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113TH CONGRESS
2D SESSION

H. R. 4285

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 2014

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

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A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''PACE Assessment Protection Act of 2014''.

SEC. 2. FINDINGS AND PURPOSE.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that the legislatures of 31 States and the District of Columbia have determined that there exist job creation benefits, other economic benefits, and significant other public benefits from the installation of improvements encouraged by local government finance programs, and have therefore enacted legislation authorizing their State and local governments to develop and implement programs under which such State and local governments finance the installation of the improvements on private property and the property owners may pay the financing costs on the property tax bill. Such legislatures include Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Vermont, Virginia, Washington, DC, Wisconsin, and Wyoming.

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

avenue for States and local governments to achieve the many public benefits associated with energy efficiency, water efficiency, and renewable energy retrofits. In addition, it is essential that the power and authority of State and local governments to exercise their longstanding and traditional powers to levy taxes for public purposes not be impeded.

SEC. 3. DEFINITIONS.

For purposes of this Act the following definitions apply:

(1) The term ''local government'' includes counties, cities, boroughs, towns, parishes, villages, districts, and other political subdivisions authorized under State laws to establish PACE programs.

(2) The term ''PACE agreement'' means an agreement between a local government and a property owner detailing the terms of financing for a PACE improvement.

(3) The term ''PACE assessment'' means a tax or assessment levied by a local government to provide financing for PACE improvements.

(4) The term ''PACE improvements'' means qualified clean energy improvements, qualified energy conservation and efficiency improvements, and

qualified water conservation and efficiency improvements.

(5) The term ''PACE lien'' means a lien, held by a local government, that secures a PACE assessment, which may be senior to the lien of pre-existing purchase money mortgages on the same property subject to the PACE lien.

(6) The term ''PACE program'' means a program implemented by a local government under State law to provide financing for PACE improvements by levying PACE assessments.

(7) The term ''residential property'' means a property with up to 4 private residences.

(8) The term ''non-residential property'' means private property that is—

(A) not used for residential purposes; or

(B) residential property with 5 or more residences.

(9) The term ''clean energy improvements'' means any system on privately owned property for producing electricity for, or meeting heating, cooling, or water heating needs of the property, using renewable energy sources, combined heat and power systems, or energy systems using wood biomass (but not construction and demolition waste) or natural

gas. Such improvements include solar photovoltaic, solar thermal, wood biomass, wind, and geothermal systems. Such term includes the reasonable costs of a study undertaken by a property owner to analyze the feasibility of installing any of the improvements described in this paragraph and the cost of a warranty or insurance policy for such improvements.

(10) The term ''energy conservation and efficiency improvements'' means measures to reduce consumption, through conservation or more efficient use, of electricity, fuel oil, natural gas, propane, or other forms of energy by the property, including air sealing, installation of insulation, installation of heating, cooling, or ventilation systems, building modification to increase the use of daylighting, replacement of windows, installation of energy controls or energy recovery systems, installation of building management systems, and installation of efficient lighting equipment, provided that such improvements are permanently affixed to the property. Such term includes the reasonable costs of an audit undertaken by a property owner to identify potential energy savings that could be achieved through installation of any of the improvements described in this paragraph.

(11) The term ''water conservation and efficiency improvements'' means measures to reduce consumption, through conservation or more efficient use of water by the property, including installation of low-flow toilets and showerheads, installation of timer or timing system for hot water heaters, and installation of rain catchment systems.

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

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

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

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

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

PACE lien do not constitute a default on any loan secured by a uniform instrument of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation and do not trigger the exercise of remedies with respect to any provision of such uniform security instrument if the PACE assessment and the PACE lien meet the requirements of section 5;

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

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

(b) PROHIBITION OF DISCRIMINATION.—The Director of the Federal Housing Finance Agency, the Comptroller of the Currency, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, and all Federal agencies and entities chartered or otherwise established under Federal law shall not discriminate in any manner against States or local governments implementing or participating in a PACE program, or against any property

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

(1) prohibiting the origination, lending, purchasing, or guaranteeing of loans on residential property within such jurisdiction or requiring more restrictive underwriting criteria for properties within such jurisdiction;

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

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

SEC. 5. PACE PROGRAMS ELIGIBLE FOR PROTECTION.

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

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

(b) CONSUMER PROTECTIONS APPLICABLE TO RESIDENTIAL PROPERTY.—A PACE program shall provide, with respect to residential property, for the following:

(1) PROPERTY OWNER AGREEMENTS.—

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

(B) PAYMENT SCHEDULE.—The property owner shall agree to a payment schedule that identifies the term over which PACE assessment installments will be due, the frequency with which PACE assessment installments will be billed and amount of each installment, and the annual amount due on the PACE assessment. Upon full payment of the amount of the PACE assessment, including all outstanding interest and charges and any penalties that may

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

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

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

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

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

(2) PACE AGREEMENT.—

(A) TERMS.—The local government and the owner of the property to which the PACE assessment applies at the time of commencement of assessment shall enter into a written PACE agreement addressing the terms of the PACE improvement. In the case of any property with multiple owners, the PACE agreement shall be signed by all owners or their legally authorized representative or representatives.

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

to the property owner in payment for the PACE improvements or materials used in making such improvements.

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

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

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

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

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

(1) All property taxes and any other public assessments are current.

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

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

(4) The property owner has not filed for or declared bankruptcy in the previous 3 years.

(5) The property owner is current on all mortgage debt on the property and has not had more than one instance of property-based debt delinquency during the past 6 months or the property owner's period of ownership, whichever is shorter.

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

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

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

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

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

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

(1) U.S. DEPARTMENT OF ENERGY ENERGY STAR QUALIFIED PRODUCTS OR OTHER STATE GOVERNMENTAL AGENCIES QUALIFIED PRODUCTS.—For clean energy improvements and energy conservation and efficiency improvements, products shall meet Energy Star guidelines or other similar guidelines provided by State governmental agencies of the applicable State.

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

(3) OWNER IMPROVEMENTS.—A local government may elect to provide financing for improvements made by the owner of the property, but shall not permit the value of the owner's labor to be included in the amount financed.

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

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

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

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

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

(g) FINANCING TERMS APPLICABLE ONLY TO RESIDENTIAL PROPERTY.—A PACE program shall provide, with respect to residential property, for the following:

(1) AMOUNT FINANCED.—In determining the amount that may be financed by a PACE assessment, the total amount of all rebates, grants, and other direct financial assistance received by the owner on account of the PACE improvements shall be deducted from the cost of the PACE improvements.

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

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

(3) OWNER EQUITY.—As of the effective date of the PACE agreement or the vote required by State law, the property owner shall have equity in the property of not less than 10 percent of the estimated value of the property calculated without consideration of the amount of the PACE assessment or the value of the PACE improvements.

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

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

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

(2) PACE assessment installments that are not due may not be accelerated by foreclosure; and

(3) payment of a PACE assessment installment from any loss reserve that may be established for a PACE program shall not relieve a participating property owner from the obligation to pay that amount.

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