

Property Assessed Clean Energy Act

December 20, 2010

When Michigan Governor Jennifer Granholm signed into law the "Property Assessed Clean Energy Act" (Act No. 270, Michigan Public Acts, 2010, the "PACE Act") on December 15, 2010, Michigan became one of a growing number of states to enact so-called "PACE" legislation. Sort of. (See the end of this alert for an explanation.)

PACE legislation is generally designed to promote energy efficiency projects and renewable energy systems on private property by setting up a mechanism to spread the cost of such projects and systems over a number of years. Local municipalities do this by fronting the cost of the energy projects and recouping the cost over time by making voluntary landowner assessments on the affected private property over a number of years. Such assessments "run with the land," which means that if a private property owner agrees to assessments, completes an energy project, then sells the property to another owner, the new owner must continue to pay assessments while the selling owner is generally "off the hook" for the cost of the project and the assessments. The result is that property owners are more likely to undertake energy projects today even if their intention is not to remain in the property for the useful life of the project.

Michigan's PACE Act contains fairly broad definitions of what can be financed under the program. "Energy efficiency improvements," for instance, include insulation; storm windows and doors and other window and door replacements and improvements that reduce energy consumption; automated energy control systems; HVAC modifications or improvements; caulking, weather stripping, and air sealing; replacements of light fixtures; energy recovery systems; day lighting systems; wiring and outlets for electric car charging; and measures to reduce use of water. "Renewable energy systems" include improvements on the "customer's side of the meter" that use renewable energy resources to generate electricity. "Renewable energy resources" mean resources that replenish over a human, not geological, time frame and that are ultimately derived from biomass, solar and solar thermal energy, wind energy, geothermal energy, and methane gas captured from landfills.

The PACE Act allows local units of government (counties, townships, cities and villages) to establish property assessed clean energy programs. The establishment of a program requires a local unit of government to take a number of actions specified in great detail in the PACE Act.

Once a program is established, a local unit of government can undertake projects by establishing districts, issuing bonds or notes (or making arrangements for other types of financing, including owner arranged financing), and making assessments and collecting installments in the same general manner as property taxes are collected. Local units of government are authorized to join with other units in creating a cooperative property assessed clean energy program.

During the course of the legislative process, significant input was made to the PACE Act from a number of potential market participants. Miller Canfield, for instance, substantially revamped the bonding provisions, making them clearer and more flexible, and suggested provisions for cooperation among municipalities. Input from other quarters, however, substantially curtailed the scope of the legislation from its original form. Two provisions not found in PACE legislation in most other states are the most significant. First, no owner of mortgaged property can agree to an assessment without the consent of the mortgage holder. Second, the Michigan program is limited to energy projects on privately owned commercial or industrial property - no projects on residential property are allowed.

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For more information on the PACE Act, or to establish a PACE program, feel free to contact:

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