



March 28, 2022

Re: Opposition to Amendment to Senate Bill 61 (amendment number AM\_134\_2796)

Chair Hillyer, Vice Chair Grendell, Ranking Member Galonski, and Members of the House Civil Justice Committee,

My name is Mark Scheffel, Vice President of Government Relations for Ygrene Energy Fund. Ygrene is a PACE provider. PACE stands for “property assessed clean energy.” PACE is an alternative form of financing that allows property owners to pay for energy efficient upgrades for their properties.

I appear before you today today in strong opposition to an amendment to Senate Bill 61, amendment number AM\_134\_2796. The amendment creates a regulatory framework for residential PACE assessments and makes additional fundamental changes to how residential PACE assessments work.

I understand that you may not have heard about PACE before today. Ohio authorized PACE over a decade ago. Representative Bill Seitz authored the original PACE statute. In Ohio, property owners can use PACE assessments to finance the purchase of rooftop solar, energy efficient windows and doors, insulation, energy efficient roofing, and high efficiency appliances.

PACE is not a loan or a government incentive program. It is also not a utility energy efficiency program. PACE is completely voluntary and can only operate where a local government first authorized the availability of the PACE assessment program. PACE allows property owners to choose to levy a special tax assessment on their own property to finance the purchase and installation of energy efficient improvements or renewable energy. The financing is then paid back over time as part of the property owner’s property taxes.

Since first being approved in 2009, commercial PACE transactions in Ohio have steadily grown with Ohio becoming a national leader in commercial PACE. The vast amount of PACE activity in Ohio has been commercial PACE with nearly \$600M of investment in Ohio commercial and industrial properties.

A few residential PACE pilot projects have been completed, primarily through the Heritage Homes program administered by the Lucas County Land Bank.

Ygrene is on the cusp of launching Ohio’s first statewide residential PACE program in partnership with the Toledo Lucas County Port Authority. Ygrene and other capital providers want to continue investing tens of millions of dollars in Ohio’s homes and buildings. The amendment jeopardizes years of work and pulls the rug out on an emerging industry, removes customer choice, is anti-competitive, and constitutes government overreach.

Moreover, we are concerned that this committee is considering an amendment without consulting with the industry it seeks to regulate. There has been no public testimony on residential PACE. No issues in Ohio have been identified or alleged. The amendment is the definition of a solution in search of a problem.

Substantively, the amendment is flawed and shows that the unknown proponents lack an understanding of how a PACE transaction works.

First, the amendment creates a new regulatory scheme intended to protect homeowners. Residential PACE providers already utilize extensive consumer protections including disclosures modeled after the “know before you owe” forms, a three day right to cancellation, and no pre-payment penalties. PACE assessments also cannot last longer than the useful life of the qualifying improvements.

Ohio consumers actually get the benefit of an industry that has matured and imposed self-regulation to ensure that consumers can utilize PACE with confidence. While residential PACE providers have agreed to national consumer protection standards, the Ohio consumer protection policy goes further with Ohio-specific provisions limiting the amount that a property can be assessed. A copy of the consumer protection policy required for the Ohio program is attached. All residential PACE providers, including Ygrene, that participate in the program administered by the Toledo Lucas County Port Authority must abide by the policy.

The Ohio General Assembly has rightfully worked hard to reduce regulatory burdens on business through enactments like Senate Bill 9. We hope that you will applaud an industry that is self-policing for bad actors and adhering to a high code of conduct instead of hastily considering a broad regulatory scheme with no meaningful input from the regulated industry.

The time is not yet right to adopt consumer protections by statute. Locking in the regulatory scheme now makes it harder to address issues and challenges down the road. Ygrene, with its government partners, needs the initial flexibility to adjust the consumer protections based on market realities.

Moreover, the proposed protections may actually harm some consumers. For example, the proposed protections limit a homeowner’s ability to use PACE to finance an emergency repair (see lines 976 through 982). A property owner whose furnace breaks in the middle of winter could not use residential PACE to quickly finance the purchase and installation of a new furnace leaving their family to rely on high interest credit cards or other financing that may not be readily available. In this example, the amendment literally leaves this homeowner out in the cold.

The amendment also places a residential PACE lien in subordinate status to a first mortgage and other previously attached liens. This represents a fundamental change in how PACE operates in Ohio upending a decade’s worth of practice. It also would represent the only place in the Revised Code where a tax assessment is subordinate to private financing. The Ohio General Assembly has for many years recognized the public policy goals of access to capital for energy efficiency projects

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as a public purpose in furtherance of goals listed in Art. VIII of the Ohio Constitution. The bill waters down the State's ability to enforce its property tax liens.

We understand financial institutions' objection to a residential PACE lien's priority status over a first mortgage; however, reality demonstrates that their concern is overstated. There is no acceleration on a PACE assessment. So in the unfortunate scenario of a mortgage foreclosure, only the taxes owed can be collected ahead of the mortgage. For example, on a property with a \$300,000 mortgage carrying a \$20,000 PACE assessment, the amount actually collected for the arrearage on the PACE assessment would be approximately \$1,500 depending on the length of term and interest rate of the assessment.

Finally, lines 852 through 858 are tantamount to government sponsored misinformation. The proposed required disclosures are factually untrue. The attached DBRS study shows that homeowners with PACE assessments are less likely to experience delinquencies. This makes logical sense when you think about it. A person who invests in their home is less likely to miss tax payments.

I have only identified a few problems with the amendment. There are many more provisions that are anti-consumer choice and anti-competition. The amendment demonstrates the flaw in trying to create an entirely new regulatory scheme on the fly without timely and meaningful input from the industry.

S.B. 61 represents good policy developed over years of input and thorough committee deliberations. The amendment contradicts the intent of S.B. 61 – making it easier for homeowners and condo-owners to install solar panels on their own property – to protect basic individual property rights.

Simply put, the amendment takes away personal property rights.

We urge you to reject the amendment. If the committee desires to explore the benefits of residential PACE more in depth, we'd be more than happy to engage with you. This type of proposal is best evaluated out in the open with open testimony and not last-minute amendments.

Sincerely,

*Mark Scheffel*

Mark Scheffel

Vice President of Government Affairs

Ygrene Energy Fund

cc: Senator Lou Blessing and Senator Nickie Antonio