Property Assessed Clean Energy (PACE) Enabling Legislation

A Policy to Help Property Owners Access Financing for Renewable Energy and Energy Efficiency Improvements

Innovations in clean energy financing are as important as innovations in the technology themselves. Local governments across the United States are expanding upon traditional land-secured municipal finance mechanisms to encourage property owners to go solar and install energy efficiency improvements, without paying high upfront costs. Known as “PACE” (Property Assessed Clean Energy), this finance model can generate billions of dollars in local economic stimulus, create thousands of long-term green jobs, and dramatically reduce energy use – all with little or no impact on state or local treasuries.

In most states, enabling legislation is needed to allow local governments to adopt a PACE program. See the end of this fact-sheet for the necessary ten components of PACE enabling legislation.

Which States Allow PACE financing?

Most states require a change to state statute to allow local governments to adopt PACE programs. With significant support over the past two years from Vote Solar, 16 states now have PACE enabling legislation in place: California, Colorado, Illinois, Louisiana, Maryland, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia and Wisconsin. Local government entities in Hawaii can implement PACE programs without any special enabling legislation at the state level (although county law may need to be amended in some counties in Hawaii). There are currently proposals in over 18 states for PACE enabling legislation.

How does PACE work?

Local governments set up special clean energy finance districts or programs capable of issuing low-interest revenue bonds. Participating property owners can opt to use the bond money to pay for renewable energy and energy efficiency improvements, and then repay this financing through a long-term assessment paid with their property taxes. This arrangement spreads the cost of a new solar energy system, for example, out across a 20-year payment plan, which matches the functional life of the technology. The cost of that assessment is often lower than or comparable to the power bill savings generated by the improvements. PACE is a budget-friendly way for local governments to empower property owners to invest in a local clean energy future.

Note this finance model can - and we believe should - be used to finance a host of technologies, such as solar PV systems, solar hot water systems, energy efficiency improvements, and even water conservation upgrades. It should also be available to residential, commercial and industrial property owners.

What are the Benefits of PACE?
For property owners interested in going solar, improving the efficiency of their homes or conserving water, the PACE finance model overcomes a key financial barrier to such projects: lack of upfront capital. In addition, the incremental tax payments are usually fixed for 20 years at reasonable interest rates. Also, unlike taking out a line of credit, this financing program, like solar leasing programs and power purchase agreements, does not rely on, or draw down, a property owner's available credit.

While the property owner occupies the house she will enjoy decreased utility bills, and when the home is sold the resale value of the home may increase with the desirable amenity of the solar, or energy efficiency or water conservation systems. Finally, the original property owner is not under a long-term obligation for the remaining value of the clean energy or water system. The property assessment usually transfers to the new property owners once the property is sold. Given that the average American lives in his home for six to nine years, transferability of the financial obligation encourages the adoption of renewable energy and energy efficiency improvements.

For local governments, the benefits are also clear. First, and perhaps most importantly in these volatile economic times, the financial model poses little to no liability or exposure to a local government's general fund. With a PACE financing program, a city or county can take significant action towards meeting clean energy or climate change goals without very little budget impact. Plus, this type of property-tax assessment financing structure is well known to local governments, and is considered a familiar way to finance local projects.

Ten Key Components of PACE Legal Authority

Enabling legislation will vary by state, depending on existing state law. Please consider the following policy components when drafting legislation. However, if more guidance is needed, please contact Annie Carmichael at annie@votesolar.org or 415-817-5063 with specific questions.

Policy Component #1: Identify existing financing & assessment authority within state statute.
Research into the state statutory law can determine whether local governments have existing authority to finance improvements and to impose assessments or special taxes against property that benefits from such improvements. If such authority exists, it is generally preferable to use such existing structures and amend existing statutory provisions to provide for the specific aspects of PACE financing, if necessary. If no such structure exists or if amendments to existing structures are too cumbersome, stand-alone PACE authority can be drafted.

Policy Component #2: Ensure that assessments are secured by liens on the property benefitted.
A key feature of PACE is that assessments are secured via a lien on the property benefited. It is preferable to use existing procedure for securing, recording, collecting other local government assessments and taxes, and handling delinquencies. Typically, the assessment or special tax lien is of the same priority as other property tax and assessment liens. It is preferable that the lien not accelerate in the event of foreclosure or transfer of ownership, and that the lien transfer to the next property owner (if this is not already provided under existing state law). We recommend that details regarding default be specified in local government ordinances or policies, rather than in state statute.

Policy Component #3: Establish the mechanism for creation of PACE financing districts and programs.
The improvement financing and assessment authorizing statute typically specifies the procedure for establishing a district or program. This process can be simple or cumbersome. In some jurisdictions the local city council or county board of supervisors can pass a city ordinance creating such districts by a simple majority vote, though a public hearing is often required. However, some states require a petition or vote of a majority of property owners or registered voters. It is less cumbersome if the financing district or program is established by the governing body of local government entity, rather than through a ballot initiative or popular election.

Policy Component #4: Authorize financing of improvements on private property.
Enabling legislation should authorize the financing of improvements on residential, commercial and industrial private property. It is important to review state constitutional law to ensure that PACE programs are properly authorized.

Policy Component #5: Authorize the financing of renewable energy and energy efficiency improvements.
Existing state law local government improvement authority often specifies the types of projects that may be financed by the local government. If specific types of projects (e.g. sidewalks, parks, sewers) are enumerated, this list should be expanded to include renewable energy, energy efficiency and water conservation improvements. We recommend choosing broad and flexible definitions that do not require state statutory amendments to adapt to technological change. If examples of specific clean energy technologies are provided, lists should not be exclusive (e.g. use the phrase “including, but not limited to”).

Policy Component #6: Legislative findings that improvements are in the public interest.
PACE enabling legislation should include a legislative findings section noting that local government financing of renewable energy, energy efficiency and water conservation projects has a valid public purpose and is in the public interest. The public benefits of such improvements, such as energy security, local job creation, clean air, and climate change mitigation are well documented.

Policy Component #7: Create opt-in assessment feature.
The PACE financing authority also must include an “opt-in” feature through which willing and interested property owners voluntarily elect to receive financing and have assessments made against their property. State law should clarify that financing is not to be provided and assessments are not to be made unless property owners first consent in writing. This opt-in feature does not typically appear in existing local government improvement financing authority. Typically, such programs only authorize improvements that result in shared benefit among all property owners within that contiguous geographic area, and tax all property owners within that geographic area. Under the PACE finance model, however, only property owners who choose to participate join the district or program and then receive financing and incur assessments against their property. Existing state law usually needs to be amended to provide that financing and assessments are contingent on property owner approval.

Policy Component #8: Authorize Bonding and the use of loans or grants to finance improvements.
State law should authorize local governments to issue and sell bonds. This is perhaps the most complicated component of enabling legislation, and policy makers should consult with local bond counsel to determine whether additional statutory provisions relating to debt are

required. It is preferable that debt issued to financing PACE improvements not be a general obligation or backed by the full faith and credit of the local or state government, but instead be secured by the assessment or tax lien on the benefitted property. In general, we recommend that state statute not include specifics regarding interest rates, administrative fees and other details, and instead allow local governments to supply such details in ordinances or policies implementing PACE programs. Also note that enabling legislation should provide cities and counties authority to accept federal, state and local government grants and loans to provide up front financing for creating and/or administering a PACE program.

Policy Component #9: Enabling statewide or multi-jurisdictional PACE programs.
PACE legal authority should authorize groups of cities and counties and joint powers authorities to coordinate under a single program or financing district to allow for greater economies of scale in the financing and administration of PACE programs.

Policy Component #10: Enable third-party owners of solar systems to participate.
In order to expand the variety of options, PACE legal authority may also authorize cities and counties to provide PACE financing to third-party owners of solar systems through a "Prepaid Power Purchase Agreement." Under a Prepaid PPA, homeowners purchase 15-20 years of clean electricity for a discounted and fixed amount and the third-party owner takes on all of the risks and responsibilities of maintaining the system. Third-party ownership is a rapidly expanding way for homeowners to go solar.

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