

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

***Request to Approve Regulations for the Property Assessed Clean Energy (PACE)
Loss Reserve Program***

Tuesday, October 21, 2014

Prepared By: *Ashley Bonnett*

REQUEST

Staff are proposing modifications to the PACE Loss Reserve Program regulations to incorporate the statutory changes made by Assembly Bill (“AB”) 2597 (Ting, Chapter 614, Statutes of 2014) to ensure the Program’s regulations will be in compliance with statute when both the regulations and AB 2597 become effective on January 1, 2015.

SUMMARY

In 2013, Senate Bill 96 (Committee on Budget and Fiscal Review) authorized the California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”) to create a risk mitigation program for Property Assessed Clean Energy (PACE) financing using \$10 million allocated in the Budget Act of 2013 (“PACE Loss Reserve Program” or “Program”).

On February 18, 2014, the CAEATFA Board approved the initial PACE Loss Reserve Program regulations, which were adopted and made effective through the emergency rulemaking process on March 10, 2014. The emergency regulations were readopted on September 8, 2014. CAEATFA staff (“Staff”) have also begun the regular rulemaking process. The 45-day public comment period for the proposed regulations began on August 29, 2014, and concludes on October 14, 2014. In addition, CAEATFA issued a 15-day public notice period to accommodate the statutorily required modifications described below, which will end October 30, 2014.

On September 26, 2014, Governor Brown signed into law AB 2597, which makes some amendments to the PACE Loss Reserve Program statute. AB 2597 clarifies that PACE financing programs are voluntary contractual assessments or voluntary special tax programs, not loan programs, by replacing all statutory references to “loan” with “assessment” or “financing,” as applicable. AB 2597 also amends the underwriting criteria by which CAEATFA must evaluate PACE programs when applying for coverage under the PACE Loss Reserve Program. Specifically, the legislation increases the amount of financing eligible for coverage under the Program from less than 10% of the underlying property’s value to less than 15% of the property value for the first \$700,000, and less than 10% of the remaining value of the property over \$700,000. The legislation also now requires that the total mortgage-related debt and the PACE financing amount not exceed the value of the underlying property. The full text of AB 2597 can be found in Attachment A.

As noted above, proposed modifications to the regulations incorporating the statutory changes made by AB 2597 were noticed on October 15, 2014, opening a 15-day public comment period. Because the modifications only reflect statutory changes, Staff does not anticipate making any further modifications to the regulations.

Proposed Modifications to the Regulations.

Following is a brief summary of the key changes made by the proposed regulatory modifications noticed on October 15, 2014. The proposed modifications to the regulations can be found in Attachment B, denoted with strikeout and underlined text.

§10080–10086.

The proposed modifications replace all references to “Loan” or “Loans” with “Financing” or “Financings” throughout the regulation text.

§10081(b): Application by PACE Program to the PACE Loss Reserve.

The current regulations, as required under current statute, limit the value of financings receiving assistance under the Program to less than 10% of the property value. The proposed modifications increase this limit to less than 15% of the property value for the first \$700,000, and less than 10% of the remaining value of the property over \$700,000, in accordance with AB 2597.

The proposed modifications also add new underwriting criteria requiring that the total mortgage-related debt and PACE financing not exceed the value of the underlying property, as required under AB 2597.

Regulatory Process.

Emergency regulations remain in effect for 180 days while Staff completes the regular rulemaking process. The emergency regulations may be readopted for up to two 90-day periods if necessary to complete the regular rulemaking process. Because the first re-adoption of the Program’s regulations expires on December 8, 2014, before the regular rulemaking process concludes, CAEATFA must seek a second re-adoption of the emergency regulations by providing notice of the emergency rulemaking action 5 days prior to submitting the emergency regulations to the Office of Administrative Law (“OAL”) for approval. OAL has 10 calendar days to approve the re-adoption. If approved, the emergency regulations will be filed with the Secretary of State and become effective upon filing. The emergency regulations will be valid until January 1, 2015, at which time the regulations adopted through the regular rulemaking process, if approved by OAL, will go into effect.

The regular rulemaking process requires CAEATFA to provide notice of the text of the proposed regulations, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking and to publish the Notice of Proposed Rulemaking in the Notice Register. Upon notice and publication, the rulemaking file must remain open for a 45-day public comment period. After the conclusion

of the comment period, CAEATFA may hold a public hearing on the proposed regulations. If CAEATFA makes any modifications to the proposed regulations originally made available in its initial notice and publication, CAEATFA must make the proposed modified regulations available to the public for an additional 15-day public comment period. After the 15-day comment period, CAEATFA may adopt the regulations and file the regular rulemaking package with the Office of Administrative Law (“OAL”). OAL has 30 business days to review the regulations.

Tentative Timeline.

All of the future dates below are tentative and subject to change.

August 29, 2014	Staff noticed the text of the proposed regulations, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking and published the Notice of Proposed Rulemaking in the Notice Register. The public may submit written comments for 45 calendar days.
October 14, 2014	Public hearing on the proposed regulations. All written comments submitted by 5:00 p.m.
October 15, 2014	Proposed modified regulation text publically noticed. The public may submit comments on the proposed modifications for 15 calendar days.
October 21, 2014	CAEATFA Board reviews and approves proposed modified regulations.
October 31, 2014	Staff files the regular rulemaking package with OAL. OAL has 30 business days to review the regulations.
November 18, 2014	Staff issues a notice of proposed rulemaking for the second emergency readoption.
November 25, 2014	Emergency regulations are submitted to OAL for review. OAL has 10 calendar days to review the emergency regulations.
December 5, 2014	OAL’s decision deadline for the second readoption of emergency regulations. Emergency regulations become effective upon filing with the Secretary of State.
December 16, 2014	OAL’s decision deadline for the regular rulemaking package.
January 1, 2015	AB 2597 goes into effect. Regulations adopted through the regular rulemaking process become effective.

Recommendation. Staff recommends adoption of a resolution to approve the proposed modifications to the regulations for the PACE Loss Reserve Program and to authorize Staff to undertake regular and emergency rulemaking proceedings and other actions related to promulgation of the regulations.

Agenda Item 4.A

Attachments:

- Attachment A Text of Assembly Bill 2597 (Ting, Chapter 614, Statutes of 2014)
- Attachment B Proposed Modified Regulations: Modifications for Board consideration are in red text.

RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES TO IMPLEMENT THE PACE LOSS RESERVE PROGRAM

October 21, 2014

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009 to adopt regulations to further implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the PACE Loss Reserve Program (the Program), as authorized in Section 26060 of the Public Resources Code, are necessary to be adopted at this time to implement the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting emergency and regular regulations to the Office of Administrative Law.

Section 3. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.

ATTACHMENT A

Assembly Bill No. 2597

CHAPTER 614

An act to amend Sections 26052, 26055, 26060, 26061, 26062, and 26063 of the Public Resources Code, relating to energy.

[Approved by Governor September 26, 2014. Filed with Secretary of State September 26, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2597, Ting. Energy: PACE program.

Existing law authorizes a public agency and a property owner to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently affixed on real property (PACE financing program).

Existing law requires the California Alternative Energy and Advanced Transportation Financing Authority to establish a Property Assessed Clean Energy (PACE) Reserve program to assist local jurisdictions in financing, among other things, the installation of distributed generation renewable energy sources or energy or water efficiency improvements on residential projects. Existing law requires the authority, in considering the eligibility of a public agency's PACE financing program for assistance under the PACE Reserve program, to consider whether the PACE program provides a loan that is less than 10% of the value of the property.

This bill would require the authority to consider whether a PACE financing program provides financial assistance that is less than 15% of the value of the property, for up to the first \$700,000, and less than 10% of the remaining value of the property above \$700,000, and whether the PACE financing program limits the total mortgage-related debt and PACE financing from exceeding the value of the property.

The people of the State of California do enact as follows:

SECTION 1.

The Legislature finds and declares all of the following:

(a) Property Assessed Clean Energy (PACE) financing programs are voluntary contractual assessment or voluntary special tax programs that finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements.

(b) The PACE risk mitigation program is intended to provide an additional safeguard for both existing and new residential PACE financing programs to expand in California.

(c) The PACE risk mitigation program is intended to remove any additional risk to the first mortgage lender and federal mortgage enterprises, such as Fannie

Mae and Freddie Mac, resulting from the existence of a PACE assessment on a property in foreclosure or forced into sale for unpaid taxes.

SEC. 2.

Section 26052 of the Public Resources Code is amended to read:

26052.

“Applicant” means, for the purposes of Article 2 (commencing with Section 26060), a public agency as defined in paragraph (3) of subdivision (c) of Section 5898.20 of the Streets and Highways Code, or an entity administering a PACE financing program on behalf of and with written consent of a public agency, and, for the purposes of Article 3 (commencing with Section 26070), a financial institution providing a loan pursuant to that chapter to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements.

SEC. 3.

Section 26055 of the Public Resources Code is amended to read:

26055.

“PACE program” means a program established by an applicant that is financed by the PACE bond or a PACE assessment regardless of funding sources.

SEC. 4.

Section 26060 of the Public Resources Code is amended to read:

26060.

(a) The authority shall develop and administer a PACE Reserve program to reduce overall costs to the property owners of PACE bonds issued by an applicant by providing a reserve of no more than 10 percent of the initial principal amount of the PACE bond.

(b) The authority shall develop and administer a PACE risk mitigation program for PACE financing to increase its acceptance in the marketplace and protect against the risk of default and foreclosure.

SEC. 5.

Section 26061 of the Public Resources Code is amended to read:

26061.

To qualify for assistance pursuant to this chapter, the PACE program shall require all of the following:

(a) The interest rate on the PACE bond does not exceed a percentage as determined by the authority to be appropriate.

(b) Minimum legal financing structure and credit underwriting criteria as determined by the authority are met.

(c) Proceeds of the PACE bonds are used to finance qualified energy and water efficiency, electric vehicle charging infrastructure, and clean energy improvements.

(d) The improvement financed is for a residential project of three units or fewer, or a commercial project that costs less than twenty-five thousand dollars (\$25,000) in total.

SEC. 6.

Section 26062 of the Public Resources Code is amended to read:

26062.

An applicant shall submit to the authority an application providing a detailed description of the PACE program, a detailed description of the transactional activities associated with the PACE bond issuance, including all transactional costs, information regarding any credit enhancement or insurance associated

with the PACE program, and other information deemed necessary by the authority.

SEC. 7.

Section 26063 of the Public Resources Code is amended to read:
26063.

(a) In evaluating eligibility, the authority shall consider whether the applicant's PACE program includes the following conditions:

- (1) Financing recipients are legal owners of underlying property.
- (2) Financing recipients are current on mortgage and property tax payments.
- (3) Financing recipients are not in default or in bankruptcy proceedings.
- (4) Financing is for less than 15 percent of the value of the property, up to the first seven hundred thousand dollars (\$700,000) of the value of the property, and is for less than 10 percent of the remaining value of the property above seven hundred thousand dollars (\$700,000).
- (5) The property is within the geographical boundaries of the PACE program.
- (6) The program offers financing for energy or water efficiency improvements, electric vehicle charging infrastructure, or clean energy improvements.
- (7) Improvements financed by the program follow applicable standards of energy efficiency retrofit work, including any guidelines adopted by the State Energy Resources Conservation and Development Commission.
- (8) The total mortgage-related debt and PACE financing on the underlying property does not exceed the value of the property.

(b) In evaluating an application, the authority shall consider all of the following factors:

- (1) The use by the PACE program of best practices, adopted by the authority, to qualify eligible properties for participation in underwriting the PACE program.
- (2) The cost efficiency of the applicant's PACE program, including bond issuance, credit enhancement, or insurance.
- (3) The projected number of jobs created by the PACE program.
- (4) The applicant's PACE program requirements for quality assurance and consumer protection as related to achieving efficiency and clean energy production.
- (5) The mechanisms by which savings produced by this program are passed on to the property owners.
- (6) Any other factors deemed appropriate by the authority.

ATTACHMENT B

PROPOSED TEXT OF MODIFIED REGULATIONS

ARTICLE 4. PACE LOSS RESERVE PROGRAM

§10080. Definitions.

(a) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code.

(b) “Executive Director” means the Executive Director of the Authority or his or her designee.

(c) “Loan Financing” means ~~a loan issued by, or~~ a contractual assessment or special tax levied by a PACE program.

(d) “PACE Program” means a residential property assessed clean energy program financing the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements and established pursuant to:

- (1) Chapter 29 (commencing with Section 5898.10) of Part 3 of Division 7 of the Streets and Highways Code; or,
- (2) Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code; or,
- (3) A charter city’s constitutional authority under Section 5 of Article XI of the California Constitution.

(e) “Program” means the PACE Loss Reserve Program established pursuant to Chapter 4 (commencing with Section 26050) of Division 16 of the Public Resources Code.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10081. Application by PACE Program to the PACE Loss Reserve.

A PACE Program seeking to participate in the PACE Loss Reserve Program shall complete an application that shall include the following information:

- (a) The formation documents required pursuant to:
 - (1) Streets and Highways Code Sections 5898.20 – 5898.22, and 5898.24; or,
 - (2) Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code; or,
 - (3) In the case of a charter city, a copy of a resolution or other document adopted by the city’s governing board evidencing approval of the PACE Program.

- (b) If not included in the documentation required in subdivision (a) above, documents showing that the PACE Program requires that property owners can show all of the following as part of the financing underwriting process:
 - (1) All property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever period is shorter.
 - (2) The property is not subject to any involuntary lien in excess of \$1,000.
 - (3) The property is not subject to any notices of default.
 - (4) The property owner is not in bankruptcy proceedings.
 - (5) The property owner is current on all mortgage debt.
 - (6) The party seeking financing is the holder of record on the property.
 - (7) The property is within the geographical boundaries of the PACE Program.
 - (8) The ~~Loan Financing~~ is for a residential property of three units or fewer.
 - (9) The ~~Loan Financing~~ is for less than ~~ten percent (10%)~~fifteen percent (15%) of the value of the property, up to the first seven hundred thousand dollars (\$700,000) of the value of the property, and is for less than ten percent (10%) of the remaining value of the property above seven hundred thousand dollars (\$700,000).
 - (10) The total mortgage-related debt and PACE Financing on the underlying property does not exceed the value of the property.

- (c) If not included in the documentation required in subdivision (a) above, a detailed description of:
 - (1) The transactional activities associated with the ~~Loan Financing~~ issuance, including all transactional costs; and,

- (2) Requirements for quality assurance and consumer protection, as related to achieving efficiency and clean energy production; and,
 - (3) Any credit enhancement or ~~loan~~ insurance associated with the PACE Program.
- (d) A summary of the PACE Program’s existing residential ~~financing~~Financing portfolio certified pursuant to Section 10087 as of the date of application. The summary shall include the following information:
- (1) The total number of ~~Loans~~Financings in the portfolio.
 - (2) The total value of the portfolio.
- (e) The PACE Program's agreement to permit an audit of any of its records relating to enrolled ~~Loans~~Financings, during normal business hours on its premises, by the Authority or its agents, and to supply such other information concerning enrolled ~~Loans~~Financings as shall be requested by the Executive Director.
- (f) Upon receipt of a completed application, the Executive Director will within ten business days review and determine whether the application is complete, or whether additional information is required to enroll the PACE Program. The Executive Director's decision whether an application is complete shall be final.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055, 26061, 26062 and 26063, Public Resources Code.

§10082. Coverage of PACE ~~Loan~~Financing Portfolios.

- (a) For PACE Programs created before March 10, 2014 and making application pursuant to Section 10081 on or before June 9, 2014, all PACE ~~Loans~~Financings outstanding at the time of enrollment shall be covered by the loss reserve pool for the length of their term. In addition PACE ~~Loans~~Financings originated after enrollment and included in reports as provided in Section 10085 shall be covered by the loss reserve pool for the length of their term.
- (b) For PACE Programs created on or after March 10, 2014, all PACE ~~Loans~~Financings originated not more than 30 calendar days before the date of the PACE Program enrollment pursuant to Section 10081 shall be covered by the loss reserve pool for the length of their term. In addition PACE ~~Loans~~Financings originated after enrollment and included in reports as provided in Section 10085 shall be covered by the loss reserve pool for the length of their term.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10083. Claims Against the Loss Reserve Pool.

Any PACE Program may make claim for payment from the loss reserve pool for the following losses incurred by first mortgage lenders and limited to losses on the ~~Loans~~Financings described in Section 10082 directly attributable to the existence of a PACE Program lien on a specified property. Losses include:

- (a) Losses resulting from the first mortgage lender's payment of any PACE assessment paid while in possession of the property subject to the PACE assessment. Losses may also include penalties and interest where they have accrued through no fault of the first mortgage lender.
- (b) In any forced sale for unpaid taxes or special assessments, losses incurred by the first mortgage lender resulting from PACE assessments being paid before the outstanding balance.

In no instance shall the loss exceed the amount of the PACE assessment, or in the case of forced sale for unpaid taxes or special assessments, the amount of the delinquent PACE assessments.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10084. Claims Procedure.

- (a) Any PACE Program seeking to make a claim against the loss reserve pool for losses as described in Section 10083 shall submit satisfactory evidence of the eligible loss, including but not limited to the assessor's parcel number, the loss amount, the origination date, the first mortgage lender, the date of the loss or losses, and the certification described in Section 10087. The Authority shall make payments to PACE Programs within 20 calendar days of receipt of a completed claim.

- (b) In the event of an eligible claim on a LoanFinancing where the PACE Program has been terminated pursuant to Section 10086, the Authority may seek additional evidence of the eligible loss from the first mortgage lender.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10085. PACE Program Reporting and Administrative Fee.

- (a) Each enrolled PACE Program shall report to the Authority twice each calendar year. These reports shall be certified pursuant to Section 10087.
- (1) On March 1st of each year, each enrolled PACE Program shall submit the following for the period from July 1 through December 31:
- i. The assessor's parcel number, principal amount, annual assessment amount and term of each new LoanFinancing originated in the reporting period.
 - ii. The total number and value of new LoansFinancings originated in the reporting period.
 - iii. Payment of the administrative fee set forth in paragraph (b) of this section.
- (2) On October 1st of each year, each enrolled PACE program shall submit the following for the period from January 1 through June 30:
- i. The information and payment outlined in subdivision (a)(1) above.
 - ii. The total number of outstanding LoansFinancings.
 - iii. The total value of the LoanFinancing portfolio.
 - iv. Information on energy and water savings resulting from the projects funded by the covered portfolio of LoansFinancings.
- (b) The Authority shall assess an administrative fee of 0.0025 (0.25%) of the principal value of each LoanFinancing issued by a Participating PACE Program during the period covered by the report, except those outstanding at the time of enrollment as described in Section 10082. In March of 2016, and every year thereafter, the Authority shall review the fee. In addition, the Authority may review the fee at any time upon a vote of a majority of the Authority.
- (c) In the event that a report and payment is not received within 60 calendar days of the due date as set forth in this section, the Authority may terminate the PACE Program's enrollment, pursuant to Section 10086(b).

Authority: Section 26009, Public Resources Code.

Reference: Sections 26011, 26050, 26050.5, 26052, 26055, 26060 and 26081, Public Resources Code.

§10086. Termination and Withdrawal from the Program.

- (a) Each enrolled PACE Program may withdraw from the Program after giving written notice to the Authority. The notice shall specify either:
- (1) That the enrolled PACE Program waives any further interest in the loss reserve pool (including for the reason that all ~~Loans~~Financings covered by the loss reserve pool have been repaid); or,
 - (2) That the enrolled PACE Program will not enroll any further ~~financings~~Financings under the Program but shall continue to count on the loss reserve pool to secure all ~~Loans~~Financings reported prior to the notice.
- (b) The Executive Director may terminate participation of an enrolled PACE Program in the Program, by notice in writing, upon the occurrence of any of the following:
- (1) Entry of a cease and desist order, regulatory sanction, or any other action against the PACE Program that may impair its ability to participate in the Program; or
 - (2) Failure of the enrolled PACE Program to abide by any applicable law, including these regulations; or
 - (3) Failure of the enrolled PACE Program to report any ~~Loans~~Financings under the Program for a period of one year; or
 - (4) Provision of false or misleading information regarding the enrolled PACE Program to the Authority, or failure to provide the Authority with notice of material changes in submitted information regarding the enrolled PACE Program.

In the event of termination, the enrolled PACE Program shall not be authorized to have any further ~~Loans~~Financings covered by the loss reserve pool, but all previously enrolled ~~Loans~~Financings shall continue to be covered by the loss reserve pool until they are paid, claims are filed, or the enrolled PACE Program withdraws from the Program pursuant to this section.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.

§10087. Certification of Reports and Claims.

- (a) All applications, reports and claims submitted by a PACE Program must be signed by the PACE Program administrator certifying that they are accurate and true.

- (b) If an application, report or claim is submitted by a third-party program administrator on behalf of a PACE Program, an appropriate public official must provide the Authority with a signed letter certifying that the PACE Program has the ability to audit the records of the third-party administrator, including all information included in the applications, reports and claims submitted to the Authority.

Authority: Section 26009, Public Resources Code.

Reference: Sections 26050, 26050.5, 26052, 26055 and 26060, Public Resources Code.