

Summary of PACE Enabling Legislation: AB 811 and SB 555

On July 21, 2008, Assembly Bill 811 (AB 811) was signed into law, amending the California Streets and Highways Code authorizing California counties and cities to establish contractual assessment (PACE) programs to finance renewable-energy, energy-efficiency and water-conservation improvements permanently fixed to real property. These PACE assessment programs operate as a traditional local government assessment on properties: funds are raised from the bond market or private investors, used to finance capital improvements, and bondholders/investors are repaid through property tax assessments over a period of time (usually up to 20 years). AB 811 has been around for a few years and there are a number of PACE programs throughout the state that have been structured under this legislation and are currently providing financing to projects.

On October 5, 2011, Senate Bill 555 (SB 555) was signed into law, amending the Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act). The Mello-Roos Act authorizes a community facilities district (CFD) to finance the purchase, construction, expansion, improvement, or rehabilitation of certain facilities. SB 555 authorizes CFDs to also finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements to or on real property and in buildings (both privately or publically owned). SB 555 declares that any improvement on private property authorized to be financed by a CFD constitutes a "public facility" for purposes of the Act; and, a "public improvement" for purposes of specified statutes. SB 555 just went into effect on January 1, 2012. Given that this option has only existed for a few months, no programs have been established under its auspices (although many jurisdictions are researching this option).

AB 811 and SB 555 are similar in that they allow local jurisdictions to create PACE financing districts, but do contain some key differences, including:

- AB 811 is a contractual assessment; SB 555 is a Mello-Roos CFD special tax:
 - AB 811: Property owner voluntarily enters into an assessment contract with the jurisdiction, the assessment is recorded, funding is provided, and the assessment is repaid via bi-annual tax payments at fully amortized rates (up to 20 years).
 - SB 555: A maximum tax rate is set, property owners vote one-by-one or by blocs to annex their property into the CFD, a special tax lien is recorded, funding is provided, and the financing is repaid via bi-annual special tax levies on improved property (up to 40 years).
- AB 811 authorizes only the installation of improvements on existing private buildings. SB 555 districts can fund projects on public as well as private property, refinance existing improvements, and offer funding for projects on both existing buildings and new construction.