

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Open Space and Ecology Committee via Lisa Pontecorvo and Stuart Schillinger, Administrative Services Director

DATE: Meeting of August 1, 2011

SUBJECT: Support for PACE Legislation

PURPOSE:

The purpose of Resolution 2011- 41 is to support legislation introduced in the House that would restore the ability of local governments to offer Property Assessed Clean Energy (PACE) programs to finance energy efficiency and renewable energy improvements.

RECOMMENDATION:

Adopt Resolution 2011- 41 and urge Congresswoman Jackie Speier, and Senators Feinstein and Boxer to support the PACE Assessment Protection Act of 2011 (H.R. 2599).

BACKGROUND:

The Open Space and Ecology Committee, as part of its charge to promote environmental sustainability, has worked to promote energy efficiency and renewable energy projects in Brisbane. However, a primary obstacle for many property owners is the high upfront cost of energy improvements. One approach to address this problem is the establishment of Property Assessed Clean Energy (PACE) programs. The Committee recommends that the City Council support legislation introduced in the House that would restore the ability of local governments to offer PACE programs to finance the installation of renewable energy and energy efficiency projects.

DISCUSSION:


The PACE program allows local governments to provide funds to participating

homeowners to install energy-efficiency upgrades, which are paid back over time in the form of a special assessment. Payments are typically secured by a lien on the property that gives local governments priority of repayment if the home goes into foreclosure. Twenty-seven states plus the District of Columbia have already passed legislation enabling cities and counties to pursue PACE programs.

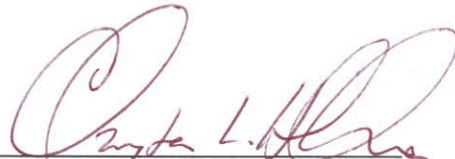
PACE programs removes many of the barriers of energy efficiency and renewable energy retrofits for residential homeowners and businesses, particularly the high upfront cost of making such an investment and the long-term ability to reap the benefits of cost savings. The law would prevent federal housing regulators from adopting policies that contravene established state and local property assessed clean energy laws. The bill incorporates best practices and guidelines from the U.S. Department of Energy to ensure safety for homeowners, private capital providers and existing mortgage lenders.

FISCAL IMPACT/FINANCING ISSUES

None.



Management Analyst



City Manager

ATTACHMENTS:

1. The PACE Assessment Protection Act of 2011 (H.R. 2599)
2. PACE Frequently Asked Questions

RESOLUTION NO. 2011- 41

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE TO
SUPPORT OF THE PACE ASSESSMENT PROTECTION ACT OF 2011**

WHEREAS, utility bills represent a major cost for home and business owners;

WHEREAS, persistent unemployment, particularly in the construction industry, continues to burden our families and communities;

WHEREAS, reliance on foreign energy sources continues to threaten America's economic recovery;

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can cut utility bills, create thousands of local jobs, and reduce reliance on foreign energy sources;

WHEREAS, the upfront cost and potentially long payback periods prevent property owners from making otherwise cost-effective clean energy improvements;

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative, voluntary local government solution that requires no general taxes or public funding to help property owners finance energy efficiency and renewable energy improvements – such as energy efficient boilers, upgraded insulation, new windows, solar installations, etc. – to their homes and businesses;

WHEREAS, twenty-seven states and the District of Columbia have passed laws enabling local governments to develop PACE programs; and

WHEREAS, despite PACE's great promise, the Federal Housing Finance Agency and the Office of the Comptroller of the Currency on July 6, 2010 issued unwarranted statements that immediately forced certain existing PACE programs to halt operations and froze the development of hundreds of other PACE programs nationwide;

WHEREAS, the PACE Assessment Protection Act of 2011 has been introduced to restore PACE, and incorporates specific program requirements to protect property owners and lenders;

NOW, THEREFORE, BE IT RESOLVED that the Brisbane City Council urges Congresswoman Jackie Speier, and Senators Feinstein and Boxer to support the PACE Assessment Protection Act of 2011 (H.R. 2599) to restore the promise of PACE.

Cyril G. Bologoff, Mayor

I hereby certify that the foregoing Resolution 2011- 41 was duly and regularly adopted at a regular meeting of the Brisbane City Council on August 1, 2011 by the following vote:

AYES:

NOES:

ABSENT:

Sheri Marie Spediacci, City Clerk

PACE Property Assessed Clean Energy

Frequently Asked Questions

PACE Program Basics

What is PACE?

PACE is a local government initiative that allows property owners to finance energy efficiency measures and renewable energy projects for their homes and commercial buildings. Interested owners opt-in to receive financing that is paid back with an assessment on their property taxes for up to 20 years. PACE spreads the cost of energy improvements such as weather sealing, insulation upgrades, more efficient heating and cooling systems, solar installations and the like over the expected life of the measures and allows the repayment obligation to transfer automatically, like other property assessments, to the next owner if the property is sold.

How does PACE work?

PACE uses the same kind of land-secured financing districts that American cities and towns have relied on for over 100 years to pay for improvements in the public interest. Over 37,000 land secured districts already exist and are a safe and familiar tool of municipal finance for street paving, parks, open space, water and sewer systems, septic tank replacement, street lighting, and seismic strengthening, to name a few. Usually, the public purpose is identified in state enabling legislation. A municipality will pass a local law to establish a benefit district, a step which often entails public hearings and may require a voter referendum or right to reject. The municipality will adopt detailed procedures to ensure programs achieve the defined public purpose and protect home owners and existing lenders.

Why is PACE so important?

PACE was adopted by 24 states in just two years because it made immediate sense to state and local governments. Energy efficiency is the least expensive energy we can buy because the low hanging fruit measures – weather sealing and improving insulation – cost so little compared to the energy saved. In Kilowatts or BTU's, the cost of saving energy through efficiency is less expensive than producing energy in the least expensive coal fired power plant. But people don't always act in an economically rational manner, particularly because of the upfront cost barrier. Experience has shown that local municipal programs often have much higher project adoption rates than incentivized programs run by state agencies or utilities. PACE, more than just a financing tool, is a uniquely self-supporting programmatic approach to encouraging energy efficiency and renewable energy projects in local communities.

Validity of PACE Assessments

The FHFA says PACE benefits are loans that do not deserve to be treated like other municipal assessments... is that true?

The FHFA has no authority to regulate public purpose. For over 100 years, state and local governments have determined what constitutes public purpose and which benefits provided by government can be financed with property tax assessments. For just as long, validly imposed public benefit assessments in arrears have been treated as a senior lien to mortgages in the event of a mortgage default. Allowing appointed federal regulators to determine what constitutes a local public purpose or benefit sets a very dangerous precedent.

The FHFA says that the size and duration of PACE assessments exceed typical local tax programs..... is this true?

Some PACE programs use relatively short assessment periods, set to produce low annual net savings to the property owners while paying off the assessment quickly. Once the assessment is repaid, these owners will see much larger energy savings. Others allow lower assessments spread over a longer period

of time (though not exceeding the useful life of the improvement measures). There is just as much variation in “typical” local tax programs. A new sewer plant that serves a given improvement district may result in assessments much larger than a “typical” PACE assessment, and the tax assessment will in all likelihood have a component that will be paid in perpetuity.

Aren't most municipal assessments mandatory, and if so, why are PACE assessments voluntary?

The FHFA uses a distinct advantage of PACE programs against it. The test of what constitutes public purpose is not whether it is mandatory and imposed on every taxpayer, but whether municipal benefits that are provided to residents meet a public purpose and further a public goal. This test has been met, and has not been challenged by mortgage lenders or the FHFA, with seismic retrofit financing benefits for individual homes and buildings in California, by sidewalk improvements in many parts of the country, by septic tank replacement programs in Massachusetts, and by the ability of citizens throughout the country to voluntarily seek inclusion in existing benefit districts.

Most municipal assessments are mandatory, for obvious and practical reasons. Let's use an example from Bedford, NY to illustrate why PACE assessments need and should not be. There was a time when every home in Bedford had its own well for its water needs. Decades ago, individual wells in the more densely populated parts of town became impractical for many reasons, so citizens chose to develop a centralized water system. Economies of scale in developing a system capable of serving every home in the district required that every home pay a pro rata share of the capital and fixed costs of operating the system, and every home in the system could benefit equally from it.

While energy efficiency and renewable energy improvements to individual homes serve a state and locally defined public purpose, there is no system wide means of improving an individual home's energy performance. We cannot place an insulated dome over an entire neighborhood to retain heat and moderate its energy use. Since there are no system economies of scale, there is no justification for assessing a home that is already energy efficient (built to newer energy standards, or already improved). While a municipality might feel there was a valid public purpose to encourage renewable energy projects like solar panels, it would make no sense (and be unfair) to assess properties that are heavily shaded and could not benefit from them.

So what is the public purpose behind energy efficiency and renewable energy?

State and local governments are increasingly developing energy goals, policies and programs to achieve them. PACE programs promote public purposes that include the following:

- Energy independence: reduces our dependence on imported oil
- Energy security: provides a hedge for property owners against rising energy prices
- Avoided costs: eliminates the need to develop new, expensive, and difficult to site power plants and transmission systems
- Environmental protection: burning oil, gas, and coal to produce heat and electricity leads to a variety of air pollutants that are unhealthy and/or expensive to mitigate
- Economic development: energy efficiency work creates permanent private sector jobs across a wide range of industries and relies on materials and equipment produced almost entirely in the United States

FHFA Safety and Soundness Concerns

The FHFA says the PACE programs raise concerns for the safety and soundness of the mortgage industry.... is this true?

It's an ironic claim, given the recent performance of regulators and mortgage lenders in evaluating risk. Experience from communities that have PACE programs in operation indicate the exact opposite: lower default and delinquency rates. Using very conservative assumptions about assessments and likely default

scenarios, PACE exposure to mortgage lenders that results from the assessments' senior lien status is likely no more than \$100 per participating home.

This amount could easily be insured for by program participants. The FHFA has provided no justification for its claim and ignores four key elements of PACE programs:

1. Building owners save money, net of assessment charges, making it easier for them to make mortgage payments
2. Only assessment charges in arrears are subject to foreclosure – most PACE assessments, like all other municipal assessments, do not accelerate upon default
3. PACE benefits are only available to homes with positive equity
4. Energy efficient buildings are worth more, so PACE programs increase the value of mortgaged collateral

The FHFA says “rational” buyers will want to pay less for a home with a PACE assessment.... is that true?

The FHFA's claim suggests that home owners who invest in energy efficiency upgrades are acting irrationally. Thorough analysis of housing data proves otherwise. Property taxes and assessments associated with a given home (or other building) are just one factor weighed by buyers in a very diverse market. All things being equal, we would expect a rational buyer to weigh all of the costs associated with owning a given property, including annual upkeep, taxes and assessments and energy costs. A home with a PACE assessment is a signal to buyers that it will have lower energy costs than a comparable house. This isn't mere conjecture. Following an exhaustive study and statistical analysis of American Housing Survey (AHS) and metropolitan statistical area (MSA) data in 1998, Rick Nevin and Gregory Watson of ICF Consulting (now ICF International) reported in “Evidence of Rational Market Valuations for Home Energy Efficiency” (*The Appraisal Journal*, October 1998) that on average, home selling prices increased nearly \$21 for every \$1 decrease in annual fuel bills. As market awareness grows, buyers will also understand that homes that are more energy efficient are also healthier and more comfortable.

The FHFA claims that PACE programs will lead to higher rates of mortgage defaults because property owners will have easier access to credit... shouldn't that be a concern?

Nearly all consumer borrowing results in added costs to home owners; the cost of paying back the debt is not offset by savings or greater income. Virtually every property tax or assessment results in an added cost to home owners' budgets. We may absolutely need water and sewer services, but the assessments that pay for them still impose an increased cost burden to operating a home. Only PACE assessments improve a home owner's cash flow. Energy cost savings that are greater than the fixed assessment payment make it easier to make mortgage payments. The FHFA, GSE's and other mortgage lenders also ignore the risk to existing lenders posed by rising energy prices. In many parts of the country fuel oil costs were a real burden to home owners before prices fell with the global recession. As the price of oil rises again, more home owners are struggling to stay warm and pay their mortgages, and further increases could well lead to defaults. PACE financing creates a permanent hedge for home owners against rising fuel prices. The FHFA's position is illogical and is not supported by facts or experience.

Consumer Protections

How can property owners be sure that they will save money?

Experience has shown that energy audits (or evaluations) performed by experienced, accredited and licensed contractors are good predictors of energy savings. Weather sealing, improved insulation, and upgrading heating and cooling systems alone, typically reduce energy consumption by as much as 35%. PACE programs are designed so that annual energy cost savings will exceed annual assessment charges.

Have steps been taken to ensure that PACE programs conform to certain standards?

PACE advocates and program pioneers worked closely with the U.S. Department of Energy to establish best practices and guidelines that ensure safety for home owners, private capital providers, and existing

mortgage lenders. The FHFA's blanket rejection of residential PACE programs came after many months of discussions during which the agency's position only became increasingly calcified.

General Questions for Policy Makers

Isn't PACE another government program that will raise my taxes?

PACE programs aren't mandated by Washington or state governments. They are created by citizens and their local governments and provide local benefits. Because participation is voluntary, only property owners who opt-in will receive an additional assessment. PACE programs have no direct cost to residents who choose not to participate.

Won't PACE losses just end up costing taxpayers money?

PACE programs are a tremendous opportunity for taxpayers. Every 100,000 homes that are made more energy efficient results in \$1 billion in direct spending for American materials and labor. It is estimated that five jobs are created for every \$1 million in spending. Each year, those 100,000 households would save about \$45 million in energy costs, net of assessments, money that can be used to pay mortgages, reduce debt, or purchase other local goods and services. Losses, spread across the entire mortgage market, are likely too small to measure, and as noted already, could be self-insured.

Congress recently created the FHFA...shouldn't the regulators be left to do their job as they see fit?

The FHFA was created to be the regulator and conservator for Fannie Mae, Freddie Mac, and other regulated GSE's. Just as they were not created to define public purpose and benefits that merit local assessment financing, they were not established to weigh broader public policy goals. Those responsibilities rest with our elected representatives in government. Congress has every reason to act in this instance.

Aren't there plenty of alternatives to PACE that could work just as well?

The FHFA would have you believe this is true. The fact is that virtually all other programs to encourage energy efficiency and renewable energy projects rely on heavy government subsidies to enhance credit, reduce interest rates, and support substantial marketing efforts. PACE is uniquely powerful for many reasons, including:

- PACE programs are locally driven, voluntary, and **require no** federal government subsidies
- PACE programs do not increase taxes or drive up energy costs
- PACE programs are self-supported by participants and are not a burden to local municipal budgets
- PACE programs rely on private capital for funding

What about subordinate PACE subordinate?

PACE subordinate programs really aren't PACE, and will not establish a new asset class that will be attractive to private sector investors. A subordinate PACE lien will require substantial government credit support. Again, PACE is the only financing tool that attracts capital on its own.

[Congressional Bills 112th Congress]
[From the U.S. Government Printing Office]
[H.R. 2599 Introduced in House (IH)]

112th CONGRESS
1st Session

H. R. 2599

To prevent Fannie Mae, Freddie Mac, and other Federal residential and commercial mortgage lending regulators from adopting policies that contravene established State and local property assessed clean energy laws.

IN THE HOUSE OF REPRESENTATIVES

July 20, 2011

Ms. Hayworth (for herself, Mr. Thompson of California, Mr. Daniel E. Lungren of California, Mr. Sensenbrenner, Mr. Sessions, Mr. Flores, Mr. Cole, Mr. Hanna, Mr. Dold, Mr. Manzullo, Mrs. Capps, Ms. Woolsey, Mr. Perlmutter, Ms. Matsui, and Mr. Polis) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To prevent Fannie Mae, Freddie Mac, and other Federal residential and commercial mortgage lending regulators from adopting policies that contravene established State and local property assessed clean energy laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "PACE Assessment Protection Act of 2011".

SEC. 2. PURPOSE.

It is the purpose of this Act to ensure that those PACE programs which incorporate prudent programmatic safeguards to protect the interest of mortgage holders and property owners remain viable as a potential avenue for States and local governments to achieve the many public benefits associated with energy efficiency, water efficiency, and renewable energy retrofits. In addition, it is essential that the power and authority of State and local governments to exercise their longstanding and traditional powers to levy taxes for public purposes not be impeded.

SEC. 3. DEFINITIONS.

For purposes of this Act the following definitions apply:

- (1) The term ``local government'' includes counties, cities, boroughs, towns, parishes, villages, districts, and other political subdivisions authorized under State laws to establish PACE programs.
- (2) The term ``PACE agreement'' means an agreement between a local government and a property owner detailing the terms of financing for a PACE improvement.
- (3) The term ``PACE assessment'' means a tax or assessment levied by a local government to provide financing for PACE improvements.
- (4) The term ``PACE improvements'' means qualified clean energy improvements, qualified energy conservation and efficiency improvements, and qualified water conservation and efficiency improvements.
- (5) The term ``PACE lien'' means a lien securing a PACE assessment, which may be senior to the lien of pre-existing purchase money mortgages on the same property subject to the PACE lien.
- (6) The term ``PACE program'' means a program implemented by a local government under State law to provide financing for PACE improvements by levying PACE assessments.
- (7) The term ``residential property'' means a property with up to 4 private residences.
- (8) The term ``non-residential property'' means private property that is--
 - (A) not used for residential purposes; or
 - (B) residential property with 5 or more residences.
- (9) The term ``clean energy improvements'' means any system on privately owned property for producing electricity for, or meeting heating, cooling, or water heating needs of the property, using renewable energy sources, combined heat and power systems, or energy systems using wood biomass (but not construction and demolition waste) or natural gas. Such improvements include solar photovoltaic, solar thermal, wood biomass, wind, and geothermal systems. Such term includes the reasonable costs of a study undertaken by a property owner to analyze the feasibility of installing any of the improvements described in this paragraph and the cost of a warranty or insurance policy for such improvements.
- (10) The term ``energy conservation and efficiency improvements'' means measures to reduce consumption, through conservation or more efficient use, of electricity, fuel oil, natural gas, propane, or other forms of energy by the property, including air sealing, installation of insulation, installation of heating, cooling, or ventilation systems, building modification to increase the use of daylighting, replacement of windows, installation of energy controls or energy recovery systems, installation of building management systems, and installation of efficient lighting equipment, provided that such improvements are permanently affixed to the property. Such term includes the reasonable costs of an audit undertaken by a property owner to identify potential energy savings that could be achieved through installation of any of the improvements described in this paragraph.
- (11) The term ``water conservation and efficiency improvements'' means measures to reduce consumption, through conservation or more efficient use of water by the property, including installation of low-flow toilets and showerheads, installation of timer or timing system for hot water heaters,

and installation of rain catchment systems.

(12) The term ``property owner'' means the owner of record of real property that is subject to a PACE assessment, whether such property is zoned or used for residential, commercial, industrial, or other uses.

(13) The term ``qualified'' means, with respect to PACE improvements, that the improvements meet the criteria specified in section 5.

SEC. 4. TREATMENT OF PACE PROGRAMS BY FNMA AND FHLMC.

(a) Lender Guidance.--The Director of the Federal Housing Finance Agency, acting in the Director's general supervisory capacity, shall direct the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to--

(1) issue guidance, within 30 days after the date of enactment of this Act, providing that the levy of a PACE assessment and the creation of a PACE lien do not constitute a default on any loan secured by a uniform instrument of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation and do not trigger the exercise of remedies with respect to any provision of such uniform security instrument if the PACE assessment and the PACE lien meet the requirements of section 5;

(2) rescind any prior issued guidance or Selling and Servicing Guides that are inconsistent with the provisions of paragraph (1); and

(3) take all such other actions necessary to effect the purposes of this Act.

(b) Prohibition of Discrimination.--The Director of the Federal Housing Finance Agency, the Comptroller of the Currency, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, and all Federal agencies and entities chartered or otherwise established under Federal law shall not discriminate in any manner against States or local governments implementing or participating in a PACE program, or against any property that is obligated to pay a PACE assessment or is subject to a PACE lien, including, without limitation, by--

(1) prohibiting lending within such jurisdiction or requiring more restrictive underwriting criteria for properties within such jurisdiction;

(2) except for the escrowing of funds as permitted by section (5)(g)(2), requiring payment of PACE assessment amounts that are not due or that are not delinquent; or

(3) applying more restrictive underwriting criteria to any property that is obligated to pay a PACE assessment and is subject to a PACE lien than any such entity would apply to such property in the event that such property were subject to a State or municipal tax or assessment that was not a PACE assessment.

SEC. 5. PACE PROGRAMS ELIGIBLE FOR PROTECTION.

(a) In General.--A PACE program, and any PACE assessment and PACE lien related to such program, are entitled to the protections of this Act only if the Program meets all of the requirements under this section at the time of its establishment, or, in the case of any PACE program in effect upon the date of the enactment of this Act, not later

than 60 days after such date of enactment.

(b) Consumer Protections Applicable to Residential Property.--A PACE program shall provide, with respect to residential property, for the following:

(1) Property owner agreements.--

(A) PACE assessment.--The property owner shall agree in writing to a PACE assessment, either pursuant to a PACE agreement or by voting in the manner specified by State law. In the case of any property with multiple owners, each owner or the owner's authorized representative shall execute a PACE agreement or vote in the manner specified by State law, as applicable.

(B) Payment schedule.--The property owner shall agree to a payment schedule that identifies the term over which PACE assessment installments will be due, the frequency with which PACE assessment installments will be billed and amount of each installment, and the annual amount due on the PACE assessment. Upon full payment of the amount of the PACE assessment, including all outstanding interest and charges and any penalties that may become due, the local government shall provide the participating property owner with a written statement certifying that the PACE assessment has been paid in full and the local government shall also satisfy all requirements of State law to extinguish the PACE lien.

(2) Disclosures by local government.--The local government shall disclose to the participating property owner the costs and risks associated with participating in the PACE program, including risks related to their failure to pay PACE assessments and the risk of enforcement of PACE liens. The local government shall disclose to the property owner the effective interest rate of the PACE assessment, including all program fees. The local government shall clearly and conspicuously provide the property owner the right to rescind his or her decision to enter into a PACE assessment, within 3 days of the original transaction.

(3) Notice to lienholders.--Before entering into a PACE agreement or voting in favor of a PACE assessment, the property owner or the local government shall provide to the holders of any existing mortgages on the property written notice of the terms of the PACE assessment.

(4) Confidentiality.--Any personal financial information provided by a property owner to a local government or an entity administering a PACE program on behalf of a local government shall comply with applicable local, State, and Federal laws governing the privacy of the information.

(c) Requirements Applicable Only to Non-Residential Property.--A PACE program shall provide, with respect to non-residential property, for the following:

(1) Authorization by lienholders.--Before entering into a PACE agreement with a local government or voting in favor of PACE assessments in the manner specified by State law, the property owner shall obtain written authorization from the holders of the first mortgage on the property.

(2) PACE agreement.--

(A) Terms.--The local government and the owner of the property to which the PACE assessment applies at the time of commencement of assessment shall enter into

a written PACE agreement addressing the terms of the PACE improvement. In the case of any property with multiple owners, the PACE agreement shall be signed by all owners or their legally authorized representative or representatives.

(B) PACE improvements.--The property owner shall contract for PACE improvements, purchase materials to be used in making such improvements, or both, and upon submission of documentation required by the local government, the local government shall disburse funds to the property owner in payment for the PACE improvements or materials used in making such improvements.

(C) Payment schedule.--The PACE agreement shall include a payment schedule showing the term over which payments will be due on the assessment, the frequency with which payments will be billed and amount of each payment, and the annual amount due on the assessment. Upon full payment of the amount of the assessment, including all outstanding interest and charges and any penalties that may become due, the local government shall provide the participating property owner with a written statement certifying that the assessment has been paid in full and the local government shall also satisfy all requirements of State law to extinguish the PACE lien.

(3) Disclosures by local government.--The local government shall disclose to the participating property owners the costs and risks associated with participating in the program, including risks related to their failure to make payments and the risk of enforcement of PACE liens.

(4) Confidentiality.--Any personal financial information provided by a property owner to a local government or an entity administering a PACE program on behalf of a local government shall comply with applicable local, State, and Federal laws governing the privacy of the information.

(d) Public Notice of PACE Assessment.--The local government shall file a public notice of the PACE assessment in a manner sufficient to provide notice of the PACE assessment to potential lenders and potential purchasers of the property. The notice shall consist of the following statement or its substantial equivalent: ``This property is subject to a tax or assessment that is levied to finance the installation of qualifying energy and water conservation and efficiency improvements or clean energy improvements. The tax or assessment is secured by a lien that is senior to all private liens.''

(e) Eligibility of Residential Property Owners.--Before levying a PACE assessment on a property, the local government shall ensure that all of the following are true with respect to the property:

(1) All property taxes and any other public assessments are current and have been current for 3 years or the property owner's period of ownership, whichever period is shorter.

(2) There are no involuntary liens, such as mechanics liens, on the property in excess of \$1,000.

(3) No notices of default and not more than one instance of property-based debt delinquency have been recorded during the past 3 years or the property owner's period of ownership, whichever period is shorter.

(4) The property owner has not filed for or declared bankruptcy in the previous 7 years.

(5) The property owner is current on all mortgage debt on

the property.

(6) The property owner or owners are the holders of record of the property.

(7) The property title is not subject to power of attorney, easements, or subordination agreements restricting the authority of the property owner to subject the property to a PACE lien.

(8) The property meets any geographic eligibility requirements established by the PACE program.

The local government may adopt additional criteria, appropriate to PACE programs, for determining whether to provide PACE financing to a property.

(f) Qualifying Improvements and Qualifying Contractors for Residential Properties.--PACE improvements for residential properties shall be qualified if they meet the following criteria:

(1) Audit.--For clean energy improvements and energy conservation and efficiency improvements, an audit or feasibility study performed by a person who has been certified as a building analyst by the Building Performance Institute or as a Home Energy Rating System (HERS) Rater by a Rating Provider accredited by the Residential Energy Services Network (RESNET); or who has obtained other similar independent certification shall have been commissioned by the local government or the property owner and the audit or feasibility study shall--

(A) identify recommended energy conservation, efficiency, and/or clean energy improvements and such recommended improvements must include the improvements proposed to be financed with the PACE assessment to the extent permitted by law;

(B) estimate the potential cost savings, useful life, benefit-cost ratio, and simple payback or return on investment for each improvement; and

(C) provide the estimated overall difference in annual energy costs with and without the recommended improvements.

State law may provide that the cost of the audit and the cost of a warranty covering the financed improvements may be included in the total amount financed.

(2) Affixed for useful life.--The local government shall have determined the improvements are intended to be affixed to the property for the entire useful life of the improvements based on the expected useful lives of energy conservation, efficiency, and clean energy measures approved by the Department of Energy.

(3) Qualified contractors.--The improvements must be made by a contractor or contractors, determined by the local government to be qualified to make the PACE improvements. A local government may accept a designation of contractors as qualified made by an electric or gas utility or another appropriate entity. Any work requiring a license under applicable law shall be performed by an individual holding such license. A local government may elect to provide financing for improvements made by the owner of the property, but shall not permit the value of the owner's labor to be included in the amount financed.

(4) Disbursement of payments.--A local government must require, prior to disbursement of final payments for the financed improvements, submission by the property owner in a form acceptable to the local government of--

(A) a document signed by the property-owner requesting disbursement of funds;

(B) a certificate of completion, certifying that improvements have been installed satisfactorily; and

(C) documentation of all costs to be financed and copies of any required permits.

(g) Financing Terms Applicable Only to Residential Property.--A PACE program shall provide, with respect to residential property, for the following:

(1) Amount financed.--PACE improvements shall be financed on terms such that the total energy and water cost savings realized by the property owner and the property owner's successors during the useful lives of the improvements, as determined by the audit or feasibility study pursuant to subsection (f)(1), are expected to exceed the total cost to the property owner and the property owner's successors of the PACE assessment. In determining the amount that may be financed by a PACE assessment, the total amount of all rebates, grants, and other direct financial assistance received by the owner on account of the PACE improvements shall be deducted from the cost of the PACE improvements.

(2) PACE assessments.--The total amount of PACE assessments for a property shall not exceed 10 percent of the estimated value of the property. A property owner who escrows property taxes with the holder of a mortgage on a property subject to PACE assessment may be required by the holder to escrow amounts due on the PACE assessment, and the mortgage holder shall remit such amounts to the local government in the manner that property taxes are escrowed and remitted.

(3) Owner equity.--As of the effective date of the PACE agreement or the vote required by State law, the property owner shall have equity in the property of not less than 15 percent of the estimated value of the property calculated without consideration of the amount of the PACE assessment or the value of the PACE improvements.

(4) Term of financing.--The maximum term of financing provided for a PACE improvement may be 20 years. The term shall in no case exceed the weighted average expected useful life of the PACE improvement or improvements. Expected useful lives used for all calculations under this paragraph shall be consistent with the expected useful lives of energy conservation and efficiency and clean energy measures approved by the Department of Energy.

(h) Collection and Enforcement.--A PACE program shall provide that--

(1) PACE assessments shall be collected in the manner specified by State law;

(2) notwithstanding any other provision of law, in the event of a transfer of property ownership through foreclosure, the transferring property owner may be obligated to pay only PACE assessment installments that are due (including delinquent amounts), along with any applicable penalties and interest, except that before imposition of any penalties or fees, the PACE program shall provide an opportunity to any holder of a senior lien on the property to assume payment of the PACE assessment;

(3) PACE assessment installments that are not due may not be accelerated by foreclosure except as provided by State law; and

(4) payment of a PACE assessment installment from the loss

reserve established for a PACE program shall not relieve a participating property owner from the obligation to pay that amount.

<all>

7-20-09