

Executive Summary of the Texas Property Assessed Clean Energy Act

BACKGROUND AND PURPOSE

On June 14, 2013, the State of Texas adopted the Property Assessed Clean Energy Act (the “Act”). With the passage of this Act, PACE financing will be available in Texas for energy-efficiency and water conservation upgrades to commercial and industrial properties. The Act authorizes local governments to establish a mechanism to enable property owners to obtain long-term, low-cost financing for water conservation and energy efficiency upgrades to existing properties. Property owners who elect to participate in PACE financing will select contractors to perform the work and lenders to provide loans that may fund up to 100% of the project costs. PACE loans will be secured by assessment liens voluntarily imposed by the owner on the property and will be repaid through annual assessments collected by local governments and remitted to the PACE lenders.

ANALYSIS

Key Terms

The Act authorizes municipalities or counties (“***local governments***”) to establish PACE programs to finance a “***qualified project***.”

“***Qualified project***” means the installation or modification of a qualified improvement.

“***Qualified improvement***” means is a permanent improvement fixed to real property and intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

Sources and Uses of PACE Financing

Financing of a qualified project may be used to pay for all materials, labor and fees incurred incident to the installation, modification, or improvement. A property owner may directly purchase equipment and materials and may contract for the installation or modification of a qualified improvement. PACE financing may be provided by a private sector lender or, if authorized by the local PACE program, bonds (excluding general obligation bonds) issued by the local government.

Procedure for Establishing Local PACE Regions

The statutory procedure for establishing a PACE program that requires the local government to adopt a resolution of intent. The resolution of intent must include a

finding that, if appropriate, the financing of qualified projects through contractual assessments is a valid public purpose. It must also include a statement that the local government intends to make contractual assessments to repay PACE financing available to owners of qualified projects, and must describe the types of qualified projects that may be subjected to contractual assessments. Furthermore, the resolution of intent must establish the boundaries of the “*region*,” which may include the entire area of the local government and in the case of municipalities, the extraterritorial jurisdiction. The resolution of intent must describe any proposed arrangements for third-party financing or any local government financing to be provided, and the local government debt servicing procedures if third-party financing will be provided.

The Act also requires a local government to prepare a report before it may establish a PACE program. The report must show the boundaries of the proposed region and include a form contract between the local government and the property owner. It must also describe the types of qualified projects that may be subject to contractual assessments. If the proposed PACE program provides for third-party financing, the report must include a form contract between the local government and the third party.

Requirements for Participation in PACE Financing

The local government’s report must include:

- A plan for ensuring sufficient capital for third-party financing and, if applicable, a plan for raising capital for local government financing.
- If bonds will be issued, a statement of the maximum aggregate annual dollar amount of assessments, a method for ranking requests from property owners, and a method for determining the interest rate, time period, and maximum amount of an assessment.
- A method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project.
- A method for ensuring that property owners seeking to participate in the PACE program demonstrate financial ability.
- Statements explaining the manner in which property will be assessed and assessments collected, the requirement that existing mortgage lenders be provided notice prior to PACE program participation, and the water and energy review requirement.
- Descriptions of marketing and participant education services, the quality assurance and antifraud measures to be instituted, and the results of consultations with the appropriate assessor-collector concerning incorporating the proposed contractual assessments into the assessments of property taxes.

Administration of PACE Programs

To implement a PACE program, a local government may:

- Hire a PACE program administrator or contract for professional services necessary to administer the program
- Impose fees to offset the costs of administering the PACE program.
- Contract with another taxing unit, or another entity, including, a county assessor-collector, to perform the duties of the local government relating to collection of assessments.

The Act authorizes any combination of local governments to agree to jointly implement or administer a PACE program; if they do so, a single public hearing held jointly by the cooperating local governments is sufficient to satisfy the requirements to establish the program. One or more local governments may contract with a third party, including another local government, to administer a PACE program.

Authorization of Bonds and Notes Secured by Contractual Assessments

The Act authorizes a local government to issue bonds or notes to finance qualified projects through contractual assessments. Bonds or notes issued may not be general obligations of the local government. The bonds or notes must be secured by payments of contractual assessments, reserves established by the local government, financial instruments used to provide credit support or liquidity, or any other funds lawfully available for purposes consistent with a PACE program. The Act recognizes that bonds or notes issued as part of an authorized PACE program support and further essential public and governmental purposes, including improvement of the reliability of the state electrical system, conservation of state water resources consistent with the state water plan, reduction of energy costs, economic stimulation and development, enhancement of property values, enhancement of employment opportunities, and reduction in greenhouse gas emissions. A local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government is a first lien on the assessments, funds, or contractual rights pledged in favor of the person to whom the pledge is given, without further action by the local government.

Mortgagee Notice and Consent Requirements

Before a local government may enter into a written contract with a property owner to impose an assessment to repay the financing of a qualified project, the holder of any mortgage lien on the property must be given written notice of the owner's intention to participate in the PACE program at least 30 days before the contract is executed. A written consent from the holder of the mortgage lien on the property must be obtained.

Baseline Review and Verification

The Act requires a baseline water or energy review to be conducted by an independent third party for each proposed qualified project to establish future water or energy savings. After a qualified project is completed, the local government is required to obtain a verification that the qualified project was properly completed and is operating as intended. Both the baseline review and verification must be conducted by an independent third party.

Priority and Enforcement of PACE Assessment Liens

A contractual assessment under a PACE program, including any interest or penalties on the assessment, is a first and prior lien against the real property on which the assessment is imposed until the assessment is paid. The lien has the same priority status as a lien for any other ad valorem tax. The lien runs with the land and the portion of the assessment that has not yet become due is not eliminated by the foreclosure of a property tax lien. The assessment lien may be enforced by the local government in the same manner that a property tax lien may be enforced.