

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “PACE Assessment
5 Protection Act of 2011”.

1 **SEC. 2. PURPOSE.**

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

12 **SEC. 3. DEFINITIONS.**

13 For purposes of this Act the following definitions
14 apply:

15 (1) The term “local government” includes coun-
16 ties, cities, boroughs, towns, parishes, villages, dis-
17 tricts, and other political subdivisions authorized
18 under State laws to establish PACE programs.

19 (2) The term “PACE agreement” means an
20 agreement between a local government and a prop-
21 erty owner detailing the terms of financing for a
22 PACE improvement.

23 (3) The term “PACE assessment” means a tax
24 or assessment levied by a local government to pro-
25 vide financing for PACE improvements.

1 (4) The term “PACE improvements” means
2 qualified clean energy improvements, qualified en-
3 ergy conservation and efficiency improvements, and
4 qualified water conservation and efficiency improve-
5 ments.

6 (5) The term “PACE lien” means a lien secur-
7 ing a PACE assessment, which may be senior to the
8 lien of pre-existing purchase money mortgages on
9 the same property subject to the PACE lien.

10 (6) The term “PACE program” means a pro-
11 gram implemented by a local government under
12 State law to provide financing for PACE improve-
13 ments by levying PACE assessments.

14 (7) The term “residential property” means a
15 property with up to 4 private residences.

16 (8) The term “non-residential property” means
17 private property that is—

18 (A) not used for residential purposes; or

19 (B) residential property with 5 or more
20 residences.

21 (9) The term “clean energy improvements”
22 means any system on privately owned property for
23 producing electricity for, or meeting heating, cooling,
24 or water heating needs of the property, using renew-
25 able energy sources, combined heat and power sys-

1 tems, or energy systems using wood biomass (but
2 not construction and demolition waste) or natural
3 gas. Such improvements include solar photovoltaic,
4 solar thermal, wood biomass, wind, and geothermal
5 systems. Such term includes the reasonable costs of
6 a study undertaken by a property owner to analyze
7 the feasibility of installing any of the improvements
8 described in this paragraph and the cost of a war-
9 ranty or insurance policy for such improvements.

10 (10) The term “energy conservation and effi-
11 ciency improvements” means measures to reduce
12 consumption, through conservation or more efficient
13 use, of electricity, fuel oil, natural gas, propane, or
14 other forms of energy by the property, including air
15 sealing, installation of insulation, installation of
16 heating, cooling, or ventilation systems, building
17 modification to increase the use of daylighting, re-
18 placement of windows, installation of energy controls
19 or energy recovery systems, installation of building
20 management systems, and installation of efficient
21 lighting equipment, provided that such improve-
22 ments are permanently affixed to the property. Such
23 term includes the reasonable costs of an audit un-
24 dertaken by a property owner to identify potential
25 energy savings that could be achieved through instal-

1 lation of any of the improvements described in this
2 paragraph.

3 (11) The term “water conservation and effi-
4 ciency improvements” means measures to reduce
5 consumption, through conservation or more efficient
6 use of water by the property, including installation
7 of low-flow toilets and showerheads, installation of
8 timer or timing system for hot water heaters, and
9 installation of rain catchment systems.

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

15 (13) The term “qualified” means, with respect
16 to PACE improvements, that the improvements meet
17 the criteria specified in section 5.

18 **SEC. 4. TREATMENT OF PACE PROGRAMS BY FNMA AND**

19 **FHLMC.**

20 (a) LENDER GUIDANCE.—The Director of the Fed-
21 eral Housing Finance Agency, acting in the Director’s
22 general supervisory capacity, shall direct the Federal Na-
23 tional Mortgage Association and the Federal Home Loan
24 Mortgage Corporation to—

1 (1) issue guidance, within 30 days after the
2 date of enactment of this Act, providing that the
3 levy of a PACE assessment and the creation of a
4 PACE lien do not constitute a default on any loan
5 secured by a uniform instrument of Federal Na-
6 tional Mortgage Association or Federal Home Loan
7 Mortgage Corporation and do not trigger the exer-
8 cise of remedies with respect to any provision of
9 such uniform security instrument if the PACE as-
10 sessment and the PACE lien meet the requirements
11 of section 5;

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

15 (3) take all such other actions necessary to ef-
16 fect the purposes of this Act.

17 (b) PROHIBITION OF DISCRIMINATION.—The Direc-
18 tor of the Federal Housing Finance Agency, the Comp-
19 troller of the Currency, the Federal National Mortgage
20 Association, the Federal Home Loan Mortgage Corpora-
21 tion, the Federal Deposit Insurance Corporation, the Na-
22 tional Credit Union Administration, the Board of Gov-
23 ernors of the Federal Reserve System, and all Federal
24 agencies and entities chartered or otherwise established
25 under Federal law shall not discriminate in any manner

1 against States or local governments implementing or par-
2 ticipating in a PACE program, or against any property
3 that is obligated to pay a PACE assessment or is subject
4 to a PACE lien, including, without limitation, by—

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

8 (2) except for the escrowing of funds as per-
9 mitted by section (5)(g)(2), requiring payment of
10 PACE assessment amounts that are not due or that
11 are not delinquent; or

12 (3) applying more restrictive underwriting cri-
13 teria to any property that is obligated to pay a
14 PACE assessment and is subject to a PACE lien
15 than any such entity would apply to such property
16 in the event that such property were subject to a
17 State or municipal tax or assessment that was not
18 a PACE assessment.

19 **SEC. 5. PACE PROGRAMS ELIGIBLE FOR PROTECTION.**

20 (a) IN GENERAL.—A PACE program, and any
21 PACE assessment and PACE lien related to such pro-
22 gram, are entitled to the protections of this Act only if
23 the Program meets all of the requirements under this sec-
24 tion at the time of its establishment, or, in the case of
25 any PACE program in effect upon the date of the enact-

1 ment of this Act, not later than 60 days after such date
2 of enactment.

3 (b) CONSUMER PROTECTIONS APPLICABLE TO RESI-
4 DENTIAL PROPERTY.—A PACE program shall provide,
5 with respect to residential property, for the following:

6 (1) PROPERTY OWNER AGREEMENTS.—

7 (A) PACE ASSESSMENT.—The property
8 owner shall agree in writing to a PACE assess-
9 ment, either pursuant to a PACE agreement or
10 by voting in the manner specified by State law.
11 In the case of any property with multiple own-
12 ers, each owner or the owner’s authorized rep-
13 resentative shall execute a PACE agreement or
14 vote in the manner specified by State law, as
15 applicable.

16 (B) PAYMENT SCHEDULE.—The property
17 owner shall agree to a payment schedule that
18 identifies the term over which PACE assess-
19 ment installments will be due, the frequency
20 with which PACE assessment installments will
21 be billed and amount of each installment, and
22 the annual amount due on the PACE assess-
23 ment. Upon full payment of the amount of the
24 PACE assessment, including all outstanding in-
25 terest and charges and any penalties that may

1 become due, the local government shall provide
2 the participating property owner with a written
3 statement certifying that the PACE assessment
4 has been paid in full and the local government
5 shall also satisfy all requirements of State law
6 to extinguish the PACE lien.

7 (2) DISCLOSURES BY LOCAL GOVERNMENT.—

8 The local government shall disclose to the partici-
9 pating property owner the costs and risks associated
10 with participating in the PACE program, including
11 risks related to their failure to pay PACE assess-
12 ments and the risk of enforcement of PACE liens.

13 The local government shall disclose to the property
14 owner the effective interest rate of the PACE assess-
15 ment, including all program fees. The local govern-
16 ment shall clearly and conspicuously provide the
17 property owner the right to rescind his or her deci-
18 sion to enter into a PACE assessment, within 3 days
19 of the original transaction.

20 (3) NOTICE TO LIENHOLDERS.—Before enter-
21 ing into a PACE agreement or voting in favor of a
22 PACE assessment, the property owner or the local
23 government shall provide to the holders of any exist-
24 ing mortgages on the property written notice of the
25 terms of the PACE assessment.

1 (4) CONFIDENTIALITY.—Any personal financial
2 information provided by a property owner to a local
3 government or an entity administering a PACE pro-
4 gram on behalf of a local government shall comply
5 with applicable local, State, and Federal laws gov-
6 erning the privacy of the information.

7 (c) REQUIREMENTS APPLICABLE ONLY TO NON-RES-
8 IDENTIAL PROPERTY.—A PACE program shall provide,
9 with respect to non-residential property, for the following:

10 (1) AUTHORIZATION BY LIENHOLDERS.—Be-
11 fore entering into a PACE agreement with a local
12 government or voting in favor of PACE assessments
13 in the manner specified by State law, the property
14 owner shall obtain written authorization from the
15 holders of the first mortgage on the property.

16 (2) PACE AGREEMENT.—

17 (A) TERMS.—The local government and
18 the owner of the property to which the PACE
19 assessment applies at the time of commence-
20 ment of assessment shall enter into a written
21 PACE agreement addressing the terms of the
22 PACE improvement. In the case of any prop-
23 erty with multiple owners, the PACE agreement
24 shall be signed by all owners or their legally au-
25 thorized representative or representatives.

1 (B) PACE IMPROVEMENTS.—The property
2 owner shall contract for PACE improvements,
3 purchase materials to be used in making such
4 improvements, or both, and upon submission of
5 documentation required by the local govern-
6 ment, the local government shall disburse funds
7 to the property owner in payment for the
8 PACE improvements or materials used in mak-
9 ing such improvements.

10 (C) PAYMENT SCHEDULE.—The PACE
11 agreement shall include a payment schedule
12 showing the term over which payments will be
13 due on the assessment, the frequency with
14 which payments will be billed and amount of
15 each payment, and the annual amount due on
16 the assessment. Upon full payment of the
17 amount of the assessment, including all out-
18 standing interest and charges and any penalties
19 that may become due, the local government
20 shall provide the participating property owner
21 with a written statement certifying that the as-
22 sessment has been paid in full and the local
23 government shall also satisfy all requirements
24 of State law to extinguish the PACE lien.

1 (3) DISCLOSURES BY LOCAL GOVERNMENT.—

2 The local government shall disclose to the partici-
3 pating property owners the costs and risks associ-
4 ated with participating in the program, including
5 risks related to their failure to make payments and
6 the risk of enforcement of PACE liens.

7 (4) CONFIDENTIALITY.—Any personal financial
8 information provided by a property owner to a local
9 government or an entity administering a PACE pro-
10 gram on behalf of a local government shall comply
11 with applicable local, State, and Federal laws gov-
12 erning the privacy of the information.

13 (d) PUBLIC NOTICE OF PACE ASSESSMENT.—The
14 local government shall file a public notice of the PACE
15 assessment in a manner sufficient to provide notice of the
16 PACE assessment to potential lenders and potential pur-
17 chasers of the property. The notice shall consist of the
18 following statement or its substantial equivalent: “This
19 property is subject to a tax or assessment that is levied
20 to finance the installation of qualifying energy and water
21 conservation and efficiency improvements or clean energy
22 improvements. The tax or assessment is secured by a lien
23 that is senior to all private liens.”.

24 (e) ELIGIBILITY OF RESIDENTIAL PROPERTY OWN-
25 ERS.—Before levying a PACE assessment on a property,

1 the local government shall ensure that all of the following
2 are true with respect to the property:

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

7 (2) There are no involuntary liens, such as me-
8 chanics liens, on the property in excess of \$1,000.

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

14 (4) The property owner has not filed for or de-
15 clared bankruptcy in the previous 7 years.

16 (5) The property owner is current on all mort-
17 gage debt on the property.

18 (6) The property owner or owners are the hold-
19 ers of record of the property.

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

1 (8) The property meets any geographic eligi-
2 bility requirements established by the PACE pro-
3 gram.

4 The local government may adopt additional criteria, ap-
5 propriate to PACE programs, for determining whether to
6 provide PACE financing to a property.

7 (f) QUALIFYING IMPROVEMENTS AND QUALIFYING
8 CONTRACTORS FOR RESIDENTIAL PROPERTIES.—PACE
9 improvements for residential properties shall be qualified
10 if they meet the following criteria:

11 (1) AUDIT.—For clean energy improvements
12 and energy conservation and efficiency improve-
13 ments, an audit or feasibility study performed by a
14 person who has been certified as a building analyst
15 by the Building Performance Institute or as a Home
16 Energy Rating System (HERS) Rater by a Rating
17 Provider accredited by the Residential Energy Serv-
18 ices Network (RESNET); or who has obtained other
19 similar independent certification shall have been
20 commissioned by the local government or the prop-
21 erty owner and the audit or feasibility study shall—

22 (A) identify recommended energy conserva-
23 tion, efficiency, and/or clean energy improve-
24 ments and such recommended improvements
25 must include the improvements proposed to be

1 financed with the PACE assessment to the ex-
2 tent permitted by law;

3 (B) estimate the potential cost savings,
4 useful life, benefit-cost ratio, and simple pay-
5 back or return on investment for each improve-
6 ment; and

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

10 State law may provide that the cost of the audit and
11 the cost of a warranty covering the financed im-
12 provements may be included in the total amount fi-
13 nanced.

14 (2) AFFIXED FOR USEFUL LIFE.—The local
15 government shall have determined the improvements
16 are intended to be affixed to the property for the en-
17 tire useful life of the improvements based on the ex-
18 pected useful lives of energy conservation, efficiency,
19 and clean energy measures approved by the Depart-
20 ment of Energy.

21 (3) QUALIFIED CONTRACTORS.—The improve-
22 ments must be made by a contractor or contractors,
23 determined by the local government to be qualified
24 to make the PACE improvements. A local govern-
25 ment may accept a designation of contractors as

1 qualified made by an electric or gas utility or an-
2 other appropriate entity. Any work requiring a li-
3 cense under applicable law shall be performed by an
4 individual holding such license. A local government
5 may elect to provide financing for improvements
6 made by the owner of the property, but shall not
7 permit the value of the owner's labor to be included
8 in the amount financed.

9 (4) DISBURSEMENT OF PAYMENTS.—A local
10 government must require, prior to disbursement of
11 final payments for the financed improvements, sub-
12 mission by the property owner in a form acceptable
13 to the local government of—

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

16 (B) a certificate of completion, certifying
17 that improvements have been installed satisfac-
18 torily; and

19 (C) documentation of all costs to be fi-
20 nanced and copies of any required permits.

21 (g) FINANCING TERMS APPLICABLE ONLY TO RESI-
22 DENTIAL PROPERTY.—A PACE program shall provide,
23 with respect to residential property, for the following:

24 (1) AMOUNT FINANCED.—PACE improvements
25 shall be financed on terms such that the total energy

1 and water cost savings realized by the property
2 owner and the property owner's successors during
3 the useful lives of the improvements, as determined
4 by the audit or feasibility study pursuant to sub-
5 section (f)(1), are expected to exceed the total cost
6 to the property owner and the property owner's suc-
7 cessors of the PACE assessment. In determining the
8 amount that may be financed by a PACE assess-
9 ment, the total amount of all rebates, grants, and
10 other direct financial assistance received by the
11 owner on account of the PACE improvements shall
12 be deducted from the cost of the PACE improve-
13 ments.

14 (2) PACE ASSESSMENTS.—The total amount of
15 PACE assessments for a property shall not exceed
16 10 percent of the estimated value of the property. A
17 property owner who escrows property taxes with the
18 holder of a mortgage on a property subject to PACE
19 assessment may be required by the holder to escrow
20 amounts due on the PACE assessment, and the
21 mortgage holder shall remit such amounts to the
22 local government in the manner that property taxes
23 are escrowed and remitted.

24 (3) OWNER EQUITY.—As of the effective date of
25 the PACE agreement or the vote required by State

1 law, the property owner shall have equity in the
2 property of not less than 15 percent of the estimated
3 value of the property calculated without consider-
4 ation of the amount of the PACE assessment or the
5 value of the PACE improvements.

6 (4) TERM OF FINANCING.—The maximum term
7 of financing provided for a PACE improvement may
8 be 20 years. The term shall in no case exceed the
9 weighted average expected useful life of the PACE
10 improvement or improvements. Expected useful lives
11 used for all calculations under this paragraph shall
12 be consistent with the expected useful lives of energy
13 conservation and efficiency and clean energy meas-
14 ures approved by the Department of Energy.

15 (h) COLLECTION AND ENFORCEMENT.—A PACE
16 program shall provide that—

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

19 (2) notwithstanding any other provision of law,
20 in the event of a transfer of property ownership
21 through foreclosure, the transferring property owner
22 may be obligated to pay only PACE assessment in-
23 stallments that are due (including delinquent
24 amounts), along with any applicable penalties and
25 interest, except that before imposition of any pen-

1 alties or fees, the PACE program shall provide an
2 opportunity to any holder of a senior lien on the
3 property to assume payment of the PACE assess-
4 ment;

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

8 (4) payment of a PACE assessment installment
9 from the loss reserve established for a PACE pro-
10 gram shall not relieve a participating property owner
11 from the obligation to pay that amount.

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