

Memorandum



DATE June 12, 2015

TO Members of the Economic Development Committee: Tennell Atkins (Chair), Rick Callahan (Vice Chair), Adam Medrano, Lee Kleinman, Jerry R. Allen, Scott Griggs

SUBJECT **Creating a Dallas PACE (Property Assessed Clean Energy) Program**

On Monday, June 15, 2015, you will be briefed on the Creating a Dallas PACE (Property Assessed Clean Energy) Program. The briefing materials are attached for your review.

If you have any questions, please let me know.



Ryan S. Evans
First Assistant City Manager

C: Honorable Mayor and Members of City Council
A.C. Gonzalez, City Manager
Warren M.S. Ernst, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Eric D. Campbell, Assistant City Manager
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Mark McDaniel, Assistant City Manager
Joey Zapata, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Sana Syed, Public Information Officer
Karl Zavitskovsky, Director, Office of Economic Development
Elsa Cantu, Assistant to the City Manager – Mayor & Council

Creating a Dallas PACE (Property Assessed Clean Energy) Program

Economic Development Committee

June 15, 2015



Overview

- What is PACE?
- Benefits of PACE
- Implementation Activities
- Next Steps

What is PACE?

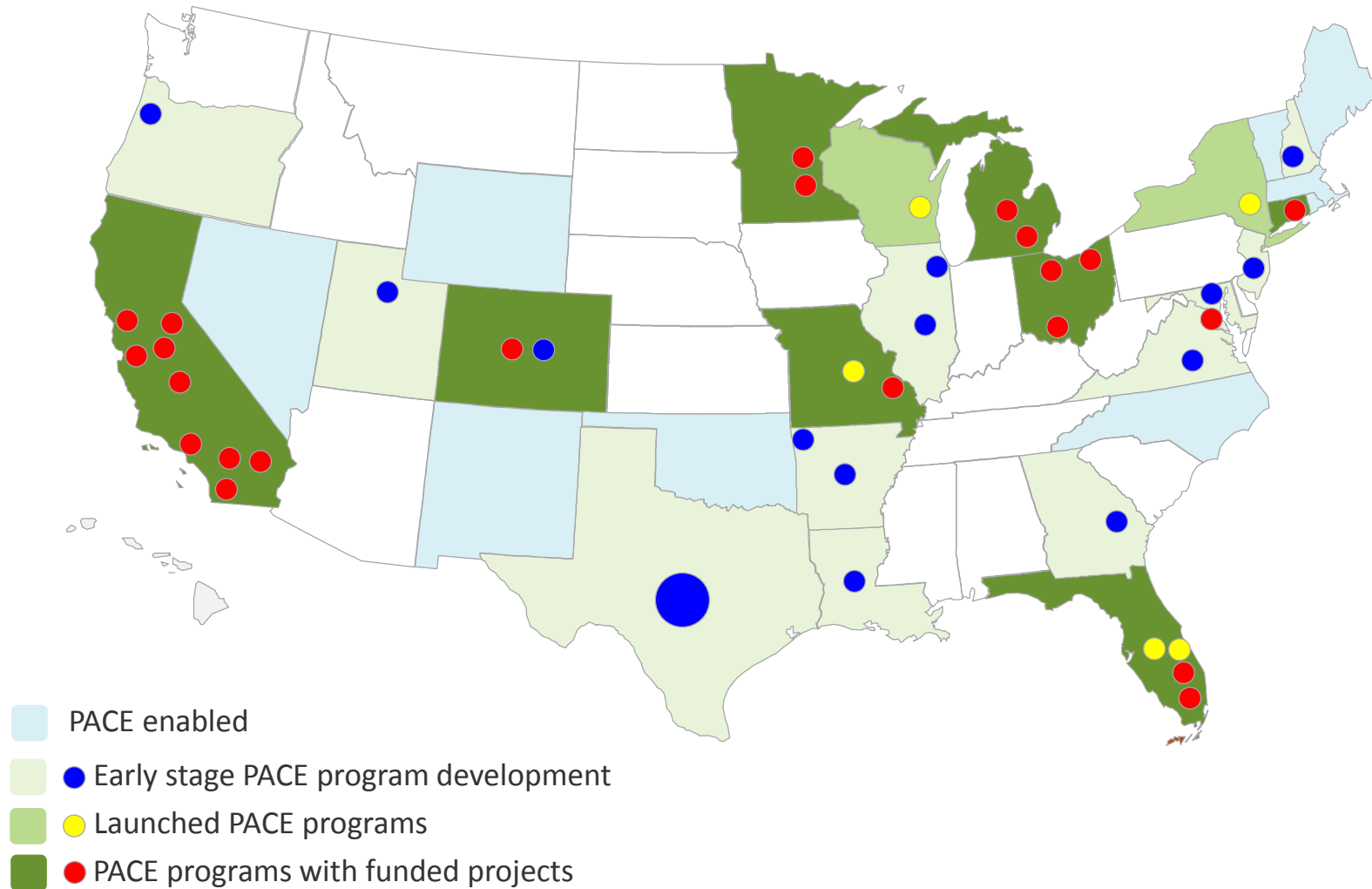
- Property Assessed Clean Energy (PACE) is a financing mechanism to help building owners access long-term loans for clean energy and energy efficiency upgrades on their buildings.
- Texas legislature enacted PACE legislation in 2013, enabling cities and counties to adopt PACE districts.
 - City staff has been exploring creating a PACE program since enabling legislation passed
 - Have met with Pace in a Box, SPEER, interested property owners and energy contractors, NCTCOG, Fort Worth, Plano, and Travis and Dallas County to get feedback
- Many states have PACE programs; most are in early stages like Texas.
- Travis County launched State's first program in April of 2015.

What is PACE?

- PACE is an innovative financing mechanism that enables owners of privately owned commercial, industrial properties and certain residential properties (five or more units) to obtain low-cost, long-term loans for water conservation, energy-efficiency improvements, and renewable retrofits.
- PACE statute authorizes municipalities and counties in Texas to work with private sector lenders and property owners to finance qualified improvements using contractual assessments **voluntarily** imposed on the property by the owner.
- In exchange for funds provided by a private lender to pay for the improvement, the property owner voluntarily requests that the local government place an assessment secured with a senior lien on the property until the assessment is paid in full.
- The term of an assessment may extend up to the projected life of the improvement, which can result in utility cost savings that exceed the amount of the assessment payment.

PACE Programs Today

260+ Projects Closed - \$83 mil - Pipeline of \$300+ mil



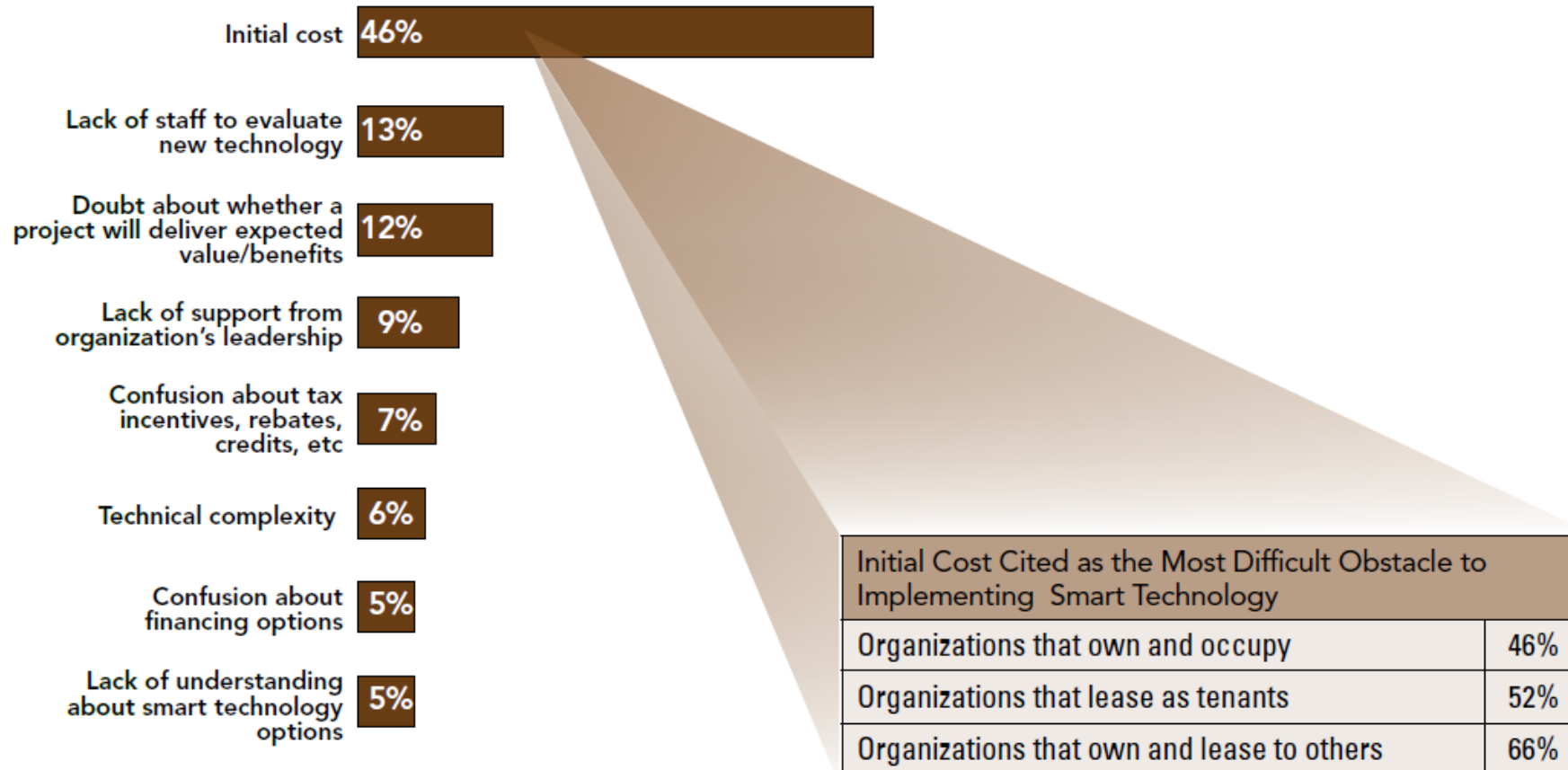
Energy in Texas Today



- Texas leads the nation in energy consumption, accounting for 12% of the nation's energy use and is the fifth largest energy consumer in the world
- Demand for electricity has increased 20% since 2000
- Population and Industry growth in Texas is skyrocketing

Why PACE is important

What are the most difficult obstacles to your organization's implementation of smart energy infrastructure?



Source: Stamats Building Media, November 2011

PACE solves a variety of problems

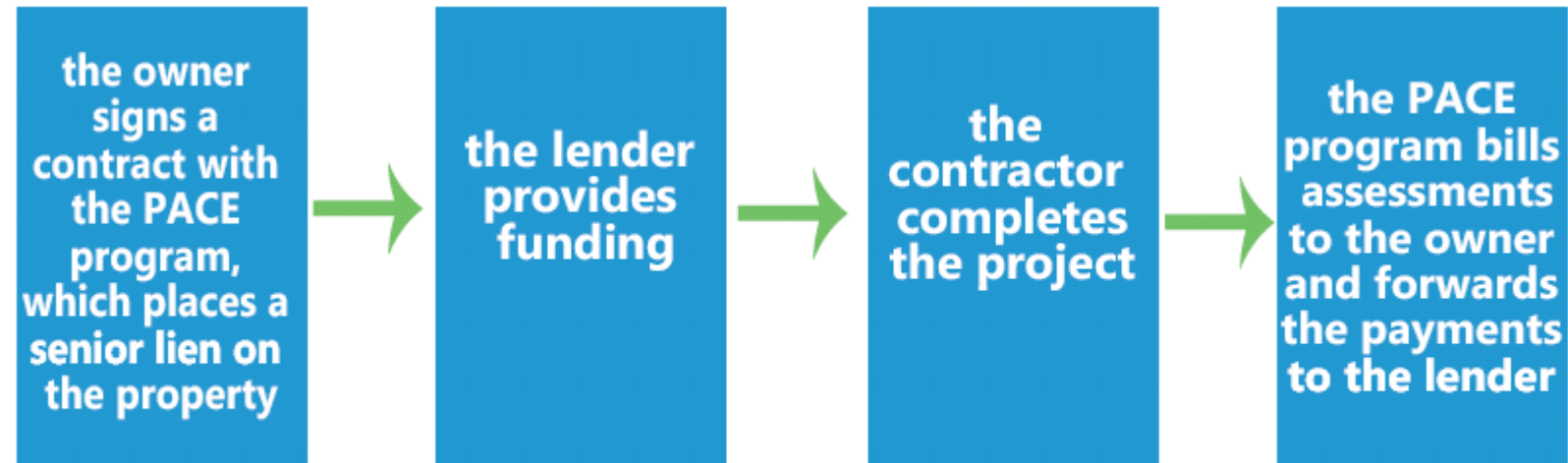
Reason for not spending on energy efficiency	How PACE fixes it
Lack of, or unwillingness to use, available capital	Capital for PACE is available from multiple lenders.
Banks won't lend for long terms at low interest rates	Banks like certainty of PACE loans paid back on property taxes.
Takes too long to receive ROI	PACE projects are cash flow positive on day one.
Lose money if property sold before ROI realized	Debt transfers to new property owners

How it Works

A Building Owner:



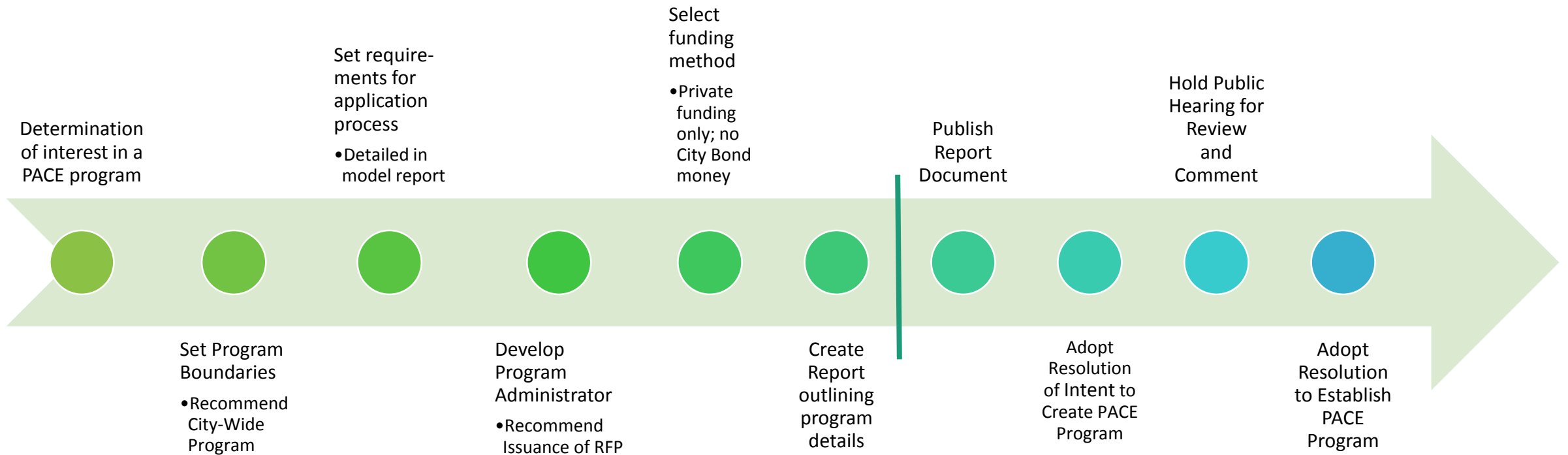
If the owner, building and project all meet PACE requirements:



Benefits of PACE

- Property Owners – lower utility bills, energy & water efficiency, potential property value increase, better loan terms, transferability of debt
- Contractors – source of increase in business, more local hiring, best practices, keeping up with technology advancements
- Lenders – new loans, steady & stable process, fully collateralized, 1st lien position, improved asset value
- Communities – increased competitiveness, economic development and jobs, improved building infrastructure, more appealing building stock
- State of Texas – over the long term, reduced peak demand, improved grid loading, renewables as source, improved air quality, better water conservation

Starting a Local PACE Program



Implementation Steps

- Create Report outlining program details
 - Describes program, benefits, types of eligible improvements, role of third party administrator, application process and financial requirements
- Publish Report Document
 - On Economic Development website and made available at City Hall
- Issue a RFP for a third party administrator
- Adopt Resolution of Intent to Create PACE Program
 - August-September
- Hold Public Hearing for Review and Comment
 - August-September
- Adopt Resolution to Establish PACE Program
 - September-October
- Council consideration of selection of Third-Party Administrator
 - September-October

Implementation Steps: Third Party Administrator

- Responsible for overseeing the PACE program and coordinating efforts between the property owners and lenders throughout the application process, verifying financial ability of the applicants, gathering reporting data to comply with the statute and maintaining the Dallas PACE website
- Will be the primary point of contact for Dallas PACE program
- Maintain list of banks and Independent Third Party Reviewers (qualified engineers) to facilitate PACE transactions; property owners are not required to use entities from these lists
- File Notice of Lien Assessment (as signed by City) with County
- City plans to issue a RFP in June to solicit third-party administrator
- Proposed fees for third party administrators will be included in RFP responses

Implementation Steps: City's Role

- After administrator has reviewed application criteria, qualified engineers report and financing information, administrator will recommend project for PACE financing.
- City will review recommendation and process an Administrative Action for contracts
- After approval, transaction will close and City will execute notice of lien assessment, and contracts with lender and project owner.
- City will review regular reports for PACE financing activities within the City of Dallas
- City may take a portion of application fee or financing fee to recover staff expenses

Next Steps (Council Action)

August/September

- Adopt Resolution of Intent to Create PACE Program
- Call for a Public Hearing for Review and Comment
- Hold Public Hearing for Review and Comment

September/October

- Adopt Resolution to Establish PACE Program
- Select Third Party PACE administrator

Appendix

Sample PACE projects from other states

Restaurant Retrofit – Edina, MN

\$39,000 Lighting Upgrades & Kitchen Hood Controls



“The savings should pay back the investment...It’s a no-brainer.”

Alan Ackerberg, Parasole Restaurant Group



C-PACE Connecticut - Norwalk Center

\$185,000 Lighting Upgrades



“One of our first projects in 2013 was this Norwalk property, a family owned shopping center whose owner found that PACE was ideal to finance energy efficiency and renewable energy improvements.”

Jessica Bailey, CEO, C-PACE Program



Multi-Family Apartments – Washington D.C.

\$340,000 Lighting Upgrades, Controls System, Solar Array



This project was a pioneer in the use of commercial PACE to finance the retrofit of an affordable multi-family housing project originally developed through the HOPE VI program administered by the US Department of Housing and Urban Development (HUD). This project yields \$41,000 in benefits each year from a 37kW solar array, lighting improvements, water conservation, and other energy efficiency upgrades.



Prologis, Inc. Headquarters – San Francisco, CA

\$1.4 mil Energy & Solar Upgrade – Multi Project



“Prologis is optimistic about the future of PACE. There are a number of opportunities over a long term in other property sectors too.”

Aaron Binkley, Director of Sustainability Programs



Simon Property Group – Great Lakes Mall, OH

\$3.4 mil Energy Efficiency – Multi Project



“We hope to serve as pioneers in this arena, encouraging others to explore the many ways to reduce energy use now, rather than delaying sound financial and environmental decisions.”

George Caraghiaur, former SVP for Sustainability at Simon Property Group

Hilton Los Angeles/Universal City, CA

\$7 mil Energy & Water Efficiency – Multi Project



- “PACE is the only funding mechanism that is credible in providing verifiable information to our investors, and therefore is the ideal tool for us to move forward in becoming the gold standard in sustainable hotels.”
- *Mark Davis, Hilton Los Angeles/Universal City General Manager.*



PACE in a Box Frequently Asked Questions (FAQ's)



PACE in a Box Frequently Asked Questions

PACE Frequently Asked Questions:

General:

What is PACE?

The Property Assessed Clean Energy Act (PACE Act) SB 385 was adopted by the 83rd Session of the Texas Legislature and signed by Governor Perry in June 2013. PACE is an innovative program that enables owners of commercial and industrial properties to obtain low-cost, long-term loans for energy-efficiency and water conservation improvements. PACE loans help property owners overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties. Improvements financed using PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners. The term of a PACE loan may extend up to 20 years, resulting in cost savings that exceed the amount of the assessment payment.

What is PACE in a Box?

PACE in a Box is a uniform, user-friendly, sustainable and scalable turnkey program or toolkit to assist local governments in establishing and implementing PACE programs. The toolkit contains all of the design elements, documents and implementation steps necessary for a local government to establish an effective PACE program quickly and economically. *PACE in a Box* will standardize the design of PACE programs in Texas, resulting in uniformity and predictability of requirements for PACE financing among all participating local jurisdictions. As a result, the various stakeholders in PACE financing transactions – property owners, lenders, governmental agencies, energy service companies, manufacturers and others – will be able to accelerate the process of utilizing PACE financing in Texas.

Who is Keeping PACE in Texas?

Keeping PACE in Texas (KPT) is a non-partisan, non-profit organization that assembled the Texas coalition to help get the Property Assessed Clean Energy Act (the PACE Act) enacted in Texas on June 14, 2013. The PACE Act authorizes municipalities and counties in Texas to work with private sector lenders and property owners to finance qualified improvements using contractual assessments voluntarily imposed on the property by its owner. After the legislation was enacted, the coalition led by KPT set out to design *PACE in a Box* and is currently assisting with the implementation of this toolkit.

How are PACE projects funded?

The PACE Act authorizes two sources for financing PACE assessments secured by a property assessment lien – third-party financing (third-party lenders) and public financing (bonds). While early adopters of PACE programs in other states relied on public financing, most of the early PACE programs began seeking ways to access additional funding sources by incorporating private lenders in PACE financing.

The PACE Act allows PACE programs great flexibility in offering PACE assessments funded through private lenders and/or public financing. Although local governments have the option to issue bonds for PACE financing if they so choose, *PACE in a Box* recommends that Texas PACE programs utilize an open-market funding, third-party lender model. This model will minimize the local government's risks and burdens associated with PACE.

Why / How is Texas' PACE program different than other states?

As KPT began researching best practices, it noted a California trend in which hundreds of early adaptor local governments were opting into one or more state-wide competing administrative programs with each providing an exclusive or favored funding mechanism that relies on privately or publicly funded municipal bonds. The competition among these government-selected program administrators and the differing program requirements can be confusing and expensive.

The case for a state-wide, uniform program model was made in 2013 by Connecticut's new PACE statute, which is the only one that created a single governmental state-wide agency to administer a PACE program on behalf of local governments. In its first eight months of operation, Connecticut accounted for one-half of all commercial PACE financing in the U.S. in 2013.

Although a state-administered PACE program is not an option in Texas, the KPT coalition recognized that uniform programs covering large areas provide economies of scale. This vision has created the *PACE in a Box* toolkit that will be utilized throughout the state, and can serve as a nationwide model.

Why was PACE passed?... What are the public benefits of PACE legislation?

In today's world of ever-increasing dependence on energy and water resources, the importance of energy efficiency and water conservation cannot be over emphasized. Commercial and industrial buildings in Texas consume approximately 63% of all energy consumed in the state. But market barriers – like extended payback periods and lack of access to capital – have discouraged building owners from investing in retrofits that would decrease their water or energy consumption. The PACE Act addresses the need for a financing mechanism to remove these barriers and to encourage building owners to make economically viable investments in energy efficiency and water conservation retrofits.

PACE financing enables owners of commercial and industrial properties to help conserve critical water and energy resources, while simultaneously reducing their utility costs and improving their bottom-line profitability. In a broader sense, the availability of PACE financing will help improve the quality and efficiency of our building stock, reduce harmful carbon emissions, and create numerous jobs in the manufacturing, construction and service sectors of our economy.

Does PACE include both water and energy efficiency improvements?

Yes, the Texas Legislature was very clear and intentional in its decision to include both water and energy improvements in the statute. This is a differentiating factor between Texas PACE programs and several other states. The inclusion of both will help Texas obtain energy and water security.

Can PACE projects qualify for rebates, tax incentives and other funding programs from governmental entities?

Yes, PACE projects can qualify and receive additional rebates and incentives. All applicable government, utility provider or manufacturer rebates, and other upfront cost reductions should be applied as a credit against the total project cost for purposes of calculating the amount of the PACE assessment.

Property Owners:

Why is PACE attractive to a property owner?

PACE enables property owners to obtain low-cost, long-term loans for up to 100% of all costs associated with the design and installation of water conservation, energy efficiency, renewable and distributed generation retrofits. These improvements can be structured to generate positive cash flow to the property owner because the cost savings derived from them exceeds the amount of the PACE assessment payment. In addition, PACE enables the property owner to amortize the cost of the improvements over their useful life. Since PACE loans are secured by assessments on the property, they are automatically transferred to successive owners when the property is sold. Consequently, each owner of the property pays only that portion of the assessment that accrues during its period of ownership. And importantly for property owners leasing their property to tenants, PACE assessments can be passed to tenants under the typical commercial office lease.

These attributes of PACE loans enable property owners to overcome traditional barriers to making capital investments in property. Without PACE, property owners will continue tossing the problem of delayed maintenance to a new owner like a hot potato. Until committing capital to modernize real property infrastructure makes sense as a value proposition, property owners will continue to waste operating expenditures on utility bills and risk exposure to utility price increases. Instead, PACE users capitalize money previously spent on utilities; the utility cost savings achieved by a retrofit pay for the retrofit itself. Property owners end up with more valuable property and access to recurring utility savings and pay only for the assessments that accrue while they own the property.

What types of properties qualify for PACE?

The PACE Act permits PACE assessments to be placed on property that is:

- Privately owned commercial real property - including not for profit real property such as private schools, medical facilities, churches, etc.;
- Privately owned industrial real property - including privately owned agricultural real property; or
- Privately owned residential real property with five or more dwelling units.

Any of these properties must also:

- Be located within the jurisdiction of the PACE program;
- Have a title that is not in dispute; and
- Where there is a preexisting mortgage lien on the property: the mortgagee must be given written notice of the owner's intention to participate in the PACE program at least 30 days before the owner enters into a contract with the PACE program; and, the mortgagee must provide written consent to participation in the PACE program.

Properties that are statutorily *ineligible* for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.

What types of projects are eligible for PACE?

The PACE Act authorizes PACE funding for the installation of Qualified Improvements. Qualified improvements must:

- Be permanently fixed to the real property;
- Have a demonstrated capacity to decrease –

- Water consumption or demand; and/or
- Energy consumption or demand (Includes renewables and distributed generation products or devices on the customer’s side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature); and
- Have a useful life that exceeds the term of the PACE financing agreement.

Ineligible Improvements – Improvements that are not permanently fixed to real property and can be easily removed are not eligible for financing through the program. For example, screw-in fluorescent light bulbs’ removable low-flow showerheads and faucet aerators, and improvements that are not recognized as “energy efficient” according to standard engineering or scientific principles would be considered as ineligible.

Multiple Improvements in a Single Project; establishing the useful life of a multi-measure project – PACE financing will enable some property owners to retrofit their property in a comprehensive manner with Qualified Improvements made up of a number of energy and/or water saving measures. This opportunity poses the most effective, cost saving opportunities.

To determine the useful life of a project made up of multiple measures with different projected life spans, the parties must determine the life of the project using a weighted average of the measures.

Length of Assessment term – The PACE Act requires that the weighted average useful life must be shorter than the assessment term.

What requirements are there for a property owner to utilize PACE?

The PACE Act requires PACE programs to ensure that property owners demonstrate the financial ability to pay the annual PACE assessments. That demonstration must be based on particular statutory underwriting factors, including verification that any participating owner:

- Is the legal property owner;
- Is current on mortgage and tax payments;
- Is not insolvent or bankrupt;
- Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
- Has consent of any preexisting mortgagee to the proposed PACE assessment through a written contract.

Why is a lien placed on the property?

The senior lien status of PACE assessments substantially reduces the risk of non-payment, making PACE loans very secure and attractive to long-term, risk-averse lenders. This enables owners of commercial and industrial properties to obtain **low-cost, long-term** loans for energy-efficiency and water conservation improvements, overcoming financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties.

What type of lien is it?

A PACE lien placed on the property is a first and prior lien against the property itself. The lien does not take effect until recorded in the property records and runs until the assessment, interest and any penalty are paid in full. The PACE lien has the same priority status as a lien for any other ad valorem tax. The lien runs with the land (the unpaid portion transfers to a new owner upon sale) and is not eliminated by foreclosure on the property.

What is the length of the assessment?

To fix the length of the assessment, the property owner first determines the total cost of the PACE project and the projected utility savings. The assessments term should be stretched long enough to ensure that the savings resulting from the project exceed the cost of the assessment.

The PACE Act requires that the assessment term must be shorter than the useful life of the improvement or, in a multi-measure project, the weighted average useful life of the improvements.

How does PACE add to the value of my property?

PACE users capitalize money previously spent on utilities; the utility cost savings achieved by a retrofit pay for the retrofit itself. Property owners end up with modern infrastructure and increased operating income through recurring utility savings. Thus pay only for the assessments that accrue while they own the property. PACE assessments can be structured to be cash flow positive.

Can the PACE assessment payments be passed through to tenants?

Yes, under most commercial operating leases, PACE assessments can be passed to tenants. Under the leases, tenants will enjoy the resulting decrease in utility bills that will place them in a cash flow positive position.

What is the mortgage holder consent process?

If there is an existing mortgage lien on the property, the mortgagee must be given thirty days advance notice and must provide written consent prior to including the property in the PACE program. A model lender consent form is included in Section 8 of PACE in a Box.

What are the upfront fees?

Improvements financed through PACE can generate positive cash flow upon completion with no upfront, out-of-pocket cost to property owners.

The PACE Act allows the following expenses to be included in the assessment: the cost of materials and labor necessary for the installation or modification of a qualified improvement, permit fees, inspection fees, lender's fees, program application and administrative fees, project development and engineering fees, Independent Third Party Reviewer (ITPR) fees, and any other fees and costs that may be incurred by a property owner incidental to the installation, modification, or improvement.

Didn't the FHFA ban PACE?

The Federal Home Financing Agency (FHFA) prohibits Freddie Mac and Fannie Mae from purchasing any residential mortgage in the secondary market if the property is subject to a PACE assessment. In 2009, Texas passed House Bill 1937, establishing PACE districts. The bill included residential PACE programs and was quickly stalled by the FHFA. The PACE Act includes commercial and industrial PACE programs, excluding residential property with up to four units.

What type of properties do not qualify for PACE?

Properties that are statutorily *ineligible* for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.

Why would a mortgage holder consent?

Any PACE proposal should be submitted to a mortgagee with an overview of PACE assessment and a solid business plan demonstrating improvement to the property value and a cash-flow positive position for the customer with improvement to the net operating income of the property.

Lenders benefit from PACE financing in multiple ways:

- Collateral is protected:
 - The property is protected from devaluation and income losses from delayed maintenance, end-of-life of infrastructure; and
 - PACE improvements modernize the property and increase value;
- Existing customers are better served because the cash-flow positive nature of PACE assessments improve the financial position of the customer over a traditional second mortgage and do not impair the net operating income of the mortgaged property
- PACE is a new product mortgagees can offer to attract new customers and increase the flow of capital into the market.

How can I find a PACE program available for my property?

Contact your county and municipality to inquire whether a PACE program exists in your area. If none yet exists, begin working with your local business organizations to advocate for one. www.KeepingPACEinTexas.org will provide information on the creation of *PACE in a Box* programs throughout Texas.

If I own an apartment complex with a FNMA or FHLMC loan can I get PACE?

Nothing in law or regulation prohibits the use of PACE to finance improvements to multi-family housing with five or more units. The current FHFA ban on Freddie Mac and Fannie Mae ability to purchase a residential mortgage in the secondary market is limited to properties with four or fewer units.

There is a larger question regarding the logistics of obtaining the mortgagee's consent when the mortgage on a property has been sold into the secondary market. Property owners and lenders should begin working together to incorporate language into first mortgage agreements to anticipate PACE financing for improvements to the collateral so that trustees in control of commercial property in the secondary market have clear authority and a process for granting consent.

Is PACE non-recourse financing?

Yes and no; PACE financing is limited recourse financing. There is no recourse for assessments that have not yet come due. Assessments in arrears are subject to the lender's enforcement terms in the loan documents as well as in the local government's enforcement authority in the statute.

Is PACE off-balance sheet financing?

This issue is unresolved until a major accounting firm rules whether a PACE assessment is off-balance sheet as a matter of generally acceptable accounting procedures. Please consult with your accountant.

Contractors/Engineers/Manufacturers:

How will PACE benefit contractors?

PACE will enable more private sector energy and water conservation projects to become a reality by bringing a state-wide funding mechanism that has many benefits for property owners. The traditional barriers are addressed in a PACE program, resulting in increased improvements and increased business. Furthermore, the standard, uniform approach will enable contractors and ESCOs to be familiar and comfortable with the standards, expectations and processes state-wide.

What technical requirements are necessary to qualify a project for the PACE in a Box program?

Once a project satisfies all underwriting requirements of PACE in a Box, it must meet three technical requirements.

First, the property's current water and energy use is measured so that a *baseline* for comparison is established.

Second, each potential energy or water conserving measure is evaluated to determine projected savings compared to the baseline in a technically sound, consistent and transparent manner. Findings from these two steps together are compiled in a document referred to as an energy /water assessment report. PACE law requires that each report is evaluated by an *independent third party reviewer (ITPR)*.

Third, after the project retrofit activities are completed, the project must be reviewed by the ITPR to ensure that the project meets the intent of the energy/water assessment report, is properly completed, and is operating as intended. The purpose of performing *measurement and verification (M&V)* after installation is to validate that the measures are operating as expected and the energy/water savings are being realized. Project evaluation by an ITPR provides assurances to the property owner, the lender, and the local government that due diligence has been met and that a professional has validated the project using standardized engineering protocols.

What technical methodology is used for data collection, measurement and savings calculations?

The technical methodology incorporated into the PACE review process relies primarily upon the Investor Confidence Project (ICP) - Energy Performance Protocols (EPP) for Standard and Large Commercial Facilities.

The ICP EPP contains processes that form a framework for bringing together all aspects of project implementation from establishing a baseline and audit, through M&V. They have been created by a large stakeholder community of industry experts and are continuously reviewed and improved. PACE in a Box relies on the EPP because they are the result of a nationwide effort to standardize the technical review of energy efficiency projects to bring uniformity and reliability on a national scale. The EPP help ensure that conservation measures are evaluated consistently throughout the state and create a national standard for lender review of PACE projects.

What protocols are available to reference within PACE in a Box?

There are a number of protocols available to reference within the *PACE in a Box* Technical Standards Manual in Section 8. PACE. These protocols generally fall under the various sections within the following technical documents:

1. Investor Confidence Project (ICP) - Energy Performance Protocols (EPP) for Standard and Large Commercial Facilities
2. *International Performance Measurement and Verification Protocol (IPMVP) Concepts and Options for Determining Energy and Water Savings Volume I*, January 2012
3. IPMVP Concepts and Practices for Determining Energy Savings in Renewable Energy Technologies Applications
4. Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 2.2 (and version 3.0)

Are Independent Third-Party Reviewers recommended for PACE projects?

Yes. The Texas PACE law requires an independent third party review of a baseline water/energy assessment report for each proposed qualified project. It is the responsibility of the Independent Third Party Reviewer (ITPR) to validate projected future energy or water savings. Additionally, after a qualified project is completed, the ITPR must verify that the qualified project was properly completed and is operating as intended. This requirement provides assurances to the PACE in a Box program, the property owner, and the lender that due diligence has been executed, that a standard of consistency has been applied throughout the PACE process, and that a professional licensed engineer has validated the expected energy and water savings from the proposed project.

Is Measurement and Verification a requirement for PACE projects?

Yes. Property owners are encouraged to address M&V in their contracts with engineers and contractors. A Best Practices Guide can be found in Section 8. The PACE Act requires that an ITPR energy conservation measure and/or a water conservation measure is installed and operational and continues as contractually specified in the M&V portion of the contract between the property owner and the contractor. Determine whether the equipment is installed correctly and is operating as intended.

Local Governments:

What are the public benefits of PACE legislation?

Texas faces significant challenges in meeting the energy and water needs of a rapidly growing economy. By far, the most affordable and readily available supply of energy and water we find will be the existing supply that we can stretch because we conserved these resources and used them more efficiently. Meeting these challenges will require significant financial investments. PACE enables property owners to make valuable improvements to property that reduce demands for energy and water in a way that benefits all parties to the arrangement, is completely voluntary and puts no public funds at risk. The energy and water savings help make Texas businesses, industry and agriculture more competitive; and, by definition, every property improvement requires work to be done locally.

By creating new investment opportunities, PACE will stimulate employment growth and economic development in municipalities and counties throughout Texas in addition to helping local communities achieve critical energy and water conservation goals. And PACE projects will help local governments avoid the costs of purchasing additional power and water to meet growing demand and the costs of clean air nonattainment and other environmental costs.

How much flexibility does PACE in a Box provide? Do we have to implement PACE as it is outlined in the box?

Texas is vast and diverse in climate, water resources, industry and local governments. While the PACE policy, process and documentation must be uniform throughout the State in order for Texas to take full advantage of the PACE opportunity, the *PACE in a Box* toolkit recognizes that each project will be unique and is flexible so as to accommodate the diverse needs and interests of:

- Local governments in both rural and metropolitan communities;
- Communities with differing climates and water resources;
- Large and small scale projects, including multifamily residential housing, agricultural, industrial and commercial properties and properties owned by nonprofit organizations;
- Local and regional banks, large and small scale capital sources and governmental bond issuers; and
- Diverse projects ranging from single-measure upgrades to holistic retrofits.

PACE in a Box contains a model PACE program based on current standards and best practices obtained from studying PACE programs established in other states and modified for the Texas marketplace. By utilizing the *PACE in a Box* toolkit, local governments can minimize start-up costs and move quickly to the implementation phase of an up-to-date, robust PACE program. This helps achieve the goal of implementing uniform, user-friendly, sustainable and scalable PACE programs throughout Texas. While *PACE in a Box* is only a recommendation, the benefits of uniformity and scale will be lost if governments follow a different path.

Can we join a regional program instead of creating our own program?

Yes. Scaling up local programs to joint programs with regional administration reduces implementation time and transaction costs, minimizes administrative overhead, and promotes widespread utilization of PACE financing. Having regional administration in place will make it much easier for rural counties and smaller local governments to offer PACE financing than it would be if these communities were required to create a PACE program on their own.

The KPT coalition encourages local governments to create regional programs designed to be easily joined by other local governments at a later date.

How much will this cost to implement?

PACE in a Box is designed to be a turnkey program with best practices accompanied by model documents and contracts – everything a community needs to establish a sound PACE program. The design is intended to drive the creation of larger, regional programs in which many counties and municipalities share program administration with significant economies of scale that minimize transaction and overhead costs. PACE in a Box is designed in a way to impose the costs of the PACE program on its users so that no taxpayer dollars are required to support the ongoing administration of the program. While non-general revenue bonds can be a source of funding under the PACE Act, the PACE in a Box design focuses primarily on private sector lenders as the less costly program preference of both business and local government stakeholders. Lean, effective regional programs with large numbers of participants are key to program sustainability over the long term.

What are our options for administration of this program?

The PACE Act gives a local government authority to hire and set the compensation of a program administrator and program staff or to contract for the professional services necessary to administer a

program at the local or regional level. Third-party administrators can be another governmental body, private sector entities, or a collaboration of several entities. If the local government selects another governmental unit to administer the program, then an interlocal government agreement will be negotiated. If the local government intends on using non-governmental entities as third-party administrators, the local government will issue a request for proposal (RFP). In order to obtain the goals of uniformity and other PACE in a Box benefits, these negotiations must require the third-party administrators to faithfully administer the PACE in a Box model program.

Delegating administrative functions to a third-party is optional and can reduce local government responsibilities in establishing and administering PACE programs. Local governments may consider doing a cost study to evaluate the administrative options.

Is PACE a federal, state or local program?

PACE is local. State legislation created this local authority. The PACE Act authorizes local governments to implement PACE programs within their jurisdictions. The PACE Act gives local governments broad discretion in designing the specific attributes of their PACE programs. Regional cooperation among local governments on PACE can help minimize administrative costs and will attract more competitive lending to a larger market.

Is a local government required to establish a PACE district?

No. State law enables, but does not require jurisdictions to offer a PACE program. If a local government chooses to offer PACE, THEN the governing body is required to designate the specific geographic area (the “region”) in which PACE assessments may be placed. The region:

- may include the jurisdictional boundaries of the entire local government; and
- must be located wholly within the local government’s jurisdiction (including a municipality’s extraterritorial jurisdiction).

The PACE Act also gives a local government the ability to create multiple PACE regions within its boundaries, which can be separate, overlapping, or coterminous.

When a local government chooses to offer a PACE program, why should it consider using the PACE in a Box model?

PACE in a Box is a toolkit designed specifically to help local governments deliver PACE programs in Texas using best practices that comply with the enabling legislation, minimize expense and effort of implementation, and contribute to developing programs that are *uniform, user-friendly, sustainable and scalable*.

Uniform -- The PACE in a Box toolkit provides a standardized system for implementing PACE programs so as to:

- Avoid inconsistencies and unnecessary complexities in order to attract private lenders to Texas PACE programs
- Minimize programmatic risk and cost for local governments
- Provide consistent standards to measure and verify energy and water savings financed by PACE

User –Friendly -- The process for determining eligibility and participation in a PACE program should be straightforward, easy to understand and easy to use. Several elements of PACE in a Box make the program user-friendly:

- Emphasizes Private Sector Marketplace of actors and choices
 - creates an attractive, secure investment for third-party lenders and relies on the marketplace to determine whether and when PACE financing will be a useful tool for business
- Provides Project Flexibility
 - accommodates both rural and metropolitan communities
 - accommodates large and small scale projects, including multifamily residential housing, agricultural, industrial and commercial properties and properties owned by nonprofit organizations, and ranging from single-measure upgrades to holistic retrofits
 - workable for local and regional banks, large and small scale capital sources and governmental bond issuers
- Ensures Transparency
 - standardized record keeping included in the toolkit will permit objective analysis and promote an ongoing cycle of review and improvement

Sustainable -- The PACE Act allows administrative costs of the PACE program to be included in the property assessments so that these costs will be paid by users of the program and need not burden local treasuries.

Scalable – Many stakeholders have emphasized that being able to scale up the size of market being served is a key to attracting the highest quality service providers and most favorable, competitive prices and financing. Texas has 254 counties and over 1,200 municipalities. The toolkit allows local and regional programs across the state to have a similar look and feel for businesses trying to decide if the market is big enough to serve cost-effectively.

What are the main steps in starting a PACE program?

A local government that determines “it is convenient and advantageous to establish” a PACE program under the PACE Act must address a number of preliminary questions and then take four statutorily required steps to assure public accountability.

Preliminary Organization -- This preliminary development stage will determine the “big picture” decisions of program design and provide much of the content for the public report. Although the PACE in a Box toolkit provides uniform policies, procedures, and documents, there remain some matters best addressed by each local government. These include:

- Determine which local officials and staff need to be Involved in the Implementation of the PACE program
- Designate a PACE region
- Determine whether to establish or join a regional PACE program
- Determine roles and responsibilities of the local government and third-party administrator (Third-party administrators can be another governmental body, private sector entities, or a collaboration of several entities.)
- Determine how the local PACE program will be funded
- Establish internal quality assurance and anti-fraud measures
- Adopt a plan for ensuring sufficient capital for third-party financing

Statutory Steps for Creating a PACE Program -- The PACE Act requires a county or municipality (local government) to take four steps in a prescribed order to establish a PACE program. Briefly, they are:

1. Publish a report on the proposed program design and make it available for public inspections
2. Adopt a resolution of intent to create a program
3. Hold a public hearing
4. Adopt a resolution establishing the program

Funding:

Why is PACE attractive to private lending companies?

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is insignificant compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

What types of PACE requirements assist in the protection of the investment?

The following are some but not all requirements to assist in the protection of the investment:

- a) The PACE Act requires local governments creating PACE programs to describe the quality assurance and anti-fraud measures to be instituted for the program.
- b) Independent Third-Party Reviewer/engineer Reviewer (ITPR) with no financial interest in the project will attest in the review he/she believes the savings (energy, demand, water, and cost), expected project life, and cost are reasonable and in compliance with the PACE program guidelines and standard engineering practices. After the construction of the project is complete there will be a site inspection by an ITPR who will determine whether the scope of the project was completed and is operating properly.
- c) The PACE Act requires the PACE program to ensure that property owners have access to third-party lenders with adequate funding for PACE projects.
- d) The property owners must demonstrate the financial ability to pay the annual PACE assessments based on particular statutory underwriting factors.
- e) To be eligible for PACE financing, the projected savings derived from the PACE improvement must be greater than the cost of the PACE assessment over the life of the assessment.
- f) The assessment is secured by a lien on the property itself (not the owner or the improvement).

What happens to the lien after a bankruptcy or if the building is unoccupied for a long period?

A PACE lien has the same priority status as a lien for any other ad valorem tax and runs with the land (the unpaid portion transfers to a new owner upon sale); and is not eliminated by foreclosure of a property tax lien.

Delinquent installments of the assessments incur the same interest and penalties in the same manner as delinquent property taxes. A local government may recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.