

Legislative Analysis



PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

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

Senate Bill 302 as reported from House committee
Sponsor: Sen. Darrin Camilleri

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

Senate Bill 303 (S-1) as reported from House committee
Sponsor: Sen. Kristen McDonald Rivet

House Committee: Energy, Communications, and Technology
Senate Committee: Energy and Environment
Revised 7-28-23

(Enacted as Public Acts 106 and 107 of 2023)

SUMMARY:

Senate Bills 302 and 303 would amend the Property Assessed Clean Energy (PACE) Act, which enables local units of government to facilitate long-term financing for the owners of commercial or industrial property for projects related to renewable energy, energy efficiency, or water efficiency. Among other things, the bills would do the following:

- Expand the scope of the act to include agricultural property.
- Allow *environmental hazard projects* to be financed under a PACE program.
- Allow a property owner to waive a guarantee that the amount of savings from a project will exceed the amount of the investment.
- Define a project category called *new construction energy projects*, which would be exempted from the requirement that savings exceed investment. These energy projects would have to exceed applicable requirements of the Michigan Uniform Energy Code.

The act currently allows a local unit of government (county, city, village, or township) to establish a PACE program under which it can contract with the record owner of privately owned commercial or industrial property located in the local unit to finance or refinance one or more *energy projects* on the property. These loans are paid back under a special assessment agreement that can spread project costs over up to 25 years. The costs of repaying a loan are less than the savings created by the energy or water efficiencies that the loan made possible.¹

Senate Bill 303 would expand the act to apply to privately owned agricultural property, in addition to the commercial and industrial property already included in the act.

The bill also would allow *environmental hazard projects* to be financed under a PACE program, in addition to the *energy projects* already included in the act. To this end, the bill would define the term *project* to mean either an environmental hazard project or an energy project, and several provisions that now refer to an *energy project* would be amended to include environmental hazard projects by using the term *project* instead.

Environmental hazard project would mean the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to address environmental hazards, such as 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.

¹ <https://leanandgreenmi.com/about-pace/how-pace-works/>

- Increase the resistance of property against severe weather.
- Mitigate lead paint contamination.

Energy project would mean² the acquisition, installation, replacement, or modification of any of the following:

- Equipment, devices, or materials intended to decrease energy consumption, such as 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.
 - Measures to reduce the usage of water or increase the efficiency of water usage.
 - Any other equipment, devices, or materials approved as a utility cost-savings measure by the governing body of the local unit.
- A **renewable energy system**.
- An **anaerobic digester system**.

Renewable energy system means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one or more **renewable energy resources** to generate electricity. Renewable energy system includes a biomass stove³ but does not include an incinerator or digester.

Renewable energy resource would mean⁴ a resource that naturally replenishes over a human time frame, rather than a geological time frame, and 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. The term would include at least all of the following:

- Biomass.
- Solar and solar thermal energy.

² Despite some revisions, the bill’s definition, given here, appears to have the same substantive meaning as the one already in the act.

³ https://www.energystar.gov/about/federal_tax_credits/biomass_stoves

⁴ The bill’s definition, given here, reworks the one now in the act largely by moving things around, although the bill would delete language that says that a renewable energy resource “comes from the sun or the thermal inertia of the earth” and “is ultimately derived from solar power, water power, or wind power.”

- Wind energy.
- Geothermal energy.
- Methane gas captured from a landfill.

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.⁵

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.⁶

Finally, the act now allows local units of government to issue bonds or notes to finance projects under a PACE program, and it declares that those bonds or notes further essential governmental purposes, such as 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 declaration of essential governmental purposes.

MCL 460.933

Senate Bill 302 would amend provisions of the act that prescribe requirements that must be included in a local unit of government’s PACE program.

Currently, a project financed with more than \$250,000 in assessments under a PACE program must include in the contract for installation of the project a guarantee by the contractor that the project will generate more in savings than the amount invested. The contractor must agree to annually pay to the record owner of the property any shortfall in savings below that level.

Under the bill, the above guarantee could be waived by the record owner and would no longer be required to be included in the installation contract. In addition, the above provisions would not apply to a *new energy construction project*.

As defined in SB 303, *new construction energy project* would mean an *energy project* that occurs at a newly constructed building or structure or consists of significant modifications to an existing building or structure.

The bill would add that a PACE program must require, for a new construction energy project, that the building or structure exceed applicable requirements of the Michigan Uniform Energy Code.⁷

Finally, the act now provides that a PACE program must require a baseline energy audit to be conducted before an energy project is undertaken, so as to establish future energy savings. The

⁵ Where the bill’s definition, given here, has *methane*, current law has *biogas*.

⁶ This is the bill’s definition. Under current law, *anaerobic digester* is defined as “a device for optimizing the anaerobic digestion of biomass for the purpose of recovering biofuel for energy production.”

⁷ Parts 10 and 10A of the Construction Code, [R 408.31059 to R 408.31071a](#) and [R 408.31087 to R 408.31099](#) of the Michigan Administrative Code. Revisions to update these rules are currently pending.

bill would allow either a baseline energy audit or baseline energy modeling to be conducted for that purpose at that time.

MCL 460.939

Neither bill can take effect unless both bills are enacted.

BACKGROUND:

The bills are similar to HBs 5011 and 5012 of the 2021-22 legislative session. Those bills would have statutorily extended PACE program eligibility to multifamily residential property with four or more dwelling units.⁸

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.

POSITIONS:

Representatives of the following entities testified in support of the bills (6-14-23):

- Michigan Energy Innovation Business Council (EIBC)
- Lean and Green Michigan
- C-PACE Alliance
- PACE Loan Group
- Michigan Conservative Energy Forum

The following entities indicated support for the bills:

- Department of Environment, Great Lakes, and Energy (6-14-23)
- Michigan League of Conservation Voters (6-14-23)
- Michigan Environmental Council (6-14-23)
- Michigan LCV (6-21-23)
- Clean Water Action (6-21-23)

The following entities indicated opposition to the bills (6-14-23):

- Mackinac Center for Public Policy
- Home Builders Association of Michigan

Legislative Analyst: Rick Yuille
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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.

⁸ Those properties might qualify already as commercial properties, as do nonprofit organizations and houses of worship. See <https://leanandgreenmi.com/wp-content/uploads/2023/02/PACE-Program-Manual.pdf> (p. 10).