

113TH CONGRESS
2D SESSION

H. R. 4285

To facilitate State and local governmental entities in developing and implementing private sector job creating programs through local government financing of the installation of energy efficiency, water conservation, and renewable energy generation improvements on privately owned property with the financing to be repaid from assessments that may be levied on the local property tax bill, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 2014

Mr. THOMPSON of California (for himself, Mr. KING of New York, Mr. SEAN PATRICK MALONEY of New York, Mr. CALVERT, Ms. MATSUI, Ms. ESHOO, Mr. GEORGE MILLER of California, Mr. SCHIFF, Mr. MCNERNEY, Mr. FITZPATRICK, and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To facilitate State and local governmental entities in developing and implementing private sector job creating programs through local government financing of the installation of energy efficiency, water conservation, and renewable energy generation improvements on privately owned property with the financing to be repaid from assessments that may be levied on the local property tax bill, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “PACE Assessment
3 Protection Act of 2014”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) CONGRESSIONAL FINDINGS.—The Congress finds
6 that the legislatures of 31 States and the District of Co-
7 lumbia have determined that there exist job creation bene-
8 fits, other economic benefits, and significant other public
9 benefits from the installation of improvements encouraged
10 by local government finance programs, and have therefore
11 enacted legislation authorizing their State and local gov-
12 ernments to develop and implement programs under which
13 such State and local governments finance the installation
14 of the improvements on private property and the property
15 owners may pay the financing costs on the property tax
16 bill. Such legislatures include Arkansas, California, Colo-
17 rado, Connecticut, Florida, Georgia, Hawaii, Illinois, Lou-
18 isiana, Maine, Maryland, Massachusetts, Michigan, Min-
19 nesota, Missouri, Nevada, New Hampshire, New Jersey,
20 New Mexico, New York, North Carolina, Ohio, Oklahoma,
21 Oregon, Pennsylvania, Texas, Utah, Vermont, Virginia,
22 Washington, DC, Wisconsin, and Wyoming.

23 (b) PURPOSE.—It is the purpose of this Act to ensure
24 that PACE programs which incorporate prudent pro-
25 grammatic safeguards to protect the interest of mortgage
26 holders and property owners remain viable as a potential

1 avenue for States and local governments to achieve the
2 many public benefits associated with energy efficiency,
3 water efficiency, and renewable energy retrofits. In addi-
4 tion, it is essential that the power and authority of State
5 and local governments to exercise their longstanding and
6 traditional powers to levy taxes for public purposes not
7 be impeded.

8 **SEC. 3. DEFINITIONS.**

9 For purposes of this Act the following definitions
10 apply:

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

15 (2) The term “PACE agreement” means an
16 agreement between a local government and a prop-
17 erty owner detailing the terms of financing for a
18 PACE improvement.

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

22 (4) The term “PACE improvements” means
23 qualified clean energy improvements, qualified en-
24 ergy conservation and efficiency improvements, and

1 qualified water conservation and efficiency improve-
2 ments.

3 (5) The term “PACE lien” means a lien, held
4 by a local government, that secures a PACE assess-
5 ment, which may be senior to the lien of pre-existing
6 purchase money mortgages on the same property
7 subject to the PACE lien.

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

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

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

16 (A) not used for residential purposes; or

17 (B) residential property with 5 or more
18 residences.

19 (9) The term “clean energy improvements”
20 means any system on privately owned property for
21 producing electricity for, or meeting heating, cooling,
22 or water heating needs of the property, using renew-
23 able energy sources, combined heat and power sys-
24 tems, or energy systems using wood biomass (but
25 not construction and demolition waste) or natural

1 gas. Such improvements include solar photovoltaic,
2 solar thermal, wood biomass, wind, and geothermal
3 systems. Such term includes the reasonable costs of
4 a study undertaken by a property owner to analyze
5 the feasibility of installing any of the improvements
6 described in this paragraph and the cost of a war-
7 ranty or insurance policy for such improvements.

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

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

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

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

16 **SEC. 4. TREATMENT OF PACE PROGRAMS BY FNMA AND**
 17 **FHLMC.**

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

23 (1) issue guidance, within 30 days after the
 24 date of enactment of this Act, providing that the
 25 levy of a PACE assessment and the creation of a

1 PACE lien do not constitute a default on any loan
2 secured by a uniform instrument of Federal Na-
3 tional Mortgage Association or Federal Home Loan
4 Mortgage Corporation and do not trigger the exer-
5 cise of remedies with respect to any provision of
6 such uniform security instrument if the PACE as-
7 sessment and the PACE lien meet the requirements
8 of section 5;

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

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

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

1 that is obligated to pay a PACE assessment or is subject
2 to a PACE lien, including, without limitation, by—

3 (1) prohibiting the origination, lending, pur-
4 chasing, or guaranteeing of loans on residential
5 property within such jurisdiction or requiring more
6 restrictive underwriting criteria for properties within
7 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) CONFIDENTIALITY.—Any personal financial

21 information provided by a property owner to a local
22 government or an entity administering a PACE pro-
23 gram on behalf of a local government shall comply
24 with applicable local, State, and Federal laws gov-
25 erning the privacy of the information.

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

4 (1) AUTHORIZATION BY LIENHOLDERS.—Be-
5 fore entering into a PACE agreement with a local
6 government or voting in favor of PACE assessments
7 in the manner specified by State law, the property
8 owner shall obtain written authorization from the
9 holders of the first mortgage on the property.

10 (2) PACE AGREEMENT.—

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

20 (B) PACE IMPROVEMENTS.—The property
21 owner shall contract for PACE improvements,
22 purchase materials to be used in making such
23 improvements, or both, and upon submission of
24 documentation required by the local govern-
25 ment, the local government shall disburse funds

1 to the property owner in payment for the
2 PACE improvements or materials used in mak-
3 ing such improvements.

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

19 (3) DISCLOSURES BY LOCAL GOVERNMENT.—

20 The local government shall disclose to the partici-
21 pating property owners the costs and risks associ-
22 ated with participating in the program, including
23 risks related to their failure to make payments and
24 the risk of enforcement of PACE liens.

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

18 (e) ELIGIBILITY OF RESIDENTIAL PROPERTY OWN-
19 ERS.—Before levying a PACE assessment on a property,
20 the local government shall ensure that at least all of the
21 following are true with respect to the property:

22 (1) All property taxes and any other public as-
23 sessments are current.

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

1 (3) No notices of default, including property
2 taxes and other public assessments, have been re-
3 corded during the past three years or the property
4 owner's period of ownership, whichever is shorter.

5 (4) The property owner has not filed for or de-
6 clared bankruptcy in the previous 3 years.

7 (5) The property owner is current on all mort-
8 gage debt on the property and has not had more
9 than one instance of property-based debt delin-
10 quency during the past 6 months or the property
11 owner's period of ownership, whichever is shorter.

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

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

18 (8) The property meets any geographic eligi-
19 bility requirements established by the PACE pro-
20 gram.

21 The local government may adopt additional criteria, ap-
22 propriate to PACE programs, for determining whether to
23 provide PACE financing to a property.

24 (f) QUALIFYING IMPROVEMENTS AND QUALIFYING
25 CONTRACTORS FOR RESIDENTIAL PROPERTIES.—PACE

1 improvements for residential properties shall be qualified
2 if they meet the following criteria:

3 (1) U.S. DEPARTMENT OF ENERGY ENERGY
4 STAR QUALIFIED PRODUCTS OR OTHER STATE GOV-
5 ERNMENTAL AGENCIES QUALIFIED PRODUCTS.—For
6 clean energy improvements and energy conservation
7 and efficiency improvements, products shall meet
8 Energy Star guidelines or other similar guidelines
9 provided by State governmental agencies of the ap-
10 plicable State.

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

18 (3) OWNER IMPROVEMENTS.—A local govern-
19 ment may elect to provide financing for improve-
20 ments made by the owner of the property, but shall
21 not permit the value of the owner's labor to be in-
22 cluded in the amount financed.

23 (4) DISBURSEMENT OF PAYMENTS.—A local
24 government must require, prior to disbursement of
25 final payments for the financed improvements, sub-

1 mission by the property owner in a form acceptable
2 to the local government of—

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

5 (B) a certificate of completion, certifying
6 that improvements have been installed satisfac-
7 torily; and

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

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

13 (1) AMOUNT FINANCED.—In determining the
14 amount that may be financed by a PACE assess-
15 ment, the total amount of all rebates, grants, and
16 other direct financial assistance received by the
17 owner on account of the PACE improvements shall
18 be deducted from the cost of the PACE improve-
19 ments.

20 (2) PACE ASSESSMENTS.—The total amount of
21 PACE assessments for a property shall not exceed
22 15 percent of the estimated value of the property. A
23 property owner who escrows property taxes with the
24 holder of a mortgage on a property subject to PACE
25 assessment may be required by the holder to escrow

1 amounts due on the PACE assessment, and the
2 mortgage holder shall remit such amounts to the
3 local government in the manner that property taxes
4 are escrowed and remitted.

5 (3) OWNER EQUITY.—As of the effective date of
6 the PACE agreement or the vote required by State
7 law, the property owner shall have equity in the
8 property of not less than 10 percent of the estimated
9 value of the property calculated without consider-
10 ation of the amount of the PACE assessment or the
11 value of the PACE improvements.

12 (4) TERM OF FINANCING.—The maximum term
13 of financing provided for a PACE improvement may
14 be 25 years. The term shall in no case exceed the
15 weighted average expected useful life of the PACE
16 improvement or improvements. Expected useful lives
17 used for all calculations under this paragraph shall
18 be consistent with the expected useful lives of energy
19 conservation and efficiency and clean energy meas-
20 ures approved by the Department of Energy or the
21 Internal Revenue Service.

22 (h) COLLECTION AND ENFORCEMENT.—A PACE
23 program shall provide that—

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

- 1 (2) PACE assessment installments that are not
2 due may not be accelerated by foreclosure; and
- 3 (3) payment of a PACE assessment installment
4 from any loss reserve that may be established for a
5 PACE program shall not relieve a participating
6 property owner from the obligation to pay that
7 amount.

