

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1151 Financial Improvements to Real Property  
**SPONSOR(S):** Energy, Communications & Cybersecurity Subcommittee, Amesty  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	14 Y, 0 N, As CS	Keating	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Ways & Means Committee			
4) Commerce Committee			

### 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 makes several changes to Florida's PACE law as it relates to commercial real property. In particular, the bill:

- Defines "commercial property;"
- Expands the types of improvements to commercial property that are eligible for PACE financing;
- Modifies the requirements for commercial property owners to be eligible for PACE financing, including the addition of a requirement for mortgage holder consent;
- Provides that a PACE financing agreement on commercial property may be executed before a certificate of occupancy or similar evidence of substantial completion of new construction or improvement is issued;
- Authorizes progress payments, or payments made before completion, for commercial property;
- Limits fees imposed on PACE assessments on commercial property; and
- Authorizes the use of PACE financing on government property leased for commercial uses.

The bill authorizes the use of a PACE financing agreement to refinance a qualifying improvement on any eligible property.

The bill provides for prospective application only.

The bill does not appear to impact state revenues or state or local expenditures. The bill may have an indeterminate impact on local government revenues. See Fiscal Analysis & Economic Impact Statement.

The bill has an effective date of July 1, 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 Mar. 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 Mar. 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.<sup>15</sup>

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>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> Some local governments in Florida have implemented more stringent eligibility requirements than those required by Florida law.

<sup>16</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 Mar. 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 Mar. 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.

Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.<sup>18</sup> Costs incurred by a local government are collected as part of a PACE assessment.<sup>19</sup> Further, PACE assessments must be collected pursuant to s. 197.3632, F.S., which provides in part that tax collectors are entitled to receive a commission, on behalf of each special assessment district, of the actual costs of collection, not to exceed 2 percent, on the amount of special assessments collected and remitted.<sup>20</sup>

## Effect of the Bill

The bill makes several changes to Florida’s PACE law as it relates to commercial property.<sup>21</sup>

### *Uses for PACE Financing*

The bill expands the types of improvements to commercial property that are eligible for PACE financing to add the following:

- Energy conservation and efficiency improvements necessary to achieve a sustainable building rating or compliance with a national model green building code.
- 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.

The bill maintains a prohibition against residential property owners using PACE financing for wind-resistant improvements on *new construction* but allows PACE financing to be used for such improvements on other types of property.

The bill authorizes the use of a PACE financing agreement to *refinance* a qualifying improvement on any eligible property.

### *Eligibility Requirements for PACE Financing*

The bill modifies PACE 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.

<sup>18</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 Mar. 5, 2023).

<sup>19</sup> S. 163.08(4), F.S.

<sup>20</sup> *Id.*; ss. 197.3632(8)(c) and 192.091(2)(b)2., F.S. It is not clear if the costs incurred by a local government include the commissions that tax collectors are authorized to receive.

<sup>21</sup> The bill defines “commercial property” to mean 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.

- Involuntary liens on a property do not preclude the use of PACE financing if not greater than \$10,000.
- 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 PACE 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 PACE financing agreement is executed by the local government).

The bill does not change the eligibility requirements for residential property.<sup>22</sup>

#### *Timing and Fees for Commercial PACE Financing*

For qualifying improvements to commercial property, the bill provides that a PACE 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.

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

#### *PACE Financing on Government Commercial Property*

The bill defines “government commercial property” to mean real property owned by a local government and leased to a nongovernmental lessee<sup>23</sup> to be used as commercial property. The bill provides that a PACE 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 PACE program. The PACE financing agreement with the nongovernmental lessee must provide that the lessee is the only party obligated to pay the PACE assessment.

The bill specifies that a delinquent assessment under a PACE financing agreement with a nongovernmental lessee of government commercial property must be enforced in the same manner as other taxes and assessments on such lessees.

#### *Other Provisions*

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

<sup>22</sup> The bill defines “residential property” to mean a residential real property of four or fewer dwelling units which will be or has been improved by a qualifying improvement.

<sup>23</sup> The bill defines “nongovernmental lessee” to mean a person or an entity other than a local government which leases government commercial property.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill limits annual fees for PACE assessments on commercial property to the lesser of 1 percent or \$5,000. Current law allows local governments to collect their costs to administer PACE financing as part of the PACE assessment. It is not clear whether these costs include the commission that tax collectors are entitled to receive by law to cover the actual costs of collection, not to exceed 2 percent, on the amount of special assessments collected and remitted. Depending on the rate or amount of fees actually collected under current law for PACE assessments on commercial property, the bill may impact local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By expanding eligible uses and easing terms for commercial PACE financing and authorizing PACE financing by lessees of government commercial property, the bill may result in expanded use of PACE financing by commercial and government commercial property owners. In turn, private PACE providers 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**

On March 13, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Provided that only commercial property owners may use PACE financing for the additional types of qualifying improvements authorized by the bill.
- Made conforming changes.

This analysis is drafted to the committee substitute.