

Legislative Analysis



PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5011 as reported from committee
Sponsor: Rep. Yousef Rabhi

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

House Bill 5012 as reported from committee
Sponsor: Rep. Felicia Brabec

Committee: Energy
Complete to 9-28-21

BRIEF SUMMARY: House Bills 5011 and 5012 would each amend the Property Assessed Clean Energy (PACE) Act, which enables local units of government (defined as counties, cities, townships, and villages) to provide financing to the record owners of privately owned commercial or industrial properties for specified energy and water conservation projects. House Bill 5011 would amend provisions pertaining to the PACE program, add and revise defined terms, and apply the PACE program to agricultural and certain multifamily residential property. House Bill 5012 would require new construction energy projects to exceed Uniform Energy Code requirements.

FISCAL IMPACT: Generally, the bills would have a minimal fiscal impact on local governments that have or establish a PACE district. The fiscal impact for each local unit of government would be directly related to the local government's usage of the expanded offerings in its PACE plan and their impact on development and property values. Local units of government retain discretion regarding the creation of PACE programs.

THE APPARENT PROBLEM:

For more than a decade, Michigan's Property Assessed Clean Energy (PACE) Act has enabled local governments to help owners of commercial and industrial properties obtain private loans to finance energy and water saving projects for existing structures. The loans enable property owners to secure affordable financing for certain types of energy conservation projects without first having to raise sufficient capital for the improvements or pay high interest rates. Since repayment periods are based on the life of the project, savings realized from greater energy efficiency often cover most, if not all, of the cost of the improvements.

Many feel it is now time to expand the PACE Act to include water usage improvements and environmental hazard projects (i.e., PFAS cleanup), as well as energy and water conservation projects for agricultural properties or in apartments or condos with more than four units. In addition, where the act applies to improvements made to existing structures, such as adding solar panels or switching to all-LED lighting in older buildings, some feel it makes sense to also allow PACE loans to finance energy-efficient new construction projects. Legislation has been offered to expand the act to apply to such projects.

THE CONTENT OF THE BILLS:

House Bill 5011 would amend the title of the act to include water usage improvements and environmental hazard projects among the programs the act authorizes local units of government to promote. Among other things, the act now allows a local unit of government to establish a PACE program and create districts in which the local unit can enter into a contract

with the record owner of *property* to finance or refinance one or more *energy projects* on the property. In these and other substantive provisions throughout the act, the bill would replace *energy project* with *project*, which would change the scope of those provisions to include *environmental hazard projects* in addition to energy projects.

Definitions

The bill would add several new definitions to the act and modify certain existing terms. New and revised terms would include the following:

Property would be expanded to mean any of the following privately owned real property located within the local unit of government:

- Commercial or industrial property (current definition).
- Agricultural property (added by the bill).
- Multifamily residential property with four or more units (added by the bill).

Project would be added to mean an *environmental hazard project* or an *energy project*.

Environmental hazard project would be added to 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.

Energy project would be revised to mean an energy efficiency improvement (as defined in the act) or the acquisition, installation, replacement, or modification of a renewable energy system or *anaerobic digester* energy system.

New construction energy project would be added to mean an energy project to which either of the following applies:

- It occurs at a newly constructed building or other structure.
- It consists of significant modifications to an existing building or other structure.

Anaerobic digester would be revised to mean a facility that uses microorganisms to break down biodegradable material in the absence of oxygen, producing methane and an organic product. In addition, *anaerobic digester energy system* would be revised to refer to “methane” instead of “biogas” as the substance used to generate electricity or heat.

Renewable energy resource would be revised to mean a resource that naturally replenishes over a human time frame, rather than a geological time frame, whose conversion to a usable form of energy minimizes the output of toxic materials. Renewable energy resource would not include petroleum, nuclear material, natural gas, or coal. Renewable energy resource would include at least all of the following:

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

Bonds

To establish a PACE program, a local unit of government must adopt a resolution of intent establishing the program and setting forth its terms and conditions. Local units of government may issue bonds to finance a PACE program. The act currently declares that these bonds or notes “further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.” The bill would add “improved public health” and “protection against climate hazards and other environmental hazards” to this list of essential purposes.

MCL 460.933

House Bill 5012 would amend provisions of the act that require a report on a proposed PACE program 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. The act describes the information that must be included in the report. Included in that information is a requirement that a baseline energy audit be conducted before an energy project is undertaken. The bill would allow either a baseline energy audit or baseline energy modeling to be conducted before an energy project was undertaken.

For an energy project financed with more than \$250,000 in assessments, the act now provides that the report must include a requirement that the contractor guarantee to the record owner that the energy 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 that level. The act currently requires the guarantee to be *in the contract for installation of the energy project*. The bill would instead require the guarantee be given *unless waived by the record owner*. Further, the bill would provide that this requirement of a guarantee does not apply to a ***new construction energy project*** (defined as described above).

The bill would add a requirement that, for a ***new construction energy project***, the report must include a requirement that the building or other structure exceed applicable requirements of the Michigan Uniform Energy Code.

MCL 460.939

The bills are tie-barred to each other, which means that neither could take effect unless both were enacted.

ARGUMENTS:

For:

PACE programs are used across the nation to provide a mechanism for private property owners to find affordable financing with little or no upfront capital from private lenders (including traditional lending institutions such as banks). Unlike traditional loans, PACE loans attach to the property, not the borrower. Generally, loans are limited to about 25% of the value of the property and therefore are considered relatively safe investments. Although a PACE project must be approved by a local government, the local government does not provide any of the financing and is able to attach a lien to the property similar to a tax lien. In Michigan, PACE projects are restricted by statute to improvements that satisfy a specific public purpose, such

as conserving or improving water resources. PACE projects not only clean the environment or conserve natural resources, they provide jobs, spur investments, and bolster local economies.

The changes proposed by the bills would benefit Michigan commercial and industrial property owners by opening up the PACE program to projects that are particularly timely, such as cleaning up PFAS-contaminated wells and water systems, mitigating damage from floods and droughts, abating lead or asbestos in older apartment buildings, and undertaking projects that would improve the health of residents or protect them from environmental hazards, such as improving air quality by retrofitting older buildings to reduce unhealthy emissions. A PACE project for new construction would have to exceed state energy code standards. Further, allowing property owners to waive the guarantee of a certain return on the investment to fund a project could incentivize more property owners to switch to cleaner and greener options because it is healthier for workers and the community, as well as conserving resources. Allowing baseline energy modeling instead of requiring each project to have a baseline energy audit will make some projects more affordable and therefore may also act as an incentive to encourage more property owners to upgrade their properties.

It is becoming clearer that providing sufficient energy to meet the state's needs in the future includes increasing energy efficiency and reducing energy waste. Removing toxic chemicals from the land and air benefits all life. Even improvements in heating, cooling, lighting, and insulation make work and living environments more comfortable in addition to conserving resources. Allowing more types of projects and properties to qualify for PACE loans, as the bills would do, would move the state closer to achieving those goals.

POSITIONS:

Representatives of the following entities testified in support of the bills (6-17-21):

- Lean & Green Michigan
- Michigan EIBC
- PACE Loan Group

The following indicated support for the bills (6-17-21):

- Michigan League of Conservation Voters
- Michigan Conservative Energy Forum
- Ingham County Treasurer
- C-Pace Alliance
- The Green Panel
- Armada Power
- Michigan Solar Solutions
- Petros Pace Finance
- Foresight Management

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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.