

AMENDED IN SENATE FEBRUARY 23, 2010

AMENDED IN SENATE FEBRUARY 18, 2010

CALIFORNIA LEGISLATURE—2009–10 EIGHTH EXTRAORDINARY SESSION

SENATE BILL

No. 26

**Introduced by Senators Pavley, Cedillo, Hancock, Padilla, Steinberg,
and Wolk**
(Coauthor: Senator Alquist)

February 4, 2010

An act to add Division 16.2 (commencing with Section 26100) to the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Pavley. Energy: Property Assessed Clean Energy (PACE) financing.

(1) The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the authority to issue revenue bonds to provide industry with an alternative method of financing in providing and promoting the establishment of facilities utilizing alternative methods and sources of energy and facilities needed for the development and commercialization of advanced transportation technologies.

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

This bill would require the authority to establish a Property Assessed Clean Energy (PACE) Reserve Program to assist local jurisdictions in financing the installation of distributed generation of renewable energy sources or energy or water efficiency improvements that are permanently affixed on real property through the use of voluntary contractual assessment. The bill would establish the PACE Reserve Account within the California Alternative Energy Authority Fund and would transfer \$50,000,000 from the Renewable Resource Trust Fund into the account. The moneys in the account would be continuously appropriated to the authority for the purposes of the PACE Reserve ~~Program~~ *program*, thereby making an appropriation. The bill would require unencumbered funds in the account, on or after January 1, 2015, to revert back to the Renewable Resource Trust Fund. The bill would require the authority, on March 31, 2011, and annually thereafter, to submit to the Legislature, a report containing specified information regarding the implementation of the above provisions.

(2) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Division 16.2 (commencing with Section 26100)
 2 is added to the Public Resources Code, to read:
 3
 4 DIVISION 16.2. PROPERTY ASSESSED CLEAN ENERGY
 5 (PACE) FINANCING ASSISTANCE
 6
 7 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS
 8
 9 26100. (a) The Legislature finds and declares all of the
 10 following:

1 (1) Property Assessed Clean Energy (PACE) financing has been
2 pioneered by municipalities and counties in California as a way
3 for home and small business owners to finance voluntary energy
4 and water efficiency and clean energy improvements.

5 (2) PACE financing was pioneered in the City of Berkeley,
6 while the City and County of San Francisco, City of San Diego,
7 City of Palm Desert, Sonoma County, and the California Statewide
8 Communities Development Authorities (CSCDA) have already
9 initiated or are working to launch additional programs.

10 (3) Seventeen other states, including Colorado and New York,
11 have also enacted enabling PACE legislation.

12 (4) PACE programs create new jobs, lower energy demand, and
13 help spur new clean industries that will help grow the economy.

14 (b) It is the intent of the Legislature to assist local jurisdictions
15 in financing the installation of distributed generation of renewable
16 energy sources or energy or water efficiency improvements that
17 are permanently fixed to real property through the use of voluntary
18 contractual assessments.

19 (c) It is not the intent of the Legislature to create any debt,
20 liability, or obligation on the part of the state in assisting local
21 jurisdictions pursuant to this division.

22 26101. Unless the context otherwise requires, the definitions
23 in this chapter govern the construction of this division.

24 26102. “Account” means the PACE Reserve Account
25 established pursuant to Section 26140.

26 26103. “Applicant” means a public agency as defined in
27 paragraph (3) of subdivision (c) of Section 5898.20 of the Streets
28 and Highways Code.

29 26104. “Authority” means the California Alternative Energy
30 and Advanced Transportation Financing Authority established
31 pursuant to Section 26004.

32 26105. “Property Assessed Clean Energy bond” or “PACE
33 bond” means a bond that is secured by a voluntary contractual
34 assessment on property authorized pursuant to paragraph (2) of
35 subdivision (a) of Section 5898.20 of the Streets and Highways
36 Code *or by a voluntary contractual assessment or a voluntary
37 special tax pursuant to Chapter 2.5 (commencing with Section
38 53311) of Part 1 of Division 2 of Title 5 of the Government Code
39 on property to finance the installation of renewable energy sources,
40 or energy or water efficiency improvements that is levied pursuant*

1 *to a chartered city's constitutional authority under Section 5 of*
 2 *Article XI of the California Constitution.*

3 26106. "PACE program" means a program established by an
 4 applicant that is financed by the PACE bond.

5 26107. This division does not create any liability or obligation
 6 upon the State of California and none shall be incurred by the
 7 authority beyond the extent to which moneys shall have been
 8 provided under this division. The authority shall not create any
 9 debt, liability, or obligation on the part of the State of California
 10 payable from any source whatsoever other than the moneys
 11 provided under this division.

12
 13 CHAPTER 2. PACE RESERVE PROGRAM

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 15 26120. The authority shall develop and administer a PACE
 16 Reserve program to reduce overall costs to the property owners
 17 of PACE bonds issued by an applicant by providing a reserve of
 18 no more than 10 percent of the initial principal amount of the PACE
 19 bond.

20 26121. To qualify for assistance pursuant to this division, the
 21 PACE program shall require all of the following:

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

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

26 (c) Proceeds of the PACE bonds are used to finance qualified
 27 energy and water efficiency and clean energy improvements.

28 26122. An applicant shall submit to the authority an application
 29 providing a detailed description of the PACE program, a detailed
 30 description of the transactional activities associated with the PACE
 31 bond issuance, including all transactional costs, and other
 32 information deemed necessary by the authority.

33 26123. (a) In evaluating eligibility, the authority shall consider
 34 whether the applicant's PACE program includes the following
 35 conditions:

36 (1) Loan recipients are legal owners of underlying property.

37 (2) Loan recipients are current on mortgage and property tax
 38 payments.

39 (3) Loan recipients are not in default or in bankruptcy
 40 proceedings.

1 (4) Loans are for less than 10 percent of the value of the
2 property.

3 (5) The property is within the geographical boundaries of the
4 PACE program.

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

7 (1) The use by the PACE program of best practices, adopted by
8 the authority, to qualify eligible properties for participation in
9 underwriting the PACE program.

10 (2) The cost efficiency of the applicant’s PACE program,
11 including bond issuance.

12 (3) The projected number of jobs created by the PACE program.

13 (4) The applicant’s PACE program requirements for quality
14 assurance and consumer protection as related to achieving
15 efficiency and clean energy production.

16 (5) The mechanisms by which savings produced by this program
17 are passed on to the property owners.

18 (6) Any other factors deemed appropriate by the authority.

19 ~~26124. Upon the approval of an application, the authority shall
20 establish an escrow or similar mechanism, utilizing funds in the
21 account, to further the purposes of the PACE program.
22 Unencumbered funds shall be periodically transferred back to the
23 authority for the purposes of this division.~~

24 *26124. The authority shall review the applicant’s PACE bond
25 issuance, including, but not limited to, indenture, trust agreement,
26 and fiscal agent agreement (“the bond documents”) and, when
27 the authority is satisfied that the bond documents are consistent
28 with the requirements of the PACE Reserve program established
29 pursuant to this chapter, the authority shall advance to the
30 applicant or the applicant’s bond trustee from the account, at the
31 closing of the applicant’s PACE bonds, the amount approved by
32 the authority for use in the PACE bond’s reserve fund under the
33 bond documents. Prior to the disbursement of moneys pursuant to
34 this section into a reserve fund, the authority shall enter into an
35 agreement with the applicant regarding the creation and operation
36 of the reserve fund, including the manner in which the authority
37 will be repaid for any moneys disbursed to the reserve fund.*

1 CHAPTER 3. PACE RESERVE ACCOUNT AND REPORTING

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3 26140. (a) There is in the California Alternative Energy
4 Authority Fund the PACE Reserve Account. Notwithstanding
5 Section 13340 of the Government Code, the moneys in the account
6 shall be continuously appropriated to the authority solely for the
7 purposes of this division.

8 (b) Fifty million dollars (\$50,000,000) from *the* Renewable
9 Resource Trust Fund is hereby transferred to the account.

10 (c) To the extent amounts in the account are not required for
11 current obligations or expenditure, those amounts shall be invested
12 in interest-bearing obligations, and the interest earned shall become
13 part of the account.

14 (d) Any amount appropriated from the account for purposes
15 other than those specified in this division shall be repaid to the
16 account within one year from that appropriation.

17 (e) On and after January 1, 2015, any unencumbered amounts
18 in the account shall revert to the Renewable Resource Trust Fund,
19 or its successor.

20 26141. On March 31, 2011, and annually thereafter, the
21 authority shall submit to the Legislature a report on all of the
22 following:

23 (a) The status of the account.

24 (b) A summary of the PACE bonds that received assistance
25 pursuant to this division.

26 (c) A summary of the benefits provided by this division,
27 including reduced interest rates on the PACE bonds receiving
28 assistance pursuant to this division.

29 (d) The number of jobs created by the PACE programs that
30 received assistance pursuant to this division.

31 (e) Information on energy and water savings resulting from the
32 PACE programs that received assistance pursuant to this division.

33 (f) Other information deemed appropriate by the authority.

34 SEC. 2. This act addresses the fiscal emergency declared by
35 the Governor by proclamation on January 8, 2010, pursuant to
36 subdivision (f) of Section 10 of Article IV of the California
37 Constitution.

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