

Legislative Analysis



PROPERTY ASSESSED CLEAN ENERGY (PACE) ACT

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House Bill 5640 (Substitute H-2)
Sponsor: Rep. Rebekah Warren

House Bill 5663 (Substitute H-3)
Sponsor: Rep. Joel Sheltroun
Committee: Great Lakes and Environment

Complete to 4-22-10

BRIEF SUMMARY: The bills would create the "Property Assessed Clean Energy Act" or "PACE Act" authorizing local unit of governments to establish programs to make loans to private property owners in a specified district or districts for energy efficiency improvements or the installation of renewable energy systems, as defined in the bill. The loans would be repaid primarily through assessments on the property under a contract between the local unit of government and the property owner. The local unit of government could issue bonds or notes under the Revised Municipal Finance Act or use other funds to make loans to property owners. The bonds would not be general obligation bonds except that a local unit could issue general obligation bonds to pay for a reserve fund or to pay for legal or other costs associated with setting up the program.

There are a few minor differences between the two bills as reported from committee but a floor substitute is anticipated that would make HB 5640 identical to HB 5663. The main difference between the two bills currently is that HB 5663 allows for installment payments on loans to be collected in the same manner as summer or winter taxes *or as a special assessment*.

FISCAL IMPACT: A fiscal analysis is in process.

THE CONTENT OF THE BILLS:

Title. The act would be called the "Property Assessed Clean Energy Act."

Program description. In accordance with the procedures described in the bill, a local unit of government (county, township, city, or village) could establish a "property assessed clean energy program," or "PACE" program, under which it could create one or more "districts" from time to time. Under the program, the local unit of government could enter into a contract with the record owner (meaning fee title holder or land contract purchaser) of private property within a district to finance or refinance (1) energy efficiency improvements, as defined in the bill, on the property; or (2) the acquisition, installation, and improvement of one or more renewable energy systems, as defined in the bill, through assessments upon "the property benefited" [HB 5663 (H-1)] or "the property" [HB 5640 (H-1)].

The contract would have to provide for the repayment of the cost of the energy efficiency improvements or the renewable energy systems through assessments on the 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; and all other fees that might be incurred by the property owner under 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 program, the local governmental unit's governing body would be required to take the following actions in the following order:

- Adopt a resolution of intent with all of the following: (1) a finding that the financing of renewable energy systems and energy efficiency improvements is a valid public purpose; (2) a statement of intent to provide funds for energy efficiency improvements and renewable energy systems to be repaid by assessments on the property benefited, with the agreement of the record owners; (3) a description of the proposed arrangements for financing the program; (4) the types of renewable energy systems and energy efficiency improvements that may be financed; (5) a reference to a report on the proposed program and where the report is available; and (6) the time and place for a public hearing on the proposed program.
- Hold a public hearing for public comment on the proposed program and the program report.
- Adopt a resolution establishing the program and setting forth its terms and conditions, including a description of which aspects of the program could be amended without a new public hearing and which aspects could only be amended after a new public hearing.

Program amendment. A PACE program could be amended by resolution of the governing body. A public hearing would be required before adoption of a resolution amending the program if required under the resolution that established the program and set forth its terms and conditions.

Required report; availability for review. The required report on a proposed PACE program would have to be made available for review on the local unit of government's website or at the office of the clerk or the official authorized to enter into program contracts, and it would have to include all of the following information:

- A form of contract between the local unit of government and the record owner governing the terms and conditions of the financing and the assessment under the program.
- The official authorized to enter into a program contract 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 efficiency improvements or renewable energy systems 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 would be made and collected consistent with Section 13(2) (either in the same manner as summer and winter property taxes or as a special assessment). [HB 5663 (H-1)] [In contrast, HB 5640 (H-2) would require an "acknowledgement that assessments will be levied and collected at the same time and in the same manner as property taxes are levied and collected." It is anticipated that a floor amendment to HB 5640 will adopt the language found in HB 5633 allowing the assessments to be made and collected either in the same manner as winter and summer property taxes or as a special assessment.)
- A plan for raising capital to finance improvements under the program. The plan could include: (1) the sale of bonds, subject to the Revised Municipal Finance Act (MCL 141.2101 to 141.2821); (2) amounts to be advanced by the local unit of government through funds available to it from any other source.
- Information regarding all of the following, to the extent known, or procedures to determine the following in the future: (1) any reserve fund or funds to be used as security for bonds or notes; (2) 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.

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 under a program, the local unit of government would have to verify that there were no delinquent taxes, special assessments, water or sewer charges, or PACE program assessments on the property.

Lien. A PACE program assessment, including any interest or penalty on an assessment, 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 all rights in the case of delinquency in the payment of an assessment as it does with respect to delinquent property taxes. When the PACE assessment, including any interest and penalty, was paid, the lien would be removed from the property.

Method of collecting payments. Installment of assessments due under a program would be included in each summer and winter tax bill issued under the General Property Tax Act, and would be collected at the same time and in the same manner as taxes collected under the General Property Tax Act. Alternatively, installments could be 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. [This language allowing PACE assessments to be billed and collected in the manner of a special assessment appears only in HB 5663 (H-1), not in HB 5640 (H-2). A floor amendment is anticipated that will insert this language in HB 5640.]

Bonds or notes. A local unit of government could issue bonds or notes to finance energy efficiency improvements and renewable energy systems under a PACE program. The bonds or notes would not be general obligations of the local unit of government but would be secured by one or more of the following, as provided by the resolution or ordinance approving the bonds or notes:

- Payment of assessments on "benefited" property within the specified district or districts. [The word "benefited" appears only in HB 5663 (H-1), not in HB 5640 (H-2).]
- 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 but not limited to, arrangements described in Section 315 of the Revised Municipal Finance Act, MCL 141.2315. (Among many 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.)

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* (HB 5663 (H-1) [*statutory* (HB 5640 (H-2))] rights that were 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 action could be secured on a parity 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.

General obligation bonds or notes. A local unit of government could issue general obligation bonds or notes under this act for the purpose of:

- Paying a reserve fund to secure bonds or notes.
- Paying the costs associated with creating a PACE program, including, but not limited to, legal fees, the cost of preparing forms of contracts, the cost of establishing procedures and regulations, the cost of preparing the required report, and the cost of conducting preliminary energy assessments within the local unit of government.

Revised Municipal Finance Act. Bonds or notes issued under this act would be subject to the Revised Municipal Finance Act, MCL 141.2101 to 141.2821. [The bill makes the bonds or notes subject to the Revised Municipal Finance Act in two places, Section 9(1)(g)(ii) as well as Section 15(6).]

Tax exemption. Bonds and notes issued under the PACE Act, and interest payable on them, would be exempt from all taxation by the State of Michigan and its political subdivisions.

Public and governmental purpose. The bill declares that bonds or notes issued under the PACE Act "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." [Note: As mentioned previously, the local unit of government's resolution of intent is also required to include a finding that "the financing of renewable energy systems and energy efficiency improvements is a valid public purpose."]

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 thereof, by contract or otherwise as may be permitted by law for the implementation of a PACE program, in whole or part. If a PACE 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.

Definitions. [§3] Terms defined in the bill include:

"District" would mean a district created under a PACE program by a local unit of government 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.

"Energy efficiency improvement" would mean the installation or modification of equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all 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-reflecting glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications to reduce energy consumption.
- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- Caulking, weather-stripping, and air sealing.
- Replacement or modification of lighting fixtures to the lighting system's energy use.
- Energy recovery systems.
- Day lighting systems.
- Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.

- Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body of the local unit of government.

"Local unit of government" would mean a county, township, city, or village.

"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 a federal corporation, or a combination thereof. However, person does not include a local unit of government."

"Property" would mean "privately owned real property located within the local unit of government."

"Record owner" would mean "the person or 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." (In other words, businesses, individuals, and other entities with fee titles or who were purchasing the property under a land contract would qualify; renters would not.)

"Renewable energy resource" would mean "a resource that naturally replenishes over a human, not a geological, time frame that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does 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 includes, but is not limited to, all of the following":

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

"Renewable energy system" would mean "a fixture, product, device, or interacting group of fixtures, products, or devices installed 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 stove but does not include an incinerator or digester."

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