

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 874 (Quirk-Silva) – As Amended March 18, 2021

SUBJECT: PACE program: risk mitigation program

SUMMARY: Creates a grant program, to be administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), to provide eligible property owners with a PACE assessment financial assistance.

Specifically, **this bill:**

- 1) Requires CAEATFA, upon appropriation by the Legislature, to award an grant, in an amount equal to at least one annual PACE assessment but not more than four annual PACE assessments, to an eligible property owner. Grants shall be awarded on a first-come, first-served basis.
- 2) Requires CAEATFA, by July 1, 2022, to adopt regulations as necessary to implement this program.
- 3) Defines “eligible property owner” as a natural person who meets the following criteria:
 - a) The person owns and occupies a property that is the person’s primary residence and is subject to at least one PACE assessment.
 - b) The person is either:
 - i. At least 45 days delinquent, as defined, on payments due on a mortgage security by the property and either an escrow or impound account has been established with the mortgage to pay the PACE assessment or the mortgage servicer has advanced funds to pay the assessment,
 - ii. Delinquent on property tax installment payment that includes a PACE assessment.
 - c) The person is low-or-moderate income, as defined in Section 50094 of the Health and Safety Code.
- 4) Modifies the mitigation program described in Existing Law #3 to require that the program also allows an eligible property owner to apply for a grant to address residential PACE-related mortgage and tax delinquencies in order to avoid default.

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. (Streets and Highways Code Section 5898.10 et seq. and Government Code Section 53311 et seq.)

- 2) Establishes a regulatory framework for PACE program administrators, solicitors, and solicitor agents in order to protect property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs. (Financial Code Section 22680 et seq.)
- 3) Requires CAEATFA to develop and administer a PACE Reserve program to reduce overall costs to the property owners of PACE bonds issued by an applicant by providing a reserve of no more than 10 percent of the initial principal amount of the PACE bond. Also requires CAEATFA to develop and administer a PACE risk mitigation program for PACE financing to increase its acceptance in the marketplace and protect against the risk of default and foreclosure. (Public Resource Code Section 26060)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1) PURPOSE

According to the author:

Californians have been greatly impacted by the COVID-19 driven recession and sadly many may be on the brink of losing their home. AB 874 would help families throughout the state avoid foreclosure by expanding access to the existing \$10 million PACE Loss Reserve Fund. As a state we must do more to keep struggling families in their homes.

2) BACKGROUND

In 2008, the Legislature granted statutory authority to cities and counties to provide financing to property owners to install renewable energy equipment or energy efficiency improvements that are permanently fixed to their properties. Property owners repay their PACE financial obligations through their annual property tax bill. Over time, the Legislature expanded PACE to allow residential and commercial property owners to finance renewable energy upgrades, energy and water efficiency retrofits, seismic improvements, wildfire hardening, and other specified improvements for their homes or buildings.

One of the key features of the PACE program is that the obligation to repay the contractual assessment remains with the property, rather than remaining the obligation of the property owner who initially agreed to the PACE assessment. Additionally, the PACE assessment has a first-lien priority over other liens on the property, including mortgages. Since a PACE lien can increase the likelihood of default on an existing mortgage while retaining the same priority as real estate taxes, PACE financing can complicate the sale or refinance of properties with an existing PACE assessment. This creates problems for mortgage and real estate stakeholders as well as property owners.

The 2013 Budget Act (SB 97) created the PACE Loss Reserve Program and allocated \$10 million to mitigate potential risk to first mortgage lenders by making them whole for any losses incurred due to a first-priority PACE lien on a property during a foreclosure or forced sale. CAEATFA manages the Loss Reserve Program but, as of March 2021, had not received day applications to date.

3) CONSUMER RISKS

The PACE program has been subject to significant controversy because of poor consumer protections for participating property owners. For consumers who understand the costs and benefits of PACE financing, PACE provides a potentially attractive financing option. There are many consumers, however, who entered into PACE assessments without a clear understanding of its terms, and the consequences of the PACE assessment have been problematic. The most severe problems occur when a consumer enters into a PACE assessment that they do have the ability to repay. Failing to repay the annual PACE assessment amount on the property owner's property taxes can lead to large late fees and exposes the property owner to the risk of foreclosure or county tax sale if they remain in default.

These risks are compounded by predatory marketing practices that have targeted low-income or vulnerable property homeowners. A local PACE program administrator may partner with home improvement contractors who offer PACE financing to property owners and deliver the efficiency improvement projects permitted by PACE programs. These contractors are designated as "PACE solicitors" or "PACE solicitor agents" in statute. However, in practice, some solicitors engage in aggressive tactics to convince property owners into PACE projects they cannot afford. An April 2021 Bloomberg report investigated the ways in which property owners can become trapped in the program:

But consumer advocates say that, in practice, what's on offer to homeowners can amount to a predatory loan with a green veneer. PACE financing is sold primarily by door-to-door contractors acting as de facto mortgage brokers, some of whom have allegedly targeted the elderly, non-English-speakers, and other vulnerable consumers.¹

4) PROPOSED GRANT PROGRAM.

This bill proposes a grant program to help keep struggling homeowners with PACE assessments in their homes. Supporters indicate that the untapped \$10 million PACE Loss Reserve Program would support these grants.

There is no thorough data on just how many homeowners may be eligible for this grant program. Using back-of-the-envelope assumptions about default rates and annual assessments provides a rough idea: Assuming 2 percent of the 136,208 residential PACE financings covered by the PACE Loss Reserve Program are in default and have an average annual assessment of \$3,000, and those households otherwise meet the income limitations established in the bill, then potential annual first-year costs could be in the range of \$8.1 million. Since this bill allows for a grant to cover *up to* four annual assessments, costs could be even higher.

The above calculation is meant as only an approximation for the number of households who could benefit from the program. One side benefit of the proposed grant program is that it

¹ <https://www.bloomberg.com/news/features/2021-04-06/the-subprime-solar-trap-for-low-income-homeowners>

would provide additional information about the extent of the financial challenges faced by homeowners with a PACE assessments.

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-income Consumer Coalition (Sponsor)

National Consumer Law Center, INC. (Sponsor)

Alliance of Californians for Community Empowerment (ACCE) Action

California Advocates for Nursing Home Reform

California Association of Realtors

California Credit Union League

Opposition

None

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