HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 101 Improvements to Real Property
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create Property Assessed Clean Energy (PACE) programs to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments determine whether to offer a residential or commercial PACE program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill adds several consumer protections relating to the current PACE program, including:

- Specifying that a financing agreement may not be used to fund ancillary work not meeting specified conditions.
- Capping the total of all non-ad valorem assessments, plus any mortgage-related debt on the property, at 97 percent of a residential property's fair market value.
- Requiring a determination that a residential property owner is able to pay the assessment and meets certain minimum creditworthiness requirements.
- Allowing property owners to cancel a financing agreement within three days of execution.
- Ensuring that financing agreements do not exceed the estimated useful life of the qualifying improvement.
- Requiring acknowledgement of a number of key terms and disclosures, both orally and in writing, before execution of the financing agreement by the property owner.
- Requiring the appropriate licensure and background screening for contractors who install qualifying improvements under a PACE program.
- Requiring verification that the work was completed to code before funds are disbursed.
- Imposing certain marketing and communication guidelines, including limitations and prohibitions on solicitation, advertising, and other inducements.
- Specifying terms relating to enforceability of contracts for qualifying improvements and associated remedies.

The bill also requires the local government to post an online annual report documenting certain PACE activities.

The bill does not have a fiscal impact on state government. The bill does not appear to impact local government revenues, but may have an insignificant negative impact on local government expenditures.

The bill takes effect on July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Assessed Clean Energy (PACE) Programs

Generally, Property Assessed Clean Energy (PACE) programs enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills.[1] The first residential PACE program was launched in 2008 in Berkeley and Palm Desert, California.[2] PACE programs are active in 24 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[3]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[4] The statute[5] provides supplemental authority to local governments[6] concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.[7] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[8]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.[9] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable."[10] However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to partner with one or more other local governments to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,[11] so if the homeowner defaults on their mortgage or

[1] For more information, *see* http://www.pacenation.org and http://floridapace.gov/ (last visited Jan. 19, 2022).
[2] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Jan. 19, 2022).
[3] California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. N CSL, *A Clean-Energy Financing Program for Homeowners Now Has Tougher Consumer Protections* (Nov. 17, 2017), https://www.ncsl.org/bookstore/state-legislatures-magazine/clean-energy-financing-consumer-protection.aspx. *See also* PACE Nation, *PACE Programs* https://www.pacenation.org/pace-programs/ (last visited Jan. 19, 2022).
[4] Ch. 2010-139, Laws of Fla.
[5] S. 163.08, F.S.
[6] Section 163.08(2)(a), F.S., defines the term "local government" to mean a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) (the Florida Interlocal Cooperation Act)."
[7] S. 163.08(4), F.S.
[8] S. 163.08(2)(b), F.S.
[9] S. 163.08(13), F.S.
[10] S. 163.08(15), F.S.
[11] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

In 2012, the Legislature expanded the definition of "local government" to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act[12] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[13]

To participate in a PACE program, a property owner must have paid property taxes and not been delinquent for the previous three years.[14] The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.[15]

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers.[16] Generally, PACE providers are private companies that administer the local government's PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.[17] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[18]

For example, Broward County authorizes the following PACE providers:[19]

- Counterpointe Energy Solutions provides financing under the "AllianceNRG" Program (residential) and the "CounterpointeSRE" Program (commercial). Administers PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the "Dividend" Program. Administers PACE program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program. Administers PACE program through the Florida PACE Funding District.
- Greenworks Lending administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Home Run Financing administers a residential PACE Program. Administers PACE program for the Florida Resiliency and Energy District.
- Rahill administers a commercial PACE program. Administers PACE program for the Florida PACE Funding District.
- Renew Financial administers PACE programs under the "RenewPACE" Program (residential and commercial). Administers PACE program for the Florida Green Finance Authority.

[12] S. 163.01(7), F.S.
[13] Ch. 2012-117, Laws of Fla.
[14] S. 163.08(9), F.S.
[15] S. 163.08(12)(a), F.S.
[16] *See* Florida Pace Funding Agency, *Service Areas*, https://floridapace.gov/serviceareas/ (last visited Jan. 19, 2022).
[17] *See* Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2020, at 13, https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf (last visited Jan. 19, 2022).
[18] *See* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited Jan. 19, 2022).
[19] Broward County, *Property Assessed Clean Energy (PACE)* https://www.broward.org/NaturalResources/Sustainability/Pages/PACE.aspx (last visited Jan. 19, 2021).

- Structured Finance Associates administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- Twain Financial Partners administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Ygrene administers the "Clean Energy Program" (residential and commercial). Administers PACE program for the Clean Energy Green Corridor Pace District.

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

Currently, PACE financing typically offers an average interest rate of 5 to 8 percent, not including additional associated fees, which is repaid over a term of 15 to 20 years. Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner. [20]

Federal Housing Finance Agency and Super-Priority Liens

In 2010, and again in 2014,[21] the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a first-lien PACE loan due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.[22]

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.[23]

This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.[24]

Additionally, in December 2017, the United States Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties

[20] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/EnergyAndSustainabilityProgram/Documents/PACE%20Broward%20FAQ%20Sheet_Update4_09212018.pdf (last visited Mar. 9, 2021).
[21] Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx (last visited Jan. 19, 2022). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)("FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it") http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited Jan. 19, 2022).
[22] "Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner's acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender." Prentiss Cox, *Keeping PACE?: The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), https://scholarship.law.umn.edu/faculty_articles/549 (last visited Jan. 19, 2022).
[23] *FHFA Statement on Certain Energy Retrofit Loan Programs, supra*, note 21.
[24] *FHFA Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 21.

that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.[25]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[26] For example, in 2013 California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.[27]

Consumer Protection

Consumer issues have surrounded the PACE programs from their inception.[28] These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.[29]

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.[30]

The United States Department of Energy maintains "best practice guidelines" for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;
- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.[31]

[25] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[26] Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[27] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Mar. 7, 2021).
[28] "PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure." National Consumer Law Center, *Advocates Applaud CFPB's Intention to Deal with PACE Loan Program Abuses* (Mar. 4, 2019), https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html (last visited Jan. 19, 2022).
[29] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[30] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). *See also* Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).
[31] Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf (last visited Jan. 19, 2022).

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[32]

Effect of the Bill

The bill amends s. 163.08, F.S., providing a number of changes to the PACE program.

Eligibility for PACE Loans

The bill provides that the total amount of any non-ad valorem assessment for a property under s. 163.08, F.S., may not exceed 20 percent of the fair market value of the property. Additionally, the total of any non-ad valorem assessments plus any mortgage-related debt on the property may not exceed 97 percent of the fair market value of the property. The fair market value of the property must be derived using any methodology commonly used in the real estate finance industry.

The bill requires a PACE program administrator to use certain information to reasonably determine whether the property owner has the ability to pay the annual assessment for the qualifying improvement, including the property owner's household income, housing expenses, assets, and other debt obligations.

The bill specifies that a financing agreement may not be used to fund ancillary work unless the scope of the ancillary work is directly related to and necessary for the installation and safe operation of a qualifying improvement and the cost of the ancillary work does not exceed the cost of the individual qualifying improvement to which it is directly related.

The bill creates definitions for the following terms:

- "Facility," means any portion of a building, structure, or site improvement located on a site as defined in Section 202 of the 2020 Florida Building Code.
- "PACE contractor" means an independent contractor who is authorized under s. 163.08, F.S. to contract with a property owner to install qualifying improvements on real property and who is not the owner of the property.
- "Program administrator" means a for-profit or not-for-profit entity which administers a qualifying improvement program on behalf and at the discretion of a local government.
- "Qualifying improvement program" means a program that includes financing and administration activities undertaken by a program administrator or other authorized entity for property owners to purchase and install qualifying improvements on a building or facility.
- "Residential property" means real estate on which any of the following is located:
    - One single-family residential unit or one multifamily structure containing one to four residential units;
    - Single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether the units are a part of a larger building or parcel containing more than four residential units.

Written Disclosures

The bill specifies that, before entering into a financing agreement for a qualifying improvement, the local government or program administrator must determine if:

- The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the application date.
- The holders or loan servicers of any mortgage encumbering or otherwise secured by the property have received notice of the assessment at least 30 days in advance.

[32] *See, e.g.,* Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf (last visited Jan. 19, 2022).

- Property owners whose taxes are paid through an escrow account have notified the holder of the escrow account that a non-ad valorem assessment will be imposed upon the property.
- The term of the financing agreement does not exceed the estimated useful life of the qualifying improvement.
- The property owner has acknowledged certain written disclosures, as described below.
- A residential property owner has not been subject to a bankruptcy proceeding within the last seven years unless it was discharged or dismissed more than two years prior.
- A residential property owner is current on nonmortgage debt excluding medical debt, and has had no more than one late payment exceeding 30 days during the 12 months.
- The property is within the geographic boundaries of the applicable qualifying improvement program.
- The property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded.

The bill requires that the local government or program administrator, before execution of the financing agreement, provide a written disclosure form to the property owner, which contains the key terms of the agreement, including:

- A description of the qualifying improvement;
- The total financed amount, including the cost of the qualifying improvement, ancillary work, installation, program fees, and prepaid interest, if any;
- The annual assessment process and yearly payment schedule;
- The amount of the annual assessment;
- The term of the total financed amount;
- The interest rate for the financed amount;
- The annual percentage rate;
- The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees;
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees;
- The estimated date when the residential real property owner's first property tax payment, which includes the assessment, will be due.

The disclosure form must contain the following statements, which must be individually acknowledged in writing:

- "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY." (This disclosure must be made in 24-point, bold font.)
- "I understand that the annual assessment will be paid when property taxes are paid and will result in a lien being placed on my property."
- "I understand that the annual assessment will be added to my property tax bill and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."
- "I understand that if I fail to pay the annual assessment, I may incur penalties and fees and the local government could issue a tax certificate which might result in the loss of my property."
- “I understand that any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.”
- "I understand that I have 3 days to cancel the financing agreement. The 3-day right expires on midnight of the third business day after I sign the agreement."
- “I understand that the local government, program administrator, or PACE contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.
- "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

A printed cancellation form must be provided to the property owner no later than the time the property owner signs the financing agreement that allows the property owner to cancel the contract.

Oral Disclosures

The bill requires the local government or program administrator to conduct an oral, recorded, telephone call in the owner's preferred language, and which uses plain language, confirming the disclosures described above. The owner or his or her authorized representative must provide written acknowledgement that the oral confirmation was given. The bill also requires that the local government or program administrator develop additional procedures to address the needs and concerns of elderly persons.

Other Encumbrances on Property

The bill prohibits a PACE loan on any residential real property where an existing loan encumbering the property is subject to:

- A negative amortization schedule;
- A balloon payment; or
- Pre-payment fees, other than nominal administrative costs.

Contractor Screening

The bill states that a local government or program administrator may not enroll a PACE contractor who offers financing on residential real property unless:

- The PACE contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains all state required bond and insurance coverage.
- The PACE contractor agrees, in writing, to comply with all applicable laws, including applicable advertising and marketing laws and regulations and other requirements in the bill.
- A process exists to enroll new PACE contractors, including a reasonable review of the contractor's:
    - Relevant work or project history,
    - Financial and reputational background checks, and
    - Status on the Better Business Bureau or other online platforms that track contractor reviews.

Contractor Payment

The bill requires that, before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, the local government or program administrator must first confirm that the applicable work or service has been completed and that the local government has determined the work complies with applicable codes and standards, including but not limited to the Florida Building Code and the Florida Fire Prevention Code.

The bill also prohibits disclosure of the maximum financing amount for which a residential real property owner is eligible to the PACE contractor or to a third party engaged in soliciting assessment contracts under the PACE program.

Marketing and Communications Guidelines

The bill requires that a local government, program administrator, or PACE contractor, or a third party engaged in marketing on the behalf of these entities, must comply with the following marketing and communications guidelines and may not:

- Suggest or imply that:
    - An assessment is a government assistance program;

    - Qualifying improvements are free or provided at no cost, or that the financing related to an assessment is a free or no cost program; or
    - The financing of a qualifying improvement using the PACE program does not require the property owner to repay the financial obligation.
- Make any representation as to the tax deductibility of an assessment on residential real property, but they may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

Unenforceable Contracts and Associated Remedies

The bill specifies that a contract to sell or install a qualifying improvement that is related to an application for financing under a PACE program for a residential property is unenforceable, and a PACE contractor may not begin work under such a contract, if:

- The property owner would not have entered into the contract but for the belief that the qualifying improvement or its installation would be paid under the financing agreement;
- The property owner applied for, accepted, and canceled a qualifying improvement financing agreement within the 3-day right-to-cancel period.

If a PACE contractor has initiated work on a residential property under an unenforceable contract as determined above, the PACE contractor:

- May not receive compensation for that work under the financing agreement.
- Must restore the property to its original condition at no cost to the property owner.
- Must immediately return any money, property, and other consideration given by the property owner. If the property owner provided any property and the PACE contractor does not or cannot return it, the PACE contractor must immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.

If the PACE contractor has delivered chattel[33] or fixtures to the residential property pursuant to an unenforceable contract, the PACE contractor has 90 days from the date the contract was executed to retrieve the chattel or fixtures provided that:

- The PACE contractor has fulfilled certain requirements under the bill.
- The chattel and fixtures can be removed at the PACE contractor's expense without damaging the property owner's property and practically returned.
- The residential property owner may retain any chattel or fixtures provided pursuant to an unenforceable contract if a PACE contractor fails to comply with these provisions.

A contract which is otherwise unenforceable remains enforceable if the residential property owner waives his or her right to cancel the contract, allows the PACE contractor to proceed with the installation of the qualifying improvement, and cancels the financing agreement.

Limitations and Prohibitions on Solicitation, Advertising, and Other Inducements

The bill specifies that a program administrator may not authorize a PACE contractor or third party to advertise the availability of financing agreements or solicit property owners on behalf of the program administrator, unless:

- The PACE contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction where it operates, and provides proof of having the required bond and insurance coverage amounts.

[33] "Chattel" means "A catch-all category of property mostly associated with movable goods. At common law, chattel included all property that was not real estate and not attached to real estate. Examples included everything from leases, to cows, to clothes. In modern usage, chattel often merely refers to tangible movable personal property." Cornell Law School, *Legal Information Institute,* https://www.law.cornell.edu/wex/chattel#:~:text=A%20catch%2Dall%20category%20of,to%20tangible%20movable%20personal%20property (last visited Jan. 19, 2022).

- The program administrator obtains the PACE contractor's or third party's written agreement that the PACE contractor or third party will meet applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

A local government or program administrator may not:

- Provide any direct or indirect cash payment or thing of material value to a PACE contractor in excess of the actual price charged by that PACE contractor for the sale and installation of the qualifying improvements that are financed by a financing agreement. However, a local government or program administrator may provide information or services to a PACE contractor to facilitate the installation of a qualifying improvement for a property owner.
- Reimburse a PACE contractor for its expenses for advertising and marketing campaigns and materials. A program administrator and a PACE contractor may share expenses in connection with joint advertising and marketing campaigns and materials, if the expenses are shared on a commercially reasonable basis.
- Provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.
- Provide to a PACE contractor engaged in soliciting financing agreements on its behalf any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements or the amount of equity in a property.

For residential properties, a PACE contractor may not provide a different price for a qualifying improvement financed under this section than the PACE contractor would provide if the property owner paid for the improvement in cash.

Annual Report

The bill requires each local government that has authorized a PACE program post an annual report on its website by April 1 containing the following information:

- The number of qualifying improvements funded.
- The aggregate, average, and median dollar amounts of annual and total qualifying improvements assessments funded.
- The percentage, the number, and the dollar value of qualifying improvements assessments represented by the category types consisting of energy efficiency, renewable energy, and wind resistance.
- The number of defaulted assessments including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and years in default, and the percentage of defaults by total assessments.
- A summary of all reported violations of this section, including the resolution of each.
- The estimated number of jobs created.
- The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

B. SECTION DIRECTORY:

Section 1 Amends s. 163.08, F.S., providing for certain requirements related the property assessed clean energy program.

Section 2 Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant negative impact on local government expenditures as a result of the annual report requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that a local government or program administrator does not already impose similar consumer protection measures, the bill will benefit property owners who choose to finance qualifying improvements through a PACE program by ensuring that property owners are fully informed as to the key terms and potential consequences of a PACE loan and by requiring a determination that they are capable of repaying the loan. The bill may result in fewer defaults and potential foreclosures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.