

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS FOR NONCOMMERCIAL, NONINDUSTRIAL PROPERTIES

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House Bill 5878 as introduced
Sponsor: Rep. Pat Outman
Committee: Energy
Complete to 3-23-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5878 would amend the Property Assessed Clean Energy Act (PACE Act) to enable local governments (counties, townships, cities, and villages) to provide financing to the owners of privately owned noncommercial, nonindustrial properties to adopt property assessment programs and to create districts to promote the use of renewable energy systems, energy efficiency improvements, water usage and sewage treatment improvements, air quality improvements, and environmental projects by owners.

The loans would be repaid through a voluntary assessment as well as a lien on the benefitted property under a contract between the local unit of government and the property owner. Installments on the assessment would be collected in the manner of either general property taxes or special assessments. Local units of government could issue bonds to obtain funds for a program, secured by assessments on the benefitted properties and other funds.

The program created by the bill is almost identical to the PACE programs created by the PACE Act that apply only to programs for privately owned commercial or industrial properties for specified energy and water conservation projects.

Program description

The bill would establish a PACE program for noncommercial, nonindustrial privately owned *property* in a new Part 3 (Noncommercial, Nonindustrial Property) of the PACE Act. In addition, the bill would designate current section 1 of the PACE Act as Part 1 and current sections 3 to 19 as Part 2 of the act.

Property would mean privately owned noncommercial, nonindustrial real property located within the local unit of government. However, the term would not include multifamily residential property with five or more dwelling units.

Following prescribed procedures, a *local unit of government* could establish a PACE program and create one or more *districts* under the program. Within a district, a local unit could enter into a contract with the *record owner* of privately owned noncommercial, nonindustrial property to finance or refinance one or more *projects* on the property.

Local unit of government would mean a county, township, city, or village or a separate legal entity created under the Urban Cooperation Act.

District would mean a district created by a local unit of government under a PACE program within the local unit of government's jurisdictional boundaries. A local governmental unit could create more than one district, and districts could be separate, overlapping, or coterminous.

Record owner would mean the **person** or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

Person would mean an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including, but not limited to, a federal corporation, or a combination thereof. Person would not include a local unit of government.

Project would mean an **environmental hazard project**, an **energy project**, or measures to reduce the usage of water or increase the efficiency of water usage.

Energy project would mean either of the following:

- An **energy efficiency improvement**.
- The acquisition, installation, replacement, or modification of a renewable energy system or **anaerobic digester energy system**.

Energy efficiency improvement would mean the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to decrease energy consumption, including any of the following:

- Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.
- Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.
- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- Caulking, weather-stripping, and air sealing.
- Lighting fixtures.
- Energy recovery systems.
- Day lighting systems.
- Electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- Any other equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

Renewable energy system would mean a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more **renewable energy resources** to generate electricity. Renewable energy system would include a biomass stove but not an incinerator or digester.

Renewable energy resource would mean a resource that naturally replenishes over a human, rather than a geological, time frame, and that is ultimately derived from solar power, water power, or wind power. It would not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and would include all of the following:

- Biomass.

- Solar and solar thermal energy.
- Wind energy.
- Geothermal energy.
- Energy storage.
- Methane gas captured from a landfill.

Environmental hazard project would mean the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to address environmental hazards, including measures to do any of the following:

- Mitigate lead, heavy metal, or PFAS contamination in potable water systems.
- Mitigate the effects of floods or drought.
- Increase the resistance of property against severe weather.
- Mitigate lead paint contamination in housing built before 1978.
- Reduce emissions to outdoor or indoor air or control indoor humidity.
- Replace or improve an on-site septic sewage system, including either conversion to a central sewage system, or repairs or modifications to the on-site septic sewage system or to a lateral connection to a central sewage system.

Anaerobic digester energy system would mean an ***anaerobic digester*** and the devices used to generate electricity or heat from methane produced by the anaerobic digester or to store the methane for the future generation of electricity or heat.

Anaerobic digester would mean a facility that uses microorganisms to break down biodegradable material in the absence of oxygen, producing methane and an organic product.

The local government’s contract with a property owner to finance or refinance a project could provide for the repayment of a project’s cost through assessments on the benefited property. The financing or refinancing could include the cost of materials and labor necessary for the installation; permit fees; inspection fees; application and administrative fees; bank fees; or any other fees that may be incurred by the property owner for the installation on a specific or pro rata basis, as determined by the local unit of government.

Steps to establish program

To establish a PACE, the local governmental unit’s ***governing body*** would have to take the following actions in the following order:

- Adopt a resolution of intent that includes all of the following:
 - A finding that the financing of projects is a valid public purpose.
 - A statement of intent to provide funds for projects to be repaid by assessments on the property benefited, with the agreement of the record owner.
 - A description of the proposed arrangements for financing the program.
 - The types of projects that may be financed.
 - A reference to a report on the proposed program (described below) and where the report is available.
 - The time and place for a public hearing on the proposed program.
- Hold a public hearing for public comment on the proposed program, including the required program report.

- Adopt a resolution establishing the program and setting forth its terms and conditions. The resolution would have to do both of the following:
 - Include the matters required to be contained in the report.
 - Describe which aspects of the program can be amended only after a new public hearing and which can be amended without one.
- During the first three years of the program, offer a workshop by an organization knowledgeable about PACE program financing to provide information to realtors and other interested parties about the program.

Governing body would mean a county board of commissioners, a township board, the council or other elected legislative body of a city or village, or the governing body of a separate legal entity created under the Urban Cooperation Act.

Program amendment

A PACE program could be amended by resolution of the governing body. The governing body would have to hold a hearing before amending the program only if required under the terms of the resolution establishing the program.

Report on the proposed program

The report on a proposed PACE program would have to include all of the following:

- A form of contract between the local unit of government and the record owner governing the terms and conditions of financing and assessment under the program.
- The official authorized to enter into program contracts on behalf of the local unit of government.
- The maximum aggregate annual dollar amount for all financing to be provided by the local unit of government under the program.
- An application process and eligibility requirements for financing energy projects under the program.
- A method for determining interest rates on assessment installments, repayment periods, and the maximum amount of an assessment.
- An explanation of how assessments will be made and collected consistent with requirements of each bill (e.g., on summer and winter property tax bills or, alternatively, in the manner of a special assessment).
- A plan for raising capital to finance improvements under the program. The plan could include:
 - The sale of bonds, as prescribed by the bill.
 - Amounts to be advanced by the local unit of government through funds available to it from any other source.
 - Owner-arranged financing from a commercial lender. Under owner-arranged financing, the local unit of government could impose an assessment and forward payments to the commercial lender or the record owner may pay the commercial lender directly.
- Information regarding all of the following, to the extent known, or procedures to determine the following in the future:
 - Any reserve fund or funds to be used as security for bonds or notes.
 - Any application, administration, or other program fees to be charged to participating property owners that will be used to finance costs incurred by the local unit of government as a result of the program.

- A requirement that the total amount of the assessments under the program would not exceed 20% of the current value of the property.
- A requirement that the term of an assessment not exceed the useful life of the energy project paid for by the assessment.
- A requirement that the total amount of the assessments on a property under the program, plus all existing mortgage debt on the property, would not exceed the current value of the property.
- A requirement that the total amount of the annual assessment under the program on a property not exceed 10% of the annual income of the record owner.
- Provisions for marketing and participant education.
- Provisions for an adequate debt service reserve fund.
- Quality assurance and antifraud provisions.
- For an energy project financed with more than \$250,000 in assessments, both of the following are required:
 - A requirement for ongoing calculations of the savings realized by the record owner from the energy project.
 - A requirement that, in the contract for installation of the energy project, the contractor guarantee to the record owner that the project will achieve a savings-to-investment ratio greater than one and agree to pay the record owner, on an annual basis, any shortfall in savings below this level. This provision would not apply to a new construction energy project.
- A requirement that a new construction energy project meet the applicable requirements of the state construction code and rules promulgated under it.
- A requirement that the contract and financing for the project comply with applicable state and federal consumer financial protection laws.

The report would have to be made available for review on the local unit of government's website or at the office of the clerk or other official authorized to enter into program contracts.

Assessments

A local unit of government could impose a PACE program assessment only under a written contract with the record owner of the property to be assessed.

Verification

Before entering into a contract with a property owner, the local unit of government, using reasonable means, would have to verify all of the following:

- That there are no delinquent taxes, special assessments, or water or sewer charges with respect to the property.
- That there is not a delinquent assessment with respect to the property for another project under a PACE program.
- That there is not a delinquent mortgage payment with respect to the property.
- That the property is not subject to a reverse mortgage.
- That the record owner is not a party to a current bankruptcy proceeding.
- That the requirements will be met that the total amount of the program assessments not exceed 20% of the current value of the property, the annual assessment on a property not exceed 10% of the record owner's annual income, and the program assessments plus all other mortgage debt not exceed the value of the property.

Further, before a local government entered into a contract with the record owner, the following would have to be met:

- The local government would have to deliver to the record owner a written financing estimate that discloses the project term; the project interest rate and annual percentage rate; the project cost, including certain fees; the projected annual payment on the assessment; and that all financing under the program, home equity lines of credit, and home equity loans may need to be paid in their entirety if the property is sold or refinanced.
- The record owner would have to acknowledge in writing that he or she has read and understands the financing estimate described above.
- The local government would have to conduct a live, recorded telephone call with the record owner to help ensure that the financing estimate is understood.

In addition, all of the following would apply to a contract:

- The term could not exceed the useful life of the project, as determined by credible, third-party sources.
- The interest rate would be fixed and nonvariable.
- Payments would be fully amortizing.
- The annual percentage rate would be calculated using generally accepted practices within the US consumer financial services industry.
- The contract could be canceled by the record owner, with or without a reason and without any penalty, within five business days after it was executed.

The bill also would require that final payment not be issued to the contractor for a project under a PACE program unless both of the following were met:

- The record owner certifies in writing that the project has been completed to his or her satisfaction.
- The contractor certifies in writing all of the following:
 - That the project meets the qualifying requirements of the PACE Act and standards established by the U.S. Department of Energy, the Environmental Protection Agency, other federal and state agencies, or reputable third parties.
 - That final permits or inspections required by law have been or will be obtained.
 - That the contractor has not received and will not receive a direct cash bonus or compensation beyond payment for the contracted cost of the project, in exchange for submitting an application for financing the project under the program.

Lien

A PACE program assessment, including any interest or penalty, would constitute a lien against the property until paid in full. The lien would run with the property and have the same priority and status as other property tax and assessment liens. The local unit of government would have the same rights in the case of PACE assessment delinquency as it does with respect to delinquent property taxes. When the PACE assessment is paid, including any interest and penalty, the local unit of government would have to remove the lien from the property. A registry of the local government's liens would have to be maintained by the *administrator* (defined as a person authorized by a local unit of government to administer a PACE program on its behalf and at its discretion).

Method of collecting installment payments

Installments of assessments due under a program would have to be *either* included in each summer and winter tax bill issued under the General Property Tax Act, and collected at the same time and in the same manner as property taxes, *or* billed and collected as provided in a special assessment ordinance of general applicability adopted by the local unit of government under state law or local charter.

Bonds or notes

A local unit of government could issue bonds or notes to finance energy projects under a PACE program. The bonds or notes would not be general obligations of the local unit of government but would have to be secured by one or more of the following, as provided by the governing body in a resolution or ordinance approving the bonds or notes:

- Payment of assessments on benefited property within the specified district or districts.
- Reserves established by the local unit of government from grants, bond or note proceeds, or other lawfully available funds.
- Municipal bond insurance, lines or letters of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, and any other available means of providing credit support or liquidity, including arrangements described in section 315 of the Revised Municipal Finance Act. (Among other things, section 315 of that act authorizes the principal and interest on bonds to be payable from taxes or other revenues of the municipality.)
- Tax increment revenues if lawfully available for such purposes.
- Any other amounts lawfully available for such purposes.

Bonds or notes issued under the act would be subject to the Revised Municipal Finance Act.

Bonds and notes issued under the act, and the interest payable on them, would be exempt from all taxation by the state of Michigan and its political subdivisions.

Statutory lien

A pledge of assessments, funds, or contractual rights made by a governing body in connection with the issuance of bonds or notes by a local unit of government under this act would constitute a statutory lien on the assessments, funds, or contractual rights so pledged in favor of the person or persons to whom the pledge was given, without further action by the governing body. The statutory lien would be valid and binding against all other persons, with or without notice.

Parity of series of bonds or notes

Bonds or notes of one series issued under the bill could be secured on par with bonds or notes of another series issued by the local unit of government under the terms of a master indenture or master resolution entered into or adopted by the local governmental unit’s governing body.

Public and governmental purpose

The bill would declare that bonds or notes issued under the bill “further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, improved public health, protection against climate hazards and other environmental hazards, economic stimulation and development, improved property valuation, and increased employment.” [As noted earlier, the resolution of intent establishing the program must include a finding that “the financing of energy projects is a valid public purpose.”]

Renewable energy or energy waste reduction credit

An electric or natural gas provider would have to receive appropriate credit toward applicable renewable energy or energy waste reduction standards under the Clean and Renewable Energy and Energy Waste Reduction Act as a result of implementation by its customer of an energy project under a PACE program.

Joint programs

A local unit of government could join with any other local unit of government, or with any person, or with any number or combination of units and persons, by contract or otherwise as authorized by law, for the implementation of a PACE or PAP program, in whole or part. If a PACE or PAP program is implemented jointly by two or more local units of government, a single joint public hearing would be sufficient to satisfy the requirement that the local unit of government hold a public hearing before adopting a resolution establishing the program.

A program implemented jointly by two or more local units of government and the Michigan Finance Authority could join with the authority or authorize administering the water pollution control or drinking water revolving funds of one or more other states, by contract or otherwise as permitted by law, to implement a multistate program, in whole or in part.

Proposed MCL 460.950 et seq.

BACKGROUND:

House Bill 5878 is similar to House Bill 6036 of the 2019-20 legislative session.

FISCAL IMPACT:

A fiscal analysis is in progress.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.