

## PROPERTY ASSESSED CLEAN ENERGY PROGRAMS FOR NONCOMMERCIAL, NONINDUSTRIAL PROPERTIES

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<http://www.house.mi.gov/hfa>

**House Bills 6036 and 6038 as introduced**  
**Sponsor: Rep. Graham Filler**

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

**House Bills 6037 and 6039 as introduced**  
**Sponsor: Rep. Rebekah Warren**

**Committee: Energy**  
**Complete to 9-15-20**

### SUMMARY:

House Bill 6036 would amend the Property Assessed Clean Energy Act (PACE Act), and House Bill 6037 would create a new 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 improvements, air quality improvements, and environmental projects by owners.

The loans would be repaid through a voluntary assessment (HB 6036) or through certain state funds, investments, and other means (HB 6037) 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 programs created by the bills are 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.

House Bill 6038 would amend the PACE Act to provide more flexibility for property assessment program participants to access funds established under the federal Water Pollution Control Act.

House Bill 6039 would amend the PACE Act to expand the definitions of property and project for a PACE program that applies to commercial or industrial property, expand categories for which local governments could issue bonds or notes, and require new construction energy projects to meet or exceed Uniform Energy Code requirements, among other things.

### **House Bills 6036 and 6037**

House Bill 6036 would establish a PACE program for noncommercial, nonindustrial privately owned property in a new Part 3 (Noncommercial, Nonindustrial Property) of the PACE Act, and HB 6037 would create a similar property assessment program, or PAP, program in a new, stand-alone act. In addition, HB 6036 would designate current section 1 of the PACE Act as Part 1 and current sections 3 to 19 as Part 2 of that act.

Program description

Following prescribed procedures, a *local unit of government* could establish a property assessed clean energy (PACE) program or a property assessment program (PAP) and create one or more districts from time to time 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, for purposes of HB 6036, a separate legal entity created under the Urban Cooperation Act.

*Project*, for purposes of HB 6036, would mean an *environmental hazard project* or *energy project*. For purposes of HB 6037, project would mean an environmental hazard project, an *energy efficiency improvement*, installation of a *renewable energy system*, or a *water usage improvement*.

*Energy project*, for purposes of HB 6036,<sup>1</sup> would mean the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system or *anaerobic digester energy system*.

*Energy efficiency improvement* would mean equipment, devices, or materials intended to decrease energy consumption, including 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-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.
- Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.
- 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.

HB 6036 adds that it would include:

- Measures to reduce the usage of water or increase the efficiency of water usage.
- Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

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<sup>1</sup> HB 6037 contains the same definition of “energy project,” but the term only appears in the bill as part of the definition of “new construction energy project” (a term that is not used in the bill) and in a requirement that an energy project must have a certain baseline measurement. “Projects” for purposes of HB 6037 are not defined as including “energy projects.” The difference in the definition of “projects” in the two bills appears to mean that projects under HB 6036 include anaerobic digesters but not water usage improvements, while projects under HB 6037 include water usage improvements but not anaerobic digesters.

HB 6037 adds that it would include any other installation or modification of equipment, devices, or materials identified as increasing energy efficiency or reducing emissions by the Department of Energy, the Environmental Protection Agency, or a similar entity.

**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, not a geological, time frame, 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.

HB 6037 adds that it would include energy storage.

**Environmental hazard project** would mean 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.

HB 6036 adds that it would include measures to reduce the usage of water or increase the efficiency of water usage.

HB 6037 adds that it would include measures to do the following:

- Mitigate the effects of wildfires.
- Mitigate the presence of microorganisms such as bacteria, viruses, and molds.

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

**Anaerobic digester** would mean a device for optimizing the anaerobic digestion of biomass for the purpose of recovering biofuel for energy production.

**Water usage improvement** would mean a measure to reduce the usage of water or increase the efficiency of water usage.

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; and all other fees that may 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 or PAP program, 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 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.
  - Specify which aspects of the program are amendable only after a new public hearing and which could be amended without a new public hearing.

***Governing body*** would mean a county board of commissioners, a township board, or the council or other elected legislative body of a city or village. HB 6036 would include the body of a separate legal entity created under the Urban Cooperation Act.

#### Program amendment

A PACE or PAP 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.

#### Required report; availability for review

The report on a proposed PACE or PAP 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 other official authorized to enter into program contracts. The report 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 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 (HB 6036).
- 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, subject to the Revised Municipal Finance Act.
  - Amounts to be advanced by the local unit of government through funds available to it from any other source (HB 6036) or from the Water Pollution Control Revolving Fund, Drinking Water Revolving Fund, or any other source (HB 6037).
  - Other financial arrangements involving the revolving funds mentioned above (HB 6037).
  - 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 (HB 6036).
  - Capital provided by program-related investors and others (HB 6037).
- 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 (HB 6036).
- 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 under the program, plus all existing mortgage debt on the property, would not exceed the current value of the property (HB 6036).
- A requirement for an appropriate ratio of the amount of the assessment to the property's assessed value as well as a method to determine, from information provided by third parties, that the record owner can afford the property (HB 6037).
- A requirement that the record owner affirm that there is not a reverse mortgage on the property (HB 6037).
- Provisions for adequate debt service reserve fund (HB 6036).
- A requirement that a baseline energy audit be conducted before an energy project is undertaken, to establish future energy savings (HB 6037).
- Quality assurance and antifraud measures.
- For an energy project financed with more than \$250,000 in assessments, both of the following are required (HB 6036):
  - A requirement for ongoing measurements that establish 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.

- For a new construction energy project (HB 6036):
  - The building or other structure would have to meet or exceed applicable Michigan Uniform Energy Code requirements.
  - The energy project would have to exceed, by an appropriate standard, the applicable requirements of the state construction code or the Michigan Administrative Code.
- Provisions for marketing and participant education. HB 6037 would add including the availability of rebates, subsidies, or utility program funds for which property owners may be eligible, if applicable.
- The contract and financing for the project would have to comply with applicable state and federal consumer financial protection laws and regulations (HB 6036).

#### Assessments

A local unit of government could impose a PACE or PAP 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 would have to verify that there are no delinquent taxes, special assessments, water or sewer charges, or PAP program assessments on the property (HB 6037). Under HB 6036, the verification would be done using commercially reasonable means and would also have to verify that there is not a delinquent mortgage payment, that the property is not subject to a reverse mortgage, that the record owner is not a party to a current bankruptcy proceeding, and that the requirements are met that the total amount of the program assessments not exceed 20% of the current value of the property and that the program assessments plus all other mortgage debt not exceed the value of the property.

Further, under HB 6036, 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 and cost, interest rate, annual percentage rate, certain fees and costs, and the projected annual payment on the assessment.
- The record owner would have to acknowledge in writing that he or she has read and understands the financing estimate.
- 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, HB 6036 would require all of the following to 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.

House Bill 6036 would also 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 both of the following:
  - The project meets the qualifying requirements of the PACE Act and standards established by the US 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.

#### Lien

A PACE or PAP 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 or PAP assessment delinquency as it does with respect to delinquent property taxes. When the PACE or PAP assessment was paid, including any interest and penalty, the lien would have to be removed from the property.

#### Method of collecting installment payments

Installments of assessments due under a program would have to be included in each summer and winter tax bill issued under the General Property Tax Act, and be collected at the same time and in the same manner as property taxes. 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.

#### Bonds or notes

A local unit of government could issue bonds or notes to finance energy projects under a PACE or PAP 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 act 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 act would declare that bonds or notes issued under HBs 6036 and 6037 "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, the resolution of intent establishing the program must include a finding that "the financing of energy projects is a valid public purpose."]

#### Funds from state revolving funds

A local unit of government could advance funds made available by the state Water Pollution Control Revolving Fund, the Drinking Water Revolving Fund, and other sources to finance projects under a PAP program (HB 6037).

#### Self-directed energy waste reduction plans

Under HB 6036, a commercial or industrial electricity customer<sup>2</sup> that installs or modifies an electric energy efficiency improvement under a PACE program is exempt from the energy optimization charges the customer would otherwise incur under section 89 or 91 of the Clean and Renewable Energy and Energy Waste Reduction Act provided that the customer conducts a self-directed energy waste reduction plan according to the requirements of section 93 of that act. (Any customer who conducts a self-directed energy waste reduction plan according to that act's requirements is exempt from the specified charges, whether or not they finance the project through a PACE program.) Those requirements include a requirement that the annual aggregate energy savings from the self-directed plan meet or exceed the energy optimization standards, based on the previous year's electricity purchases for sites covered by the self-directed plan.

#### Joint programs

A local unit of government could join with any other local unit of government, or the Michigan Finance Authority (HB 6037), or with any person, or with any number or combination of units and persons, by contract or otherwise as may be permitted 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 (HB 6036).

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<sup>2</sup> The new Part 3 of the PACE ACT, which HB 6036 adds, applies to noncommercial, nonindustrial properties. This provision, which is in current law concerning commercial and industrial properties, seems out of place in Part 3.



## Definitions

Other terms used and defined in the bills include:

***District*** would mean a district created under a PACE or PAP 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 may be separate, overlapping, or coterminous.

***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. Person would not include a local unit of government. For purposes of HB 6037, person would also mean a mission-based organization.

***Property*** would mean privately owned commercial or industrial real property located within the local unit of government. Under HB 6036, the term would not include multifamily residential property with five or more dwelling units.

***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.

### **House Bill 6038**

The bill would add a new section to the Natural Resources and Environmental Protection Act (NREPA). The bill would require the Department of Environment, Great Lakes, and Energy (EGLE) to update the nonpoint source (NPS) management program and create water pollution source categories that will provide a local government, property assessment program participant, or other eligible borrower with greater flexibility to access funds under the federal Water Pollution Control Act. The department's NPS management program reduces NPS pollution and excessive runoff by supporting efforts to develop and implement watershed management plans. The water pollution source categories would have to include at least all of the following:

- ***Atmospheric deposition.***
- ***Urban runoff.***
- Hydrologic and habitat modification, including rising water levels and altered weather patterns as a result of greenhouse gas emissions.
- Leaks, spills, and accidents.

***Atmospheric deposition*** would mean the transfer of atmospheric pollutants, including particulate matter, gas, and dust, generated by activities such as electric power generation and transportation, from the air to terrestrial and aquatic surfaces.

***Urban runoff*** would mean stormwater runoff from urban area that can contain contaminants including sediment, pathogens, petroleum, and mercury.

Actions that a local government, property assessment program participant, or other ***eligible borrower*** could take under the categories described above include all of the following:

- Reducing the demand for fossil fuels in electric power generation.
- Improving commercial, industrial, and residential buildings.

- Expanding advanced vehicle infrastructure and deployment.
- Increasing the use of renewable energy.

*Eligible borrower* would mean a person eligible to receive financial assistance as determined under Section 319 of the federal Water Pollution Control Act.

#### Application

EGLE would have to develop both of the following:

- An application and application process for the nonpoint source management program to allow a local government, *property assessment program participant*, or other eligible borrower to seek financial assistance from the state Water Pollution Control Revolving fund or the state Drinking Water Revolving Fund, both established under the Shared Credit Rating Act.
- A principal forgiveness or forbearance program that an eligible borrower (as described above) can access under certain circumstances.

*Property assessment program participant* would mean a residential property owner who upgrades his or her property through a property assessment program supported by the Water Pollution Control Revolving Fund or the Drinking Water Revolving Fund.

Proposed MCL 324.5316a

#### **House Bill 6039**

The bill would amend of the Property Assessed Clean Energy (PACE) Act as it applies to commercial or industrial property. As would House Bill 6036, the bill would redesignate section 1 of the act as Part 1 and sections 3 to 19 as Part 2, which it would entitle “Commercial or Industrial Property.” House Bill 6039 would amend Part 2.

The bill would modify the definition of “project,” for purposes of a PACE program under this part, to also include (in addition to energy projects, which are already included in the scope of the term) an *environmental hazard project*.

*Environmental hazard project*, for the purposes of Part 2, would mean 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.

The bill would also add multifamily residential property with four or more dwelling units to the definition of “property” for purposes of this part.

Currently, the list of actions that a local government must include in establishing a property assessed clean energy program requires that a baseline energy audit must 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 a project was undertaken.

In an action pertaining to a project financed with more than \$250,000, the bill would revise a current requirement that a guarantee be given to the record owner by the contractor in the

contract for installation of the energy project and instead require the guarantee be given unless waived by the record owner. Further, the bill would state that this provision would not apply to a *new construction energy project*.

*New construction energy project* would 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.

For a new construction energy project, the bill would require a building or other structure to meet or exceed applicable Michigan Uniform Energy Code requirements.

Finally, the bill would add improved public health and protection against climate hazards and other environmental hazards to the essential public and governmental purposes that are furthered by the issuance of bonds or notes under the part.

MCL 460.931 et seq.

#### **FISCAL IMPACT:**

A precise fiscal impact of the bills cannot be determined since it is not known how many local units will choose to participate, how many projects will be undertaken, and the extent to which these projects increase taxable values. To the extent that taxable values increase, both local property tax collections and School Aid Fund revenues would also increase. However, local unit expenses would also increase by an unknown amount due to administrative costs.

House Bill 6038 would increase costs for the Department of Environment, Great Lakes, and Energy. The bill would require EGLE to update the nonpoint source management program and create water pollution source categories to increase flexibility for borrowers of water pollution funding. The extent of this cost increase is unclear as such measures have yet to be taken by the department and it is uncertain how they will tax current resources. The bill does not include additional funding to accomplish these new requirements and is unlikely to affect departmental revenues. The department's FY 2019-20 budget is \$617.7 million Gross (\$170.5 GF/GP). The bill is unlikely to directly affect local government costs or revenues, although it may alter a local government's ability to access water pollution funding in the future.

House Bills 6036, 6037, and 6039 are unlikely to directly affect costs or revenues for EGLE.

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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.