



**National
Consumer Law
Center**

*Fighting Together
for Economic Justice*

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H.3275 and S. 2218 re: Residential Property Assessed Clean Energy (PACE) programs

*The National Consumer Law Center, on behalf of its low-income clients,
opposes H. 3275 and S. 2218.*

Testimony of National Consumer Law Center, on Behalf of its Low-income Clients, in Opposition to H. 3275 and S. 2218 Regarding Residential Property Assessed Clean Energy (PACE) Programsⁱ September 29, 2021

I. NCLC's experience, particularly with PACE programs

The National Consumer Law Center is a non-profit advocacy organization that, since 1969, has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and disadvantaged people. On behalf of our clients, we strongly oppose H. 3275 and S. 2218 as placing them at great risk, due to the lack of any consumer protections in these bills, and because existing, award-winning Massachusetts programs already provide adequate tools for homeowners to finance energy efficiency.

NCLC has been actively involved in advocacy for consumers who have been financially harmed by the predatory practices in the R-PACE program in Californiaⁱⁱ and elsewhere. We have released issue briefsⁱⁱⁱ which describe the common abusive practices and the dire consequences of PACE loans for many consumers, including the threatened loss of their homes. We are particularly concerned that the many bad actors observed in these programs have preyed upon low-income consumers, older adults, and homeowners of color, including through deceptive contractor practices and targeting communities of color.

II. Specific comments regarding the proposed PACE bills

H. 3275 and S. 2218 authorize the Department of Energy Resources to “develop and implement regulations to establish a residential sustainable energy program” that would provide “financing to residential property owners energy efficiency and renewable energy improvements.” The apparent intent of both bills is to establish a residential Property Assessed Clean Energy (PACE) program comparable to the existing commercial PACE program in Massachusetts^{iv} and to the residential programs offered in California and a few other states. On behalf of its low-income clients, NCLC opposes this legislation.

Of greatest concern to us is that the bill contains no consumer protections whatsoever, while authorizing a financing program that will burden consumers with debt that includes a lien being placed on the consumer’s home and the potential for foreclosure. California, which has the oldest and by far the largest residential PACE program, included extensive consumer protections when it was first adopted PACE, and the legislature added further protections in response to numerous instances of deceptive sales practices that harmed consumers^v. John Oliver’s program, *This Week Tonight*, detailed the broad range of problems families that have accessed PACE funding have encountered in a June 21, 2021 episode.^{vi} The PACE business model has, to date, resulted in extensive use of contractors who use high-pressure, deceptive sales practices to maximize the amount of work a homeowner agrees to undertake, and, consequently, maximizes the loan amount. Notably, Renovate, one of the first companies to offer PACE loans and an early, lead proponent of spreading the PACE model to other states, filed for bankruptcy in December 2020. California regulators moved to revoke the bankrupt entities’ license “after local homeowners had liens placed on their properties for nonexistent improvements in an apparent fraud,”^{vii} and Renovate recently entered a settlement agreement with regulators to have its license revoked.^{viii}

Given the many complaints that have been lodged against PACE programs by consumers, Congress mandated^{ix} that the Consumer Financial Protection Bureau (CFPB) adopt Truth-in-Lending regulations applicable to PACE loans addressing, among other issues, “ability to repay,” that is, ensuring that borrowers have the actual ability to repay the borrowed amounts. H. 3275 and S. 2218 are completely silent on “ability to repay” and on all other relevant consumer protections that should be addressed in any PACE legislation. The CFPB is still in the midst of drafting those regulations.^x

The Massachusetts PACE bills are a solution that makes little sense in Massachusetts, as there is no problem obtaining financing for energy efficiency measures, at a zero interest rate^{xi} and without having a lien placed on the home. The HEAT loan program offered by MassSave provides \$100 million in interest-free loans annually. Not only are the loans zero-interest, but unlike PACE loans, no liens are placed on borrowers' homes nor is the repayment obligation added to the tax bill, where missing payments results in the imposition of a very high interest rate and fees. Moreover, the loans are offered by local, community banks, not out-of-state, for-profit companies motivated as much by generating profits for global investors as by concern about climate change.

In conclusion, on behalf of our low-income clients, NCLC strongly opposes H. 3275 and S. 2218 because the bills contain no protections for consumers; because PACE loans have unquestionably harmed consumers elsewhere, especially low-income consumers; and because existing Massachusetts programs meet the need for financing of energy efficiency improvements without carrying any of the risks of PACE loans.

ⁱ Prepared by Charles Harak, Staff attorney, charak@nclc.org, 781 307-6775.

ⁱⁱ For examples of early California PACE abuses, see National Consumer Law Center, Issue Brief: Residential Property Assessed Clean Energy (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements, (Sept. 2017), available at <http://bit.ly/2xJm22L>.

ⁱⁱⁱ National Consumer Law Center, Property Assessed Clean Energy (PACE) Loans: State and Local Consumer Protection Recommendations (November 2019), available at

https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-nov2019.pdf;

National Consumer Law Center, What is a Property Assessed Clean Energy (PACE) Loan? (September 2016), available at <https://www.nclc.org/issues/pace-energy-efficiency-loans.html>.

^{iv} H. 3275 specifically references the commercial PACE program; S. 2218 does not.

^v See, e.g., Cal. Fin. Code §§22684, 22686 & 22687.

^{vi} *Last Week Tonight* (June 21, 2021), available at: <https://www.youtube.com/watch?v=zv8ZPFOxJEc>.

^{vii} San Diego Union Tribune, "San Diego clean energy lender Renovate America may lose PACE license amid fraud claims" (June 4, 2021), available at: <https://www.sandiegouniontribune.com/business/story/2021-06-04/california-regulator-moves-to-revoke-pace-license-of-san-diego-clean-energy-lender-renovate-america-amid-fraud-claims>.

^{viii} The September 8, 2021 Settlement Agreement between the California Commissioner Of Financial Protection And Innovation and Renovate America, Inc. can be found here: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/09/Admin.-Action-Renovate-America-Inc.-Settlement-Agreement.pdf>.

^{ix} See Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174.

^x The CFPB's Advance Notice of Proposed Rulemaking can be found here:

<https://www.federalregister.gov/documents/2019/03/08/2019-04177/advance-notice-of-proposed-rulemaking-on-residential-property-assessed-clean-energy-financing>.

^{xi} PACE loans to date have carried relatively high interest rates, almost always higher than the homeowner would pay on a home equity line.