



# Property Assessed Clean Energy (PACE) Enabling Legislation

## 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](mailto: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 benefitted. 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 energy efficiency and renewable energy 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 energy efficiency, renewable energy, 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 (i.e. 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 bonds 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. 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: Bonds not backed by full faith and credit of local/state government.**

It is preferable that debt issued to finance 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.

**Key policies to avoid as they make PACE programs ineffective:**

- 1. Treating PACE assessments as junior to tax assessments, pari passu or junior to mortgages** [[link to Barclays memo on PACENow](#)]
- 2. Having PACE assessments be general obligation/credit risk for municipalities**  
One of the great advantages of PACE is that it presents no credit risk to municipalities.
- 3. Requiring that PACE programs be funded with monies from the federal government.**  
PACE programs should be funded with private capital and not constrained by the small monies available from government programs.

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