



Update on New Jersey's PACE Legislation

Notes on the Conditional Veto of the PACE Bill

New Jersey PACE

Monday, November 16, 2015

**Special Webinar:
The Future of PACE
in NJ Municipalities
Tuesday, December 15, 2015
11 a.m. – Noon
Details at www.NewJerseyPACE.org**

Property Assessed Clean Energy (PACE) is an innovative financing program for energy efficiency, renewables, and resiliency for property owners, secured through a voluntary special assessment for up to 30 years. For more information, see www.NewJerseyPACE.org.

For the past three years, New Jersey PACE, a 501(c)(3) nonprofit, has been working with the PACE industry and other stakeholders to draft improvements to NJ's original Property Assessed Clean Energy (PACE) law enacted in 2011. In June 2015 a new bill (A2579) was passed overwhelmingly by the legislature. On November 9th, the Governor returned the bill to the Legislature with a Conditional Veto (CV), specifying changes to the bill as a condition of signing it.

After looking in detail at the Conditional Veto we believe that it contains several provisions that would make the program impractical to implement and in several respects actually leave us in a worse position than the 2011 statute. Accepting the Governor's recommendations would also likely prevent the introduction of a corrective bill in the next session.

A couple of examples: the CV creates a "pilot" program limited to 10 towns, excluding some of the ones that could benefit from it the most; it excludes residential completely; and it authorizes the Division of Local Government Services (DLGS), an oversight agency in the Department of Community Affairs, to promulgate "rules and regulations," which could delay approval of municipalities and programs more or less indefinitely. None of these restrictions are in the current law (PL 2011, Ch.187).

We're at a critical stage with PACE in NJ, and we take our nonprofit responsibility to the public interest seriously. That is why we're taking a careful approach. We are remaining open as to our response until we have discussed all options with key constituents, starting with the bill's sponsors.

Our principal concerns with the Conditional Veto:

1. The proposed pilot program includes only ten towns, in the order of application, and excludes many cities that could benefit the most (Newark, Camden, Trenton, Atlantic City, Asbury Park, etc.).
2. Due to the limitation to 10 towns, and the uncertainty as to which towns will be approved, energy services companies can't take the risk of wasting the time and money they have invested in lining up projects.
3. Reintroducing the requirement for pre-approval of municipalities by the DLGS can create major delays, because (1) the DLGS is severely understaffed (2) the DLGS has repeatedly told us and other PACE Administrators that their role is to protect public finances, not promote private investment or clean energy, and (3) since the DLGS is authorized to "write rules and regulations," it would not be unusual for this to take several years to complete.
4. There is nothing in the CV that determines what the Pilot's objectives would be, when it would be complete, how it should be evaluated, or how and when a full program could be established.
5. By removing residential altogether, the financial investment in PACE will be significantly diminished, which could be interpreted as a lack of program effectiveness, and impact the speed of expansion of the program. It is not generally understood that across the US, there has been 10X the investment in single family residential as compared with commercial projects. While residential projects are smaller, they are more

efficiently processed — such that over \$1B has been invested in residential PACE just in one program so far this year.

6. Residential PACE has been controversial in the past; however, in August the Obama Administration, through HUD/FHA, proposed guidelines that would make residential PACE loans subordinate to the first mortgage in the case of a default (but the lien would survive the default). The guidelines are still in formulation, but the CV could have made NJ's PACE law contingent on those guidelines.
7. Commercial projects are one-of-a-kind, more complex, and take much longer to bring to fruition, among other challenges. Restricting the pilot program to a small number of commercial projects will not provide a meaningful assessment of the potential impact of residential or commercial PACE.
8. We are very concerned that capital providers will write off NJ as not worth investing in. PACE investors are looking for scale because that is the only way for them to make money. A small pilot program is of no interest to most PACE investors. Meanwhile, other states are moving ahead, and the investment dollars will flow to programs elsewhere in the country.
9. The requirement that a commercial PACE loan be subject to the approval of all prior lien holders means that a multi-million dollar project could be killed by an uninformed minor lien holder. Getting the first mortgage holder to approve the loan is difficult enough; most property owners will not have the patience to try to persuade everyone who might have a lien on the property.
10. The stipulation that the law go into effect four months after enactment, instead of immediately, will cause a further attrition in projects. The fact is that there are many projects that have been ready to go for months, some of them with critical systems needing to be replaced. Particularly with solar, where PACE is the most effective financing solution, time is of the essence, as the Investment Tax Credits will expire in 2016.

You can read the full text of the Conditional Veto at www.NewJerseyPACE.org.

PACE was created to accomplish the public good of reducing energy waste, switching to renewables, and increasing the resiliency of our built environment. If the reduction in energy use could have been achieved through our current system, it would have been – but it has not. This is why we need innovative programs like PACE. The mortgage banking system has controlled the financing of private property, and will continue to do so, for the majority of building assets. However, at some point positive change must overrule the dictates of the past, as long as these changes are done with sensitivity. We feel that PACE laws sufficiently protect the banking and mortgage banking industry — and the evidence shows that there have been virtually no defaults in the billion+ dollars of PACE loans made so far in America.

What can to be done to make the program work?

Many people, including ourselves, initially thought we could work with a limited pilot program. Pilots of new ideas sometimes make sense, but in the case of PACE, there has been sufficient evidence of success in other states that such a pilot is unnecessary; and we think a pilot structured in the way suggested in the CV would severely and perhaps permanently limit the viability of a PACE industry in NJ. It's a shame, because NJ will likely lose more than a billion dollars a year of investment and the attendant economic and environmental benefits—at a time when NJ sorely needs to improve its business competitiveness and create jobs.

Thirty-one states—including Texas, Mississippi, and others—now have PACE statutes in place. They've already resolved the “concerns” that the Governor's office has expressed, and demonstrated that PACE is not harmful in any jurisdiction.

At this point, though, we need to speak with the bill's sponsors and see what they want to do. We remain committed to leading the movement to create a thriving PACE industry in New Jersey. Thank you for taking the time to understand this important issue.

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New Jersey PACE, a 501(c)(3) Nonprofit

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8 Revere Drive, Basking Ridge, NJ 07920 ~ 908-396-6179