prohibits a Property Assessed Clean Energy (PACE) program administrator from executing an assessment contract unless the associated property has undergone an energy audit, as specified, and prohibits a PACE program administrator from disbursing funds to a PACE solicitor or PACE solicitor agent without specified proof of project completion. Specifically, **this bill:**

- 1) Clarifies that the prohibition from executing an assessment contract and an associated home improvement contract unless the property has no recorded and outstanding liens in excess of \$1,000 refers to the cumulative total amount of such liens.
- 2) Provides that a program administrator shall not execute an assessment contract, work shall not commence under a home improvement contract that is financed by that assessment contract, and a home improvement contract shall not be executed unless the property that will be subject to the assessment contract has undergone an energy audit that may be focused on the suitability and cost effectiveness of the measures to be installed and PACE financed and is performed by any of the following:
 - a) An auditor or rater certified by the Building Performance Institute.
 - b) A rater who is accredited under the Mortgage Industry National Home Energy Rating Standards, as adopted by the Residential Energy Services Network, or certified by CalCERTS, CHEERS, or another comparable Home Energy Rating System provider approved by the Energy Commission.
 - c) An independent energy assessor with credentials obtained through one or more of the organizations listed as eligible by the United State Department of Energy to provide a Home Energy Score Report.
 - d) An independent and certified home energy consultant or auditor, as specified, that is permitted under a local or state home energy certification or audit program.
- 3) Requires the audit to, at a minimum, include all of the following in a written report provided to the property owner as a printed copy before execution of an assessment contract:
 - a) An evaluation of the suitability of the measures to be installed and PACE financed, given the energy sources, uses, and inefficiencies in the specific property.
 - b) A determination of whether the measures to be installed and PACE financed, if installed properly in the specific property, would reduce energy consumption or reduce the use of fossil fuel as energy.

- c) An estimate of energy cost savings for the specific property expected from the identified measures to be installed and PACE financed.
- 4) Specifies that the energy auditor performing the audit shall not be an agent or affiliate, as defined, of a program administrator, PACE Solicitor, or PACE solicitor agent.
- 5) Provides that in the case of emergency or immediate necessity, the requirements of this bill may be waived with respect to the execution of a PACE assessment contract to finance a heating, ventilation, and air-conditioning system, boiler, or other system, the primary function of which is temperature regulation in residential real property, if all of the following requirements are met:
 - a) The contract is executed in connection with the making of emergency or immediately necessary repairs to protect persons or real or personal property.
 - b) The property owner initiated the contract for the emergency repair or immediately necessary repair.
 - c) The property owner provided 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 acknowledging both of the following:
 - i) The contractor has informed the property owner of the right to cancel the sale.
 - ii) The property owner waives the right to cancel the sale.
 - d) 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.
 - e) Any efficiency improvement funded is eligible for PACE financing.
 - f) The amount of the assessment contract does not exceed \$15,000 or a monthly equivalent payment on the PACE assessment of \$125, as adjusted by any annual increase in the California Consumer Price Index as determined by existing law, whichever is greater.
- 6) Specifies that this bill does not apply with respect to permanent installation of new or upgraded electrical circuits and related equipment to enable electrical vehicle charging or to improvements related to water efficiency, seismic strengthening, or wildfire safety.
- 7) Provides that a program administrator shall not disburse funds to a PACE solicitor or PACE solicitor agency pursuant to an assessment contract unless at least one of the following criteria is met:
 - a) For assessment contracts financing improvements that require permitting or inspections under state or local law, the program administrator has obtained copies of all required permits and final inspection documentation.
 - b) For assessment contracts financing improvements that require approval by a utility company for interconnection, the program administrator has obtained copies of that approval.

- c) For assessment contracts in which the amount financed on the individual assessment contract or cumulatively with any past assessment contract with the property owner is not less than \$25,000, the program administrator has obtained and reviewed a written inspection report, a paper copy of which is also provided to the property owner, verifying that all measures contained in the home improvement contract have been installed according to accepted trade standards for work quality. The written inspection report shall be prepared by an inspector certified by the International Association of Certified Home Inspectors, the American Society of Home Inspectors, or an equivalent certifying entity.
- d) For assessment contracts in which the amount financed is less than \$25,000, the program administrator has obtained time- and geo-tagged photographs verifying that all measures contained in the home improvement contract have been installed according to accepted trade standards for work quality.

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: According to the Senate Appropriations Committee, “Unknown, potentially significant fiscal impact to the Department of Financial Protection and Innovation, to the extent that any increased administrative and enforcement workload is not absorbable within current resources.”

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 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 Community Facilities District (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 counties of Sonoma and Placer administer their own PACE programs. 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 which 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. Even after state and local policy changes, including the PACE reform laws of 2017 and 2018, questionable behavior by PACE solicitors has apparently persisted.

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.

- 5) **Bill Summary.** This bill prohibits a PACE program administrator from executing an assessment contract unless the associated property has undergone an energy audit and requires the audit to contain specified information. This bill also provides these requirements can be waived in certain emergency circumstances, and an audit is not required for the permanent installation of new or upgraded electrical circuits and related equipment to enable electrical vehicle charging or improvements related to water efficiency, seismic strengthening, or wildfire safety. Lastly, this bill prohibits a PACE program administrator from disbursing funds to a PACE solicitor or PACE solicitor agent without specified proof of project completion.

This bill is sponsored by the California Low-Income Consumer Coalition and the National Consumer Law Clinic.

- 6) **Author's Statement.** According to the author, "California's Property Assessed Clean Energy (PACE) program has been significantly diminished by the deceptive actions of administrators and contractors who have misled California's homeowners into signing up for unnecessary and exorbitantly priced home improvements with no energy or cost savings, and no actual environmental benefit. SB 476 establishes two critical reforms that will help address some of the most common consumer abuses we continue to see in PACE solicitation and financing.

"PACE solicitors often provide unrealistic estimates about how much money homeowners will save in energy costs. Consumers are promised energy savings that may never materialize and pitched upgrades they may not need. SB 476 will require a qualified third party to perform an energy audit to ensure the home improvements will reduce energy consumption or fossil fuels use. The energy audit requirement may be waived in the case of emergency or immediate necessity for financing a heating, ventilation, and air-conditioning system, if specified conditions are met.

"Residential PACE has a history of consumer complaints regarding unfinished or unacceptable work, and improvements that contractors have charged for but never installed. The second important reform SB 476 makes is halting payment to a PACE contractor until it can be verified that all the work has been adequately performed. Having this combination of

an upfront energy audit and a back-end inspection will significantly reduce fraud in the PACE program.”

- 7) **UC Berkeley Report.** In February 2021, the Environmental Law Clinic at UC Berkeley School of Law released a report titled, “The Dark Side of the Sun: How PACE Financing Has Under-Delivered Green Benefits and Harmed Low-Income Consumers.” Authored by academics and practitioners with careers in sustainability and environmental protections, the report argues that, “Property Assessed Clean Energy (PACE) is a creatively conceived program to finance solar energy and energy efficiency that has gone wrong in implementation in the residential sector. Hundreds of low-income California homeowners now face steep property tax debt and potential home foreclosure as a result of liens placed on their homes through PACE programs. These homeowners often accepted PACE liens on the false promise of cost-effective energy upgrades. Residential PACE is failing because it lacks environmental performance checks and adequate consumer protections. These intertwined deficiencies raise environmental justice concerns that must be addressed to achieve state climate goals without harming the most economically vulnerable.

“This report identifies two serious flaws in PACE residential program design that reduce the program’s environmental benefit; create economic risk for low-income participants; and facilitate outright contractor fraud.”

The report made the following recommendations to the Legislature:

- a) Mandate a pre-contract energy audit, performed by an independent and credentialed third party, for all residential PACE projects.
 - b) Mandate a post-installation inspection before any PACE administrator can pay a home contractor for PACE-financed work.
 - c) Bar PACE administrators from enrolling low-income homeowners in residential PACE, or at minimum, prohibit PACE marketing through door-to-door sales, which so often pressure vulnerable homeowners into financially unsupportable contracts.
- 8) **Policy Considerations and Committee Amendment.** The Committee may wish to consider the following:
- a) **Energy Audit.** Opponents state that a home energy audit costs \$400 - \$1,650, and this bill does not declare who would bear the costs. The costs could be paid by the homeowner, the home improvement contractor soliciting PACE, the program administrator, the property owner’s electric utility, or a public entity. If the cost of the audit is paid by the property owner, opponents have argued that, as currently drafted, this bill would still require a costly, time consuming, and burdensome energy audit that homeowners would have to pay for out-of-pocket. Ygrene Energy Fund argues, “SB 476 functions as a new energy efficiency tax on working families. Homeowners will be pushed into costlier financing options with fewer consumer protections such as credit cards or personal loans or they will simply be unable to complete their projects. Further, this requirement will disproportionately impact lower-income consumers who may lack the funds to pay this upfront fee out-of-pocket and may lack other financing options for their home improvement projects... SB 476, by placing a mandatory audit fee on every

family who chooses to use PACE, will seriously undermine the ability of local governments to empower their citizens to make sustainable and resilient home improvement choices. PACE supports city and county climate action plans, community water conservation initiatives, and so much more. SB 476 will effectively eliminate PACE as an option in the home improvement marketplace putting all the public benefits of PACE for local governments at risk.”

While the PACE program has faced significant controversy and scrutiny in recent years, and further safeguards may be needed, the Committee may wish to consider if this bill strikes the right balance between protecting consumers and ensuring PACE can continue as a viable financing option for energy related improvements.

- b) **Auditors.** The most recent amendments to this bill expanded the potential pool of energy auditors, however concerns continue to be raised that these auditors are not geographically dispersed in a manner that reflects the potential market for PACE-eligible projects. To the extent that demand for energy auditors far outstripped supply, particularly in rural areas, the cost of an energy audit would likely increase and the wait times for obtaining an energy audit would likely increase even more. The Committee may wish to consider if this bill could deter a property owner from selecting PACE as their preferred financing mechanism, which may reduce their demand for renewable energy or energy efficiency projects.

In order to respond to the policy considerations raised above, the Committee may wish to ask the author to remove the energy audit provisions from the bill. Due to compressed timelines, this amendment can be taken in the Assembly Banking and Finance Committee.

- 9) **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.

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.

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; and, 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.

- 10) **Arguments in Support.** The California Low-Income Consumer Coalition argues, “The UC Berkeley School of Law Environmental Law Clinic’s recent report on PACE, *The Dark Side of the Sun*, points out that the PACE program for *commercial* properties routinely mandates energy audits as a precondition for financing – but that the program for *residential* properties does not: ‘It is paradoxical that the logic of the market has endowed commercial PACE programs with far more protection against environmental under-performance, financial miscalculation, and contractor fraud than exist in residential PACE programs, which frequently market to low-income homeowners.’

“Additionally, the unique structure of PACE financing takes homeowners entirely out of the traditional payment loop. State law requires that in general contracting, homeowners have access to tools such as bonds, letters of credit, and escrow accounts that protect both the homeowner and the contractor. The contractor has some assurance money is available for payment, and the homeowner can effectively control the timing so full payment is not made unless the customer is satisfied.

“PACE’s financing structure, in contrast, guarantees direct and full payment to contractors when PACE program administrators receive a single document: the ‘completion certificate.’ This certificate, which is e-signed, simply asks the homeowner and contractor to certify that work was completed and performed to code, without any requirement that the program administrator verify the truth of its contents. This arrangement has invited abuse. There are many, many cases in which contractors have used fraud, misrepresentation, forgery, harassment, and/or undue influence to obtain a homeowner’s signature on a completion certificate. Once the contractor has been paid and a PACE tax lien has been placed on a homeowner’s residence, it is very difficult to undo the damage. CLICC’s legal aid members have been overwhelmed with clients trying to extract themselves from onerous tax liens that they should never have been burdened with in the first place.

“These instances of ‘no work’ and ineligible-work cases have *increased* since 2018, despite earlier PACE reforms. The need for greater protections and greater transparency is urgent and clear. The pre-construction audits and post-construction inspections required by this bill

will enhance the energy benefits and the reliability of the PACE program. They will protect low-income homeowners from contractor fraud, and from debilitating property-secured debt that too easily can lead to foreclosure.”

- 11) **Arguments in Opposition.** A coalition of PACE stakeholders is opposed unless amended and argues that, “As currently drafted, SB 476 would mandate working families pay out-of-pocket for an unnecessary and costly energy audit before they can utilize PACE financing to fund critical renewable energy and energy efficiency home improvement projects. While the Appropriations committee amendments to the post project inspection language are a good first step, the author’s amendments following the Senate Appropriations hearing did not eliminate the audit mandate. This mandate will disproportionately harm low- and moderate-income homeowners that should not be forced to pay for an unnecessary energy audit before they choose to finance their renewable energy or energy efficiency project with PACE. SB 476 will add costs to consumers and constrain one of California’s most successful climate and environmental resiliency policies.”

“We are a coalition of PACE stakeholders that support advancing solutions to California’s pressing climate and environmental challenges. SB 476, while well intentioned, will in practice increase costs to consumers and limit access to affordable PACE financing for hundreds of thousands of working families across California for critical renewable energy and energy efficiency improvement projects. A broad coalition has recommended amendments to SB 476 that would replace the energy audit mandate and preserve provisions for more flexible post project inspections, which would strengthen consumer protections without eliminating PACE as a financing option for working families.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-Income Consumer Coalition [SPONSOR]
 National Consumer Law Clinic [SPONSOR]
 Alliance of Californians for Community Empowerment (ACCE) Action
 Bet Tzedek Legal Services
 California Association of Realtors
 California Bankers Association
 California Credit Union League
 California Land Title Association
 California Mortgage Association
 California Mortgage Bankers Association
 Housing and Economic Rights Advocates
 Legal Services of Northern California
 National Consumer Law Center, Inc.
 National Housing Law Project
 Public Counsel

Opposition

Black Small Business Association of California (unless amended)

California Efficiency + Demand Management Council (unless amended)
California Hispanic Chambers of Commerce (unless amended)
California Solar & Storage Association (unless amended)
Clean Tech San Diego (unless amended)
FortiFi Financial Inc. (unless amended)
Los Angeles Business Council (unless amended)
Los Angeles Metro Hispanic Chambers of Commerce (unless amended)
PACE Funding Group (unless amended)
PACENation (unless amended)
Renew Financial (unless amended)
Silicon Valley Leadership Group (unless amended)
The Climate Center (unless amended)
Ygrene Energy Fund (unless amended)
53 Individuals

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