

New Hampshire Property Assessed Clean Energy (PACE) Districts

Enabling Legislation. NH RSA 53-F enables municipalities (city council or town meeting) to voluntarily create districts to finance energy conservation and efficiency improvements in residential, commercial, and industrial structures. PACE districts may be part or all of a municipality, and may be part of a regional district. PACE initiative may only be advanced by the local governing body (not by citizen petition).

Revenue Source. Municipalities may issue general obligation bonds a/o receive grants and may create a revolving fund using such funds or general municipal revenues. Any debt shall constitute a pledge of the municipality's full faith and credit.

Energy Audit. Energy improvements must be done based on an energy audit that is done by a contractor certified by the Building Performance Institute as a building analyst, by the PUC, or by another appropriate NH entity; improvements must be "cash positive" based on anticipated energy savings. Audit shall identify recommended improvements; provide cost savings, useful life, benefit-cost ratio, and return on investment for each improvement; and estimated difference in energy costs with and without recommended improvements. The cost of the audit may be financed through a PACE loan.

Qualified Improvements. Not for new construction; combination of supply and demand side.

- **Clean energy Improvements:** installation of any system on the property for producing electricity for, or meeting heating, cooling, or water heating needs of the property, using either renewable energy sources, combined heat and power systems, or *district energy systems* using wood biomass or natural gas. Such improvements include but are not limited to solar photovoltaic, solar thermal, wood biomass, wind, and geothermal systems.
- **Energy Conservation and Efficiency Improvements:** measures to reduce consumption through conservation or more efficient use of electricity, fuel oil, natural gas, propane, or other forms. May include air sealing, insulation, heating/cooling/ventilation systems, daylighting, window replacement, energy controls and recovery systems, lighting. All improvements must be permanent fixtures.

Property Owner Agreement. Funds may be for reimbursement of cost of equipment purchased and/or for paying a qualified contractor. Improvements shall be done by a qualified contractor (terms of qualifications not identified in law), but the municipality may elect to allow improvements done by the property owner (but owner's cost of labor may not be PACE-financed). Property owner must report post-installation energy use data for a period determined by the municipality. Risks of participation must be disclosed by municipality to property owner (i.e., delinquency recourse). Prior to entering into the agreement, the property owner must disclose intention to enter into it to existing mortgagees. Post agreement, notice of assessment is to be recorded by municipality in County Registry of Deeds. Owner eligibility: taxes current for 3 years; no involuntary liens on the property; no property-based debt defaulted in the past 3 years; current on mortgage. Municipality is to establish other criteria to determine the creditworthiness of the property owner.

Loan Terms. PACE loans of between \$5,000 and \$35,000 for residential or \$60,000 for C/I/Multifamily (and cannot exceed 15% of the property's equalized assessed valuation). Combination with existing mortgages cannot exceed 85% of the value of the property. The loan repayment term is not to exceed 85% of the projected useful life of all improvements, weighted by cost.

Collection and Enforcement. Loan secured as a “special assessment” (pursuant to NH RSA 80:19) and repaid on same schedule as property taxes or other similar municipal service charges (can go on tax bills, sewer or water bills, other assessment bills, or be billed separately). The municipality’s cost of administration may be recovered from participating properties. Collection shall be the same as for taxes. When the assessment is made, a lien is created, but not recorded. Municipality may lien property for unpaid assessments only (including penalties and interest), with no acceleration. Municipality may record a tax lien for non-payment (~18 months after assessment) or ultimately “tax deed” the property (~3 years after assessment). If a mortgagee forecloses, the municipality may only collect past due payments at foreclosure, but shall be made whole through payment from the municipality’s loan loss reserve. The (former) owner would still obligated to pay the debt (now unsecured).

Loan Loss Reserve and Financing Standards. Municipality to create a loan loss reserve to cover uncollectible delinquencies and foreclosures. Financing terms and underwriting standards to be established by municipality.

HB 1554 was signed by Governor Lynch on 6/28/10, effective on 8/27/10; enacted as Chapter 215, Laws of 2010. Bill Text: <http://www.gencourt.state.nh.us/legislation/2010/HB1554.html>

Federal Status of PACE Initiatives

On May 5, 2010, Fannie Mae and Freddie Mac both issued lender letters expressing their concern over state and local PACE initiatives that permit a property lien superior to first mortgages. On July 6, 2010, the Federal Housing Finance Administration (FHFA), which oversees Fannie and Freddie, further hardened the financial picture based on this view:

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

FHFA has required Fannie and Freddie to significantly tighten their lending practices relative to PACE programs, with the result that these programs have largely been shut down nationwide. Negotiations among FHFA, DOE, and others continues.

Meanwhile, the State of California has sued FHFA over its actions and Congress has stepped in with various bills that would address FHFA’s issues or work around them.

More information at DOE: <http://www1.eere.energy.gov/wip/pace.html>

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August 13, 2010