

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senator  
Pavley**

*(Principal coauthor: Assembly Member Skinner)*

*(Coauthors: Senators Alquist, Cedillo, Hancock, Padilla, Steinberg,  
and Wolk)*

*(Coauthor: Assembly Member Huffman)*

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~~An act relating to the Budget Act of 2009. An act to amend Section 26011 of, and to add Division 16.2 (commencing with Section 26100) to, and to repeal Section 26141 the Public Resources Code, relating to energy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 77, as amended, ~~Committee on Budget and Fiscal Review~~ Pavley. ~~Budget Act of 2009. Energy: California Alternative Energy and Advanced Transportation Financing Authority: Property Assessed Clean Energy (PACE).~~

*(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 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 meeting specified requirements that are permanently affixed on real property through the use of a voluntary contractual assessment. The bill would, until January 1, 2015, appropriate up to \$50,000,000 from the Renewable Resource Trust Fund to the authority for the purposes of the PACE Reserve program. The bill would require the authority, on March 31, 2011, and annually thereafter until January 1, 2015, to submit to the Legislature a report containing specified information regarding the implementation of the above provisions.*

*(2) Existing law vests the authority with specified powers in the implementation of the California Alternative Energy and Advanced Transportation Financing Authority Act.*

*This bill would authorize the authority to purchase bonds issued by a public agency meeting specified criteria. The bill would authorize the authority to hold the purchased bonds or to sell the purchased bonds, in whole or in part, to public or private purchasers.*

*(3) This bill would declare that it is to take effect immediately as an urgency statute.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

- 1 *SECTION 1. Section 26011 of the Public Resources Code is*
- 2 *amended to read:*
- 3 *26011. The authority is authorized and empowered:*
- 4 *(a) To adopt an official seal.*
- 5 *(b) To sue and be sued in its own name.*
- 6 *(c) To issue bonds, notes, bond anticipation notes, and other*
- 7 *obligations of the authority, including, at the option of the*
- 8 *authority, obligations bearing interest that is taxable for purposes*

1 of federal income taxation, for any of its purposes and to fund or  
2 refund the same, all as provided in this division.

3 (d) To determine the location and character of a project to be  
4 financed under the provisions of this division, to lend financial  
5 assistance to a participating party, to enter into loan agreements  
6 with a participating party for the financing of a project including  
7 creating a lien or security interest in the property, to construct,  
8 reconstruct, renovate, replace, lease, as lessor or lessee, and  
9 regulate the same, and to enter into contracts for the sale of a  
10 project, including installment sales or sales under conditional sales  
11 contracts.

12 (e) To fix fees and charges for projects, and interest rates with  
13 respect to loans for projects, and to revise from time to time the  
14 fees and charges and interest rates, and to collect rates, rents, fees,  
15 and charges for the use of, and for a facility or service furnished,  
16 or to be furnished, by a project or part of the project and to contract  
17 with a person, partnership, association, corporation, or public  
18 agency with respect to the project, and to fix the terms and  
19 conditions upon which a project may be sold or disposed of,  
20 whether upon installment sales contracts or otherwise.

21 (f) To employ and fix the compensation of bond counsel,  
22 financial consultants, and advisers as may be necessary in its  
23 judgment in connection with the issuance and sale of any bonds,  
24 notes, bond anticipation notes, or other obligations of the authority;  
25 to contract for engineering, architectural, accounting, or other  
26 services of appropriate state agencies as may be necessary in the  
27 judgment of the authority for the successful development of a  
28 project; and to pay the reasonable costs of consulting engineers,  
29 architects, accountants, and construction experts employed by a  
30 participating party if, in the judgment of the authority, the services  
31 are necessary to the successful development of a project, and the  
32 services are not obtainable from a state agency.

33 (g) To purchase alternative source energy or projects from a  
34 person or entity for sale to a participating party, or to make a loan  
35 to a participating party to purchase alternative source energy or  
36 projects, or to purchase from a person or entity that has contracted  
37 to sell alternative source energy to a participating party the right  
38 to receive purchase payments and related rights under that contract  
39 or any related contracts. Notwithstanding any other applicable law,  
40 the authority and a public agency, for purposes of a program or

1 financing, shall have the power to enter into contractual  
 2 arrangements and related agreements or instruments, including,  
 3 without limitation, a prepayment purchase contract, lease, loan,  
 4 construction, security, operation and maintenance, or other  
 5 agreement or instrument, with the authority or with a participating  
 6 party, upon the terms and subject to the conditions that may be  
 7 necessary or convenient to accomplish the purposes of this  
 8 subdivision. The authority shall only enter into a prepayment  
 9 contract with a participating party for energy derived from an  
 10 alternative source to the extent the prepayment is for energy  
 11 intended to primarily offset part or all of the authority's or a  
 12 participating party's own electrical requirements.

13 *(h) To purchase, with proceeds of its bonds or its revenue, bonds*  
 14 *issued by a public agency described in paragraph (2) of subdivision*  
 15 *(f) of Section 26003 at a public or negotiated sale. Bonds*  
 16 *purchased pursuant to this subdivision may be held by the authority*  
 17 *or sold to public or private purchasers at public or negotiated*  
 18 *sales, in whole or in part, separately or together with other bonds*  
 19 *issued by the authority.*

20 ~~(h)~~

21 *(i) To do all things generally necessary or convenient to carry*  
 22 *out the purposes of this division.*

23 *SEC. 2. Division 16.2 (commencing with Section 26100) is*  
 24 *added to the Public Resources Code, to read:*

25

26 *DIVISION 16.2. PROPERTY ASSESSED CLEAN ENERGY*  
 27 *(PACE) FINANCING ASSISTANCE*

28

29 *CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS*

30

31 *26100. (a) The Legislature finds and declares all of the*  
 32 *following:*

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

37 *(2) PACE financing was pioneered in the City of Berkeley, while*  
 38 *the City and County of San Francisco, City of San Diego, City of*  
 39 *Palm Desert, Sonoma County, and the California Statewide*

1 *Communities Development Authority (CSCDA) have already*  
2 *initiated or are working to launch additional programs.*

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

5 *(4) The public subsidy provided by the PACE financing is*  
6 *justified by the benefits received in job creation, lower energy*  
7 *demand, and spurring new clean industries that will grow the*  
8 *economy.*

9 *(b) It is the intent of the Legislature to assist local jurisdictions*  
10 *in financing the installation of distributed generation renewable*  
11 *energy sources or energy or water efficiency improvements that*  
12 *are permanently fixed to real property through the use of voluntary*  
13 *contractual assessments.*

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

17 *26101. Unless the context otherwise requires, the definitions*  
18 *in this chapter govern the construction of this division.*

19 *26102. “Applicant” means a public agency as defined in*  
20 *paragraph (3) of subdivision (c) of Section 5898.20 of the Streets*  
21 *and Highways Code.*

22 *26103. “Authority” means the California Alternative Energy*  
23 *and Advanced Transportation Financing Authority established*  
24 *pursuant to Section 26004.*

25 *26104. “Property Assessed Clean Energy bond” or “PACE*  
26 *bond” means a bond that is secured by a voluntary contractual*  
27 *assessment on property authorized pursuant to paragraph (2) of*  
28 *subdivision (a) of Section 5898.20 of the Streets and Highways*  
29 *Code or by a voluntary contractual assessment or a voluntary*  
30 *special tax on property to finance the installation of distributed*  
31 *generation renewable energy sources, or energy or water efficiency*  
32 *improvements that is levied pursuant to a chartered city’s*  
33 *constitutional authority under Section 5 of Article XI of the*  
34 *California Constitution.*

35 *26105. “PACE program” means a program established by an*  
36 *applicant that is financed by the PACE bond.*

37 *26106. This division does not create any liability or obligation*  
38 *upon the State of California and none shall be incurred by the*  
39 *authority beyond the extent to which moneys shall have been*  
40 *provided under this division. The authority shall not create any*

1 *debt, liability, or obligation on the part of the State of California*  
2 *payable from any source whatsoever other than the moneys*  
3 *provided under this division.*

4

5

*CHAPTER 2. PACE RESERVE PROGRAM*

6

7 26120. *The authority shall develop and administer a PACE*  
8 *Reserve program to reduce overall costs to the property owners*  
9 *of PACE bonds issued by an applicant by providing a reserve of*  
10 *no more than 10 percent of the initial principal amount of the*  
11 *PACE bond.*

12 26121. *To qualify for assistance pursuant to this division, the*  
13 *PACE program shall require all of the following:*

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

16 (b) *Minimum legal loan structure and credit underwriting*  
17 *criteria as determined by the authority are met.*

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

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

23 26122. *An applicant shall submit to the authority an application*  
24 *providing a detailed description of the PACE program, a detailed*  
25 *description of the transactional activities associated with the PACE*  
26 *bond issuance, including all transactional costs, and other*  
27 *information deemed necessary by the authority.*

28 26123. (a) *In evaluating eligibility, the authority shall consider*  
29 *whether the applicant's PACE program includes the following*  
30 *conditions:*

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

32 (2) *Loan recipients are current on mortgage and property tax*  
33 *payments.*

34 (3) *Loan recipients are not in default or in bankruptcy*  
35 *proceedings.*

36 (4) *Loans are for less than 10 percent of the value of the*  
37 *property.*

38 (5) *The property is within the geographical boundaries of the*  
39 *PACE program.*

1 (6) The program offers financing for energy efficiency  
2 improvements.

3 (7) Improvements financed by the program follow applicable  
4 standards of energy efficiency retrofit work, including any  
5 guidelines adopted by the State Resources Conservation and  
6 Development Commission.

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

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

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

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

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

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

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

21 26124. The authority shall review the applicant’s PACE bond  
22 issuance, including, but not limited to, indenture, trust agreement,  
23 and fiscal agent agreement (“the bond documents”) and, when  
24 the authority is satisfied that the bond documents are consistent  
25 with the requirements of the PACE Reserve program established  
26 pursuant to this chapter, the authority shall advance to the  
27 applicant or the applicant’s bond trustee, at the closing of the  
28 applicant’s PACE bonds, the amount made available from the  
29 Renewable Resource Trust Fund and approved by the authority  
30 for use in the PACE bond’s reserve fund under the bond documents.  
31 Prior to the disbursement of moneys pursuant to this section into  
32 a reserve fund, the authority shall enter into an agreement with  
33 the applicant regarding the creation and operation of the reserve  
34 fund, including the manner in which the authority will be repaid  
35 for any moneys disbursed to the reserve fund.

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37 *CHAPTER 3. APPROPRIATION AND REPORTING*

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39 26140. (a) Until January 1, 2015, an amount of up to fifty  
40 million dollars (\$50,000,000) from the Renewable Resource Trust

1 Fund, established pursuant to Section 25751, is hereby  
2 appropriated to the authority for the purposes of this division. The  
3 moneys appropriated shall remain in the Renewable Resource  
4 Trust Fund until the funds are needed by the authority pursuant  
5 to this division.

6 (b) Of the moneys appropriated in subdivision (a), up to three  
7 hundred thousand dollars (\$300,000) may be expended by the  
8 authority for the initial administrative costs in implementing this  
9 division.

10 (c) All repayments of moneys disbursed pursuant to this division  
11 shall be deposited into the Renewable Resource Trust Fund.

12 26141. (a) On March 31, 2011, and annually thereafter, the  
13 authority shall submit to the Legislature a report pursuant to  
14 Section 9795 of the Government Code on all of the following:

15 (1) The status of the account.

16 (2) A summary of the PACE bonds that received assistance  
17 pursuant to this division.

18 (3) A summary of the benefits provided by this division,  
19 including reduced interest rates on the PACE bonds receiving  
20 assistance pursuant to this division.

21 (4) The number of jobs created by the PACE programs that  
22 received assistance pursuant to this division.

23 (5) Information on energy and water savings resulting from the  
24 PACE programs that received assistance pursuant to this division.

25 (6) Other information deemed appropriate by the authority.

26 (b) This section shall remain in effect only until January 1, 2015,  
27 and as of that date is repealed, unless a later enacted statute, that  
28 is enacted before January 1, 2015, deletes or extends that date.

29 SEC. 3. This act is an urgency statute necessary for the  
30 immediate preservation of the public peace, health, or safety within  
31 the meaning of Article IV of the Constitution and shall go into  
32 immediate effect. The facts constituting the necessity are:

33 To expedite the issuance of the Property Assessed Clean Energy  
34 bonds by local entities that would facilitate the installation of  
35 energy and water efficiency improvements and distributed  
36 generation renewable energy sources on real property, creating  
37 jobs in the green energy sector and protecting the environment, it  
38 is necessary for this act to take effect immediately.



1     ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
2     ~~changes relating to the Budget Act of 2009.~~

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