

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 669 Improvements to Real Property

**SPONSOR(S):** Commerce Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Keating	Hamon

### SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create qualifying improvement programs, commonly referred to as 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 qualifying improvement program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill makes several changes to Florida law governing qualifying improvement programs, including:

- Expanding eligible “qualifying improvements” to include:
  - For residential properties: wastewater improvements, such as advanced onsite sewage treatment and disposal systems and septic-to-sewer conversions.
  - For commercial properties: stormwater and flood resiliency improvements, including “shoreline improvements,” improvements to achieve a sustainable building rating or compliance with a national model resiliency standard, improvements to achieve wind or flood insurance rate reductions, and wind-resistance improvements on new construction.
- Requiring the holder or servicer of a mortgage that encumbers an applicant’s property to provide consent:
  - For residential properties: for the applicant to exceed a 97% ratio of property-related debt to the property’s fair market value as determined by a licensed appraiser.
  - For commercial properties: for the applicant to finance any qualifying improvement through the program.
- Authorizing the use of a qualifying improvement program to refinance qualifying improvements.
- Strengthening underwriting requirements for residential properties, including, among other things, a determination that the property owner is able to repay the assessment and cover existing debts and expenses, subject to a maximum debt-to-income ratio of 49 percent.
- Providing new terms and requirements for residential properties, including:
  - Written disclosure requirements before execution of financing agreements and confirmation of specified terms by phone prior to initiation of work.
  - A requirement that the property owner obtain at least two estimates.
  - Maximum terms for financing agreements based on the useful life of financed improvements.
  - A rescission period of 5 business days.
  - A prohibition on the use of negative amortization schedules, balloon payments, and prepayment fees.
  - Requirements for enrolling, monitoring, and suspending program contractors.
  - Confirmation, before payment to a contractor, that all permit requirements are satisfied.
  - Requirements for program marketing, and a prohibition on kickbacks to contractors.
- Providing new terms for commercial properties, including:
  - Allowing the property owner to execute a financing agreement before a certificate of occupancy or evidence of completion is issued and allowing for progress payments.
  - Defining and providing terms for the use of qualified improvement programs by “nongovernmental lessees” on “government commercial property.”
- Requiring an annual report from each local government that has authorized a PACE program.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** pcs0669.COM

**DATE:** 4/23/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### *Property Assessed Clean Energy (PACE) Programs*

Generally, Property Assessed Clean Energy (PACE) laws 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.<sup>1</sup> PACE programs are active in 30 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.<sup>2</sup>

##### *PACE in Florida*

In 2010, the Legislature provided specific authority for local governments to create PACE programs.<sup>3</sup> The law<sup>4</sup> provides supplemental authority to local governments<sup>5</sup> 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.<sup>6</sup> "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.<sup>7</sup>

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.<sup>8</sup> 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."<sup>9</sup> 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 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,<sup>10</sup> so if the homeowner defaults on their mortgage or 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.

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<sup>1</sup> For more information, see <http://www.pacenation.org> and <http://floridapace.gov/> (last visited April 5, 2023).

<sup>2</sup> 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. See PACE Nation, *PACE Programs* <https://www.pacenation.org/pace-programs/> (last visited April 5, 2023).

<sup>3</sup> Ch. 2010-139, Laws of Fla.

<sup>4</sup> S. 163.08, F.S.

<sup>5</sup> 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)."

<sup>6</sup> S. 163.08(4), F.S.

<sup>7</sup> S. 163.08(2)(b), F.S.

<sup>8</sup> S. 163.08(13), F.S.

<sup>9</sup> S. 163.08(15), F.S.

<sup>10</sup> See ss. 125.01(1)(r), 170.01 and 170.09, F.S.

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<sup>11</sup> to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.<sup>12</sup>

Before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments on the property are paid and have not been delinquent for the preceding 3 years (or the property owner’s period of ownership, if less than 3 years);
- There are no involuntary liens on the property, including, but not limited to, construction liens;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years (or the property owner’s period of ownership, if less than 3 years); and
- The property owner is current on all mortgage debt on the property.<sup>13</sup>

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.<sup>14</sup> Consideration of the property owner’s ability to repay the assessment is not required.

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers. 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.<sup>15</sup> PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.<sup>16</sup>

For example, Broward County authorizes the following PACE providers:<sup>17</sup>

- Counterpointe Energy Solutions administers a commercial PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the “Dividend” Program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program for the Florida PACE Funding Agency District.
- Greenworks Lending administers a commercial PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program for the Florida Resiliency and Energy District.
- Home Run Financing administers a residential PACE Program for the Florida PACE Funding Agency District.
- Rahill administers a commercial PACE program for the Florida Resiliency and Energy District.

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<sup>11</sup> S. 163.01(7), F.S.

<sup>12</sup> Ch. 2012-117, Laws of Fla.

<sup>13</sup> S. 163.08(9), F.S.

<sup>14</sup> S. 163.08(12)(a), F.S.

<sup>15</sup> See, e.g., 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](https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf) (last visited April 5, 2023).

<sup>16</sup> See, e.g., Sarasota County, PACE, <https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace> (last visited April 5, 2023).

<sup>17</sup> Broward County, *Property Assessed Clean Energy (PACE)*

[https://www.broward.org/Sustainability/Documents/PACEProviderList\\_2022.pdf](https://www.broward.org/Sustainability/Documents/PACEProviderList_2022.pdf) (last visited April 5, 2023).

- Renew Financial administers PACE programs under the “RenewPACE” Program (residential and commercial) for the Florida Green Finance Authority.
- Structured Finance Associates administers a commercial PACE program for the Florida Resiliency and Energy District.
- Twain Financial Partners administers a commercial PACE program for the Florida Renewable Energy 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.

PACE financing interest rates vary but are typically higher than traditional financing.<sup>18</sup> Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.<sup>19</sup>

### *Federal Housing Finance Agency and Super-Priority Liens*

In 2010, and again in 2014,<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup>

<sup>18</sup> The Balance, *How PACE Loans Work*, <https://www.thebalancemoney.com/pace-loans-financing-for-upgrades-4124071> (last visited April 5, 2023).

<sup>19</sup> See PACE Broward, *Frequently Asked Questions*,

[https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet\\_Update6\\_09272021.pdf](https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet_Update6_09272021.pdf) (last visited April 5, 2023).

<sup>20</sup> 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 April 5,

2023). See also Federal Housing Finance 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 April 5, 2023).

<sup>21</sup> “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](https://scholarship.law.umn.edu/faculty_articles/549) (last visited April 5, 2023).

<sup>22</sup> FHFA *Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.

<sup>23</sup> FHFA *Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.

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 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.<sup>24</sup>

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.<sup>25</sup> 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.<sup>26</sup>

### *Consumer Protection*

Consumer issues have surrounded the PACE programs from their inception.<sup>27</sup> 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.<sup>28</sup> An administrator of residential PACE programs in California and Florida recently settled with the Federal Trade Commission and California to address complaints that the administrator recruited and authorized contractors, without adequate training or oversight, to sell its financing, leading to many consumers being deceived during the sales process and being unfairly subjected to liens on their homes without their express, informed consent.<sup>29</sup>

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.<sup>30</sup>

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;

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<sup>24</sup> FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).

<sup>25</sup> Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.

<sup>26</sup> NCSL, *PACE Financing* <https://www.ncsl.org/research/energy/pace-financing.aspx> (last visited April 5, 2023).

<sup>27</sup> “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 April 5, 2023).

<sup>28</sup> FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).

<sup>29</sup> Federal Trade Commission, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent*, <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens> (last visited April 5, 2023).

<sup>30</sup> 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).

- 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.<sup>31</sup>

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.<sup>32</sup>

### *Wastewater Treatment Improvements*

The Florida Department of Health provides “Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as septic systems, are a safe and effective means of wastewater disposal for 30 percent of Florida’s population. The OSTDS program ensures that the OSTDS is properly designed, constructed, and maintained through permitting and inspection and contributes to safe ground water, which provides 90 percent of Florida’s drinking water.”<sup>33</sup>

There are estimated, however, to be thousands of septic tanks that are old and at risk of failing.<sup>34</sup> These systems risk leaking phosphorus and nitrogen into the water system, which can promote harmful algal blooms, aquatic weeds, and the alteration of the natural fauna and flora. Serious algal blooms can also cause human health issues.

For this reason, there has been a push over time to move from individual septic systems to community sewage treatment. Such a transition can cost in the range of \$15,000 to \$20,000.<sup>35</sup>

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<sup>31</sup> 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 April 5, 2023).

<sup>32</sup> 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](https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf) (last visited April 5, 2023).

<sup>33</sup> Onsite Sewage, Florida Department of Health, last modified Oct 20, 2020, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last accessed April 14, 2023)

<sup>34</sup> Benita Goldstein, “Failing septic tanks damaging state’s environment; will cost billions of dollars to replace,” Apr. 22, 2019, South Florida Sun Sentinel, available at <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-septic-tanks20190422-story.html> (last accessed April 14, 2023).

<sup>35</sup> Terri Lowery, “Cities, Counties Need Plan to Switch Septic to Sewer,” May 14, 2016, Florida Today, available at <https://www.floridatoday.com/story/opinion/columnists/guest-columns/2016/05/14/cities-counties-need-plan-switch-septicsewer/84295648/> (last accessed April 14, 2023).



## Effect of the Bill

The bill makes several changes to Florida's PACE law.

### *Definitions*

The bill creates and uses the term “qualifying improvement program” to refer to the programs used in Florida to finance qualifying improvements and creates definitions for additional terms related to these programs, as follows:

- *Qualifying improvement program* means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on residential or commercial real property.
- *Program administrator* means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government has contracted to administer a qualifying improvement program.
- *Residential property* means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.
- *Commercial property* means real property not defined as residential property which will be or has been improved by a qualifying improvement, including, but not limited to, the following:
  - A multifamily residential property composed of five or more dwelling units;
  - A commercial real property;
  - An industrial building or property;
  - An agricultural property;
  - A nonprofit-owned property;
  - A long-term care facility, including nursing homes and assisted living facilities; or
  - A government commercial property.
- *Government commercial property* means real property owned by a local government and leased to a nongovernmental lessee where the usage by the lessee meets the definition of commercial property.
- *Nongovernmental lessee* means a person or an entity other than a local government which leases government commercial property.
- *Qualifying improvement contractor* means an independent contractor who has been enrolled under a qualifying improvement program to install or otherwise perform work on qualifying improvements financed through the program.

### *Eligible Qualifying Improvements*

The bill amends the definition of “qualifying improvements” to expand the types of projects a qualifying improvement program may finance.

For residential property, the bill adds wastewater improvements as qualifying improvements.

Wastewater improvements include the following:

- The removal, replacement or improvement of an onsite sewage treatment and disposal system with a secondary or advanced onsite sewage treatment and disposable system or technology;
- The replacement or conversion of an onsite sewage and disposal system to a central sewerage system or distributed sewerage system; and
- Any removal, repair, or modification made to an onsite sewage treatment and disposal system.

For commercial property, the bill adds the following as qualifying improvements:

- Energy conservation and efficiency improvements necessary to achieve a sustainable building rating or compliance with a national model green building code; and
- Resiliency improvements, including creation or improvement of stormwater and flood resiliency (including shoreline improvements) and any other improvements: (a) necessary to achieve a sustainable building rating or compliance with a national model resiliency standard; or (b) made to achieve wind or flood insurance rate reductions, including building elevation.

### *Other Uses for PACE Financing*

The bill expands the authorized uses of PACE financing. First, the bill specifies that PACE financing may be used to *refinance* qualifying improvements on any eligible property. Second, the bill authorizes new uses for PACE financing on commercial property, including wind resistance improvements on property under new construction and improvements by nongovernmental lessees to government commercial property. The bill provides that a financing agreement for government commercial property must be executed by the nongovernmental lessee with the written consent of the governmental lessor, with evidence of this consent provided to the local government operating the qualifying improvement program. A financing agreement with the nongovernmental lessee must provide that the lessee is the only party obligated to pay the assessment.

### *Eligibility Requirements for PACE Financing*

The bill provides that a financing agreement for a residential property may not be approved unless the local government or program administrator acting on its behalf has reasonably determined that, in addition to the requirements in current law, the following conditions have been met:

- 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 property owner has acknowledged in writing disclosure statements required by the bill, as described below.
- The property is within the geographic boundaries of the applicable qualifying improvement program.
- The term of the financing agreement does not exceed:
  - For a single qualifying improvement, the estimated useful life<sup>36</sup> of the qualifying improvement.
  - For multiple qualifying improvements, the lesser of (a) thirty years or (b) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.
- The property owner has not been subject to a bankruptcy proceeding within the last 5 years unless it was discharged or dismissed more than 2 years before the application date for financing.
- The property is not subject to an existing home equity conversion mortgage or reverse mortgage product.
- The property is not currently a residential property gifted to a homeowner for free by a nonprofit entity as may be disclosed by the property owner. The failure of a property owner to disclose information set forth in this paragraph does not invalidate a financing agreement or any obligation thereunder.
- The property owner has obtained estimates from at least two unaffiliated, competitive entities, one of which is a qualifying improvement contractor, for the qualifying improvement to be financed.
- The local government or program administrator, as applicable, has asked if the property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded.<sup>37</sup>

The bill modifies eligibility requirements for commercial property as follows:

- Delinquency in payment of property taxes or other assessments on a property during the preceding 3 years do not preclude the use of PACE financing if such taxes and assessments are current.
- Involuntary liens on a property do not preclude the use of PACE financing if not greater than \$10,000.

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<sup>36</sup> The bill provides that the useful life of a qualifying improvement must be established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.

<sup>37</sup> The bill provides that the failure of a property owner to disclose this information does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvement exceeds the amount that would otherwise be authorized.



- Recorded notices of default or other evidence of property-based debt delinquency during the preceding 3 years do not preclude use of PACE financing if released during that time.

Further, the bill requires that, prior to entering into a financing agreement with a commercial property owner, the local government must have the written consent of the current holders or servicers of any mortgage that encumbers or is otherwise secured by the property (or that will be secured by the property at the time the financing agreement is executed by the local government).

#### *Ability to Repay for Residential Property Owners*

The bill requires that, prior to approval of financing for a qualifying improvement on residential property, the local government or program administrator, as applicable, must reasonably determine that the property owner has the ability to pay the annual non-ad valorem assessment for the qualifying improvement, based on information contained in the property owner's application, reasonably reliable third-party records, or an automated verification system. To make this determination, the local government or program administrator must review the property owner's household income,<sup>38</sup> housing expenses, assets, and other debt obligations. In reviewing ability to pay, the local government or program administrator:

- When determining household income, may include the income of any property owner aged 18 years old or older whose name is on the property title, provided that if a person's income is considered, that person's debt obligations must also be considered.
- May not consider the equity in the property that will secure the non-ad valorem assessment.
- Must determine the property owner's debt obligations using reasonably reliable third-party records, including, at a minimum, one consumer credit report from an agency that meets the requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be reviewed include secured and unsecured debt, housing expenses,<sup>39</sup> and stated alimony or child support obligations.
- Must determine whether the property owner has sufficient income to pay the annual non-ad valorem assessment and that he or she has sufficient residual income to meet his or her household living expenses.

To participate in a qualifying improvement program, the bill requires that a residential property owner must have a total debt-to-income ratio no higher than 49 percent.

#### *Debt-to-Value Limitations on PACE Assessments for Residential Property Owners*

Under current law, the total amount of any PACE assessment on residential property may not exceed 20 percent of a property's just value, without consent of the holder or servicer of a mortgage secured by a property. The bill replaces the "just value" standard in current law<sup>40</sup> with a "fair market value" standard. The bill requires that fair market value be determined by the written report of a certified residential appraiser under ch. 475, F.S.

The bill further provides that, for residential property, the combined mortgage-related debt and the total amount of any PACE assessments on the property may not exceed 97 percent of the property's fair market value, absent consent of the holder or servicer of a mortgage secured by the property. However, this limit can be exceeded if a property owner fails to disclose whether other PACE assessments have already been recorded, or funded but not yet recorded, on the property.

#### *Disclosures to Residential Property Owners*

The bill requires that local government or program administrator, as applicable, to develop a written disclosure form that must be provided to a residential property owner before executing a financing

<sup>38</sup> The bill provides that if the local government or program administrator uses an automated verification system, it must be a system that can verify the property owner's income, is not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator.

<sup>39</sup> The bill provides that the local government or program administrator must make a reasonable estimate of the basic housing expenses based on the number of persons in the household.

<sup>40</sup> Under current law, "just value" is the value of the property as determined by the county property appraiser.

agreement. This disclosure may be presented to the property owner in electronic format and must contain the following key terms:

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

The bill requires that the written disclosure form must also contain the following statements, which must be individually acknowledged in writing by the residential property owner :

- "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 non-ad valorem 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 non-ad valorem 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 non-ad valorem 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 annual non-ad valorem assessment or total assessment amount."
- "I understand that I have 5 days to cancel the financing agreement. The 5-day right expires on midnight of the fifth business day after I sign the agreement."
- "I understand that the local government, program administrator, or qualifying improvement 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."

The bill provides that a printed or electronic cancellation form must be provided to the property owner no later than the time the property owner signs the financing agreement which allows the property owner to cancel the contract.

The bill provides that the local government or program administrator, before a notice to proceed is issued on residential property, must conduct an oral, recorded telephone call with the property owner or an authorized representative. The program administrator must ask the property owner or authorized representative if he or she would like to communicate primarily in a language other than English and must use plain language. On the telephone call, the local government or program administrator must confirm all of the following with the property owner or authorized representative:

- That at least one property owner has access to a copy of the financing agreement and financing estimates and disclosures.
- The qualifying improvements being financed.

- The total estimated annual costs that the property owner will have to pay under the financing agreement, including program fees.
- The total estimated average monthly equivalent amount of funds the property owner would have to save in order to pay the annual costs of the assessment, including program fees.
- The estimated due date for the property owner's first property tax payment that includes the assessment.
- The term of the financing agreement.
- That payments for the financing agreement will cause the property owner's annual property tax bill to increase, and that payments will be made through an additional annual non-ad valorem assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the property owner's mortgage escrow account.
- That the property owner has disclosed whether the property has received, or the owner is seeking, additional non-ad valorem assessments funded under this program and that the owner has disclosed all other such assessments which are or will be placed on the property.
- That the property will be subject to a lien during the term of the financing agreement and that the obligations under the agreement may be required to be paid in full before the property owner sells or refinances the property.
- That any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.
- That the local government, program administrator, or qualifying improvement contractor does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the financing agreement.

The local government or program administrator may not leave a voicemail to satisfy this requirement.

### *Financing Agreements*

The bill limits the term of a financing agreement for a single qualifying improvement to the estimated useful life<sup>41</sup> of the improvement. For multiple qualifying improvements, the term of a financing agreement is limited to the lesser of: (1) 30 years; or (2) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

The bill prohibits a financing agreement on residential property from including a negative amortization schedule,<sup>42</sup> a balloon payment, or prepayment fees other than nominal administrative costs.

The bill allows a residential property owner to cancel a financing agreement, without any financial penalty from the program administrator, within 5 business days after signing the financing agreement. The bill provides for relief to such property owners if a contractor has begun work on, or delivered chattel or fixtures to, the property when the property owner has exercised timely its right to cancel the financing agreement.

For qualifying improvements to commercial property, the bill provides that a financing agreement may be executed before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued. Further, the bill provides that progress payments, or payments made before completion, are allowed for commercial property if the property owner, upon request for a final progress payment, subsequently provides written verification that the qualifying improvements are completed and operating as intended.

### *Qualifying Improvement Contractors*

<sup>41</sup> The bill provides that the local government or program administrator, as applicable, shall determine the useful life of a qualifying improvement using established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations.

<sup>42</sup> The bill provides that capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

The bill establishes terms for the enrollment and oversight of qualifying improvement contractors by the local governments or program administrator, as applicable. These provisions apply only with respect to improvements to residential property.

Before enrolling a contractor to install qualifying improvements, the bill provides that a local government or program administrator, as applicable, must make a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage. Each local government or program administrator must also obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

The bill further provides that each local government or program administrator must maintain a process to enroll new contractors which includes reasonable review of the following for each contractor: relevant work or project history; financial and reputational background checks; a criminal background check; and status on the Better Business Bureau online platform or another online platform that tracks contractor reviews. Each local government or program administrator must also establish and maintain a process for monitoring qualifying improvement contractors with regard to performance and compliance with program policies and must implement policies for suspending, reinstating, and terminating qualifying improvement contractors based on violations of program policies or unscrupulous behavior.

The bill prohibits a program administrator, either directly or through an affiliate, from becoming enrolled as a qualifying improvement contractor.

Before disbursing funds to a contractor for a qualifying improvement on residential property, the local government or program administrator must first confirm that the applicable work or service has been completed and that the final permit for the qualifying improvement has been closed with all permit requirements satisfied.

The bill prohibits a local government or program administrator from disclosing to a qualifying improvement contractor or to a third party engaged in soliciting assessment contracts the maximum financing amount for which a residential property owner is eligible. Program administrators are also prohibited from providing a qualifying improvement contractor with any payment, fee, or kickback in exchange for referring financing business relating to a financing agreement on residential property. The bill provides, however that a local government or program administrator may provide information or services to a qualifying improvement contractor to facilitate the installation of a qualifying improvement for a property owner.

The bill prohibits a qualifying improvement contractor from providing a different price for a qualifying improvement financed under a qualifying improvement program than the contractor would otherwise reasonably provide if the qualifying improvement was not being financed through a financing agreement under a qualifying improvement program.

### *Qualifying Improvement Program Marketing*

The bill prohibits local governments, program administrators, or qualifying improvement contractors, or any third party engaged in marketing on behalf of these entities, from representing to residential property owners:

- A non-ad valorem assessment under a qualifying improvement program is a government assistance program;
- qualifying improvements are free or that financing related to a non-ad valorem assessment under a qualifying improvement program is free or provided at no cost;
- The financing of a qualifying improvement under a qualifying improvement program does not require the property owner to repay the financial obligation; or
- The tax deductibility of a non-ad valorem assessment under a qualifying improvement program.

The bill provides that a qualifying improvement contractor or third party engaged in marketing a qualifying improvement program may not advertise the availability of financing agreements or solicit residential property owners on behalf of the local government or program administrator unless:

- The qualifying improvement 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 in which it operates and provides proof of having the required bond and insurance coverage amounts; and
- The local government or program administrator, as applicable, obtains the qualifying improvement contractor's or third party's written agreement that the qualifying improvement contractor or third party will comply with applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

The bill also provides that a local government or program administrator may not reimburse a qualifying improvement contractor or third party for its expenses in advertising and marketing campaigns and materials. However, a local government or program administrator, as applicable, and a qualifying improvement contractor may share expenses in connection with joint advertising and marketing campaigns and materials if the expenses are shared on a commercially reasonable basis.

Under the bill, a program administrator may not 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.

### *Annual Report*

The bill requires each local government that has authorized a qualifying improvement program to post on its website, by April 1 of each year, an annual report for the previous calendar year. Each annual report must include the following information:

- The number of qualifying improvements funded.
- The aggregate, average, and median dollar amounts of annual non-ad valorem assessments and the total number of non-ad valorem assessments that funded qualifying improvements.
- The percentage, number, and dollar value of non-ad valorem assessments that funded qualifying improvements, aggregated by the category types consisting of energy efficiency, renewable energy, wind resistance, residential property wastewater, commercial property resiliency, and other commercial property qualifying improvements.
- The number of defaulted non-ad valorem assessments, including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and the years in default, and the percentage of defaults by total assessments.
- A summary of all reported complaints received by the local government and its program administrators related to authorized qualifying improvements programs, including the resolution of each complaint.
- Estimated number of jobs created.
- The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

### *Other Provisions*

The bill updates disclosures required by sellers of real property for which a non-ad valorem assessment has been levied under a qualifying improvement program to reflect the additional types of qualifying improvements authorized by the bill.

The bill provides that a notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located and that the lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the financing agreement.

The bill provides that an assessment on commercial property for a qualifying improvement is subject to a maximum annual fee of 1 percent of the annual assessment collected or \$5,000, whichever is less.

The bill requires program administrators to develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and property owner complaints.

The bill provides that it is prospective only and does not affect or amend any existing PACE assessment or interlocal agreement between local governments.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 163.08, F.S., relating to supplemental authority for improvements to real property.

**Section 2.** Provides an effective date of July 1, 2023.

**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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that a local government or program administrator does not already impose measures similar to those in the bill, the bill may impose costs on qualifying improvement program administrators. However, by expanding eligible uses for PACE financing, the bill may result in expanded use of PACE financing, and, in turn, program administrators may earn additional revenues on PACE loans.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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